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TRANSCRIPT OF RECORD.

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SUPREME COURT OF THE UNITED STATES.

No. 294. *17*

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JOHN G. BENSON, PLAINTIFF IN ERROR,

*17*  
VS.

*17*  
JOSEPHINE DECUR.

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*17*  
IN ERROR TO THE SUPREME COURT OF THE STATE OF LOUISIANA.

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*1875*

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a 4829. Eighth district court, No. 7800, transferred to fifth district court, No. 4028. Mrs. Josephine Decuir vs. John G. Benson. Supreme court of La.

Filed Nov. 4th, 1873.

(Signed)

M. P. JULIAN,  
Dy. Clerk.

1 Eighth district court for the parish of Orleans.

MRS. JOSEPHINE DECUIR }  
vs. } No. 7800.  
JOHN G. BENSON. }

*Petition.—Filed June 29th, 1872.*

To the honorable the judge of the eighth district court in and for the parish of Orleans, Louisiana :

The petition of Mme. Antoine Decuir, who resides in the parish of Pointe Coupée, in this State, respectfully represents :

That on Saturday the 20th of July, being then in the city of New Orleans, and desiring to go to her plantation in the aforesaid parish of Pointe Coupée, she went on board the steamboat Governor Allen, a packet engaged in the business of common carrier of passengers and plying between the ports of New Orleans and Vicksburg, and the captain and owner of said steamboat being one John G. Benson, and the clerk of which boat is D. E. Grove, the duly-recognized agent of the owner of aforesaid boat; the domicil of said John G. Benson is in this parish.

That the said steamboat was duly advertised and public notice given to all the world that she would carry passengers as aforesaid.

That petitioner, relying on the law and the said public advertisement, *she* desired to avail herself to the said means of transit, and did go into the cabin of said steamboat for the purpose as stated *as* above.

That she was on legal business of importance in the matter of the succession of her late husband in aforesaid parish.

Petitioner now avers that she was denied the equal rights and privileges granted to all persons under the provisions of article 13th of the constitution of Louisiana, in regard to the equal rights and privileges

3 of all persons, irrespective of race and color, and under the laws of the United States, and under the provisions of act No. 38, of the general assembly of 1869, on the sole ground of her being a person of color.

That she was greatly insulted and wounded in her feelings.

That she was expressly denied, though in ill-health at the time, the privilege of even a state-room in the cabin, or a seat at the table to take her meals on said boat, although due application was made in her behalf to the officers of said boat.

That she was forced to remain in a small compartment in the rear of said boat, which was a public place, without the common conveniences granted to the other passengers, on the sole ground alleged, set up, and expressly stated by the captain and clerk of said boat, that she was a colored person—thus making an illegal discrimination on account of color.

Petitioner alleges that she was willing and able to pay for, and did



proper payment for such privileges as the other cabin-passengers had, but was denied such privileges.

4 That her meals, such as they were, were brought out to her to said place after all the cabin-passengers, officers, and servants had sat at the table and eaten, and she was thus compelled to eat on a chair.

That she was forced to set up all night, although a bed was offered to her on the floor of said boat, which she refused for the reasons that the place was public, and a place of passage for the officers of the boat and every one, and she could not, on account of delicacy, disrobe herself or be exposed to the sight of every one.

Petitioner further avers she is a native of the State of Louisiana; that her husband was a large land-holder in the parish of Pointe Coupée in this State.

That she is well educated; that she resided more than twelve years in the city of Paris, France, and that the treatment above alluded to is not only a gross infraction of the constitution and laws of this State

5 and those of the United States, but is also a gross indignity to her personally; and for this denial of equal rights and privileges on the part of said officers of the steamboat Governor Allen, was such a shock to her feelings, and occasioned so much mental pain, shame, and mortification, that her mind was affected.

That she was exposed to the vulgar conversation of the crew and every one on said boat.

That for this she claims to have suffered actual damages in the sum of twenty-five thousand dollars, which amount she claims from the owner of said boat; and she claims the further sum from the owner of said boat of fifty thousand dollars as exemplary damages.

Petitioner further avers that on her arrival at her place of destination, to wit, Hermitage Landing, Pointe Coupée Parish, in this State, a distance of about one hundred and sixty miles from New Orleans, having been on said steamboat sixteen or eighteen hours in the position as alleged, being a night and part of a day, the clerk of said boat de-

6 manded and received payment of her fare as cabin-passenger, and she paid, although protesting against his right to demand payment, and the receipt of said clerk is hereto annexed and made part of this petition.

Petitioner avers that in all her travels on different steamers and public conveyances, both in this country and Europe, she has not met a like indignity as on the steamer Governor Allen.

That she has always demeaned herself with propriety, decorum, and respect.

That she was not guilty of any gross, vulgar, or disorderly conduct, and that the sole ground alleged by the captain and clerk of said boat in their refusal to accord her equal rights and privileges with the other cabin-passengers was that she was a colored person.

Wherefore petitioner prays that the said John G. Benson, captain and owner of said steamboat Governor Allen, be duly cited, and that, after due proceedings had, there be judgment against said John G.

7 Benson, owner and captain of aforesaid steamboat and in favor of petitioner, in the full sum of seventy-five thousand dollars for actual and exemplary damages, and for costs of suit and general relief.

As in duty bound.

(Signed)

(Do)

SEY. R. SUAER,  
E. K. WASHINGTON,  
Of Counsel.

*Bill annexed to petition.—Filed July 29th, 1872.*

[Trip No. 3. Regular New Orleans and Vicksburg weekly packet.]

HERMITAGE, July 21, 1872.

*Mdme. Decuir to str. Gov. Allen.*

Pass from N. O .....	5 00
Ft. ....	1 00
	<hr/>
	6 00

Paid.

(Signed)

D. E. GROVE.

*Citation.*

STATE OF LOUISIANA:

Eighth district court for the parish of Orleans, in the city of New Orleans.

MRS. JOS. DECUIR	} No. 7800.
vs.	
JOHN G. BENSON.	

8 Mr. John G. Benson, New Orleans, La.:

You are hereby summoned to comply with the demand contained in the petition of which a copy accompanies this citation, or deliver your answer to the same, in the office of the clerk of the eighth district court for the parish of Orleans, in ten days after the service hereof.

Witness the honorable Chas. M. Emerson, judge 3d d. court, acting in the absence of Henry C. Dibble, judge of the said court, on the 29th day of July, in the year of our Lord 1872.

(Signed)

THOMAS LYRME, Clerk.

*Sheriff's return to above citation.*

Received July 30th, 1872, and on the 2d day of August, 1872, served a copy of the within citation and accompanying petition on John G. Benson, defendant herein, in person.

Returned same day.

(Signed)

JAS. MCK. RICHARDY,  
Dy. Sheriff.

*Exception.—Filed August 12th, 1872.*

9 Eighth district court for the parish of Orleans.

MME. ANTOINE DECUIR	} No. 7800.
vs.	
JOHN G. BENSON.	

Now comes John G. Benson, defendant in the above cause, into court, and without admitting any of the allegations contained in plaintiff's petition, herein filed, appears excepts thereto on the following grounds:

1°. Because this court is without jurisdiction *ratione materia* of the



matters and things set up in plaintiff's petition, the United States district court being alone vested with jurisdiction of the same, as the matters set up are admiralty matters, over which that court alone has jurisdiction.

2°. Because the plaintiff's petition sets forth no cause of action against appearer, in this, that he is not alleged to have been present or authorized the acts complained of, or that he could have prevented the same.

3°. Because plaintiff did not pay, or tender to pay, for a cabin-passage, the same being \$7, to Hermitage Landing.

10 4°. Because the steamboat Governor Allen is licensed and enrolled, according to act of Congress, to pursue the coasting trade, and is governed by the laws of the United States, and no others, and appearer has a right to make all reasonable rules and regulations under said acts of Congress for the prosecution of his business.

5°. Because the 13th article of the constitution of the State of Louisiana and the act, No. 38, of 1869 of said State, set up and invoked by plaintiff in her petition, as the basis of her pretended claim, are in violation of the article i, sec. 8, of the Constitution of the United States, authorizing Congress to regulate commerce among the several States, and consequently null and void so far as they attempt to regulate commerce.

6°. Because the steamer Governor Allen was at the time alleged in plaintiff's petition engaged in prosecuting commerce and navigation between the ports of New Orleans, State of Louisiana, and Vicksburg, in the State of Mississippi, and not subject to the control of the  
11 acts of the State of Louisiana in the prosecution of her said voyages so far as they attempt to regulate or control the management of said steamboat Governor Allen in the mode of carrying or accommodating her passengers, or the price she should charge for the same or making room for their accommodation when there was none.

Wherefore appearer prays that this exception be maintained and plaintiff's suit dismissed at her costs.

(Signed)

BENTRICK EGAN, *Atty.*

*Exception continued.—Extract from minutes, Nov. 11th, 1872.*

Eighth district court for the parish of Orleans.

MRS. JOS. DECUIR }  
vs. } No. 7800.  
JOHN G. BENSON. }

The exception fixed for this day was, by consent of counsel, ordered to be continued to Monday, November 18th, 1872, at eleven o'clock a. m.

12 *Exception continued.—Extract from minutes, Nov. 18th, 1872.*

Eighth district court for the parish of Orleans.

MRS. JOS. DECUIR }  
vs. } No. 7800.  
JOHN G. BENSON. }

The exception herein came up for trial—

Present, B. Egan, for exceptor;

" E. K. Washington and S. P. Suaer, for plaintiff—

when, after hearing argument of counsel, the court took the matter under advisement.

*Exception continued.—Extract from minutes, Nov. 25th, 1872.*

Eighth district court for the parish of Orleans.

MRS. JOS. DECUIR }  
                   vs.        } No. 7800.  
 JOHN G. BENSON. }

The exception herein was ordered to be continued to Monday, December 2d, 1872, at eleven o'clock a. m.

13   *Exception continued.—Extract from minutes, Dec. 2d, 1872.*

Eighth district court for the parish of Orleans.

MRS. JOS. DECUIR }  
                   vs.        } No. 7800.  
 JOHN G. BENSON. }

The exception herein came on for trial—present, E. K. Washington and S. P. Suaer, for plaintiff; present, B. Egan, for defendant and exceptor—when, after hearing pleadings and counsel, it is ordered that this exception be continued to Monday, December 9th, 1872, for further argument.

*Exception continued.—Extract from minutes, Dec. 9th, 1872.*

Eight' district court for the parish of Orleans.

MRS. JOS. DECUIR }  
                   vs.        } No. 7800.  
 JOHN G. BENSON. }

14   The exception herein fixed for this day for argument was ordered to be continued to Wednesday, 11th, 1872, at ten o'clock a. m.

*Exception overruled.—Extract from minutes, Dec. 11th, 1872.*

Eighth district court for the parish of Orleans.

MRS. JOS. DECUIR }  
                   vs.        } No. 7800.  
 JOHN G. BENSON. }

The exception herein continued for this day for argument came on—Present, E. K. Washington, for plaintiff;

“B. Egan, for defendant & exceptor—

when, after hearing pleadings and further argument, it is ordered by the court that the exception be overruled, reserving to the defendant the right to plead in his answers the matters set up in his exception.

*Answer.—Filed December 28th, 1872.*

Fifth district court for the parish of Orleans.

MRS. ANTOINE DECUIR }  
                   vs.        } No. 4028.  
 JOHN G. BENSON. }

15   Now comes John G. Benson, defendant in the above-entitled cause, into court, and reserving all his rights to the exception



heretofore filed, he pleads a general denial to all and singular the allegations contained in plaintiff's petition. And, for further answer, respondent alleges that the steamer Governor Allen was, on the 20th of July, 1872, and had been for some years before, enrolled and licensed under the laws of the United States to pursue the coasting-trade, and was in said month of July actually engaged in commerce and navigation between the ports of New Orleans and Vicksburg, in the State of Mississippi, and that the 13th article of the constitution of the State of Louisiana, and the act, No. 38 of 1869, of said State, so far as they attempt to regulate steamboats, are in conflict with the article 1, section 8, of the Constitution of the United States, giving Congress exclusive power to regulate commerce among the several States, and are, consequently, null and void. And, for further answer, respondent

16 alleges that he has by law a right to regulate and prescribe rules for the accom'odation of passengers on the steamer Governor Allen; that said boat is private property and does not belong to the public, and any law attempting to prevent him from regulating and managing said steamboat to the best advantage and for the interest of her owner would be in violation of article 14, section first, of the amendment of the Constitution of the United States prohibiting any State from depriving any person of his property without due process of law. And, for further answer, respondent alleges that there is now, and always has been, a well-known regulation on the steamer Governor Allen, as well as all other boats engaged in commerce and navigation between the port of New Orleans and the various ports and places on the Mississippi and tributary rivers, that colored persons are not placed in the same cabin as white persons or allowed to eat at the same table with them; that this regulation is reasonable, usual, and customary, and is made for the protection of their business, and was well known to the plaintiff in this cause in July, 1872, and had been known to her for many years previous.

And, for further answer, respondent alleges that the steamboat Governor Allen has a cabin called the bureau, for the exclusive accom'odation of colored persons, provided with state-rooms and all the conveniences of the cabin appropriated for the exclusive use of white persons; that plaintiff was tendered a state-room in said bureau-cabin appropriated for the exclusive use of colored persons according to the well-known rules and regulations of the boat, and instead of occupying it took a seat in the recess of the boat in the rear of the ladies' cabin, where she was offered a stre'cher, which she declined.

And, for further answer, respondent alleges that the plaintiff was distinctly informed, before she came on the boat, by the clerk, to a person who applied to him on her behalf, that she could not be accom'odated in the cabin for white persons, but would be in the bureau or

18 cabin for colored persons, and that she came on the boat with that understanding and without complaint, and only paid \$5, the amount charged in said cabin, and that the other cabin-passengers are charged \$7 to Hermitage Landing.

Wherefore respondent prays that there be judgment in his favor and against plaintiff, with costs.

(Signed)

BENTRICK EGAN, *Atty.*

*Order fixing case.—Extract from the minutes, Jan'y 25th, 1873.*

Fifth district court for the parish of Orleans.

MRS. JOS. DECUIR }  
                   vs.        } No. 4028.  
 JOHN G. BENSON. }

SATURDAY, the 25th day of January, 1873.

Present, the honorable E. Worth Cullom, judge.

MDME. JOS. DECUIR }  
                   vs.        } No. 4028.  
 JOHN G. BENSON. }

On motion of B. K. Washington & S. R. Snaer, attorneys for  
 19 plaintiff herein, and on suggesting to the court that this is a suit  
 under act No. 37 of the acts of the general assembly of 1869,  
 entitled "An act to enforce the 13th article of the Constitution of the  
 United States," and as such, under said act, is entitled to be tried by  
 preference over all other cases :

Ordered, this case be assigned for trial on Wednesday, the 5th inst.,  
 and defendant be duly notified thereof.

(Signed)

EDWARD KEENA,  
*Dy. Clerk.*

*Sheriff's return to above order.*

Received, January 25th, 1873, and on the 27th day of same month and  
 year served copy of within rule on John G. Benson, defendant, through  
 B. Egan, esq., his attorney, in person.

Returned same day.

(Signed)

J. V. RELIMPIO,  
*Dy. Sh'ff.*

20 *Continuance.—Extract from minutes, Feb'y 5th, 1873.*

Fifth district court for the parish of Orleans.

MRS. JOS. DECUIR }  
                   vs.        } No. 4028.  
 JOHN G. BENSON. }

This cause is continued by preference.

*Continuance.—Extract from minutes, Feb'y 17th, 1873.*

Fifth district court for the parish of Orleans.

MRS. JOS. DECUIR }  
                   vs.        } No. 4028.  
 JOHN G. BENSON. }

This cause is continued by preference.



*Continuance.—Extract from minutes, March 10th, 1873.*

Fifth district court for the parish of Orleans.

MRS. JOS. DECUIR }  
                   *vs.* } No. 4028.  
 JOHN G. BENSON. }

This cause is continued by preference.

21                   *Testimony.—Filed March 17th, 1873.*

Fifth district court for the parish of Orleans.

MRS. JOS. DECUIR }  
                   *vs.* } No. 4028.  
 JOHN G. BENSON. }

Testimony taken by consent in the office of B. Egan, esq., on February 4th, 1873, on behalf of defendant: B. Egan, esqr., present, and representing defendant; and Messrs. E. K. Washington and S. R. Suaer, present, and representing plaintiff.

J. H. Mossos sworn and examined on behalf of defendant.

By Mr. Egan:

Q. Mr. Mossof, you are a clerk on the steamboat, I believe?

A. That is my occupation, sir.

Q. How long have you been engaged in that business?

22           A. Well, sir, since I first went on the river. It was 1855. I have been engaged in that business since 1855. I was not doing much of it during the war. I was in that business about fourteen or fifteen years, off and on.

Q. Well, since the war, have you been continually engaged in it?

A. I have.

Q. In what trade?

A. In the trade from here to Greenville and from here to Memphis and to Louisville part of the time.

Q. On what boat have you mostly run lately?

A. Lately I have been on the Robert E. Lee mostly, excepting in the summer time. We had the Ouachita Belle chartered last summer in place of the Lee.

Q. When you say "clerk," what do you mean—first clerk or second clerk?

A. I have been first clerk most of the time for the last two or three years.

23           Q. Are you familiar with the custom amongst steamboats in trade between New Orleans and Vicksburg and above that, with regard to carrying colored persons?

A. I believe so.

Q. Will you state it fully?

A. Well, on all boats that I have been on for the last three or four years, we have had apartments built separate from the main cabin. Some boats have them in the texas, and some have them under the ladies' cabin, for colored passengers, where they have nice rooms, and their meals are furnished there like they are in the other cabins; and with regard to passage with us in our trade we charge them one-quarter less pas-



sage. For instance, if it was twelve dollars from here to Vicksburg, it would be nine dollars for a colored passenger. It is a custom  
24 with us in all the boats that I have been on, and I have never had any serious trouble with any of them with regard to it.

Q. Is this a well-known custom on the Mississippi River?

A. I judge it is. I can only say, though, so far as boats are concerned that I have been on myself personally, and where I have known the boats, but I think it is pretty well understood amongst all of the steam-boats. That is, I can say so far as I know.

Q. Have you ever heard of any other custom prevailing?

A. I never did—not that I know of positively. A man can hear rumors here and there, but I don't know anything that I can state.

Q. But I mean the custom?

A. No, sir; never.

Q. Is there any necessity for this custom, and, if there is, will  
25 you please state what that necessity is?

A. Do you mean the custom of taking them separately?

Q. Yes.

A. Well, sir, in that respect, I could only say as far as my own feelings were concerned, and I would suppose it is the feelings of the people of this country. I would suppose that there would be right smart of objections. I would not like to be put into the cabin with colored passengers. If they allowed Tom, Dick, and Harry to be set down at a table to eat with me, and put into a room with me, I should certainly object to it myself, and I judge that other people are good deal like myself in that respect.

Q. What would probably be the result if a boat was to mix the whites and the colored people in the same cabin?

A. I think that the mixture would terminate in a serious  
26 fuss, and one party or the other would have to get off. The captain would have to land his boat and let one party or the other off, if he couldn't do anything else. This case in which my evidence is being taken I don't know anything about.

Q. Have you had Madame Decuir at any time as a passenger on the Robert E. Lee?

A. Never that I know of on the Robert E. Lee.

Q. Have you had her as a passenger on any other boat?

A. I believe that she was a passenger on the steamboat Onachita Belle last summer. I think she is the same party. I don't know positively. I never learned the name at that time.

Q. Were you clerk of the boat at the time?

A. I was.

Q. Where was she put?

A. I offered her a room, and she would not take it, and she sat  
27 down in the recess. That is after the ladies' cabin of the boat.

Q. Have you ever given colored persons rooms in the cabin appropriated to white persons?

A. Never, when I knew them to be colored. If I did, I didn't know them to be colored.

Q. What is the recess. Will you describe where the recess is?

A. It is the after part of the main and ladies' cabin. It is aft of all. It is a place for children to play in more than anything else, and servants to stay, and the like of that. There are no accom'odations there for sleeping or anything of that kind. It is simply a place to sit down.

Q. But it is enclosed?

A. Oh, yes; it is enclosed.

Q. With glass windows?

A. Yes, sir; with windows.

28 Q. Where do they usually put the colored persons on the steamboat Governor Allen?

A. She has rooms under the ladies' cabin, as near as I recollect. It is just like the way of a great many other boats. The Katie and a great many other boats are the same way.

Q. Are those rooms as good as the rooms in the upper cabin of the boat?

A. They are not quite as large, but I don't know but they are quite as good.

Q. Provided with the same bed and bedding?

A. Yes, sir; I believe they are.

Q. Have they the same meals in them?

(Mr. Washington objected to the question as leading.)

Q. What kind of meals do they have?

A. It is the same as the other people get on the boats that I have been on. I cannot speak of any others. I only of those that  
29 I have been clerk on. They all come from the same table and from the same pantry.

Q. What is that cabin called?

A. Well, there are a half a dozen names; some boats call it the colored cabin, and some of them call it the colored bureau. I would call it a colored cabin.

Q. Have you said that some boats have the colored cabin in the texas?

A. Yes, sir; the steamboat Natchez has.

Q. In the texas?

A. Yes, sir.

Q. But the Lee and the Allen and the Ouachita Belle have them the other way?

A. The Lee has some in the texas and some under the ladies' cabin, there not being room below for all that she carries. The Katie will be the same way.

Q. You have also been clerk of the steamboat Katie?

30 A. Yes, sir.

Q. That was the last boat you were e'gaged on?

A. I have made a trip on the Lee. I have been on her for the last two trips. The Katie is now undergoing repairs, and I expect to go on her.

Q. What is the passage in the cabin to Hermitage Landing for white persons?

A. For white persons to Hermitage Landing it would be seven dollars.

Q. And for colored persons?

A. Five dollars and a half; that is the fare on the steamboat Natchez or on the steamboat Natchez or on the steamboat Robert E. Lee. I will speak for one boat where I know it to be a fact.

Cross-examine' by Mr. Washington:

Q. In your experience, Mr. Mossof, I have understood you to state that Madame Decuir came on board the Ouachita Bell; she applied for a room and you directed her to the recess.

31 A. No, sir; I didn't say I directed her there. I say that I offered her a room and she would not accept it, and then she went into the recess.



Q. Where was that room ?

A. It was in the colored cabin.

Q. Where was it in that boat ?

A. Under the ladies' cabin.

Q. You offered her a room down there ?

A. Yes, sir.

Q. Which she declined to accept ?

A. Yes, sir.

Q. And she then went into the recess ?

A. Yes, sir.

Q. Where she remained ?

A. Yes, sir.

Q. Do you know how long she remained there ?

A. She remained there all day, or nearly all day. She got on the boat about eight or nine o'clock and got of' here in the city about five or six o'clock.

Q. From what point to what point did she travel ?

32 A. She got on board at Hermitage, if she is the same lady. I cannot say that she is the same party.

Q. Well, we assume that she is the same party. How did she appear to behave herself ?

A. She behaved herself, as far as I know. I didn't see her but once.

Q. Did she conduct herself as a lady ?

A. I cannot say, because I never saw her until just before she got of' the boat.

Q. As far as you know, she demeaned herself properly ?

A. I cannot *not* say, because I didn't see her until she was about to get of' the boat.

Q. You did not see her do anything ?

A. I didn't see her do anything, either one way or the other.

Q. This colored cabin is below the ladies' cabin.

A. Right under the ladies' cabin.

Q. Now, please state what differences, if any, there are between that and the ladies' cabin.

33 A. Do you mean between the ladies' cabin and the colored cabin ?

Q. Yes, in regard to accom'odation and in regard to the locality.

A. In regard to the accom'odations *and in regard to the locality ?*

A. *In regard to the accom'odations*, I say, as I said just now, that the rooms down there are a little smaller than they are in the ladies' cabin. They are not quite as large.

Q. Are they as well ventilated ?

A. Well, what boats do you refer to ?

Q. Well, the Ouachita Belle we are now speaking of.

A. If the doors are left open, they are very near so.

Q. Suppose the doors are not left open ?

A. They are not entirely so, but very near so. I say that they are not quite as well ventilated.

Q. Now what is the reason that they are not so well ventilated ? Are they near the machinery ?

34 A. No, sir; they are not any nearer the machinery than the ladies' cabin is.

Q. Why are they not so well ventilated ?

A. Well, they are not built in the same way.

Q. Please state wherein they differ.



A. They run just the reverse of those in the ladies' cabin—cross-ways.

Q. What is there outside of this colored cabin?

A. Nothing but the guards.

Q. Are there any guards to those cabins?

A. Yes, sir.

Q. They lead right out into the open air?

A. Yes, sir; and there is a lattice-work.

Q. They are the guards, you say?

A. Yes, sir.

Q. What do you understand by the guards?

A. I mean the guards of a steamboat. There are the upper guards and the lower guards. There are guards on the lower deck and on the cabin deck.

35 Q. Do you mean that there is a passage-way around these rooms, or between these rooms and the outside of the boat, as is the case with the ladies' cabin?

A. There are guards on the outside.

Q. You do not understand the question. I mean, is there a passage-way around these rooms as is the case with the ladies' cabin?

A. You mean, are there two passage-ways?

Q. No, sir. I mean simply this: Is there a passage-way on each side of these rooms?

A. No, sir; not on all boats. There may be on some.

Q. How is it on the Ouachita Belle?

A. In the Ouachita Belle you go from the guards into the rooms, and go out on the other side. There is only a passage one way, that is, by going through the passage of the colored cabin?

Q. How do you get into the colored cabin?

A. By going aft on the main deck, and go down stairs.

36 Q. Is there more than one way of getting into it?

A. You might go into it two ways—by going down through the main cabin, and by going down by the guard. There are two entrances for you to go in.

Q. What is the ordinary way of going into these colored cabins?

A. By going aft on the guard and going down stairs.

Q. That is the usual way?

A. That is the usual way. There could be another way used.

Q. Well, when you get down there is there any passage-way outside of that colored cabin, between that and the side of the boat? Is there a passage-way around the colored cabin?

A. There are the guards.

Q. Can you walk around the colored cabin as you can around the ladies' cabin?

A. You cannot walk around the ladies' cabin of a steamboat.

Q. You can go outside, can you not?

37 A. You can go outside from the other place also.

Q. Is there a place outside?

A. There are guards, as I said before.

Q. How wide are those guards?

A. I could not tell you how wide they are, because I don't know the width of them.

Q. Is there a walk around the colored cabin of two feet wide?

A. No, sir; nor around any cabin on any steamboat, not out on the guards, that I have ever seen.

Q. Around the ladies' cabin, as well as around the gentlemen's cabin, you can walk outside around?

A. I beg leave to differ with you on that point, you can around the gentlemen's cabin, but you cannot around any ladies' cabin that I have ever seen. Without going into the cabin you cannot go around it on any boat that I have ever seen.

38 Q. I understand you to say that you cannot walk around this colored cabin?

A. There is a guard on each side.

Q. And that is all?

A. Yes, sir; there is a guard on each side of the ladies' cabin also.

Q. Now, then, with regard to light, how is that colored cabin?

A. I would suppose there was plenty of light there.

Q. I speak with reference to the ladies' cabin?

A. In the day-time you can see to read in either of them and in the night-time you can see to read in either of them with light.

Q. I ask you whether the conveniences of lights in the colored cabin are equal to those in the ladies' cabin?

A. Well, on some boats they are not, and on others they are.

Q. How is it on the Ouachita Belle?

A. I don't think they are quite as good.

Q. You mean to say that the advantages with regard to light in the colored cabin are not equal to those in the ladies' cabin?

39 A. Yes, sir.

Q. What is the reason of that?

A. It has not got as many windows to it.

Q. How many windows has it?

A. It has a light from the main hall.

Q. You mean from the hall between? There are two departments, I suppose, in this colored cabin?

A. Yes, sir.

Q. Where does the light come from?

A. It is a light from the guards.

Q. Through windows?

A. Yes, sir.

Q. Now, Mr. Mossof, with regard to the meals. How do colored passenger get their meals?

A. There is a table set there on purpose.

Q. Is it set down there, is it?

A. Yes, sir.

Q. There is a table specially for the colored passengers set down there?

A. Yes, sir.

Q. Where is it situated?

A. In the hall of the colored cabin, sir.

Q. Between these rooms?

40 A. Yes, sir.

Q. At what time are the meals down there served?

A. Well, I don't know exactly.

Q. I mean with reference to the meals above?

A. About the same time, sir, as near as I know. I was never down there more than once during the whole time that I was steamboating, because it is other people's work to attend to that department, and I don't go down there. It is served about the same time, I should say.

Q. You say it is served about the same time. Now tell me in regard to the quality?



A. As far as I know, it is the same as goes to the other tables.

Q. Are there different sets of servants to wait on them?

A. There are servants to wait on those persons in that cabin just as much as there are in the ladies' cabin; there are servants belonging to that department.

41 Q. Well, I understand you to say that the meals are served about the same time?

A. About the same time.

Q. By a different set of servants to those above?

A. Yes, sir; there are servants for that purpose, to attend to that cabin. It is their work to attend to that cabin.

Q. Are there any chambermaids to attend to the colored cabin of the Ouachita Belle?

A. There was a chambermaid; she was required to go there; she was ready to serve any of them.

Q. Is there any chambermaid specially for that colored cabin?

A. I don't think there is. That is a department that the steward attends to himself. We have three chambermaids on the boat. Now, I don't know where he puts them, nor what work he puts them to do. There are three on the boat, but what work he allots for them to do I cannot say, because I don't know. The steward of the boat manages all the cabin affairs himself.

42 Q. You were never down there when they were at their meals?

A. I don't think I was down there more than once on the Ouachita Belle, that I know of.

Q. What did you observe when you were down there. Did you see any colored cabins?

A. I went down there just out of curiosity more than anything else. There was nothing called me there; I just went of my own accord.

Q. What did you observe down there?

A. I saw everything going on quietly and orderly, and all of them were being waited on. I just took a casual walk at meal-time. It is the custom at meal-times to take a walk down the tables.

Q. It was your business to go down there?

A. No, sir, it was not my business. It was my business  
43 to see that all that were seated at the table above had been to the office and paid their passage. It is the steward's place to see that they have paid. I never go down for that purpose. As for the colored passengers, why we generally have a clerk for that purpose on most of the boats; on some boats one clerk attends to everybody.

Q. That is the Ouachita Belle that you are speaking of where the colored cabin is below?

A. Yes, sir.

Q. Are the rooms as high as those above?

A. Well, I don't know; I never measured them. I expect they are as high, very near, but I don't know.

Q. But they are not as large?

A. I don't think they are quite as large, sir.

Q. Are they provided with water and pitchers and towels as the ladies' rooms above are?

44 A. I don't know whether they are or not. I cannot say; I have no recollection. I don't know that I was ever in a room in the Ouachita Belle. I don't believe that I have ever been in a lady's room, either in the ladies cabin or the other, on the Ouachita Belle.

Q. You are speaking of those below?

A. Of course. I understand you; but I don't think I was in a ladies'



room, either above or below. I don't know whether there are pitchers and such things in there or not.

Redirect by Mr. Egan:

Q. I believe there is a distinction made on some of the boats in regard to the sizes of the rooms in different parts of the boat?

A. Yes, sir. On the Onachita Belle, now, the rooms in the gentlemen's cabin are much smaller than they are in the ladies' cabin, because a man and his wife might travel and would like to sleep in the same  
45 bed, and those rooms are made larger on all steamboats. I believe in the main cabin it is not the case.

Q. Is there a difference in the ventilation—of course where there is a difference in the size?

A. There is a difference in the ladies' cabin and in the forward part of the main cabin. The ladies' cabin and the main cabin forward are ventilated or lighted better, or you can get more light there than you can get alongside of the wheel-house. The rooms in the gentlemen's cabin are smaller than they are in the ladies' cabin on boats that I have been on.

Q. The finest rooms for ventilation are in the texas are they not?

A. Yes, sir.

Q. On all boats?

A. Yes, sir. In the summer-time they are the best, and in the winter-time they are the coldest. In the winter-time I would like to get into the darkest rooms in order to keep warm.

46 Q. The rooms in the texas are preferred, are they not, by nearly every one in the summer?

A. Yes, sir. On the Lee we have a great many nice rooms in the texas, and many gentlemen prefer to go up there to sleep rather than sleep down stairs. In the winter-time, though, they would be pretty cold. In the summer-time I have often had gentlemen come to me and ask me for a room in the texas in preference to the main cabin.

Q. You have stated, I believe, that this regulation with regard to the carrying of colored passengers is well known on the river?

A. I should judge so. It has been customary with the boats that I have been on for the last five or six years. I have never personally  
47 known of colored passengers taking rooms in the main cabin with white passengers. I have always made that distinction.

Q. You have never seen them at the same table, have you?

A. Never in my life, not to know that they were colored passengers.

By Mr. Washington:

Q. In the colored cabin have the men a particularly-assigned portion and the women another? You have more or less colored passengers that are males, just as you have above, and some that are females, just as you have above. I wish to know how you distinguish them.

A. We give them separate apartments; we don't put them together.

Q. How do the colored passengers get into their rooms.

A. Well, as I told you before, by going down the guards and going down stairs into their cabin. The men and women all go down the same way, just like the ladies and gentlemen go up the steps,  
48 of the boat to go into the cabin.

Q. Whereabouts in this colored cabin are the rooms appropriated to the female passengers?

A. I cannot tell you. I don't know.

Q. Are they in the extreme rear or in the front part?

A. I am not able to state.

Q. What I would wish to know is this: necessarily, in the ladies' cabin above, it is all appropriated to the ladies back of the wheel-house; now, is it equally so below?

A. I cannot say, because I don't know.

Q. For instance, suppose a female passenger had one of the first rooms near the stairway, going down; a man de'cending that stairway would have to pass her door to go into his room?

A. Yes, sir; if she had the first room. I don't know whether she would have the first room or the last room. I don't know whether they  
49 make that distinction or not, because I am not in the habit of registering colored passengers. I can't say, because I don't know.

Q. Then you do not know whether there are designative rooms for the female passengers below like there are above?

A. I can't state.

Q. I understand you to say that you make a difference between white and colored passengers?

A. In what way?

Q. I regard to the place you put them.

A. Yes, sir.

Q. And in the table?

A. No, sir; not in the table.

Q. You give them a different table from the whites?

A. Yes, sir.

Q. You give them different rooms from the whites?

A. Yes, sir.

Captain JOHN W. CANNON, sworn and examined on behalf of defendant:

By Mr. Egan:

50 Q. You are the master and the owner of the steamboat R. E. Lee?

A. Yes, sir.

Q. And also owner of the steamboat Katie?

A. Yes, sir.

Q. You have been engaged in the steamboating business for how long, captain, as master and owner?

A. About thirty six years.

Q. In what trades have you run?

A. In all the trades pretty near, except from here to Texas. I have run to Louisville, St. Louis, Ouachita River, Red River, and Vicksburg. I have been in the Vicksburg and Point trade and to Louisville for the last fifteen or eighteen years. I know——

Q. You have been running a boat here constantly?

A. Yes, sir; except during the war; that is, when the fall of New Orleans took place.

Q. Making about one trip a week?

A. Yes, sir.

51 Q. Both summer and winter?

A. Yes, sir; when we run to Vicksburg and Greenville; and when we went to Louisville we made a trip every two weeks.

Q. Then you had a boat in your place?

A. Yes, sir; we had a boat in the trade all the time for the last fifteen or eighteen years, except during the war. During the war I run a boat almost two years, up to the fall of New Orleans.

Q. You are familiar with the custom on the river—with regard to the carrying of colored persons, are you not?



A. Yes, sir.

Q. Well, will you state in your own words as fully as possible ?

A. I have always carried them separate and apart from the white people, down in the nursery, until we got what is called the colored cabin. Since the negroes have been freed, we have had cabins for them.

52 Q. Where is that cabin ?

A. Down under the ladies' cabin and up in the texas.

By Mr. Washington :

Q. Do I understand you to say that it is down under the ladies' cabin ?

By Mr. Egan :

Q. Where is the texas ?

A. It is under the pilot-house. It is on the roof. It is a separate cabin from the main cabin down below. It has rooms for officers and passengers, and a colored cabin up there besides. We have got all three up there.

Q. Do you know whether this regulation of carrying colored passengers in the way you describe is well known on the river ?

A. I should think so. I never carried them any other way, in all the boats I have had. I never been asked any other way, except some  
53 ignorant ones that would come aboard sometimes. The clerk might have some talk with them, but I never had my intention called to it. In fact, there have not been any other terms made. In fact, they all seem to know where they belong when they come aboard.

Q. What boats have you had since the war ?

A. Well, I had a good many. I have had the Quitman, and then I had the Grey Eagle, and then I had the Robert E. Lee, and then I had the Governor Allen, and the Belle Lee, and the Pargoud, and the Magenta. That was one that I ought to remember. I remember about fifty-odd thousand dollars. Then I have had the Governor Allen, as I have said before. I owned an interest in her for several years. The last boat  
I have had was the steamer Katie.

54 Q. All of those boats were what you term first-class boats ?

A. Well, the Grey Eagle might not be called a first-class boat. She was a comfortable passenger-boat.

Q. All the others were first-class boats ?

A. Yes, sir. The Governor Allen is not as large as the Lee, but she is almost as comfortable as any other boat.

Q. On all these boats this regulation prevailed ?

A. Yes, sir.

Q. Of carrying the colored persons separate ?

A. Yes, sir.

Q. Do you know whether this regulation is well known to the travelling community ?

A. Well, I think so. They have never travelled any other way but that way, and it must be known. I think it is just as well known as the fact that they know when they go on the boat how to ask for a  
55 cabin or a deck passage.

Q. Is there any reason for this rule being established by boats; and if there is, will you give the reasons fully ?

A. Well, the reason is that I considered that there was a difference between negroes and white people. I never put them together, no' do any boats put them together.

Q. Would it have any effect upon your business to mix them ?

A. Well, I think it would. It would have this effect : That no white



people would travel on a boat to all if they knew that negroes were put in the same cabin with them, or even that they had stayed in the same state-rooms, where the white people would have to sleep after them.

Q. Is there any prejudice in the public mind against associating with colored persons?

A. The greatest on earth, I suppose, sir.

56 Q. Are you in the habit of treating colored persons well in the cabin that you appropriate to them; and if you do, describe what the treatment is?

A. It is the same as we treat the white people. They have just the same victuals and the same attention that the white people get. They have their meals at the same time and servants to wait on them at the same time.

Q. Are the meals of the same quality?

A. Yes, sir; the same quality, just the same.

Q. And whereabouts do they get their meals?

A. Down in the bureau, or up in the texas, wherever they are put.

Q. Is the bureau a large cabin?

A. Well, it is a pretty good-sized cabin.

Q. About how many state-rooms?

A. What boat do you mean?

Q. Well, say the Allen.

57 A. Well, the Allen has got a very comfortable bureau, and as good rooms as she has got above, and there are some very large rooms. I think she has about ten or twelve rooms down there, maybe fourteen—say, from twelve to fourteen rooms—and some of those rooms are very large ones.

Q. Are they well ventilated?

A. Yes, sir; very well. They have guards on each side, the same as the cabin has above.

Q. Is the cabin well furnished?

A. Yes, sir.

Q. And the table is set in the cabin?

A. Yes, sir; set in the cabin.

Q. Do you know whether the crew of the boat have access to this colored cabin?

A. No, sir.

Q. They have not?

A. No, sir; it is the same as the cabin above, as far as the crew is concerned.

Q. Do the crew of the boat work anywhere near this cabin?

A. No, sir; there is a deck between them.

58 Q. Would it be possible for persons up in this cabin to hear the language of the crew in the lower part of the boat?

A. Not any more than standing on the forward guard and hear the crew down below, or the afterguards and hear the crew down below. You might hear them quite as plain, because you would be a little nearer to them.

Q. There would be no more chance for the passengers in this colored cabin to hear the language of the crew than for the persons in the white cabin to hear them.

A. On the forward guard? Yes, sir.

Q. Would not a man on the forward guard be nearer to them?

A. No, sir.

Q. Where is the crew generally?

A. All over the boat.

Q. Are they not generally forward?

A. Yes, sir; more than aft. The business of the boat is generally done forward, pretty much.

59 Q. You have been captain most of the time that you have been running on boats?

A. Yes, sir; most of the time.

Q. Have you ever heard of any other custom prevailing than that which you have spoken of as being the rule upon the boats that you have run on?

A. No, sir. I have never known anybody to put negroes in the cabin or at the white people's table, that I know of. I know it has not been done on my boats.

Q. You say you find this rule necessary for your own preservation?

A. Why, we could not get along unless we observed this rule strictly. I would have no white people to travel on the Lee; she wouldn't have ten passengers on a trip.

Q. What is the number of passengers she generally carries?

60 A. Well, it varies from thirty to two hundred and thirty or three hundred. I have seen her with three hundred people on her.

Q. I mean her usual passengers?

A. Well, from seventy to eighty and a hundred.

Q. What proportion of them are generally colored?

A. Well, I suppose on'third of them.

Q. What difference, if any, is made between the price for a colored passenger and the price for a white passenger?

A. Well, there is a some little difference. I don't know exactly what it is. It is, maybe, a dollar or a dollar and a half.

Q. What is the passage to Hermitage landing?

A. I don't know. Mr. Mossoss can testify about that. I believe it is seven dollars. I never questioned about that particularly, for they have been with me a long time. I never looked at it; but I think it is seven dollars. It is the same price as to Bayou Sara.

Q. Do you know what the price for a colored person is?

61 A. No, sir; I am not aware.

Q. You know that there is a distinction made between a colored person and a white person in the price?

A. Yes, sir.

Q. Although there is no difference in the accom'odations?

A. Well, there is no difference in the food that they get and the serving of it, but the cabin is not as fine below as it is above.

Q. That is the only difference?

A. Yes, sir; that is the only difference at all, and for that they are charged a less price.

Cross-examined by Mr. Washington:

Q. Captain, will you be so kind as to describe this colored cabin particularly?

A. Do you mean the one on the Allen?

Q. Yes.

62 A. Well, I can describe it very particularly, because I was on her three years. I can say that she has got an excellent colored bureau, as much as any one I ever saw. She has got some very large rooms down there. I repaired her once or twice, and looked over it, and I know her thouroughly.

Q. There are twelve or fourteen rooms, you think?



A. Yes, sir; either twelve or fourteen rooms.

Q. There is a passage-way between the rooms?

A. It is the same as any other cabin. It is a cabin, only it lays crossways of the boat instead of lengthways. The saloon of the cabin is crossways of the boat.

Q. How wide is that passage?

A. I suppose it is about fifteen or sixteen feet; fifteen feet probably. It is wide enough to set a table in and pass all around it.

Q. The table is set there, is it?

A. Yes, sir.

Q. And there are rooms on each side of that?

A. Yes, sir; the rooms are on each side of that passage. It is  
63 a regular cabin, sir.

Q. Now, you say that it is not so fine as the cabin above. Please specify why it is not so.

A. Well, I think I can specify to you, sir. The cabin above is finished all over with arches and the cabin below is only plain ceiling. The bedding is about the same as the room' above have.

Q. You think it is about the same?

A. Near about the same. Yes, sir.

Q. Now, in regard to light and ventilation, how are they?

A. Well, the ventilation of the rooms next to the guard is just the same as it is above. The rooms amidships are not quite so well ventilated.

Q. I understand you to say, captain, that these rooms below run across?

A. Yes, sir.

Q. Now, what kind of light and ventilation have they. What is the outlook from these rooms?

A. Well, out on the guards.  
64

Q. Is it out on the guards of the rooms looking to the front of the boat?

A. No, sir; there is no guard on the front part. The rooms in the middle of the colored cabin are not so well ventilated. The rooms across the ends are just as well ventilated, but these rooms amidships are not so well ventilated.

Q. Well, I understand you to say that the rooms below have an outlook, where?

A. They look right in to the open air, out into the river or the trees on the shore, wherever you want to look.

Q. But in the middle where do they look?

A. Well, they look out into the cabin. They couldn't look out forward, because there is a full cut right forwards; there are four or five rooms at each end which would be just as well ventilated and  
65 have as much light as in the ladies' cabin. By the wheel-house in the upper cabin you can't look out at all. It is the same way in all boats. There are dark rooms in the middle that you can't look out of at all.

Q. What is the obstruction there?

A. There is a bull-cat across there. There is no ventilation there at all. There are the doors to look out in front. There are no windows.

Q. Then these rooms have only one door and window?

A. They have only one door leading out.

Q. And nothing exterior.

A. No, sir.

Q. How many rooms are in that condition?

A. Three or four rooms are not so well ventilated from the front part.

Q. But there is no circulation of air through it?

A. No, sir.

66 Q. Where does the crew usually sleep on the boat?

A. The crew of the boat sleep down in the fore-castle, where you first go aboard—right under the steps, and under the boilers and all around.

Q. I do not mean the deck crew; I mean the cabin crew?

A. They sleep in the after part of the texas; we have a special place for them there, sir.

Q. What is there immediately before this colored cabin?

A. Just the deck of the boat, the same as this floor. There is nothing down there.

Q. Do you not have a great many deck passengers staying down there?

A. No, sir; we don't carry many deck passengers.

Q. Is not the machinery there below?

A. That is away forward.

Q. What do you carry in the rear part of the boat under this cabin?

67 A. Nothing of any consequence, unless the boat is very deeply loaded with cotton, but up stream there is hardly anything up there unless the boat is loaded.

Q. Captain, how can passengers get into this colored cabin?

A. There are stairs to it. It is the same as they come into the main cabin. There is only one stairway? There are two ways to get into the "Allen" below. You can go down into the nursery, and then go through the bureau.

Q. What is the usual way?

A. To go down on the guards.

Q. Outside?

A. Yes, sir.

Q. How wide is this passage leading from this recess back down?

A. Do you mean the stairway? I suppose it is about five or six feet wide?

Q. Captain, you are a man of practical sense and experience; now I ask you this question: In the event of a fire, do you really think that the passengers in the colored bureau would have as much of a  
68 chance to escape as those in the ladies' cabin above?

A. Well, I should think they would, and probably they might have a better chance, because they can go right down the steps and go down on the deck, and if the fire was above, they could go forward easier.

Q. They would have to go down on the deck of the boat?

A. Well, they would be nearer the shore than the person in the ladies' cabin. If the boat was sinking they could go up on the hurricane roof just the same as they could from the ladies' cabin. There is a stairway going right on the roof, five or six feet wide.

Q. Do they not have to go into this recess or nursery first?

A. No, sir; you go out on the guards, and then go right on the hurricane roof, or you can go right on the lower deck, and there is a pair of stairs.

69 Q. Now there is a stairway from this colored bureau down on deck?

A. Yes, sir.

Q. Where is that stairway?

A. It goes down on the lower deck, right on the guards.



Q. Does it go from this passage between the cabin or from the guards?

A. Yes, sir; just the same as these steps go down-stairs. It runs down on the guards of the main-deck below.

Q. How wide is this stairway?

A. I suppose about five feet.

Q. There is only one stairway?

A. Yes, sir; only one stairway.

Q. Where does it lead?

A. It leads down right on the deck, and you can go out forward or any where you want to go.

Q. Where do you carry your deck passengers?

A. Immediately on the deck. They have the privilege of the whole boat down below.

Q. They can go immediately under this colored bureau?

70 A. Yes, sir; or under the boilers, or anywhere else below. They have the privilege of the whole lower deck of the boat.

Q. Where do they sleep, when they do sleep?

A. Right down on the deck, wherever they can get a place. They sleep, sometimes, underneath the boilers, and sometimes on the boilers.

Q. How do the colored passengers get into this colored bureau?

A. Well, they go up the forward guards and go through the cabin and go down there.

Q. Do they go right through the ladies' cabin?

A. There is a gangway between the main cabin and the wheel-house, and they go right back there. On the Allen it is about three feet wide, may be three feet and a half, and on the Lee it is about six feet wide.

71 They can go right through the ladies' cabin and go through the nursery. The usual way is to go down the gangway. It is just the same as they go into the main cabin and then go into the ladies' cabin.

Q. Then they would generally go through the ladies' cabin?

A. No, sir, not usually; but they can go.

Q. That is not their direct way?

A. No, sir; the direct way is to go there directly from the office. The office generally is on the same side as the bureau is on, and it is a direct way from there. They have the privilege generally of the guards and all around them. They most generally have the privilege of the guards forward and aft. These colored people are never excluded from the guards.

Q. Are they excluded from the cabin?

A. They are excluded from the cabin.

Q. From the ladies and gentlemen's cabin?

72 A. Yes, sir; they are excluded from them, but they are not excluded from the guards. It is a kind of a public thoroughfare. It is the same as a street here. After they go into the bureau and deposit their packages, they can come out and occupy the guards above, and the guards below, if they do not act too freely with the ladies' cabin.

Q. They are not allowed to go into the ladies' cabin at all?

A. No, sir; it is out of their place entirely.

Q. Captain, you have a different set of servants to wait on them at their meals?

A. Not often. There is a set of servants set apart to wait on that special department, but there is no difference between them. They are just the same as the servants above in capacity and quality.

Q. In regard to the meals being served—are they served at the same time?

73 A. Yes, sir; at the same time.

Q. What do you know about the quality of the meals?

A. I pay particular attention to that myself, and know that they are well fed down there, and I have instructed the steward in reference to it, because if I treat them well I get their custom.

Q. Is the food exactly the same as that which is served above?

A. Yes, sir; it is the same as you or Mr. Egan, or anybody else travelling on that boat would get. There is no distinction whatever; not a particle.

Q. You say that about one-third of your passengers are colored?

A. Yes, sir.

Q. Sometimes more than a third, are the' not?

A. Yes, sir; sometimes.

Q. Probably about one-half?

A. No, sir; not a half—about a third, generally.

Q. Is there a chambermaid down there?

74 A. The chambermaid attends down there whenever it is necessary to go down there. The' is a chambermaid to look after her department of the boat. If it is necessary to look after that part, she goes down there just the same as she does any other part of the boat. There are generally three on board, and there is probably one who attends to that and sees that the rooms are kept in proper order.

*Testimony filed March 17th, 1873.*

Fifth district court for the parish of Orleans.

MME. JOSEPHINE DECUIR	}	No. 4028.
vs.		
J. G. BENSON.		

Testimony taken on behalf of defendant, in the office of B. Egan, esq'r, February 5th, 1873, by consent of counsel.

D. E. GROVE, being duly sworn, says: Witness is clerk of the  
 75 steamer Governor Allen—first clerk; has been employed on her as such from the early part of July, 1872, up to the present time. The boat has been running as a weekly packet between New Orleans and Buck Ridge, in Louisiana, and Vicksburg, in the State of Mississippi, since witness has been on her. She was laid up between fifteen and eighteen days and in August and September last. Witness was first clerk of the boat when Mr. Washington came to the office of the boat when she was laying at New Orleans on Saturday afternoon, (witness thinks in July last,) and stated to me that he had a client that he wished to obtain a passage for to Hermitage Landing, and for fear she would only be accom-  
 'odated in the colored cabin he wished to know before she came on board  
 this boat if I would give her a room in the ladies' cabin, or  
 76 words to that effect. I informed him that if she was colored, she could only be accom'odated in the colored cabin; that I could not give her a room in the ladies' cabin. I think Mr. Washington then went away. I was busy, and did not see him any more then. After the boat backed out Mr. Washington came to me again and told me that Mme. Decuir was on the boat, and asked me to give her a room in the ladies' cabin. I informed him I could only give her a room in the



colored cabin, as I was informed by other persons that she was colored, and Mr. Washington did not deny it. When she refused to go into the colored cabin I ordered a cot to be put in the recess of the ladies' cabin for her, or in the chambermaids' department, just as she chose. Next morning, Sunday, the boat arrived at Hermitage Landing, and plaintiff

77 came forward to the office of the boat and paid her fare and for some freight she had on board. This was the first time I saw her that I know of. I do not now recollect the amount of her fare.

When the boat first came out we were charging six dollars to that landing. We afterwards reduced it to five. The white cabin to that landing was seven dollars. There is a difference made between the white and colored cabin in the amount of fare charged. It is from twelve to twenty-five per cent., according to the points the passengers go. I cannot say whether there is any difference between the white and colored cabin of the steamer Governor Allen in the accom'odation of the passengers, because I never was in the colored cabin on that boat. I have been steamboating off and on for the last seven or eight years, in almost

78 all the tributary trades out of New Orleans, in the capacity of captain, pilot, and clerk. I am familiar with the customs among steamboats in carrying passengers, white and colored. The custom is, on boats where they have them, is to give colored persons accom'odations by themselves in a cabin appropriated to them exclusively, and where the boats have no such accom'odations it is customary to give them rooms by themselves or with colored employees of the boat, and giving them their meals after the white cabin passengers are through, with the cabin crew of the boat. When I speak of this custom I have reference to colored persons applying for cabin accom'odation. They are never mixed with the white cabin passengers to my knowledge. This custom among steamboats trading to this port in separating the white from the colored passengers is well known among the travelling community. The colored people are well aware of it. It is a regu-

79 lation that has always prevailed upon all boats that I have ever been on. I know of no boats not having this regulation. It is a reasonable regulation, and made for the accom'odation of the majority of the public. They would not travel on any boat where the white and colored passengers were mixed, because there is a public prejudice against associating with colored persons. If any boat was to attempt to mix the white and colored persons in the same cabin, I believe they would lose the white travel altogether.

By Mr. Egan :

Q. Did Mrs. Decuir tender you any passage in this matter ?

A. I said I sent her bill back.

Q. Did she offer or tender you any passage-money when the application was made for passage ?

A. No, sir.

Q. Did any one else tender you any passage-money for her ?

A. They did not.

80 Q. Did Mr. Washington offer any ?

A. No, he did not.

Q. Did he ask the price of it ?

A. If he did I don't remember of his having done so. I was very busy at the time he was there.

Q. Then she did not pay her passage until she was about to go off the boat the next day ?

A. She did not.



Q. And then she came forward of her own free will and paid her passage?

A. I sent her bill back by the chambermaid; that is customary.

Q. Then she came with the bill?

A. Yes, sir.

Q. Did she make any complaint when she was going off the boat?

A. Well, she complained of not having a room in the ladies' cabin.

Q. Was she a colored person?

A. Well, I was informed so by Captain Leathers and others, who said that they had known her for twenty-five years. From my own  
81 knowledge, I don't know anything about it, but Mr. Washington did not deny her being colored.

Q. You never saw her until she applied to you, or rather until she was about to leave the boat and came forward with the bill you had sent to her?

A. Not that I know of.

Q. Do you know whether there was any room in the ladies' cabin on the boat on that trip?

A. I do not now recollect whether there was a vacant room or not.

Q. What is the proportion of colored persons travelling on boats; about what proportion do they bear to the white passengers? I do not mean this trip in particular, but all trips; what is the average?

A. Well, without any memorandum in the matter, I should think that the colored persons that travel are about one-fifth.

Q. Do you mean this as the average travel for the last six or eight months?

82 A. Yes, sir; it will not be over that, if it is that much. I have never thought of it before.

Q. Have you ever thought of the thing before?

A. No, sir; not of making an estimate of that kind.

Q. But from your knowledge of the thing, your impression is that that is about an average?

A. Yes, sir; without any memorandum whatever, or ever having thought of it.

Q. Do you know whether the colored passengers on the Allen are treated as well as the whites?

A. I don't know whether they are or not, sir, of my own knowledge.

Q. You stated before, that you never were there?

I was never in the colored cabin of the boat.

Cross-examined by Mr. Washington:

Q. Mr. Grove, when Madame Decuir presented herself to pay her fare, did she strike you forcibly as being a colored person,  
83 or would you have known it unless you had had some previous apprehension?

A. I would have thought she was.

Q. Suppose you had not been apprehensive or expectant, would you have known that she was colored; suppose, in the ordinary course of your business you had been receiving fare from parties, would you have particularly detected her as a colored person?

A. Well, I couldn't say, sir, because I don't recollect how she looked, and wouldn't know her if I saw her again.

Q. She is not a black person?

A. No, sir.

Q. What is her complexion?

A. I don't recollect anything of Madame Decuir's appearance at all.



Q. She might pass for a white person sometimes without any suspicion, would you not suppose; did she or not appear just as an ordinary person?

84 A. Well, as I told you, I couldn't answer that question, because I have no recollection of how she looked myself. I wouldn't know her again if I was to see her. She was just at the office a moment, and was talking very roughly to me, and I didn't look at her for fear of laughing, and I didn't notice her particularly. I didn't want to abuse her.

Q. When I (Mr Washington) first came to you, it was with the view of seeing whether she could come on the boat, was it not? Did that appear to be my object? It was simply an application on my part to see whether she could go, was that it? I was asking whether she would be allowed to go on that boat or not, was that it?

A. I don't recollect your words exactly, but you came and said that you had a client that wished to go up the river, and that she was  
85 afraid to go on the Governor Allen on account of the fact that as she was very dark she was afraid that they would put her in the colored cabin; that is as near as I can remember.

Q. Subsequently I went off satisfied, apparently, that she could not go on the boat?

A. That was my impression.

Q. That she could not go on the boat, and that it was final?

A. That she could not go on the boat in the ladies' cabin.

Q. When I came to you the second time, do you remember what I stated?

A. You stated that she was on the boat.

Q. Did I state that she was on the boat to my astonishment, or any thing like that? Do you remember whether or not I said that, contrary to my expectations, I found her, nevertheless, on the boat? Do you remember whether there was anything of that kind?

86 A. I think you said something of that kind.

Q. Do you remember what that was?

A. No, sir; I don't remember what that was.

Q. Was it not something to this effect, that, contrary to my expectations, or rather to my astonishment, I found that she was on the boat, nevertheless?

A. There was something to that effect said. I know that you produced the impression on my mind that you did not think she was on the boat until you saw her.

Q. Was the boat just leaving when I came and told you that I had discovered her on board?

A. I don't remember.

Q. Was not the boat about to leave just at that moment?

A. I don't recollect; it is impossible for a man to recollect now when there are so many people going on the boat; this was in November, and I was very busy at that time.

87 Q. The only question is whether or not I seemed to be astonished, and felt myself a little mortified that she was, nevertheless, on the boat, and came to state to you the circumstances; that to my surprise I found her back in the ladies' cabin?

A. Well, I think you stated something to that effect.

Q. Well, now, had she been an indisputably white person, could you have given her a room in the ladies' cabin, and would you have done so?

A. Yes, sir.

Q. What do those boats do with colored passengers which have no separate colored cabin for them especially. You mentioned that they gave them rooms; where do they give them rooms?

A. They give them rooms that they give other passengers.

Q. The same in the cabin?

A. Yes, sir.

Q. Other boats?

A. Yes, sir.

88 Q. You know some boats that do give them rooms?

A. I have been clerk on boats that gave rooms in that way.

Q. Having no other accom'odation?

A. Yes, sir.

Q. On those boats, however, they take their meals after the white passengers are done?

A. Yes, sir. They occupy that portion of the boat generally assigned to the colored cabin, too, and eat their meals with them, or if there is enough of them to have them waited on, they are waited on before the people in the colored cabin eat.

Q. Your sole objection to giving her a room in the ladies' cabin was because she was a colored person?

A. Yes, sir.

Q. You do not know much about that colored bureau that you speak of?

A. No, sir; I was never in it.

Q. Do you know how people get into it when they go there?

89 A. They go along the guard.

Q. Outside of the cabin.

A. Yes, sir.

Q. They go along outside the guard, and then go into it.

A. Yes, sir; right outside the ladies' cabin.

Q. And then they pass through this recess.

A. No, sir.

Q. How do they get into it?

A. There is a stairway leading from the guard to it.

Q. Are those cabins below, as far as you know, as good as the rooms above? I mean the rooms in this colored bureau?

A. I should not think they were, from the character of the people that stay in them. You could not keep them so.

Q. What character of people stay in them?

A. They are generally not so cleanly as the people who occupy the white cabins.

Q. I suppose the rooms, then, are not so cleanly?

90 A. The rooms are cleaned as well at the end of the trip.

Q. Are the rooms below ventilated as far as you know?

A. I have never been in them. I never saw them.

Q. You stated that you directed a cot to be placed back there for Madame Decuir in the recess?

A. Yes, sir.

Q. What sort of place is that recess? What is the object of that recess? What is it used for?

A. It is a place for the accom'odation of ladies and children who don't chose to stay in the cabin.

Q. Is it a place of passage for the officers of the boat and the crew?

A. No, sir; no one but the chambermaids, except in the day-time, when any one who has lady friends back there has the privilege of going back there.



Q. Well, it is a place of passage, to some extent, from one side of the boat to the other; is it not?

A. Yes, sir.

91 Q. Who pass through it usually? What persons are privileged to pass through it?

A. Well, in the day-time any passenger who has a lady-friend on the boat has the privilege of passing through there, and the cabin-boys and the employees.

Q. The employees of the boat pass through it? The employees of the boat make use of it, and pass through it?

A. Yes, sir; during the day-time the cabin employees do the same as they have the privilege of passing through the rest of the cabin.

Q. Is it a place of general and public access?

A. No, sir; not like the ladies' cabin. It is retired from the ladies' cabin for the accom'odation of parties and children who want to be out of the way.

Q. At all events *is it* not so excluded as a cabin room?

A. No, sir.

Q. *Is it* open, is it?

92 No, sir; there are four doors leading into it.

Q. *Is it* not a private room in any way?

A. No, sir.

Q. Any one can go in there who has business about the boat?

A. Yes, sir; but no one has any business there after nine o'clock except the chambermaid and lady passengers.

Q. Well, now, Mr. Grove, you have travelled a good deal, and you have observed; do you think that the business of steamboating would be seriously injured by letting parties, white and colored, have general and equal rights? Do you think that it would seriously injure it?

A. Yes, sir.

Q. Well, my idea is this, that it is no more than travelling in street-cars, and the business of the street-cars is not materially injured by that, is it?

A. I don't know what the street cars do.

93 Q. *Is it* the same idea. Now, formerly we objected to it; we would not submit to it at all, but we have recently submitted to it. Now, then, what would be your view, suppose the same course was adopted in regard to steamboats that has been adopted in regard to street-cars; would not the effect be the same eventually after people became accustomed to it?

A. Well, it might be eventually, but I don't think it would be in the generation of people that travel now; because people would only travel on business, when half the travel now is a matter of pleasure, and is no' actually necessary.

Q. In my interview with you, did it appear to you that Madam Decuir's presence on the boat was rather involuntary on my part, and hers too; that is to say that the idea first was that she should leave,  
94 but eventually, to my astonishment, I found her still on the boat. Did that seem to be the impression on your mind, that her being there was somewhat involuntary?

A. No, sir; that is not my impression, because she could have gone off at Carrollton if she did not want to stay on the boat.

Q. Perhaps she did not find out that she could not get a room on the boat until after the boat had left?

A. Do you mean after the boat left the wharf?

Q. Yes.

A. That I could not tell, but she knew before she got to Carrol'ton that she could not get a room. When the boat landed there a great many persons got off.

*Testimony filed March 17th, 1873.*

Fifth district court for the parish of Orleans.

95 M'D'ME JOSEPHINE DECUIR }  
           vs.                                } No. 4028.  
       JOHN G. BENSON.

Testimony taken on behalf of defendant, at the office B. Egan, esqr., February 7th, 1873, by consent of counsel. Present, E. K. Washington, esqr., for plaintiff; B. Egan, esqr., for defendant.

Captain THOMAS P. LEATHERS, being sworn, says :

I have been engaged in steamboating for the last 36 years; my principal trade has been between New Orleans and Vicksburg, Mississippi; have been running a boat in that trade for the last thirty-three years as master, and now master of the steamer Natchez, a weekly packet between New Orleans and Vicksburg; was on board the steamer Governor Allen when Mr. Washington came on board and applied for a passage for some person, did not see who; heard the clerk of the  
 96 boat tell him that if she was a colored person she could only be accom'odated in the colored cabin; think this was in July, 1872. The Allen was then running in place of my boat, the Natchez, carrying the mail. Heard nothing more; this was Saturday evening, before the boat backed out from the wharf. Witness went with the boat to Carrol'ton.

Witness is familiar with the custom and regulations of steamboats carrying colored person'. It is usual to have a colored cabin for their accom'odation for them separate and distinct from all others. This custom is well known among all persons travelling upon the river, both whites and black. It is a reasonable regulation, and prevails among all boats coming to this port. The colored passengers on my boat are accom'odated as well as the white, and are provided with the same bill of fare, but have distinct and seperate appartments.

97 The rules on my boat are to keep the officers in a seperate cabin; the waiters have a seperate one; the ladies cabin also have a seperate one; the gentlemen have a seperate one; the ladies' servants have a seperate one, and the colored passengers another—each one is seperate and distinct from the others, and have seperate tables. The steamboat Governor Allen is regulated the same way that my boat is regulated.

This regulation and custom among steamboats coming to this port of keeping the white and colored cabin passengers seperate has prevailed ever since I have been steamboating. I never have heard of any other. This regulation is made for the accom'odation of the whole travelling community, because there are a large majority of the white people who do not wish to travel mixed up with the colored people, and the

98 colored people do not wish to be mixed up with the white people.

It would be impossible to run a steamboat without this regulation. It is just as essential as to keep the gentlemen and ladies' cabin seperate. I think the colored travel in my trade is between a fourth and fifth of the whole; that is, the white persons travelling are about four-fifths of



the whole, or near that. About one-half of that travel is for pleasure. If I did not have rules and regulations for my boat, and the accom'odation of my passengers, I do not think I would have any, either white or colored. The white passengers are charged about twenty-five per cent. more than the colored passengers, though they get the same accom'odation. Governor Dunn was a passenger on my boat just before his death.

I gave him a state-room in the colored cabin, where he preferred to be, as he asked for it. I have also had Senator Revels travel on my boat frequently, and he informed me that the separate cabin was the only way to give satisfaction to the white and colored races; that they must be kept separate. He was always accom'odated in the colored cabin. I have also frequently had other colored members of the legislature of both Louisiana and Mississippi, and always put them in the colored cabin, and never heard any complaint from them on that score.

#### Cross-examination :

I do not know Madame Decuir by sight. The clerk of my boat has informed me that she has travelled on my boat in the colored cabin. The colored cabin or bureau on the steamer Allen is immediately under the ladies' cabin, and on the Natchez it is above. The colored cabin on

the steamer Governor Allen is entered by going down a flight of steps from the guards. The accom'odation in the colored cabin is as good as the upper cabin, but it is not as finely fitted up; it is not as finely fitted up exter'ally. The rooms are not as pleasant as the rooms above. There is not as good views as there is above; it is on account of its position; they are not quite so well ventilated as the upper rooms. We have such a thing as steerage passengers; they all go together. The colored cabin passengers are put in the colored cabin, because they are colored, and the white people are put in the white cabin because they are white. If a colored person was to ask for admittance into the white cabin, he would not be admitted, and if a white person should ask permission to go into the colored cabin he would not be admitted.

Q. No more than if a man was to ask admittance into the ladies' cabin, and he would not be admitted?

101 A. Yes, sir; it is the same. We then have whites and blacks that we will not admit at all.

Q. Now, captain, I do not want to hurt anybody's feelings, because I am perhaps a worse reben than you are, but I want to ask you this question: Suppose Dunn or Pinchback or Revels had asked to go into the gentlemen's cabin, you would not have admitted them any more than anybody else, would you?

A. Not a bit more; I don't propose to give up charge of my steamboat to Dunn, Pinchback, Revels, or anybody else, white or black. When a passenger comes aboard my boat, he comes to get such accom'odations as I cho'se to give him, and he asks where he can get that; and if it doesn't suit, why, he doesn't go. If I have got to give up charge of my steamboat to a passenger, why, I don't think him and me will go together. I thought Mr. Dunn was the same man when he was with me as a cabin-boy as when he was governor. I looked upon him as the same. He was a cabin-boy with me for a long time.

102 Q. Captain, have you observed any change whatever in regard to the method of carrying colored persons. Has there been any change within the last three or four years, so as to be different from what it was many years ago?



A. The colored people travel more now.

Q. I mean in regard to their accom'odations and in regard to the treatment that they receive. Is there any change within the last three or four years?

A. No, sir.

Q. Is it the same that it has always been?

A. The same as it has always been, only that they travel more than they used to, and they have larger accom'odations. We extend it more and give more accom'odations to them now.

Q. The question is this: Whether, in the last three or four years, there has been any change whatever with regard to making a discrimination on account of color on steamboats?

A. I say there is none, sir.

Q. Then is it the same as it has been?

A. It is the same as it has been since I have been on the river.

Q. Years ago I do not remember of hearing anything of a colored cabin?

A. There was none; there was a saloon in the olden times.

Q. You do not know Madame Decuir?

A. Well, I knew of her; she has travelled with me; but I wouldn't know her by sight, sir. I know who she is.

Q. Who is she?

A. She is a mulatto.

Q. I mean is she a sister of the State treasurer?

A. I don't know anything about the treasurer. I don't know who she is a sister of.

Q. In this colored bureau is there a colored female apartment and a colored male apartment?

104 A. Yes, sir, the same as below.

Q. Is the colored male apartment in front of the other?

A. Yes, sir.

Q. That is, is it nearer the front of the boat?

A. Yes, sir, it is like the saloon of a steamboat.

Q. How many rooms do you know there are in this colored bureau?

A. Well, I suppose there are ten or fifteen, or eight or ten rooms; I don't know how many rooms there are.

Q. And the males are shown to a certain set of apartments and the females to another set?

A. Yes, sir; I believe that is the rule. Of course we don't put them together. Sometime' they will get together, but I don't allow it on my steamboat.

Q. You go out on the guards, and then there is a passage right through. Is there a hall-way?

A. No, sir, it is just the same as the main cabin.

105 Q. But you must go into it from the outside to get into it; you go down the stairway from the guards?

A. Yes, sir; you go down the stairway from the guards.

Q. There is a hall between these rooms?

A. Yes, sir.

Q. And the males are on one side and the females on the other?

A. Yes, sir.

Q. Then the two sexes are right opposite to each other?

A. Well, they are alternately put that way as they take the rooms. Sometimes the passenger wants a room well back, and another will come and want it forward, and we try to accom'odate him the best we can.



Q. Then I understand you to say that there is no particular ladies' cabin, so to speak, in the colored bureau?

A. Well, I haven't been on the Allen now. I don't recollect that there is more than the state-rooms.

106 Q. The state-rooms are given them any way; but there is no special place that might be called a colored ladies' cabin, as they call themselves?

A. No, sir; I don't know that there is.

Redirect by Mr. Egan:

Q. You say, captain, that you made one or two voyages up the country, and that there was very little colored travel up there?

A. None to St. Louis, sir.

Q. Then the colored travel is confined to the southern country entirely?

A. Yes, sir, pretty much.

Q. Mississippi and Louisiana?

A. Between here and Memphis, I suppose pretty much. I took my bureau when I went to St. Louis, and fitted it up for white people, and we had it full of white passengers. We reduced the fare about twenty-five per cent., and a great many people went there in preference to going below. They thought it was cooler.

Q. Then this colored travel is confined almost entirely to the lower parts of the Mississippi River?

A. Yes, sir.

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*Testimony filed March 17th, 1873.*

Fifth district court for the parish of Orleans.

MDME JOSEPHINE DECUIR	}	No. 4028.
vs.		
JOHN G. BENSON.		

Testimony taken by consent in the office of B. Egan, esqr., Feb'y 10th, 1873. Present, E. K. Washington, esqr., and E. R. Suaer for plaintiff, B. Egan, esqr., for defendant.

Captain V. B. BARANCO, being sworn, says: Witness is a steamboat captain and owner, and has been since 1847, with the exception of about nine years previous to and during the war; was interested in the Bayou Sara Mail Company before the war, and the Bayou Sara Packet Company since the war. The first of those companys had six or eight boats and the last three boats. Since witness has been steamboat-  
 108 ing his trade has been between New Orleans and Bayou Sara and New Orleans and Baton Rouge, making from two to three trips per week.

By Mr. Egan:

Q. When you say from two to three trips a week, you mean round trips?

A. Yes, sir; going up and back three times or going up and back twice.

Q. What boat have you now got?

A. The Bart Able.

Q. How long have you had her?

A. I have been on her now, next May will be three years; about two

years and a half; two years and nine months, probably; about two years and ten months, I suppose.

Q. What size of a boat is she? What is about her tonnage?

A. About five hundred and fifty tons. She is two hundred feet long.

Q. Does she carry passengers and freight?

A. Yes, sir.

Q. Are you familiar with the custom prevailing on the river among steamboats in the transportation of colored persons?

A. Yes, sir.

109 Q. What is that custom? Describe it fully.

A. The custom is this; that we have what we call the "freedmen's bureau" on the after part of the boat, between the upper cabin and the lower deck; and we keep that for colored people. Some boats have texas, where they put them. Never put them up there myself. We keep them in this place I have described, and then we sometimes—we have two rooms in the cabin which we keep for colored people, some special people; but we don't permit them in the cabin, you understand. We lock the door inside generally, and let them go out on the guard when they want to leave the room. We carry their food into the room for these people, to take whenever they want to eat, and the colored people eat after all the white people are through in the cabin.

By Mr. Washington:

Q. That is on the Bart Able?

110 A. Yes, sir.

Q. You are confining your remarks to that boat now?

A. Yes, sir; and they do it on other boats, too, sir.

By Mr. Egan:

Q. You are referring to the rooms on the Bart Able, but you are speaking generally of the custom on the river?

A. I cannot say about its being general.

Q. How long has this custom prevailed?

A. Well, sir, it has prevailed since long before the war. We used to allow them to eat in the cabin after the white people got through.

Q. You reference, then, to colored persons who are taking a cabin passage?

A. No, sir; those that take the "freedmen's bureau."

Q. And to those colored persons desirous of cabin accom'odations you give the accom'odations you have spoken of?

A. Yes, sir.

111 Q. You never mix them with the white cabin-passengers?

A. No, sir; and never permit them in the cabin except at their meals.

Q. And then they go to the table only after the white passengers are through?

A. After they are all through, sir. Now, some boats have a place in the freedmen's bureau for feeding colored passengers.

Q. You say that that custom prevailed on the river before the war and has prevailed up to the present time?

A. Yes, sir.

Q. Have you ever known any other custom to prevail?

A. Well, sir, I have known some of them to feed them in the "freedmen's bureau," on large boats that have a place down there for them to eat in, and will not let them come up in the cabin at all.

Q. What boats have you run since the war?

A. Well, sir, I have run the Ben Franklin, and that was the first



112 boat I run; and the La Fourche, and the National, the Wagoner, the H. S. Turner, the Welcome, the Bart Able, and the La Belle.

Q. And the Mary Louise?

A. No sir, I never run her. There may be some other boats, but I don't remember them just now.

Q. On all these boats, then, did you have this custom?

A. No, sir; not on all of them. Just after the war I had the custom of feeding them on the guard. That was just after the war, on the first boats that run.

Q. Then you got to feed them in the cabin.

A. In the cabin, after the others.

Q. But you never mixed them with the white passengers.

A. No, sir; never mixed them with the whites.

Q. Have you ever heard of any other custom prevailing with reference to carrying colored persons than that you have described?

A. No, sir; I have not.

113 Q. If any such custom had prevailed here, would you have been likely to know it?

A. I think I would, being among the steamboats so much.

Q. Well, do you not know that you would be bound to have known it?

A. Well, there may have been some different. Yes, sir; I think I would have been bound to know it. I would certainly have heard of it.

Q. Were all the boats that you have mentioned as having been commanded by your passenger-boats?

A. Yes, sir; all of them except one, before the war—before the freight-boat. I have not run any but passenger-boats since the war.

Q. Is there any difference in the amounts that you charge white persons and colored persons for passage?

A. Yes, sir; we make a difference.

Q. What is the difference?

114 A. Well, you know, I made an exception of having two rooms in the cabin for colored passengers, where we carry their meals in to them. Those we charge the same as white persons, because we give them good accommodations; but with the others we make a difference. Up to Donaldsonville we make a difference of half a dollar, and above that we make a difference of one dollar. In issuing our passenger-tickets to colored people we always specify on the guards—"this will entitle you to one passage on the guards."

Q. Well, if a colored person should apply on your boat for a cabin-passage, you would refuse to give it to him?

A. Yes, sir; that is, with the same privilege as a white person.

Q. Is this rule or regulation that you have been speaking of a reasonable one?

A. Well, I think so. Yes, sir.

Q. What is your reason for thinking it to be a reasonable regulation?

115 A. Because there has always been a difference made here between the colored people and the white people; and another thing is, if you permit these colored people to come in and mix with the whites on the boat, it is a matter of interest to you.

Q. Then, this rule is dictated for your own preservation.

A. Yes, sir; for our own interest.

Q. And for the regulation of your boat?

A. Yes, sir.

Q. Do you know whether this is a well-known rule on the river?

A. Yes, sir.

Q. Among the travelling community ?

A. Yes, sir ; it is.

Q. Do you know Madame Decuir ?

A. Yes, sir.

Q. The plaintiff in this case ?

A. Yes, sir ; I know her well.

Q. Is she a colored person ?

A. Yes, sir ; she is colored.

Q. Do you know whether she knows this rule ?

A. Yes, sir ; she does.

Q. Has she ever travelled on your boat ?

116 A. Yes, sir.

Q. What boat did she travelled on ?

A. She has travelled on the Lafourche, particularly with me, I recollect.

Q. In what year ?

A. I think it was the first or second year after the war, 1866 or 1867—1866, probably.

Q. Did she travel more than once with you ?

A. Yes, sir ; several times.

Q. What accommodations did you give her ?

A. I gave her a room, as I told you, in the cabin ; but she was not permitted to go inside the cabin.

Q. The door was fastened on the inside ?

A. Yes, sir.

Q. So that she could not go out on the guard ?

A. Yes, sir ; go on the guard.

Q. You gave her a room on the guard in the cabin ; with the door fastened on the inside, so that she could go outside on the guard, as I understand you ?

A. Yes, sir.

117 Q. Well, did you permit her to eat at the table with the white people, or where was the table ?

A. She ate in her own room. I' was carried there on a waiter.

Q. Were you carrying many colored people at that time ?

A. A great many ; yes, sir. A great many were travelling at that time ; more than there is now.

Q. How were the other colored persons accommodated in their eating ?

A. They were eating at that time on the guard.

Q. It was after that that you gave them the privilege of eating in the cabin after the whites were through ?

A. Yes, sir. Other boats had done that, and I did it myself in order to give them as much satisfaction as I could.

Q. What proportion does the colored travel bear to the white ?

A. Do you mean now, or some time back.

Q. Now and for the last six or eight months ; say, since last summer ?

118 A. I should think one-fifth, perhaps.

Q. If you mixed the colored and white people together in the cabin on your boat, what would be the result ?

A. Well, sir, the result would be that you would have a great deal of fuss and quarrelling among the colored and white people, and finally you would have no white people to travel on your boat ; knowing the difficulties they would have to contend with, they wouldn't travel on your boat. That is my opinion about it. You cannot get *no* man to travel on a boat with ladies where you would set them alongside of



colored people. They wouldn't stand it. The business would be ruined, as far as passengers are concerned.

Q. What is the principal travel now; is it for business or pleasure?

A. For business.

Q. The principal travel is for business?

A. Yes, sir.

119 Q. But there is a great deal of travel for pleasure, is there not?  
A. Oh, yes, sir; at certain seasons of the year there is.

Q. Then, when you say that it is for business, you have reference to the present time; but taking the travel the year round, what does the large proportion of it consist of, business or pleasure?

A. Business, sir, I think.

Q. What is the passage to Hermitage?

A. Six dollars, sir, I think; six or seven dollars; it used to be six dollars when I run there.

Q. How long ago is it since you run there?

A. It has been about four years, I should think.

Q. You have not gone up as high as Hermitage for four years?

A. No, sir.

Q. Your boats have been stopping since that time at Baton Rouge?

A. Yes, sir.

Q. That was the highest you went on your voyages?

A. Yes, sir.

120 Q. Then, if I understand you right, this regulation that you speak of, in reference to keeping colored and white persons separate, is made for the accomodation of the travelling community in general, and not for any particular part or portion of them. Is that so?

A. Yes, sir.

Q. Do you know whether it is well known to the travelling community?

A. Yes, sir; it is well known to them.

Cross-examined by Mr. Washington:

Q. Captain, I understand that you make a distinction between the whites and the colored people in the accommodations of the boat.

A. Yes, sir.

Q. What is the cause of that distinction?

A. Well, sir, the cause of it is in the first place——

Q. (Interrupting.) Is it on account of color?

A. It is on account of color; yes, sir; and it is the custom of the country.

121 Q. Captain, have you ever known a boat in which the experiment of treating them all alike has been tried, and the effect it would have on business? Have you ever know' that?

A. No, sir; I have never known that. I can tell you this, that there was a colored boat started out, a stern-wheel boat, to run as far, I think, as Port Hudson or Bayou Sara, (I don't know which,) and she was going to give the colored people the same privilege that they did they whites, and she made but two trips before she quit. If white persons had travelled on her, I presume they would have had to put up with the same fare as colored persons, and to be put together with them.

By Mr. Egan:

Q. What year was that?

A. It was 1867 or 1868—1868, perhaps.

Q. What boat were you running with then?

A. Well, I don't know; I have been on so many at different times that

I don't even remember the boat's name now. That was a stern-wheel boat.

122 By Mr. Washington :

Q. Now, I understand you to say, captain, that you know of no instance in which the experiment of giving them equal privilege has been tried except the instance that you have related ?

A. No, sir ; I never did.

Q. That was a small stern-wheel boat ?

A. Yes, sir.

Q. Well, captain, with regard to the appearance of Madame Decuir, and her behaviour ; what do you know about that ? Did she behave herself always ?

A. I think not, sir.

Q. On your boat ?

A. On my boat, she didn't behave herself properly.

Q. Now, you will have to specify it.

A. Well, she didn't want to abide by my rules and regulations. That is why I consider that she didn't behave herself well.

Q. She wanted to claim the same privileges that white people had. Is that what I understand you to mean ?

123 A. Yes, sir.

Q. Then she went into this place and occupied it under protest, as it were.

A. I will tell you the circumstances. It was on the La Fourche. She came aboard the boat. I was well acquainted with Madame Decuir, and knew her for a long time, and was disposed to do everything I could to make her comfortable. I gave her a room on the guards in the cabin, and after she had been there a few minutes she came out in the cabin. There were no other ladies on board at the time, and she stayed there in the cabin rocking herself to and fro, and I soon discovered that she was out there. As there were no white ladies on board the boat at that moment, I considered over the matter some fifteen or twenty minutes, intending to tell her to go out of the cabin. I wrote her a note, stating

124 that persons of her color, I did not permit in the cabin, and that she would either have to keep in her room or go out on the guard —one of the two. She sent for me, and I went there ; and she was in tears and crying, and said that she didn't *except* such treatment from me, as I had known her husband so long, and so forth. I told her that I had to have those rules and regulations, and that I could not permit her in that cabin. She said she had been in France a good while, and was treated there like a white lady. I told her I couldn't help that ; that it was a custom here to keep colored people separate from the whites, and that she would have to abide by that rule or not travel on the boat. That was the end of it. She kept her place from that out. She went back to her room, and had no more to do with the cabin. She didn't come in it any more.

Q. The door leading to the cabin was locked, I suppose ?

125 A. Well, I don't know in that particular case whether it was or not ; but she was not permitted in the cabin afterwards.

Q. Well, captain, has Madame Decuir the characteristics of a colored person in a very marked degree. I mean, might she not be mistaken for a white person sometimes ?

A. No, sir ; I think not. She is a yellow woman. Any one could see that she is a colored woman by looking at her.

Q. Is her behavior lady-like ?



A. Oh, yes, sir.

Q. Did she dress neatly?

A. Yes, sir.

Q. Do you know whether she has any relatives in this city, and who they are?

A. No, sir; I do not.

Q. Do you know whether Mr. Dubuclet is her brother or not?

A. No, sir; I couldn't say.

Q. Well, captain, if two persons were to go on your boat, one white and the other colored, proposing to go, say, to Hermitage Land-  
126 ing, and both were to offer you the same price, what would you do with them?

A. Well, sir, I would give the white man accom'dations to eat at the table with the other white people. The colored person would have to eat either to himself or in the room, or eat with the colored people.

Q. And where with regard to their place of sleeping?

A. Well, if the white man wished to go into a room with the colored man, we would give them a room together. If he did not wish that, we would put the colored man down in the "freedman's bureau," as we called it.

Q. The white man may, if he pleases, go into the colored bureau, but the colored person could not, on any account, go into the apartments of the white people?

A. No, sir.

Q. That would not be permitted?

A. No, sir.

Q. Be so kind as to describe this colored bureau. I mean, com-  
127 paring it with the cabin above. Just state the difference between them in regard to their comfort and eligibility and attractions. State the differences between them, if you please.

A. Well, sir, the colored department is not as comfortable as the cabin on the boats that I have been on. We don't have as fine and nice furniture down there, and we don't have as nice a carpet, and probably not as much finish to that part of the boat as there would be in the cabin above. It is built rougher, you know.

Q. It is not as comfortable and not so well ventilated, perhaps?

A. No, sir.

Q. Is it not as convenient a place as the cabin above?

A. No, sir.

Q. Well, has it a distinct part for the female colored passengers different from the male part?

A. We have one side that we give to the females on my boat, and one side to the males.

Q. One side?

A. Yes, sir.

128 Q. Then their rooms are just opposite each other?

A. Yes, sir.

Q. What is the width of the passage between the rooms; that is, the hall?

A. Well, sir, it is about eight feet, I reckon.

Q. Now, where do the colored passengers eat? Do they, or not, eat sometimes down in the hall?

A. On some boats they do, sir. On my boat they do not.

Q. On your boat they eat after the passengers are through in the main cabin?

A. Yes, sir.

Q. Do you know what arrangement prevails on board the Allen ?

A. No, sir ; I do not.

Q. You know that boat ?

A. Yes, sir.

Q. Have you ever seen the colored bureau of that boat ?

A. No, sir ; I have not.

129 Q. Now, captain, please state whether, with regard to eating and living or fare and provisions, the colored passengers receive what is equal to the first table.

A. Yes, sir ; we give them on our boat about the same, sir.

Q. But the' wait until the others are done ?

A. Yes, sir.

Q. I understand that you have, of course, cabin and steerage passengers ?

A. We have steerage-passengers ; yes, sir.

Q. When you say that about one-fifth of the travel is colored travel, do you include the steerage also ?

A. No, sir ; I was not thinking of the steerage at the time.

Q. Well, including the steerage, what proportion of the travel would you say was colored ?

A. Well, I suppose it would be about, probably, one-fourth.

Q. Captain, has there been any great change within the last three years in respect to the convenience of colored passengers ? I mean, is it any different now from what it was previous to the last three years ?

130 A. No, sir ; not that I know of.

Q. I understand you to say that the system pursued now is pretty much what it has been for the last ten years and before the war ?

A. Yes, sir.

Q. Is it the same as it was before the war ?

A. Yes, sir ; pretty much the same.

Q. I understand you to state, captain, that what you have referred to is the general custom of the steamboats on this river at present ?

A. Yes, sir.

Q. It prevails generally ?

A. Yes, sir.

Q. In the winter-time, how is it in regard to colored passengers ? Are they obliged to remain in the cabin below ?

A. Well, in the winter-time we have a stove down there in this freedman's bureau, whery they go and warm themselves.

Q. There is a stove kept down there ?

A. Yes, sir ; there is on my boat.

131 Q. If I understand, you say you have two rooms in the cabin for colored people. In winter-time how do they warm themselves ?

A. Well, they in the barber-shop generally, if they are males ; and if they are females, we have a recess behind the cabin where they go into.

Q. And where there is a stove, I suppose ?

A. Yes, sir.

Q. They are not permitted, then, I understand you to say, in the cabin, in any way, of the boats ?

A. No, sir ; never in the cabin.

Q. Nor are they permitted at the table ?

A. No, sir ; not while the whites are eating.

Q. And if they were to claim any such privileges of going into the cabin, it would be resisted ?



A. Yes, sir.

Q. Captain, with regard to the behavior and civil conduct of colored people on your boat, are they or not generally well-behaved? I mean do they behave themselves usually?

A. Yes, sir; well-behaved. Occasionally we get hold of some-  
132 body who is a little obstreperous, but not often.

Q. That sometimes happen' with white passengers, to'?

A. Yes, sir; it happens with white ones, too.

Redirect by Mr. Egan:

When you speak of colored persons having a cabin-passage, you mean the cabin-passage you have described, or you mean the accom'odations that you have described? You do not mean, as I understand you, that a colored person can obtain a cabin-passage?

A. Oh, no, sir.

Q. To mix with the whites?

A. No, sir.

Q. You keep them separate and distinct from each other, just as you do the men from the women in the white cabin?

A. Yes, sir; the same.

Q. You have spoken of two rooms that you kept on the Bart Able.

A. Those are for particular persons. There are some colored  
133 people who wouldn't associate with other colored people without they are nice-behaved people—just like this Madame Decuir. We would do it with her.

Q. You kept those for the particular accom'odation of these colored people?

A. Yes, sir.

Q. And you kept only two such rooms on the boat?

A. Yes, sir; and when they were filled, the balance had either to not travel or go into the freedmen's bureau.

By Mr. Washington:

Q. In such cases you charge them the regular white-cabin passage?

A. Yes, sir.

By Mr. Egan

Q. But you do not give them the regular common accom'odations?

A. No, sir; they are not permitted in the cabin at all.

Q. You say you knew the husband of Madame Decuir. Was he a white man or a colored man?

A. A colored man.

Q. What is her color?

A. Well, she is a yellow woman—the color of that book there,  
134 (pointing to a book on a desk near witness;) she is what we call a mulatto.

Q. A bright mulatto or a dark one?

A. Well, she is just a medium—neither dark nor bright.

Q. About the color of the back of a law-book?

A. Yes; there might be some law-book—that one—lighter than that. She is about the color of that law-book.

Q. There was no difficulty in distinguishing her color from that of a white person.

A. None in the world.

Q. Had she the features of a colored person also?

A. Well, I couldn't say that she had them very strongly marked, sir.

By Mr. Washington :

Q. Have you ever seen white persons as dark as Madame Decuir in color ?

A. I don't think I have, sir, to the best of my recollections.

135 By Mr. Suaer :

Q. Have you not seen some people darker than Madame Decuir claiming to be white ?

A. No, sir ; I don't think I have.

Q. Do you know Mr. Saurinet, of this city ?

A. No, sir ; I do not.

*Testimony filed March 17th, 1873.*

Fifth district court for the parish of Orleans.

MDME. JOSEPHINE DECUIR	}	No. 4028.
vs.		
JOHN G. BENSON.		

Testimony taken on behalf of defendant, in the office of B. Egan, esq., February 11th, 1873, E. K. Washington, esqr., for plaintiff, B. Egan, esqr., for defendant.

JOHN G. BENSON, defendant, sworn and examined on his own behalf.

By Mr. Egan :

Q. You are master of the steamer Governor Allen ?

A. Yes.

136 Q. And you have been how long ?

A. Ever since last November a year ago.

Q. You are the defendant in this suit ?

A. Yes, sir.

Q. You have been steamboating, captain, for how long ?

A. Ever since 1848, off an' on, but not all the time.

Q. How long have you been engaged in steamboating since the war ?

A. Well, sir, all the time.

Q. What boats have you had, and in what trades have you run ?

A. Well, sir, I have run from New Orleans to St. Louis, from New Orleans to Louisville, and have made several trips to Cincinnati, and for the last three or four years I have been running down here in the New Orleans and Vicksburg and Carolina Landing trade.

Q. You make a trip about how often ?

A. We make a trip a week since we have been running down here in the packet trade.

Q. What boats have you been running in the packet trade ?

137 A. The John Kilgour and the Governor Allen.

Q. What do you mean by the packet trade ?

A. Well, a packet is a boat that has a regular day and a regular hour for leaving ; she might leave, perhaps, every week or every two weeks during the coasting business.

Q. Do you know the plaintiff in this case ?

A. I do not.

Q. Have you ever seen her ?

A. I never saw her but once that I know of.

Q. State when you saw her and all that occurred.

A. It was last summer. I don't remember what month it was, nor



what day of the month, but it was on Saturday I know, our day for leaving here, the clerk came to me, after we had backed out from the wharf, and said that there was a woman aboard of the boat that he

thought was disposed to make a little trouble if she could. He  
 138 said that before the boat had left the wharf a gentleman came to him and asked him, or said to him that there was a lady who wanted to go up on the boat, and he wanted to know if she could have a state-room in the ladies' cabin, and he said that the question was put in such a way, and seemed so out of place, that he mistrusted something, and remarked to the gentleman that if she was a white woman she could have a room in the ladies' cabin, but if she was not, she would have to go in the bureau. The gentleman remarked to him that he would go and tell the lady, or the woman, and that she could use her pleasure in going on this or some other boat, but after the boat had backed out from the landing he found her on board, and I think he said that the gentleman came to the office and wanted to know if she could not have a room.

Well, I said to him that of course, if she was colored, we couldn't  
 139 give her a room in the ladies' cabin, and that he would have to do the best he could. There were two places besides the regular bureau for colored passengers on the boat, one was the chambermaid's apartment, where there are extra berths, and where there are no colored men allowed to go. I told him that if there was a vacant berth there, to give her one there, if she liked it better, and if that did not suit her, to have the steward put a cot up in the recess behind the ladies' cabin. After a while I believe the steward came to me, or the clerk came to me, (I don't remember which,) and said she would not accept of either one. Then, I think, the gentleman, Mr. Washington, came to me and wanted to know if I couldn't give her a room, and I told him I could not, as well as I remember. I asked the gentleman if his wife was aboard of the  
 140 boat, or his sister, how he would like to have Madame Decuir put in the room with them, and he said he wouldn't like it. I never heard any more of it after that until the next morning, when she came out to the office and paid her bill and got off the boat. We landed at the landing that she had registered for and she got ashore.

Q. What landing was that?

A. Hermitage, a landing called Hermitage.

Q. What is the price of a cabin passage for a white person to that landing?

A. I think it is seven dollars.

Q. What is the passage of a colored person?

A. Five dollars, I think, is what we charge.

Q. Is there any regulation upon your boat in reference to the transportation of colored persons? and, if so, just state it fully.

A. Well, there is a regulation thus far; that we have a separate cabin for them with state-rooms. They have a hall where their meals are set for them and a cabin for them to stay in where they are fed.  
 141 They don't mix with the white people in the cabin. They are not allowed to mix with the white people in the white cabin on any boats I have been on.

Q. Is the regulation that you have the usual regulation that prevails on the river?

A. I believe so, so far as I know.

Q. Have you ever seen any other regulation prevailing?

A. Never, sir.

Q. Have you ever seen them mixed with white people on any boat?



A. No, sir; I have never been on a white boat where they allowed them to mix together and gave them rooms together.

Q. Were you ever on a boat where they mixed them?

A. No, sir.

Q. What is the object of this rule?

A. Well, sir; it is to protect a man in his business. I hold that if a man started on a steamboat out of this port or any other port and allowed negroes to occupy rooms in the main cabin and stay in  
142 the main cabin, I don't think he would carry many other people. I don't think he would. I don't think there are many white people who would travel on a boat of that kind.

Q. For whose accom'odation is this rule made and for whose protection?

A. It is to protect the owners of the vessel against sustaining damage and loss by losing their business. Is that what you mean?

Q. And for whose accom'odation is it?

A. For the accom'odation of the passengers generally, the white people.

Q. The travelling public?

A. The travelling public, of course.

Q. Is the largest proportion of the passengers white?

A. Well, yes, sir; I should think it was. There is a great difference in the number of the two.

Q. What proportion would the white cabin passengers bear to the colored on an average, taking the season through?

143 A. Well, I suppose about one-fifth, I should judge from one-fourth to one-fifth.

Q. Do you know whether this regulation of keeping the colored people separate from the white passengers is well known to the travelling community?

A. Why, certainly it is, to every person that is accustomed to travelling up and down the river. I don't think anybody can be ignorant of it.

Q. How long has it prevailed?

A. Well, ever since I have been steamboating.

Q. That is since 1848?

A. Since 1848, yes, sir; and how long before, I can't say.

Q. Well, where a boat has no bureau, what do you generally do?

A. Do you mean what do they do with the colored passengers?

Q. Yes, sir.

A. Well, they make beds down on the floor. There is a place back of the ladies' cabin on all steamboats. It is what we call the recess. There is probably as much room and probably more than in  
144 this room here, and they make beds down there.

Q. Is it more than thirty by twenty?

A. Well, it depends altogether upon the size of the boat; some have them larger, and some have them smaller. Well, as a general thing any boats that have not a bureau, do not take colored passengers. They don't take them in the cabin, but on deck. If there are any vacant rooms in the texas, where the colored boys sleep, sometimes they put them there and take the boys out and put the boys down on the floor or double them up to the best advantage.

Q. Do you give them the table after the white people are through in the cabin?

A. No, sir; we do not. All boats that have a bureau have a hall in



that cabin for them to eat in. When they don't have a bureau they eat with they boys after the cabin passengers are done.

145 Q. What sort of accom'odations do you give them? Are they as good in regard to eating as the whites have?

A. They have just about the same as the white people. It is good enough for me. I know, and reckon, it is as good as these hotels generally give a guest. I never heard any fault-finding.

Q. Have you ever had any complaints before, in reference to the treatment you gave your passengers?

A. Never, never. All that I have ever cared for have always been pleased, and always anxious to travel on the boat again, when they are going on the same way we are going. I don't suppose there is a boat on the river that fed the darkies as well as the Allen. I know there is not.

Q. You say the colored passengers have the same food as the white ones?

A. Yes, sir; as far as I know.

Q. How many berths or state-rooms are there in the colored cabin?

A. Well, really, I don't know, I never counted them.

146 A. Is this colored cabin, or the recess, a place of passage for the crew of the vessel?

A. No, sir; no more than the boys that pass all over the boat doing their work. There is no public place for anybody that does not belong there.

Q. Well, does the crew of the vessel ever go any place near there?

A. No, sir.

Q. Is it exposed to the conversation of the crew, so that a person in the colored cabin could hear the talk of the crew?

A. Do you mean the recess?

Q. Yes.

A. No, sir.

Q. Who is the recess generally occupied by?

A. Well, by nurses and children.

Q. Also by ladies when they go out to see the shore?

A. Yes, sir; the ladies of the boat, about as much as any body. The ladies in the cabin go out there very often, especially, in the summer time, when it is warm, because it is cool out there.

147 Q. Could a person in either the bureau or the recess hear the conversation of the crew of the vessel?

A. No, sir. Oh, well, no more than the white persons can; if they talk loud beneath, the ladies in the ladies' cabin can hear it; if they hear them holloa down below, it is nothing but a faint noise. They can hear nothing more than the white ladies can. The sound that would reach their ears would reach the ears of any lady on the boat.

Q. The crew of the vessel are generally in the forward part, forward of the boilers?

A. Yes, sir.

Q. They are not back?

A. Well, the roustabouts, as we call them, when they are off watch stay back there in the after part of the deck-room, right underneath the ladies' cabin.

Q. There is no access from the lower deck, where the roustabouts stay, up to the ladies' cabin or to the bureau?

A. No, sir.

148 Q. How do you get into this bureau?

A. From the boiler-deck.

Q. From the same deck that go into the ladies' cabin from ?

A. Yes, sir, exactly.

Q. You have to go up stairs ?

A. Yes, sir.

Cross-examined by Mr. Washington :

Q. Captain, the Allen is a very fine boat, is she not ?

A. No, sir; she is not particularly fine; there is nothing extra about her.

Q. Well, she is a first-class boat ?

A. Well, there are better boats—that is, finer furnished boats than she is—she is a medium class boat.

Q. Well, she is a very good boat. Where was she built ?

A. Well, sir, I think she was built in the town of Jeffersonville. The hull and the machinery were built in Louisville.

Q. Do you know anything about her cost ?

A. No, sir. I do not.

Q. Seventy-five thousand or a hundred and twenty thousand dollars, or thereabouts ?

149 A. I don't know; I didn't build her.

Q. But you have an idea.

A. No, sir; I have no idea, for there is much difference in the cost of steamboats built at the time she was. I might guess at it.

Q. Well, give us an idea as to what the Allen's cost is.

A. Well, I suppose in the neighborhood of a hundred thousand dollars. It might be ten thousand over or ten thousand less.

Q. Captain, in my conversation with you relative to this lady, did I express some regret and surprise that I found her on the boat the second time ? Did I express any astonishment, or rather, did I state that I found myself in an awkward predicament ? Do you remember anything of that kind ?

A. Yes, sir; I think I do. I think you remarked that it was unpleasant for you; and that she had employed you to look after some law business for her.

150 Q. That my idea, on being informed by the clerk that it would not be agreeable that she should come on the boat, was that I would undertake to communicate that to her. Do you remember anything of that kind ?

A. No, sir; I don't know that I do.

Q. But that subsequently, somewhat to my surprise, I found her on the boat nevertheless. Was that about the substance of what I said ? Did I not say that, to some extent, involuntarily on my part, she was on the boat ? Do you remember whether that was the substance of it ?

A. Well, you might have made some remarks of that kind, but I don't remember whether it was that or not. I think you did.

Q. That was the conversation on the upper-deck of the boat, where I found you, and where I stated that being a client of mine I felt myself in an awkward predicament, because, to some extent, she  
151 looked to me for some kind of protection; and that I have failed in communicating with to her that she had better not go on the boat, and that nevertheless after the boat had left I had found her there; was that about it ?

A. I could not really say.

Q. And that I asked you whether she could not have some other accommodations than the bureau, in view of the circumstance that she was somewhat an involuntary passenger, and her health not being very



good, being nervous or something of that kind. Do you remember whether that was the purport of it?

A. Well, I couldn't say, sir.

Q. Captain, you are the owner of the Allen, I suppose?

A. Yes, sir.

Q. If I understand your examination-in-chief, the present regulations are the same that have always prevailed on the river; that is, prevailed before and since the war or ever since the war at any date. There  
152 has been no change. It is pretty much the same.

A. No, sir; there has been a change. Before the war there was no such place on the boats as a negro cabin. There was never a bureau built for the accommodation of darkies. The travel was not sufficient to justify anybody to go to that expense.

Q. Then there has been a change. Now please state wherein a change has taken place since the war with regard to the convenience of colored passengers.

A. Well a change has been made by boats providing a cabin separate from the white cabin for their accommodation.

Q. That has been the change?

A. Yes, sir.

Q. You have had large experience in steamboating, I know, but of course the court wants to know that you commanded, I think, several boats according to your statement.

A. Yes, sir.

Q. You are very much interested in that business?

153 A. Yes, sir.

Q. How do you get into this colored cabin? Do you get into it by passing through the ladies' cabin?

A. No, sir; you can go that way; you can go in through this recess. They can go out on the guard and go down these steps that lead into this bureau.

Q. You pass along the guards of the boat and go to the recess and go down into the bureau?

A. They can do so, or they can go forward and go along the gangway until they get to the stairs and go in it that way. They can get into it either aft or forward.

Q. Can they go into it from the deck of the boat?

A. No, sir.

Q. The waiters and servants around the table pass through that recess, do they not?

A. No, sir.

Q. Are they excluded from it?

A. Yes, sir; they are not allowed there unless they are sent back to get linen or something from the chambermaid.

154 Q. Is that recess a place of passage in any way for the upper-deck employees or the cabin employees? I mean is it a place of passage for the cabin employees from different parts of the boat, or from one side of the boat to the other?

A. Well, they can pass that way, but it is not intended for that.

Q. Well, ordinarily I suppose they do?

A. No, sir.

Q. Now will you describe this bureau? Is it as comfortable as the cabin above?

A. Well, I don't see why it should not be. In cold weather it is just as comfortable as the cabin above.

Q. There is a stove there, I suppose?

A. Yes, sir; there is all the outfit there; that is, there is a water-closet and there is a wash-room. It is just the same as the one above in that respect.

Q. Captain, I understand you to say that colored people are not permitted in the cabin at all.

155 A. How do you mean?

Q. They are not permitted to stay or remain or room there or eat there?

A. No, sir; they are not permitted. Colored nurses are allowed sometimes when they are with a family and come to nurse a child, staying with its mother, but colored passengers that are not with white ladies in the capacity of nurses are not allowed.

Q. If two persons, one of them an indisputably white woman and the other a colored person, like Madame Decuir, were to come there and tender passage-money for any particular point, the white woman would be shown a place in the cabin and the colored woman into the bureau?

A. Yes, sir.

Q. That is the rule?

A. Yes, sir.

Q. Now, captain, with regard to their meals: they are served down there in the hall, I suppose?

A. It is in the cabin; you may call it a hall. It is the same as  
156 there is above, the same state-rooms, and it is between them.

Q. Between those rooms there is a hall where the table is set. They are served the same way as above?

A. Yes, sir; the food is cooked just the same and seasoned just the same.

Q. The waiters are the same?

A. Yes.

Re-direct by Mr. Egan:

Q. I want to know whether there was any vacant ladies' cabin or ladies' state-room on the occasion that this woman came on board the boat?

A. We had a great many ladies on board. I don't think there was a vacant room in the ladies' cabin. There may have been some vacant berths. I don't think there was an empty state-room.

Q. How many berths are there in a state-room?

A. Two in some, and in some only one. We have bedsteads in some rooms.

Q. What is the difference you make in the passage of a colored  
157 person and a white person?

A. Well, it runs from twenty to thirty per cent.

By Mr. Washington:

Q. I think you stated that the proportion of colored travel was about one-fifth. Do you include in that the steerage? There are a good many more in the steerage, perhaps, that are colored?

A. Well, no, sir; in some seasons of the year we don't have any colored travel at all, you know, to amount to anything.

Q. Captain, could you speak positively as to whether or not there were any vacant state-rooms at that time?

A. I could not; but I think the clerk told me there was not, to the best of my remembrance.

Q. We could ascertain that fact from the books?

A. Yes, sir, from the registry.

Q. Could that be ascertained?



A. Yes, sir, I think so ; I think the registry is on the book. But  
 158 I would not have given her a room if they had not all been taken.  
 I should not have given her a room there if there was.

Q. On the ground that she was a colored person ?

A. Yes, sir; as being contrary to the rules of the boat.

JOHN CEDILLOT, sworn and examined on behalf of defendant.

By Mr. Egan:

Q. You are steward of the steamboat Governor Allen ?

A. Yes, sir.

Q. And have been on her in that capacity since last summer ?

A. Since Captain Benson has bought her.

Q. When was that ?

A. Well, that was in September some time, but I couldn't tell you  
 exactly when.

Q. September of last year ?

A. Yes, sir.

Q. September, 1871, you mean ?

A. Yes, sir.

Q. Have you steamboated on any other boats ?

A. Yes, sir ; I have been steamboating all my life-time. I com-  
 159 menced steamboating from an infant, and have never followed  
 anything else.

Q. How long have you been at it ?

A. I have been at it since the age of ten years. I was born in 1821,  
 and I am fifty-two years of age, or going on fifty-two, and I have never  
 followed anything else.

Q. How long have you been engaged in the trade between New Or-  
 leans and Vicksburg ?

A. It is going on three years. I was on the Kilgour, with Captain  
 Benson, and I was on the Allen.

Q. Are you familiar with the rules and regulations on the part of  
 steamboats trading on the Mississippi River, between New Orleans and  
 ports above, with regard to the transportation of carrying of colored  
 passengers ? and, if you are, state those rules and regulations.

A. Well, as far as those rules that you speak about are concerned, I  
 am familiar with them.

Q. Now, tell us what the rules are.

A. The rules on all the boats that I have been on are, that I  
 160 have never known the colored people to have any state-room, with  
 the exception of having state-rooms in the chambermaid's depart-  
 ment. In a side-wheel boat it is called a saloon, and in a stern-wheel  
 boat it is called a recess. Some of these stern-wheelers have two rooms  
 on the side, where they generally put colored passengers ; but I have  
 never known them to occupy a state room in the ladies' cabin in all my  
 steamboat experience, and they are not fed with the white people. In  
 the up-country boats we have fed them after the white people. We  
 have set a table for them and had a couple of boys to wait on them.  
 These have been the rules, with the exception of the Allen, where I car-  
 ried it on a little different. We had a rule on that boat by which we  
 have always served their meals at the same time as the white people.

Whenever the white people ate, they ate too ; they went on at  
 161 the same time. Whenever the meals were brought up into the  
 cabin, the two boys that wait on the colored passengers down in  
 the burean took their meals at the same time and carried them down  
 there and waited on them.

Q. Do they get the same food ?

A. The same food, the same dessert, the same pies, the same of everything, fruits and everything the same—even coffee, if they wish it. Any body can get a cup of coffee at dinner-time, if they ask for it.

Q. This is the regulation on the Governor Allen ?

A. Yes, sir ; she feeds the colored people better than any other boat on the Mississippi River, which I will say to everybody else as well as say here. They get all kinds of dessert, the same as the white people. That is what the Lee doesn't do, and the Natchez doesn't give it.

Q. Have you ever known a boat on the Mississippi River in  
162 which the colored people had the privileges of the cabin, and were fed at the cabin-table along with the whites ?

A. No, sir ; I never knew it, from my childhood up. I have never seen it.

Q. Is the regulation that you have spoken of well known to the travelling community ?

A. Yes, sir ; it is well known to the whole travelling community ever since I have been running on the river.

Q. You say it prevails on all boats that you have been on ?

A. Yes, sir.

Q. Is it a reasonable regulation ?

A. Well, yes, sir. I don't see anything unreasonable about it, sir. They get nice, clean state-rooms ; they get good meals and all the privileges they want, with the exception of the privilege of the upper cabin ; they sit down on the upper guard, or sit down outside, anywheres they want to—on the roof or anywhere else. They have no privileges  
163 in the pilot-house, which is not allowed on any boat. They have all the privileges, sir, that they can have, even coffee at four o'clock in the morning, when the white people get it. There is coffee put in the cabin, and coffee put in the bureau, every morning, when the boat is under *weigh*.

Q. Is this regulation for the accom'odation of the public ?

A. Yes, sir ; for the public, or for the public travel—the white people and the colored people. It is the same. There is no difference, except that they are served in different parts of the boat. That is all the distinction there is.

Q. I want to know whether it is a regulation for the mutual accom'odation of all persons travelling on steamboats that the colored people should be kept separate from the whites.

A. Yes, sir ; it has been so ever since I have been steamboating. I never knew any other regulation.

164 Q. I want to know from you whether it is a regulation for the mutual accom'odation of all persons.

A. Well, I believe it is.

Q. What would be the result if the boat undertook to mix the colored and white persons together ?

A. Well, I think it would create a big fuss, for I think that the white people would take it in hands, and create a big fuss on the steamboat, and somebody would be killed.

Q. Would it not be likely to drive the white travel away from the boat ?

A. Yes, sir ; it would indeed. The white people wouldn't stand it.

Q. What proportion does the white travel bear to the colored in the season ?

A. Well, in some parts of the season we car'y hardly any colored peo-



ple. About this time of the year we carry about one-fourth or one-fifth. That is about the average.

Q. But the larger portion of the passengers are white?

A. Yes, sir; the largest portion.

165 Q. What is the price of passage from here to Hermitage?

A. Well, I couldn't tell you that; I couldn't answer that question. I am not posted with anything of that kind.

Q. Do you know the difference made between the charges to white people and the charges to colored people?

A. No, sir; I don't, exactly. I know there is some difference made, but I couldn't tell you what the difference is. I don't collect any passage.

Q. Do you know the plaintiff in this case, Mrs. Decuir?

A. Well, I don't know that I would know her if I saw her. She had a veil on at the time that I saw her. I saw her when Mr. Washington came to me. Mr. Washington was on the boat, and the captain came to me, and Mr. Washington asked me if I had a room for her,  
166 and I took Mr. Washington down in the saloon and showed him the room, and she wouldn't accept of that. Mr. Washington and me were down in the bureau. Mr. Washington will remember that.

(Mr. Washington here stated he had been in the recess of the boat with the witness, but not in the bureau. He also said that he was never in the bureau.)

WITNESS. I believe you did go with me, but still I wouldn't say positively. It seems to me that I showed you a room down there, and then you went up and spoke to her and she wouldn't accept of either one of them; and then I put up a cot after nine o'clock, and then I sent her supper back there, and she eat a little supper. It was just as nice a supper as I would give anybody. I sent it on a waiter, and then I put up a cot, and she occupied the cot during the night. That is all I know about the case.

167 Q. You offered her, then, a state-room in the bureau, and she declined it?

A. Yes, sir.

Q. Did you not offer her a state-room or a berth in the saloon?

A. Yes, sir; in the chamber-maid's department in the saloon, and she wouldn't accept of it, and then I put up a cot, and during the night she occupied it.

Q. That cot was put in the recess?

A. Yes, sir; that is, behind the ladies' cabin. That is what we call the recess, and the lower part is saloon.

Q. Is this recess a place of public passage?

A. No, sir; it is just for ladies. The ladies in the ladies' cabin go in there and go into the saloon. There are generally water-closets down there for the ladies, and it is a private place. No gentleman is allowed back there except a gentleman with a lady, who pass there and go  
168 out on the guards. There is no smoking there, and nobody is allowed to stay there unless it is a gentleman with a lady.

Q. Is this room or recess or bureau exposed to the conversation of the crew of the boat?

A. No, sir; it is not, with the exception that the deck-crew sleeps right under it. There is always a noise below. The upper passengers can hear it as well as the bureau passengers. It is no public place, though.

Q. They could not hear any conversation very well when the boat is in motion?

A. No, sir. The motion of the boat kills of' the conversation. They can't hear it any better than they can in the ladies' cabin.

Q. Anything that could be heard there could be heard in the ladies' cabin?

A. Yes, sir.

Q. How many state-rooms are there in the bureau?

169 A. There are eleven, sir; and then I have two dozen cots whenever it is necessary to put them up. They are on hand when we have people to put *them in*.

Q. Did you have any conversation with this woman?

A. Well, no, sir, with the exception of a conversation I had with her when I offered her a room and she wouldn't accept of it. Finally I asked her if she wanted supper, and she refused it, but I sent it to her anyhow. I sent her some supper, and I think she eat some. I think so, but I wouldn't say for certain. She drank either tea or coffee. I think she drank that, and I think she eat a little supper. Everything was nice. If I am not mistaken I fried oysters that evening, and I sent her some, if I am not mistaken; and I sent her baked potatoes and warm rolls; and we had waffles that evening, I think.

Q. Did she get off next morning before breakfast or after breakfast?

170 A. I think she got off before breakfast. I think so. No; I think she had breakfast, because I told the waiter to go back there. I didn't go exactly back with it, but I know he took it. He is a boy that has been on the boat a year and a half, and I can fetch the same boy that took it.

Q. Do you know whether she was aware of the regulations of this boat in reference to the transportation of colored people?

A. I couldn't say anything about that. If she was, she wouldn't have raised that fuss.

Q. Did she demand of you a state-room in the ladies' cabin?

A. No, sir; she couldn't demand any state-room from me, because I am not the clerk. The clerk is the man that gives out the rooms.

Q. What objection did she make to the bureau?

A. Well, she didn't know exactly; she said she didn't want to go down there.

171 Q. Is that all the objection she made?

A. I believe that is all the objection she made.

Q. Did she ask you for anything else?

A. I don't remember of anything else being asked for.

Q. When she said she would not go there, what did you say?

A. Well, I told her I would give her a cot. She said, "No, no." She spoke to me in French. I am a Frenchman. She said she wouldn't have the cot. I said, "Je vous donnerai un lit dans cette chambre ici," and she wouldn't accept of it. I told her I would put this cot in the recess. I put it up anyhow, in case that she wanted it.

Q. When did you offer her a berth in the saloon?

A. It was between about half past seven and eight o'clock. Mr. Washington will remember.

Q. Where is this saloon that you speak of?

A. It is right down below the recess.

172 By Mr. Washington:

Q. Is it the same as the colored bureau, is it not?

A. No, sir; there is no colored passenger except nurses goes down there; some white and some colored nurses.



By Mr. Egan :

Q. Then the saloon is separate from the bureau ?

A. Yes, sir ; there is no connection at all.

Q. Has the Allen got as good accom'odations for colored persons as any other boat on the river ?

A. Well, I couldn't say that ; the Natchez has the best on the river.

Q. Does the Allen come next to the Natchez ?

A. I think the Lee is next, and I think we are about the next to it. We feed them as well as any, but as far as sleeping is concerned, the sleeping is not so nice. We feed them a little better, but the  
173 bureau is not so nice. The Allen is a very comfortable boat. There is a stove and everything agreeable.

Q. How many trips is the Allen in the habit of making ; one trip a week, is it not ?

A. Yes, sir ; one trip a week we have made ever since we have been out.

Q. You mean one trip to and from New Orleans ?

A. Yes, sir.

Q. She is running between New Orleans and Vicksburg ?

A. Yes, sir.

Q. She is a vessel of how many tons burthen ?

A. I think she is about twelve hundred tons. She may be smaller ; I think she is that much. She carries thirty-five hundred bales of cotton. She has carried that from the Ouachita River. I don't think the "Katie" will carry more than that.

Cross-examined by Mr. Washington :

Q. When the meals were taken back to Madame Decuir, where were they placed ?

174 A. They were placed on a waiter and taken back aft.

Q. And how then ? Did they stay there in the waiter ?

A. The breakfast was set on two chairs. The supper was set in the same way. It was set on a napkin or a waiter, was nicely got up, the same as I would send it to your state-room. We generally set it on two chairs in the state-room.

Q. That was in the recess ?

A. Yes, sir.

Q. Well, how was Madame Decuir apparently affected ? Did she seem troubled or excited in any way ?

A. Well, I was not present at the time.

Q. I mean at the time that you saw her ?

A. I didn't see her except at the time you were there. I had no conversation with her at all except what I have stated.

Q. Did she appear troubled or excited in any way, or did she cry ?  
175 A. No, sir ; I didn't notice anything of that kind. I was not about there very much. It was supper-time, which is my busiest time.

Q. You do not know whether she appeared grave or annoyed at the circumstance ?

A. No, sir ; I don't remember.

Q. Her breakfast was served in the same way ?

A. Yes, sir.

Q. This saloon is a place for nurses and children.

A. Yes, sir ; white and colored nurses and children. There is where the ladies go, too, in the water-closet. No gentleman is allowed there, and no servants except a woman-servant.

Q. Whereabouts is that on the boat? Is it in the rear of the colored bureau below?

A. Yes, sir; right down where we were going. We went down this place, I suppose.

Q. Has this colored bureau apartments for the men on one side, and for the women on the other?

176 A. Yes, sir; unless it is a man & wife, and then we give them a room together.

Q. With regard to these water-closets, are they convenient to them?

A. Yes, sir; there is a water-closet convenient to the bureau, and also a wash-room and towels, and everything comfortable.

Q. Now, would you consider it as pleasant and eligible a place as the ladies' cabin above?

A. Well, they have free access to the upper guards, and also all around the boat.

Q. That is true; but what I mean is this: suppose they were to stay in their state-rooms, would it be as agreeable and pleasant as it is to stay in the rooms above?

A. Well, the rooms are not much different; the mattresses are the same and everything.

Q. Are there windows and blinds like there are above?

A. No, sir; there are no windows; there is a door and a ventilation to the bureau where they can receive air.

177 Q. There is no window to the outside of it?

A. No, sir; if there was I don't think it would be a very safe place, because everybody would be robbed.

Q. Then, as I understand you, the only window and way to get in is by the bureau.

A. Yes, sir.

Q. And there is not 'other window back?

A. No, sir.

Q. Well, you would not think it would be so well ventilated as the cabin above?

A. There is a ventilator from the bureau which ventilates the room.

Q. But ventilation implies a passage of air from one end to the other. The air does not pass through from one end to the other in the colored bureau.

A. Yes, sir; the air runs through the hall.

178 Q. But I understand that these colored cabins have no other windows except the window above the door?

A. That is all, sir.

Q. That door, or that window above the door, opens into the hall between the rows outside.

A. Yes, sir; it opens right above the door, and you can raise it up and let the air circulate.

Q. Are they not a little dark near the centre of the room?

A. No, sir; it is not so dark, it is pretty light.

Q. When a person is in this cabin he is not very far from these roustabouts that the captain has been speaking of.

A. Well, the roustabouts, when the boat is under *weigh*, are always at work; most of them sleep forward of the mess-room. There is where we feed them, and most of them sleep there.

Q. Suppose there was a great many steerage-passengers, would they not ordinarily be under this colored cabin?

A. Yes, sir; right under this bureau.



179 Q. Then, what they would say in their conversation could be heard much easier than in the ladies' cabin above?

A. Well, I don't know that it would.

Q. Because it is nearer, in the first place.

A. Well, I have been down in the bureaus several times, and I have never heard any conversation there—very much.

Q. But if there was a crowd of people below, or steerage-passengers, or any excitement below, naturally enough it could be heard much easier in the colored bureau than in the ladies' cabin?

A. Well, I don't know that you could, because it is open outside, and the sound of the men's voices would go up-stairs just as well as it could below, because there is a very heavy carpet and a floor, and the sound of the persons' words will not come through the carpet.

180 Q. I don't say that it could be heard at all. But it could be heard better there if it could be heard at all?

A. I don't think it could be heard as well as it could be heard up-stairs, because if you are sitting on the upper guard up-stairs you can hear everything that is said below quite plain. This you cannot in the bureau.

Q. Upon the whole, the colored bureau is inferior to the ladies' cabin?

A. Well, I don't know that it is.

Q. It may be in some respects equal to the ladies' cabin, but it is inferior in accommodation. I mean in regard to its being a pleasant and eligible place?

A. No, sir; I can't call it inferior to the ladies' cabin. It has the same accommodations, and carpets, and everything.

Q. Well, from its position it could not be quite so eligible, because it is under the ladies' cabin, in the first place.

181 A. Well, I can tell you, Mr. Washington. I was two years on a boat once—the Jacob Straeder—running between Cincinnati and Louisville, and we had an upper ladies' cabin and a cabin below. The lowest cabin was the preference of the ladies. They occupied the cabin below in preference. They preferred it much better than the upper one.

Q. You do not know anything about the value of steamboats?

A. No, sir, I do not; don't ask me any questions of that kind because I can't tell you.

Q. How does the Allen rank? Does she rank among the fine boats of the Mississippi River?

A. Well, we treat people as well, and they get as good accommodations as they get on the finest boats on the Mississippi River.

Q. You consider her a first-class boat?

A. Yes, sir; I do.

Q. How old is she?

182 A. I think she is five years old, or along about that.

Q. How long does a steamboat usually live?

A. Well, if they are kept up and repaired, they will last for ten or twelve years. If they are not repaired and kept up, they will wear out in five years.

Q. Well, the Allen is not half used up?

A. No, sir; not more than half. I believe that Captain Leathers intends to have the Natchez to live about twelve years. The hull is going to live about twelve years.

Q. Do you think the Allen will last five years more?

A. Well, when she is repaired up she will last five years more.

Q. She is insured, is she not ?

A. Yes, sir ; I think she is.

Q. Do you know for how much ?

A. No, sir.

183 Q. I understand you to say that Madame Decuir could, on no account whatever, get a room in the ladies' cabin of the Allen or a seat at the table on the ground of being a colored person ?

A. No, sir ; that is what the captain says ; as far as that is concerned, I have got nothing to do with it.

Q. You state that as derived from your observation ?

A. Yes, sir ; she could not occupy a seat at the table with the white people.

Q. And could not have a room in the ladies' cabin ?

A. Yes, sir ; she could not.

Q. That is from your observation of the course of the management of the boats ?

A. Yes, sir.

Q. That is the regulation of the boat ?

A. Yes, sir.

*Testimony filed March 17th, 1873.*

Fifth district court, for the parish of Orleans.

184 MADAME JOSEPHINE DECUIR }  
vs. } No. 4028.  
JOHN G. BENSON.

Testimony taken 13th February, 1873, on behalf of plaintiff, in the office of B. Egan, esqr. Present, E. K. Washington and S. R. Suaer, esqrs., for plaintiff ; B. Egan, esqr., for defendant.

A. DUCONGÉ, sworn and examined on behalf of plaintiff.

By Mr. Washington :

Q. You reside in New Orleans ?

A. Yes, sir.

Q. Are you a native of New Orleans ?

A. Yes, sir ; I was born here.

Q. You own some property here, do you ?

A. Yes, sir.

Q. What is your occupation ?

A. Merchant ; I do nothing at present. I was a merchant.

Q. You have travelled on the river, on steamboats ?

A. Yes, sir.

Q. Mention what steamboats you have travelled on.

185 A. The Mississippi and the Webster ; but that has been a long time.

Q. Before the war, was it not ?

A. Yes, sir.

Q. Mention the names of the boats you have travelled on.

A. The name of the boat is the Webster. The last time it was the Mississippi. I was going to St. Louis.

Q. When was that ?

A. That was in 1868.

Q. Since 1868 have you travelled ?

A. Since 1868 I have not travelled.



Q. Where did you take your passage at? Was it here at this port? Was it here in New Orleans?

A. Yes, sir.

Q. Just state how you went on board, and how you engaged your passage, and all about it.

A. The last time I took passage on the steamer Mississippi, I went with Major Suaer, going to St. Louis. I took passage on the boat, paid my passage, and they gave me a cabin-room. I ate at the first  
186 table and was treated as the other passengers were treated in the cabin.

Q. You had a room in the gentlemen's cabin?

A. Yes, sir; I had a room during the voyage.

Q. Was not that since the war?

A. Yes, sir; in 1868, and just before the election.

Q. When you went on board you went to the clerk's office and engaged your passage?

A. Yes, sir.

Q. Did they ask you any question?

A. No, sir; none at all. They only asked me where I was going to.

Q. You paid your fare, I suppose?

A. Yes, sir.

Q. As usual?

A. Yes, sir.

Q. Just like any one else?

A. Yes, sir; I asked the price, and they told me and I paid.

Q. What was the name of the captain?

A. I have forgotten; he was a big man.

Q. When you first went on board, did they demand your passage from you at once, or did you pay during the course of the trip?

187 A. I paid immediately; when I went in I paid.

Q. What was the length of the trip?

A. Several days, on account of the low water in the river.

Q. They asked you no question at all?

A. Absolutely none.

Q. You were treated just like any other passenger?

A. Yes, sir.

Q. Were you very well treated?

A. Very well treated.

Q. They made no difference at all?

A. None at all.

By Mr. Suaer:

Q. Are you a reputed colored man?

A. They have always known me and taken me to be a colored person; I mean that the people have.

By Mr. Washington:

Q. Do you know Madame Decuir?

A. Imperfectly. I know her somewhat. I know her name, but I don't know her much.

By Mr. Egan:

Q. How did you know her?

188 A. I saw her, but I only know her a little. I know her son very well.

By Mr. Washington:

Q. Have you a large family of brothers and sisters?

A. Yes, sir; a large family.

Q. Have you any father or mother?

A. I have my mother and sisters. I have some other relations.

Q. Do you know whether they have travelled.

A. Several years before the war they have travelled.

Q. You were with them?

A. Yes, sir; I was with them.

Q. Do you know how they were treated?

A. It is so long that I cannot recollect.

Q. Were they in the cabin with you?

A. I was so young that I cannot recollect.

Q. Is your family pretty well known here in New Orleans?

A. Yes, sir.

Q. You are pretty well known, and your whole family, too, are they not?

A. Yes, sir.

189 Q. You are one of the old families here in New Orleans?

A. Yes, sir, I am.

Q. Your mother and father and other relatives were born here?

A. My father was not; my mother was born here.

Cross-examined by Mr. Egan:

Q. You have been on steamboats twice in your life?

A. That is all I can recollect. I know I went not far from here, to Camp Parapet.

Q. On one of those occasions you were on the steamboat Alexander Scott, or the Webster?

A. The Webster and afterward the Mississippi.

Q. What year was that in?

A. About 1854 or 1855.

Q. Where did you go on her?

A. I was going to the Attakapas country.

Q. Who was master of the boat?

A. I don't know.

Q. How old were you at that time?

A. Nine or ten years of age, about.

Q. Was there any of your family with you?

190 A. No, sir; not at that time.

Q. Who went with you?

A. A young man was with me, whose name I hardly recollect; I believe it was Mr. Penn.

Q. Was he a white man?

A. I don't know. He was of my complexion. He was a colored man, but of my complexion.

Q. How old was he?

A. I don't know; about forty-five years.

Q. Did you get cabin-passage on the boat?

A. Yes, sir.

Q. Were you known on the boat as a colored man?

A. I don't know.

Q. Did you know any one on the boat?

A. No, sir; absolutely nobody.

Q. Then the next time you were on a steamboat it was on the Mississippi?

A. Yes, sir.

Q. That was in the year 1868?



A. Yes, sir.

Q. Who was with you on that occasion?

A. Major Suaer, a brother of this Mr. Suaer.

191 Q. Mr. Suaer's brother is white?

A. He is a colored man.

Q. He has the reputation of being a white man?

A. No, sir; he is known in all the city for a colored man.

Q. Did any one on the boat know you?

A. No, sir; not personally.

Q. Did you know any one on the boat?

A. I recognized one colored man by the name of Menard, and by sight one of the employees of the boat, a colored man also.

Q. Was there any one on the boat who knew that you were a colored man?

A. Well, I don't know, sir.

Q. Have you generally engaged in the city of New Orleans the privilege of a white man in the coffee-houses and places of amusement?

A. No, sir.

Q. You did not enjoy them in the city?

A. No, sir.

192 Q. Then you are known in the city to be a colored man?

A. Yes, sir.

Q. You are very white, are you not?

A. My complexion is white, but I claim to be a colored man.

Q. Would not a person who did not know you take you for a white man?

A. Well, I don't know.

Q. Would they take you for a white man?

A. I know Mr. Suaer for a colored man, and of course if I saw Mr. Suaer I would know that he is a colored man.

Q. You are, then, as white as Mr. Suaer?

A. I am of the same race that he is.

Q. You are as white in color?

A. I suppose so.

Q. Your hair is straight?

A. It is curly.

Q. Have you not got the hair of a white man, or the same kind of hair that a white man has?

A. I know thousands of colored men darker than I am who have the same kind of hair which I have.

193 Q. That is not answering the question. Have you not got the same hair that a white man has?

A. I will answer you this question in this way: I know thousands of white men who have more curly hair than I have, and then some, of course, straighter. I mean that there are many reputed to be white men have more curly hair than I have.

Q. What is the color of your hair?

A. About brown.

Q. Have you any of the features of a negro about you?

A. I don't know. I am reputed to be a colored man, and have always been known as a colored man, and I cannot enjoy the same privileges as those reputed to be white. I don't know that I can pass better for a white man than a colored man, but I know I do not enjoy the same privileges as those reputed to be white men.

194 Q. I want to know whether you have any of the features peculiar to the colored race?

A. As far as I know the colored population here in New Orleans, I have the same features that they have. I have the same features as a colored person.

Q. Do you understand the question? I want to know whether you have any of the features of a colored person.

A. Yes, sir; I have.

Q. Now what are the features of a colored person?

A. I cannot describe the features of a colored person.

Q. What are the most prominent features in a colored person's face?

A. That is a question quite delicate. I cannot answer you. I can hardly tell you, because the reputation of a man being colored makes them call him colored.

Q. What is the difference between a colored man's face and a white man's face?

A. The difference between a white man and colored man is that  
195 the colored man has a darker face than the white man, but you can find a quantity of colored men, reputed to be colored men, who have white faces.

Q. What is the designative difference between a white man's face and a colored man's face, taking them as a race?

A. I cannot say.

Q. Have you stated in your examination-in-chief that there is a large family of you?

A. Yes, sir.

Q. Are they whiter or blacker than you are?

A. Some whiter and some darker.

Q. Was you' father a white man?

A. No, sir; he was a colored man.

Q. Where was you' father born?

A. He was born in Cuba, coming from St. Domingo.

Q. Was your mother white?

A. No, sir; she was colored.

Q. Did any of your family ever travel on a steamboat?

A. I suppose so. I don't know.

Q. What is the color of Madame Decuir?

A. About yellow.

196 Q. Is it not much darker than your color?

A. Certainly.

Q. Is it not as dark as the cover of that book? (referring to a law-book.)

A. Between the two. She is not so dark as that law-book.

Q. Would any one mistake her for a white woman?

A. No, sir.

Q. Could not a person very easily mistake you for a white man?

A. I don't know.

Q. Do you not know that a person might take you for a white person? Could not a man take you for a white person very well?

A. Well, not if he knew me.

Q. If he did not know you, could he not mistake you for a white man?

A. Not if he has got native's intuition to know that I am a colored man.

Q. Are your features any different from those of the white race?

A. There must be a difference, because the' call me a colored person and another man a white man.



197 Q. Are your features any different from those of the white race ?

A. There must be a difference.

Q. State what that difference is, or in what it consists ?

A. I don't know. There must be some difference, because I am recognized and known as a colored man, and called a colored man. I cannot state in what that difference consists.

Q. Where do you live ?

A. On Royal street.

Q. What number ?

A. 229.

By Mr. Washington :

Q. When you were on board this steamboat, did you represent yourself as a white person ?

A. Well, I just went on naturally.

Q. In the ordinary way ?

A. Yes ; just as any person would. I never stated that I was a white man or a colored man. I only went there and took my passage.

Q. Your age is about twenty-nine ?

A. I was born in 1844. It is about twenty-nine, sir.

All the foregoing testimony was taken in the French language, Mr. S. R. Suaer interpreting.

198 *Continuance.—Extract from minutes, March 24th, 1873.*

Fifth district court for the parish of Orleans.

MRS. JOSEPHINE DECUIR }  
                   *vs.*                    } No. 4028.  
 JOHN G. BENSON. }

This cause was continued till Monday, the 31st inst., at 12 m.

*Testimony filed March 31st, 1873.*

Fifth district court for the parish of Orleans.

MDME. JOSEPHINE DECUIR }  
                   *vs.*                    } No. 4028.  
 JOHN G. BENSON. }

JAMES E. MOORE, sworn and examined for plaintiff, says :

I reside at No. 300 Josephine street. I have resided in New Orleans about twenty-one years.

Q. What is your business ?

A. I am a policeman now.

199 Q. Heretofore what have you been at ? Had you any position in connection with steamboats ?

A. About six years ago I was steamboating.

Q. On what boats ?

A. I was on a good many. The Pargoud, Fashion, Joseph Pierce. The Pargoud is the last boat I was on.

Q. What position did you hold on these boats ?

A. I was cabin-boy on the Pargoud.

Q. Were you ever in the position of steward ?

A. Yes ; a great many times.

Q. State what you know relative to the existence of a place called the colored bureau, on any of those boats.

(Objected to. Objection overruled, and exception taken.)

A. I knew about them when I was steamboating.

Q. Describe it, where it is located, and what kind of a place it is.

200 A. It is a lower cabin ; some boats have it better than others ; some boats have no bureau at all. I have been on some boats where colored people were treated very well, but of course they did not accom'odate them in the cabin where they accom'odated the white people, but they were accom'odated very well as far as I remember in the boat I was. I steamboated in the Vicksburg trade.

Q. In what part of the boat was it ?

A. The colored bureau was down stairs, under the ladies' cabin.

Q. Was it comfortable ?

A. On some of the boats it is, and on some it is not ; on some boats it is very comfortable, as in the cabin, only smaller. It may be warmer in the summer time than up stairs.

Q. Is it a place distinct from the ladies' cabin ?

A. Yes ; it is down-stairs under the ladies' cabin.

Q. How do you get to it ?

201 A. From up stairs, at the back part of the ladies' cabin, there is a recess, and you go through that ; you go through the ladies' cabin or through the guards to the recess.

Q. Are the colored people usually permitted to go through the cabin ?

A. No ; they always go back on the guards.

Q. Describe the difference between this colored bureau and the cabin above.

A. What difference do you mean ?

Q. In regard to comfort, eligibility ?

A. I have been on some boats where the bureau was equally as good for sleeping and bedding as up stairs, and I have been on some boats where it was worse down stairs than up stairs.

Q. Generally, how is it ?

A. Very bad ; at least in my time of steamboating it was generally bad.

Q. Do you know the Governor Allen ?

A. Yes ; I never was aboard of the Allen but once in my life. I did not go into the colored bureau at all. I did not go down stairs at all.

202 Q. What place is this recess you speak of ; a public place ?

A. Yes.

Q. For whom ?

A. For the passengers.

Q. And officers of the boat ?

A. No ; not the officers, they are not allowed back there.

Q. Or the cabin-boys ?

A. No, they are not allowed back there, only those that work there.

Q. Is it a place for passengers ?

A. Yes ; it is a place to pass and repass.

Q. Was this colored bureau as well ventilated as the cabin ?

A. No ; I cannot say it was, because it is down stairs.

Q. Is it immediately over the deck ?

A. Yes.

Q. Can you hear the conversation or language of the crew below ?



A. Ordinarily, when running you cannot.

Q. When stopped?

A. Yes; you can hear them in the ladies' cabin also.

Q. But you can hear them better there than you can in the ladies' cabin?

A. Yes; for it is nearer the deck.

203 Q. Do the colored people get their provisions in that place?

A. I' some, yes; and in some in the pantry.

Q. Is there a table set in the bureau for them?

A. Generally, where they have a bureau, there is.

Q. What sort of provisions is given them?

A. On some of the boats the same as the white people, and on some boats the leavings. Some give them as good as the white people gets. There are different classes of steamboats.

Q. In regard to the cabins in this colored bureau, how are they arranged; I mean in regard to the different classes, males and females, is there a distinction—separate places?

A. No; the bureau has no more eight or ten rooms; some ten and some eight.

Q. Where are the female passengers put?

A. They get a state-room.

Q. And the males.

A. The males don't get any room, except they have wives, in  
204 the bureau. They generally get rooms in the texas.

Q. If a colored passenger has a wife he gets a room?

A. Yes.

Q. Was there a distinction between the male and female cabin in the bureau?

A. They had no male cabin in the bureau.

Q. They allowed male' there though?

A. Yes; if they have a wife. On several occasions I have seen single men go down there.

Q. Was there a portion of those cabins for the males and a portion for the females?

A. No.

Q. They were all in common?

A. Yes.

Q. In regard to the accom'odation of those cabins, was it equal to the accom'odations above?

A. In some boats yes, and in some boats no.

Q. In regard to the bedding & other things?

A. Generally, when they build a boat like the Pargoud or Lee, when they fit the cabins they fit the same mattresses down stairs that they do in the cabin.

205 Q. Is that colored bureau upon the whole as comfortable a' pleasant a place as the ladies' cabin above?

A. No; it cannot be.

Q. Why?

A. Because it is too close. There is no air can get to it. On some boats it is very pleasant, down stairs in the wash-room, and on some boats they do not have a wash-room.

Q. The bureau is close you say?

A. Yes. In the winter time it is comfortable, but in the summer time it is warm.

Q. Is it ventilated?

A. Yes; lattice-work on the sides, and they have a skylight to every room. When a boat is running you are bound to get air, but it is warm on any steamboat in summer when she is laying still.

Q. When a boat is not running it is uncomfortable?

A. It is all over the boat then.

Q. Is it less there than above?

A. It is very close then below.

206 Q. Is it inferior to or equal to the accom'odation above?

A. It is inferior, of course.

Q. Where is the washing and ironing done?

A. Down stairs. The saloon is not as large as the upper cabin, and on one side is the privy and on the other side is the wash-room.

Q. Right near the bureau?

A. Yes. That is on some boats, but not on all. On some boats the privies are up stairs next to the wheel-house.

Q. You had some experience and observation in regard to the treatment of colored people on board steamboats?

A. Yes. I steamboated sixteen years straight along.

Q. What in regard to the treatment of colored persons generally on steamboats?

A. They did not, in my time, charge colored people as much as they did white people. I have been on boats where colored people never got any good fare at all, and I have been on boats where they got as good fare as white people, but some of them did not get any  
207 beds at all, and some did. On some boats there are no accom'o-  
dations for colored people.

Q. Have you been on boats much since the war?

A. Yes, a good deal since the war.

Q. Has there been any change in that respect since the war, or within three or four years, as far as you know?

A. Yes. I was steamboating before the war in the coast-trade and on these coast boats, I believe, the colored people got better fare than any other boats; they did before the war and since the war.

Q. Do you know Madame Decuir?

A. No.

Q. Did the officers generally pay as much attention to the colored passengers as to the white?

A. In what respect?

Q. In every respect.

A. There is but one party has anything to do with it; it is left to the steward I believe.

208 Q. The officers of the boat never pay any attention to them?

A. The officers of the boat never have anything like that to attend to; it is not in their line of business. It is left to the steward, and he gives such accom'odations as the boat allows.

Q. In regard to cleanliness, is this colored bureau kept clean or not?

A. Generally kept clean and neat.

Q. Is it as safe a place in case of accident? Can people get out as readily?

A. I should think it is. The only difference, you should come up a pair of stairs, five or six steps.

Q. You could not go out on the guards?

A. You come right up stairs.

Q. Up to the cabin?

A. Yes.

Q. Are they usually permitted to go there?



A. In case of accident they would not prevent any person going there.

Q. Ordinarily they have not been permitted to pass through the cabin?

A. I have seen them permitted to pass.

209 Q. But not generally?

A. Not generally, no; that is for the white people, exclusively. They have a cabin for the colored people, and they are *not* supposed to stay in that cabin.

Cross-examined:

Q. You spoke of this recess being a common passage; you meant a passage for ladies and children?

A. Certainly.

Q. Gentlemen are not allowed back there?

A. They are allowed back there in the day-time if they have acquaintances; but if they have no acquaintances they have no business back there. They have a cabin for themselves. The gentlemen's cabin is forward of the ladies', and underneath the ladies' cabin is the bureau.

Q. Has it always been customary during your time steamboating to separate colored people from the whites?

A. Yes, but I have seen colored people have state-rooms in the cabin.

Q. But not eat at the cabin table?

210 A. Of course not.

Q. On steamboats that had no bureaus?

A. Yes; I have seen them have state-rooms up stairs in the gentlemen's cabin.

Q. Is it customary for coast boats that have no bureau to keep a few state-rooms for the colored passengers?

A. Yes.

Q. And the inside of these state-rooms are locked?

A. They can have them open if they wish.

Q. They do not eat at the cabin-table or associate with the cabin passengers?

A. They do not.

Q. This custom is well known to all people?

A. To those who travel any.

Redirect:

Q. You have known colored people to travel and be admitted into the cabin on what boats?

A. The John Cotton and Iberville. Those boats run before the war.

Q. They were permitted in the cabin?

A. Yes; but those colored people were rich; Deslonde and Dubuclet.

211 Q. Is it not the usual custom to send them below?

A. Yes; since they have a bureau.

Q. Have you ever known colored people in a cabin where they have a bureau; have a *cabin* in the gentlemen's cabin?

A. No; I have not.

Q. But you knew colored people to have a *cabin* in the cabine above?

A. Yes, sir.

P. G. DESLONDE, sworn and examined for the plaintiff, says:

My name is P. G. Deslonde.

Q. Where do you reside?

A. I reside in New Orleans for the moment.

Q. Have you resided in New Orleans a good many years?

A. No; only about four months.

Q. Have you travelled any lately?

A. Yes.

Q. What boats have you been travelling on?

A. It is nearly four months since I have travelled on any boats.

Q. What boats?

A. The Pike.

212 Q. What do you know in regard to the existence of a place on any of the boats called the colored bureau? Do you know anything about it?

A. I do.

Q. What do you know about it?

A. It is a black room somewhere in the back part of the boat where they generally pen up colored passengers.

Q. What kind of a place is it?

A. For my part I hardly ever traveled in that part. I never went into them only when I was forced to do so, and I never paid any particular attention whatever. I know it was no place for me, therefore I rather stay on the guard.

Q. Have you ever been in it at all?

A. Once.

Q. What kind of a place is it?

A. A dark place, like a kind of prison; something of that kind.

Q. Describe it a little more fully. Is it comfortable?

A. I stated to you that I went there only once, and I did not pay any attention.

213 Q. You would not stay in it?

A. No.

Q. Why?

A. Because I deemed it not a place for a man of my standing to stop in it.

Q. Did they tell you to go into it?

A. I was invited down there to get my supper.

Q. You objected to it on account of its being disagreeable?

A. Yes.

Q. Was it dirty in any way?

A. I' was dirty for a man of my standing. I repeat that to you again.

Q. Describe that again.

A. I thought in my humble judgment it was not a place for me to stop in a single moment, when there was a line of demarcation. I did not think it was my place; therefore I did not pay any attention.

Q. What did you do?

A. I went on the guard and spent the evening there.

Q. Where did you take your meals?

A. I did not take any. I travelled often without taking any meals on a boat where I discovered there were prejudices.

Q. What boat is that you are speaking of?

A. That was about 18 months ago.

Q. Can you tell what boat?

A. If you give me time I will come to it. I think it was the Belle Lee, if I mistake not. I am not sure. If you give me time to go to my house, I can tell you. I will not swear to that part.



Q. To the best of your recollection it was the Belle Lee?

A. Yes.

Q. Did you see any colored people in that bureau when you were in it?

A. Yes.

Q. Males and females?

A. Both.

Q. Was there a separate place—a separate part of the bureau for the males and the females?

A. No; they were all mingled up together like we generally do in the country with our pens; we pen up everything.

Q. Have you got a wife?

A. Yes, sir; I am married.

215 Q. Would you let your wife go into that bureau?

A. No.

Q. Why not?

A. Because she was raised in another sphere from that, to be classed as such.

Q. Would you feel very much mortified if your wife had to go into that bureau and stay there?

A. Certainly I would.

Q. Would you permit it?

A. I would not.

Q. So far as you observed, was it equal, in any respect, to the cabin above, in comfort, and eligibility, and convenience?

A. No; I don't think they were by a great deal.

Q. Did you see the colored people eating in there?

A. Yes.

Q. How were they served—what kinds of provisions?

A. I guess they had plenty to eat.

Q. You travelled a good deal on steamboats?

A. Yes; for the last twenty-odd years—nearly forty years.

Q. Are you a native of New Orleans?

216 A. No; but of the parish of Iberville.

Q. You are seventy years old?

A. No; forty-seven.

Q. Has there been any difference lately in regard to the treatment of colored people in travelling, or is the treatment about the same as it was previous to the last three or four years?

A. I think it is worse now than it was before the war. Before the war, being a rich planter and patronizing boats, we had some kind of comfort; since the war generally the planters made very little crops, and they do not patronize these boats to a great extent. They travel on the first boat comes. In fact I can travel just as well as any man on one certain boat on this river; that is all; but not with the proper fare that should be extended to me.

Q. Is this difference made on account of the color of the parties you spoke of?

217 A. Without any doubt. I saw it practiced from here to Louisville.

Q. What did you see practiced?

A. I saw a prejudice from here to Louisville; but just as quick as I took the cars to go to Washington, I discovered I was treated with the proper respect, having the full accomodation of the first fare; but down here South, I never met it yet in my life, and I was bred and born here.

Q. There are no improvements for the last few years?

A. Not on this river here. No, not from here to Louisville either by car or boats.

Q. In the lower trade here generally there has been no improvements?

A. None at all. I think it is worse, if anything, for improvement you cannot find.

Q. Is that on account of the color?

A. It must be on account of color; because if you (counsel) travel yourself, the' will give you all the accom'odations necessary.

Q. But if you (witness) travel?

218 A. If I travel there will be a line of demarcation right away.

Providing your skin is white you can get everything; but while my pocket was full of gold I could get no fare.

Cross-examined:

Q. What boats have you travelled on?

A. Since the war? I travelled on the Natchez once, about a little over a year ago; and also on the Belle Lee; and also on the Ouachita Belle or Belle Lee; and on the boats in the lower trade here—the Pike and St. John, no other ones since about a year.

Q. Those are all the boats you travelled on since the war?

A. No; I travelled on a great many during the war. I could not tell. But I travelled since on most of the boats in the Baton Rouge and Bayou Sara trade, mostly all of them.

Q. How were you accom'odated on those boats?

A. Some boats who were friendly to me personally there was little exception on.

219 Q. In what way?

A. It is so little, it is laughable to tell it.

Q. Describe it?

A. For giving my freight to the captain he will invite me to take a private room, a state-room, I may say. I was fed in there. That is all.

Q. You were never put into the white cabin with the white passengers. You never went to the same table with them.

A. No.

Q. Nor associated with them in the cabin?

A. No; not in this State.

Q. Is it not a well-known custom on the river to separate the white and colored passengers?

A. Everybody who is bred and born here knows that.

Q. You say you were on the Natchez. Where did she accom'odate you?

A. Either up in the texas, or in the pantry, or something of the kind. I could not exactly say.

220 Q. Don't you know the Natchez is underneath and in the texas, too? She has a burean both places.

A. For that part I cannot say. I don't think that was a burean, for I was the only one there. In fact, about the arrangements of a boat I do not know much.

Q. Where was the burean you went into?

A. I only went into one in my life.

Q. On what boat?

A. Either on the Ouachita Belle or the Belle Lee. I am not sure which.

Q. Were you ever on board the Governor Allen?

A. Yes; once.

Q. Where were you put in that boat?



A. It was either the Bart Able or the Governor Allen. She was making the trade of Baton Rouge or Bayou Sara at that time. That was the only time I went on the boat.

Q. Do you know the Governor Allen?

A. No.

Q. You have no idea how the bureau looked?

A. None at all. I do not think I ever saw the bureau on that boat.

221 Q. Did you ever see the bureau in the Bart Able?

A. No.

Q. Where were you accom'dated in the Bart Able?

A. In a state-room, as I stated to you a while ago.

Q. But your meals were given to you separate?

A. Yes, in the room; in my personal room.

A. Is it customary on these boats to separate the gentlemen from the ladies?

A. Not from what I heard.

Q. Don't you know it to be customary?

A. I said a while ago I never went into the bureau only once.

Q. I ask you whether it is not customary to separate gentleman passengers from the lady passengers. Is not there a cabin appropriated to the gentlemen and another cabin appropriated to the ladies—white?

A. I should think there ought to be a system.

222 Q. Is it not so of your own positive knowledge. Is it not usual for steamboats to separate the white males from the white females?

A. I believe that.

Q. Well, it is so.

A. Allow me to explain this.

Q. There is a rule to separate colored females from colored males?

A. From what I could see in the bureau the little time I remained there, there was nothing separating them.

Q. Only on one boat; and you don't know what boat that was?

A. I was informed by a majority of people.

Q. Never mind what you were informed. State what you know of your own knowledge. What boat was that bureau on?

A. On a boat I travelled on. I could not state what boat now positively, because I do not want to make a false testimony.

Q. What is your standing? You spoke of your standing.

A. I am secretary of state now.

Q. And you count yourself a rich man?

223 A. No; I count myself a poor man to-day.

Q. Still the accom'dation of your race was not sufficient for you?

A. In this State? No, sir.

Q. On the boat you saw this bureau on; not on all boats, but the accom'dation you saw on this boat?

A. It did not satisfy my personal wants. I don't think you either would associate yourself with all the whites, whether they are good or bad.

Q. You are a colored man?

A. Yes; I show it in my face and all over.

Re-direct:

Q. Do you know Madame Decuir?

A. I know Madame Decuir, of Pt. Coupée.

Q. Do you know Mr. Dubuclet, the State treasurer?

A. I do.

Q. Do you know that he is a brother of Madame Decuir?

A. Yes.

Q. Is she reputed to be a colored person?

A. She is known to be so.

224 Q. What is her color?

A. She is a little copper color.

Q. Do you know anything in regard to her general manner and deportment?

A. She is very much of a lady and always has been.

By the COURT:

Q. Did you see white people in the bureau assigned to the colored people?

A. I did not.

Plaintiff offers in evidence the testimony of A. Ducongé, taken by consent in Mr. Egan's office in the city of New Orleans.

Its admission objected to and objection overruled.

E. K. WASHINGTON, sworn and examined for the plaintiff, says:

Some time last summer, in the month stated in the petition, a lady came to my office who desired to engage me in some business in the parish of Point' Coupée; she was well dressed and her manner appeared to be lady-like. I had not the remotest intimation she was a

225 person of color. It would not have made *me* any difference if I

had. I told her it was necessary to go to Pointe Coupée to examine the records in that case, and I told her I would leave on Saturday, July 20th. I went down on the day, and observing the Governor Allen there, and knowing she was a very good boat, I went to the clerk and I engaged a room to get up to Hermitage Landing. I think it was pretty near 5 o'clock that evening. There being a little time I walked ashore and met Mr. Suaer, who I expected was coming up with me. I told him I had engaged on the Governor Allen. He told me Madame Decuir was also going up. I said very well. I selected the Allen myself and presumed it would be better to go on that boat. I noticed some hesitation on the part of *of* Mr. Suaer I did not understand. I then learned

226 from him that if Madame Decuir went on that boat she would be mortified. I then first apprehended she was a woman of

color. I had not thought of it before. I remarked to him I did not know, but possibly she might go on this boat. I wanted to have some conversation with her about the case. I then went on board again and, in order to be frank with the clerk, I asked him whether or not Madame Decuir could or not go on that boat, and stated I had just learned she was a person of color and a very respectable person. He told me she could not. I then, in great haste, went ashore to inform Mr. Suaer, so that he could communicate with her that she had better not come on that boat at all, but I did not see him or her. The boat being about to leave, I returned and subsequently walked up and down the gentlemen's

227 cabin when I discovered in the ladies' cabin a party whose appearance seemed somewhat familiar to me. She spoke to me,

however, and said "is not that Mr. Washington." I said "yes," and then discovered it was Madame Decuir. I said, "Madame, how did you come on this boat, did not Mr. Suaer see you?" I said, "I am afraid it is too late now." The boat being about to leave, I hastened in front to see whether she could get off the boat, and found they were just draw



ing in the stage. She could not then leave, and I then saw the clerk and stated to him that, somewhat to my surprise, I found Madame Decuir ; that she had not received my word, and stated she was in ill health, and asked if he could not accom'odate with a room in the ladies' cabin. His conduct was courteous throughout. He said distinctly it was contrary to the rules of the boat, or something of that kind. Subsequently I had a conversation with another gentleman on the boat who  
 228 seemed, to be a clerk or some officer, and he stated the same reasons.

(Objected to the statements of other persons.)

I then went into the rear part of the boat and found Madame Decuir sitting in a recess back there. I told her I was sorry, but could not see she could be accom'odated in the cabin. She was very much mortified and seemed to be crying, too, sitting on the chair in the back part of the boat alone, very much mortified. I felt a natural anxiety on the subject, she being a client of mine, and I concluded I would see Captain Benson. At supper-time I also went back again and found Madame Decuir sitting on a chair back there eating some provisions sent her. I saw Captain Benson in the upper part of the boat. His treatment of me was very courteous, and I explained the circumstances;

that accident'ly and contrary to my information *that* Madame  
 229 Decuir was on the boat ; that it was necessary she should be up there in a certain time in order to attend to this case, and I asked him whether or not he could not consistently allow her have a room in the cabin ; that I had no agency in it. I had interferred to send her word not to come, but she had not received it, and she had come on that boat because she had to be put there in a certain time. Captain Benson and myself argued the matter for a little time. His treatment of me was courteous and gentlemanly. He stated it would injure the business of his boat, and it could not be done. She should have every accom'odation in the bureau, and should be well treated, but could not go into the ladies' cabin and have a room there, nor could she go to the table—it strikes me that was about the substance of the conversation—on account of her color. Later in the evening I  
 230 saw Madame Decuir in the same place, sitting. It was a place of passage, entirely in the rear part of the boat, for all persons, chambermaids, and others. The next morning I saw her, and she seemed mortified and distressed, no place to sleep in, and she had spent the whole night there. She remained on the boat and took her meals back there, and on her arrival at Hermitage Landing she went ashore.

Q. When you asked Captain Benson to give her a cabin, did he make use of such a word as not for a thousand dollars ?

A. I could not be sure ; it was a very decided refusal, on the ground that she was a person of color, but I could not be sure of the exact language.

Cross-examined :

Q. Mrs. Decuir is a colored person ?

A. So reputed.

Q. Do you not know it ?

A. Only know it from what I heard.

Q. About the color of a new law-book ?

231 A. We expected to have her in court. I do not think quite so dark as that ; the colors of new law-books are various. I did not suspect her to be a colored person ; she was not as dark as that.

Q. You did not know her to be a colored person when you first saw her ?



A. I did not.

Q. You knew it afterwards?

A. I came to the conclusion she was.

Q. Did you see her in the light?

A. I saw her in the office.

Q. Is she not as dark as Mr. Deslonde?

A. Not so dark.

Q. Did she ask you to go to the clerk of this boat to inquire about the passage?

A. No.

Q. Why did you go?

A. The ordinary interest you would take in a person whose conduct was ladylike.

Q. Did you come with her to the boat?

A. No; I found her in the cabin in the rear.

232 Q. Where was she when you went first to inquire about the passage?

A. I do not know where; I did not see her on the levee at all.

Q. Did not you go back to her to tell her what the clerk said?

A. When I saw her, after the boat left, I told her my idea was to provide means for her leaving the boat, and if the boat had not left, I should certainly have advised her not to come. When I went to the front part of the boat I found the staging was drawn in.

Q. Did the boat land at Carrollton?

A. I think it did.

Q. Could not she have got off there if she wanted to?

A. Yes.

Q. You say you intended she should leave the boat?

A. Yes.

Q. Did you advise her to leave at Carrollton?

A. I did not.

Q. Were there many persons went ashore at Carrollton?

A. They usually do. I will not state positively that the boat landed there, but I presume it did.

233 Q. When did you first see her at your office?

A. Perhaps a week or so previous to the 20th of July.

Q. Did you then arrange what hour you should go up?

A. I told her it was necessary for me to go up and examine the papers, and I think subsequently I may have sent her word I would leave at a certain time.

Q. What boat did you tell her you would go on?

A. I don't know that I told her of any boat particularly.

Q. Was the case to be tried?

A. No; I think not.

Q. You were only going up to examine the papers?

A. Yes. There was no case to be tried, but I was utterly unacquainted with any person there in the country, and so it was necessary for her to come up, and besides I wanted to have some conversation with her relative to the facts of the case.

Q. Did Mr. Snaer go up with you?

234 A. No. He did not go up on that boat.

Q. You went up merely for the purpose of examining some papers?

A. Yes; to examine some records.

Q. She went up for the purpose of accompanying you?



A. For the purpose of seeing I was accom'odated, and knew where to go when I got up there.

Q. Then you knew she was going up the same evening you went?

A. No.

Q. Then why did you go to the clerk to inquire about her passage?

A. After I had seen Mr. Suaer and he told me she was going up.

Q. Did he tell you where she was?

A. I think he told me she was going up on some other boat. I think after I went there to tell him she could not come I expected to find him and her on some other boat.

Q. You knew, and she knew before the boat left the wharf that  
235 she could not be accom'odated in the white cabin?

A. No; I was under a different impression, not having travelled very much within the last three or four years. I was under the impression she could go on that boat.

Q. Did not the clerk inform you distinctly she could not have a cabin passage on the steamboat?

A. Yes.

Q. Did not he tell you she could be accom'odated in the bureau?

A. I think he did.

Q. Did you not inform her of that fact?

A. I told her subsequently when I found her on the boat.

Q. Did you not inform her?

A. I did.

Q. And before the boat arrived at Carrolton?

A. Yes.

Q. He told you the reason he could not give it to her was there was a custom on the boat?

236 A. He stated that she was a colored person, and she could not be in the ladies' cabin.

Q. The amount of passage charged her was \$5.00?

A. The receipt shows that.

Q. And you were charged in the white cabin \$7.00?

A. I presume so.

Q. You were charged \$2 more than she was charged?

A. Yes.

Q. Did you see any one making the recess a common passage?

A. Yes.

Q. A great many people—chambermaids and various other persons—how many chambermaids were there?

A. I do not know, but it was what I considered a public passage for anybody.

Q. Was it as much a place of passage as the ladies' cabin?

A. I do not know. It was a place in the rear of the boat, with an opening to go down to the bureau. I looked down that stairway  
237 which I was told led to the bureau, and there were persons passing; I did not notice them particularly, but all persons can pass in the rear of the boat.

Q. Did not Captain Benson offer you on her behalf apartments with the chambermaids?

A. I cannot be sure; possibly he may; *be* he denied that she should stay or remain in the ladies' cabin.

SEYMOUR R. SUAER sworn and examined for the plaintiff.

Q. What do you know in regard to going up to Pointe Coupée with Madame Decuir about July 20th, 1872?

A. I don't know much about it. I know she employed me with you (Washington) to take up her case in that parish—the succession of her husband. I recollect we told her once we were going Saturday evening, and I recollect I went there ready to start. I found you (Washington) on the levee. I intended to take the Governor Allen, but  
 238 after a while I changed my mind and went on another boat. I went on the City of Quincy.

Q. Did you see Madame Decuir on the evening in question?

A. Yes; on the levee.

Q. You saw myself (Washington) there also?

A. Yes, but not at the same time. I cannot say whether it was before or after.

Q. What do you know in regard to it? You did not go up stairs in the Allen?

A. No, I took the City of Quincy. I arrived there Sunday evening at about eleven o'clock.

Q. Do you know anything in regard to what is called the colored bureau on steamboats?

A. No.

Q. What do you know about the bureau?

A. I know nothing at all about the bureau of the Governor Allen.

Q. Have you travelled much lately?

Q. Yes, I have travelled several times, but not a great deal.

Q. Do you know anything in regard to any discrimination made  
 239 between the white and black?

(Objected to and objection sustained.)

No cross-examination.

CAPTAIN BENSON sworn and examined for the defence.

Q. Is there any entrance from the recess to the bureau?

A. Not on the Governor Allen.

Q. Then Mr. Washington was mistaken when he said he saw it?

A. He saw the gangway that leads down into the chambermaid's department, I suppose.

Cross-examined:

Q. You state in your evidence you were the owner of the Governor Allen?

A. Yes.

Q. That boat is worth \$40,000 to \$50,000?

A. It would be hard for me to—

(Question objected to and objection sustained.)

Q. Did you advertise the Governor Allen in the newspapers usually?

A. Yes.

Q. Please look at the advertisement and state whether that is the advertisement of your boat usually. (The Times newspaper  
 240 banded to witness.) The Times is dated August 25th, 1872.

(Objected to and sustained.)

Q. Has there been any change in that advertisement?

A. I do not know whether there has or not. We frequently change them.

Q. Do you know whether or not, at the time (July 20th, 1872) or not you had an advertisement of the boat, advertising the Governor Allen for freight and passengers?

A. I suppose we had.

Defendant offers in evidence the testimony of John C. Benson, John



Sidelot, D. A. Grove, D. V. Baranco, J. H. Mossuss, J. W. Cannon, and Thomas P. Leathers, taken by consent.

Testimony closed.

*Order : Case submitted.—Extract from minutes, March 31st, 1873.*

241 Fifth district court for the parish of Orleans.

M'D'ME JOSEPHINE DECUIR }  
                                   *vs.*                                } No. 4028.  
       JOHN G. BENSON.

This cause came on this day for trial—E. K. Washington and S. R. Suaer for plaintiff; B. Egan for defendant—when, after hearing pleadings and evidence and counsel, said cause was submitted, with leave to the parties to file briefs within one month.

*Motion to withdraw records.—Extract from minutes, April 2d, 1873*

Fifth district court for the parish of Orleans.

M'D'ME JOSEPHINE DECUIR }  
                                   *vs.*                                } No. 4028.  
       JOHN G. BENSON.

On motion of B. Egan, attorney for defendant in above cause,  
 242 and on suggesting to the court that he is desirous of withdrawing the record in this cause for the purpose of writing a brief—

Therefore it is ordered by the court that he have permission to withdraw the record in this cause from the clerk's office.

*Reasons for judgment.—Filed June 14th, 1873.*

Fifth district court for the parish of Orleans.

M'D'ME JOSEPHINE DECUIR }  
                                   *vs.*                                } No. 4028.  
       JOHN G. BENSON.

The plaintiff in this case is a lady of color, genteel in her manners, modest in her deportment, neat in her appearance, and quite fair for one of mixed blood. Her features are rather delicate, with a nose which indicates a decided preponderance of the Caucasian and Indian blood.

243 The blackness and length of the 'air, which is straight, confirm this idea. She was never a slave, nor is she the de'cendant of a slave. Her ancestors were always free as herself. She has always been respected by those who knew her. She left this city on or about the 20th day of July, A. D. 1872, for the purpose of returning to the parish of Pointe Coupée, where she has resided in wedded life for many years, taking passage on board the steamer Governor Allen, then engaged in the business of common carrier of passengers and freight, and plying between this city and the city of Vicksburg. There is no dispute about these facts. Mrs. Decuir applied for and was refused a cabin passage. A cabin or sleeping apartment was offered her in what is called and known as the "bureau," which, on the Governor Allen, is situated below the berths and floor assigned to the white passengers.



The evidence shows that this bureau is kept exclusively for people  
244 of color, and that there is not so much comfort nor so many facilities for seclusion as on the cabin floor above it; indeed, that it is very uncomfortable for a lady particularly. Mrs. Decuir declined to accept the accom'odations offered her, and passed the night during which she was on board sitting in her chair in the rear part of the boat, in what is known as the recess. A lady's cabin was asked for, but the defendant peremptorily refused to permit her to occupy one. He says that if half the rooms in the lady's cabin had been vacant she could not have had one. On her arrival at the Hermitage, her point of destination, she paid for a first-class cabin passage. She now institutes this suit alleging these facts, and saying further, that the defendant did on that trip  
245 of his said boat refuse to her, on account of her race and color, and for that reason only, the equal rights and privileges accorded to the white passengers on the boat; that she suffered for want of rest from inability to sleep, and from exposure.

She also alleges that the mortification and mental anguish which she was thus compelled to undergo justly entitle her to exemplary damages in the sum of \$75,000. It is useless to examine the exceptions separately, as they may be passed upon in connection with the merits of the case. It will suffice to say that the supreme court of this State, in the days of Judge Martin, has declared that the "law gives compensation for mental suffering occasioned by acts of wanton injustice," and that this opinion had not only been proclaimed by Judge Story, but has latterly been reiterated by the present supreme court of Louisiana. The United States  
246 court in admiralty have nothing to do with this case. (See 20 An., 432, case of Averill vs. The Steamer Alabama Belle & owners; Roach et als. vs. Chapman et als., 22 How. (Repts., 244.) A contract between a passenger and the master of a vessel for the passage is a personal one, not cognizable in the admiralty." (Brightly Dig., vol. 1, p. 11, art. 128.)

On other points raised by the exceptions the case of Keene vs. Lizardi (5 L., 431, and 6 L., 319 and 20) will be found pertinent, and also the case of St. Amand vs. Lizardi, (4 L., 244.) For the purposes of this investigation, the constitutions of the United States and this State, and the laws enacted in obedience thereto having fixed the unlimited citizenship of the colored race in the United States, I must examine its merits as if Mrs. Decuir were a purely white lady suing for her rights. Courts  
247 cannot make distinctions where the law does not, and availing myself of the strong language of Lord Kenyon, "they are bound, and shack'ed by certain rules, from which they should not depart." Counsel has furnished a lengthy brief in which he endeavors to show that if the plaintiff was not treated as the white ladies were she cannot complain, because she did not make a tender in advance of the amount of money which white ladies paid. This is a mere technicality, which cannot be permitted to defeat a legal right, and more especially where, as in this class of cases, the law does not require it to be done. The statute of 1869, 1st sec., declares that "when such person shall, on demand, refuse or neglect to pay the customary *force*," &c. It was therefore the duty of the defendant to first make the demand of the customary fare before he could, under the law, deny to her the rights and  
248 privileges of accorded to white ladies on board his boat. But, again, it would have been entirely useless to make a formal tender of the "customary fare," when the defendant and his clerk had persistently declared that they would not treat her otherwise than as they did. She was thereby saved the necessity of putting the defend-



ant in default, even had the requirements of the law been the reverse of what they are.

The second reason assigned by counsel begs the question at issue ; for when called upon to interpret an express and positive law, it is a matter of very little importance what existing customs are, if they plainly contravene both the letter and the spirit of that law.

No association of men whatever can create or establish a custom for their convenience, and vitilize it with a power paramount to the authority of an express and positive statutory enactment. (12 M., 26 ; 4 N. S., 497 ; 6 N. S., 571 ; 2 L., 366 ; 3 L., 394, & 4 R., 381.) Courts from

249 time immemorial have been aided by customs in construing statutes of ambiguous meaning, but their judgments can never be properly influenced by them where the law is plain and easily understood without the aid of Cooley's Con. Limx, 69. Custom, in this case, is clearly opposed to and subversive of the plainest meaning and spirit of the law, and can be recognized neither as the law of the land nor as a guide to the courts. (Foley vs. Bell, 6 A., 760, & Bonham vs. Overton, id., 765.) To enforce it in contravention of the act of 1869, No. 38, and of article 13 of the constitution of this State, would be to disregard these laws, and to deny to persons those rights and privileges they were designed to establish and to secure the enjoyment of. Further still, it would be an emphatic and practical denial to a large class of persons

which the General Government, in the exercise of its political  
250 omnipotence (quoad them) and its sovereign wisdom, has seen proper to invest with all the attributes of citizenship, of the equal protection of its laws. (XIVth Am'd't of the Constitution of the United States. Meeker vs. Klemm, 11 A., 104.) With what reason or propriety can the courts, which are but the creatures of the law, refuse to yield obedience to the requirements of that constitutional power upon which alone they must depend for existence, and without which they would possess no authority whatever. The constitutions are the supreme laws of the land, and good government requires that every officer and every citizen should act accordingly. It is true that whenever mere legislative enactments are unconstitutional the courts should so declare them ; and that judge would be unworthy of his ermine, who would shrink from such a duty. But the constitution is the only limitation to

251 legislative power, and I am not aware that customs ever have, in any country, been deemed of such high authority as to supersede the behests of even the common law. (See Winder vs. Blake, 4 Jones, N. C. Repts., 332 ; Knoules vs. Dow, Fost. N. H. Repts., p. 387.) Illegal customs can't have no we'ght, and courts cannot recognize them, however long they may have been established. (See Pierce vs. U. States, Nott & Huntingdon's R., 270.) They are obligatory on parties only when the law does not provide for the case, (the Lucy Ann, 23 Law Reports, 545,) and when the' are opposed to the provisions of a statute they are not binding. (The Forrester, Newberry's Repts., 81 ) I have thought it prudent to collate authorities on this point to a greater number than is ordinarily deemed necessary, by reason of the generally prevailing impression concerning some personal rights

252 that customs are laws, legislation to the contrary notwithstanding. Counsel has laid much stress on the fact that the plaintiff knew all about the rules and regulations which steamboats had established when she went on board the Governor Allen. This is doubtless true, but it is equally true that Captain Benson knew of the existence of the laws whose authority had superseded those rules and regulations. If, then, it is fair to argue that plaintiff



should have been governed by those rules and regulations when they had been swept away by legislation, it is far more just to insist that he should have been guided by the imperative requirements of the law. A systematic disregard of them furnishes no argument to excuse their violation, but, on the contrary, should admonish courts to vindicate their authority the more promptly—the more impartially. It is the peculiar province of the legislature to enact laws, and of the  
 253 courts to interpret, construe, and administer them. Viewed rightly, they are the special ministers of that science which Hooker speaks of as having “her seat in the bosom of God, whose voice is the harmony of the world—unto whom all things in heaven and earth do homage; the very least as feeling her care, and the greatest as not exempted from her power.”

Whether laws are adapted to the present state of society or not is an important matter, it is true, but it is one with which courts have nothing to do. (Cooley's Con. Lims., p. 167, last sentence, & p. 168 & 171.) Social necessities and enlightened opinions are often in advance of legislation, but whenever the supreme power of the state “speaks out in the definition of what it considers right, and the prohibition of what it is pleased to term wrong, society must pause and the people obey. It is the duty of courts to declare what the law is, not to prescribe what it should be.

254 States are possessed of all power not prohibited by the Constitution. Counsel for defendant cites the case of Day vs. Owen, (5th Mich. Repts., p. 520,) when the court held that the right to be carried was one thing, the privilege of a passenger on a boat quite another, both being subject to the reasonable rules and regulations of the boat. Can a rule or regulation be judicially declared reasonable which supersedes express law, and bids defiance to its authority? A fair analysis of that case will show that it does not favor the conclusion which he deduces from it. The rule established by law may give rise to personal or private injuries, and it will no doubt do so in this case, but whilst it is the duty of Government to protect the rights of each individual, however humble or obscure he may be, private interests are never insuperably set up as a barrier public necessity.

255 Again, counsel cited the case of Jenks vs. Coleman, (2 Summer, p. 221,) in which Judge Story said that the right of passengers on steamboats was not unlimited, but was subject to such reasonable rules and regulations as the proprietors may prescribe for the accommodation of passengers; that they are not bound to admit passengers on board who refuse to obey the reasonable rules and regulations of the boat. Here again the question recurs, can courts say rules are reasonable which are contrary to and subversive of positive law? It is not pretended that boats may not establish regulations, but they are prohibited from making discriminations on account of race or color. The next point argued by counsel in argument is that my interference by a State with the rules and regulations of vessels is in substance an attempt to regulate commerce. The Government of the United

256 State is one of enumerated powers. These powers are expressly delegated by the Constitution, and the Government can rightfully claim none which are not granted by it. They are such as are actually and expressly given or such as are given by necessary implication. (See opinion of Ch. J. Marshall in *Martin vs. Hunter's Lessee*, 1 Wheaton, 326. See also 7 Crant, 32; 1 Wh., 415; 7 Pet., 243; Cooley's Con. Lim., 19.) The tenth amendment to the Constitution of the United States provides that the powers not delegated to the United States by the Constitution,



nor prohibited by it to the States, are reserved to the States, respectively, or to the people. Now what are the powers of Congress as established by the Constitution with regard to this matter? "To regulate commerce with foreign nations, and among the several States, and with the Indian tribes." Chancellor Kent said of this section: "The power was

restricted to that commerce which concerned more States than one, 257 and the completely internal commerce of a State was reserved for the State itself." (1 Kt., 436; Cooley's Con. Lims., 584-'5.) It will hardly be denied that inspection-laws relative to the quality of articles to be exported, quarantine laws of every description, and such as were designed to regulate the strictly internal commerce of a State, formed and are component parts of an immense mass of legislation which are never surrendered to the General Government. (See 1 vol. Kent, pp. 436-'7. See also the celebrated case of Gibbon vs. Ogden, reported in 9th Wheaton.) In the late slaughter-house decision, the Supreme Court of the United States expressly recognized the fact that notwithstanding the convulsions that have shaken and endangered the permanency of the fabric of American Union, and despite the amendments added to its Constitution, the States still have certain sovereign rights which they may lawfully exercise. The cases referred to by counsel 258 in support of the proposition now under consideration are not in point—

1st. Because the plaintiff was travelling from one point to another within the limits of this State; and—

2d. *Because the plaintiff was travelling from one point to another within the limits of this State; and—*

2d. Because the' antedate all the recent changes in the Constitution of the United States establishing and providing for the regulation of the states of the colored race in America. As well might he invoke the decision in the Dred Scott case as authority for the denial of the black man's citizenship. It is useless to dwell at greater length on these questions. The laws under which this action is brought are, 1st, art. 13 of the State constitution, which reads as follows:

"All persons shall enjoy equal rights and privileges upon any conveyance of a public character," &c., &c.

Now, is a steamboat a conveyance of a public character?

259 It has been made the subject of special legislation by the general assembly of Louisiana, and I am not aware that the power of the State to enact laws affecting steamboats was ever seriously questioned. It has enacted laws imposing penalties in cases of accidents, for regulating the carrying of gunpowder, to compel the use of iron chains as a substitute for the formerly-used tiller-ropes, for carrying lights, and several other matters. Was it ever pretended that this legislation was an unlawfull interference with commerce, or that it deprived steamboats of the right to make reasonable rules and regulations for the management of their business? The act of the legislature under which this suit is brought is as follows:

"All persons engaged within this State in the business of common carriers of passengers shall have the right to refuse to admit any 260 person to their railroad cars, street cars, steamboats, or other water-crafts, coaches, omnibusses, or other vehicles, or to expel any person therefrom after admission, when such person shall, on demand, refuse or neglect to pay the customary fare, or when such person shall be of infamous character, or shall be guilty, after admission to the conveyance of the carrier, of gross, vulgar, or disorderly conduct, or shall commit any act tending to injure the business of the carrier, prescribed for



the management of his business, after such rules and regulations shall have been made known, provided said rules and regulations make no discrimination on account of race or color; and they shall . . . the right to refuse any person admission to such conveyance when there is not room or suitable accom'odations; and except in cases above enumerated, all persons engaged in the business of common carriers of  
 261 passengers, are forbidden to refuse admission to their conveyance, or expel any person therefrom whomsoever." Counsel insists that the provisions of these laws extend only to cases in which a State or other license is paid, and that as steamboats do not pay a license, the law does not affect them. The constitution just cited and quoted says: "All persons shall enjoy equal rights and privileges upon any conveyance of a public character."

There is no mention here of a license to be paid by such public conveyance as a prerequisite to its obligation to afford equal rights and privileges. The act already quoted makes no reference to any such necessity. The provisions of law requiring licenses to be paid, and to be forfeited in certain cases, relate entirely and exclusively to the places of public resort, such as public inns, hotels, coffee-houses, theatres, &c.

Whatever may be thought of the wisdom, propriety, or policy of  
 262 the foregoing constitutional and legislative provisions, one thing is clear to my mind, it is that they are laws, and that the courts of this State must recognize and declare them to be such. If they operate injuriously to private interests, it is to be regretted, but if experiment should successfully prove that they promote the general prosperity and the welfare of the public, then, according to the well recognized and wholesome principals of government, they should be respected.

Having reviewed as far as it is deemed proper the arguments and authorities offered by counsel, it only remain' for me to fix the quantum of damages which the defendant should be condemned to pay. In doing so it is necessary to remark that I do not think it proper to award exemplary damages in this particular case. The public in general is not sufficiently  
 263 apprised of the existence and validity of the laws which govern such cases to be severely punished for their violation. When it shall have become a settled theory in the State's jurisprudence that these laws exist by constitutional authority, and that they will be enforced, and when the people, who have been taught to condemn them as unjust and consequently unwise, shall have learned that there is nothing unconstitutional in them, it will be time enough to inflict punitive damages for withholding the rights and privileges which they are designed to secure.

The plaintiff was entitled under the laws to such rights and privileges as were accorded to the white passengers. It is not pretended that she refused or neglected to pay the customary fare, or that she was of infamous character, or guilty of disorderly conduct, or that she committed any act tending to injure the business of the steamboat Governor Allen. The  
 264 evidence is positive and conclusive that she was denied those rights and privileges for no other reason than that she was a colored woman. She was therefore forced to institute this suit for the judicial establishment and vindication of her rights under the laws. She had to employ counsel as a necessary means of having her case properly made up and presented to the court, and I think that whatever sum it may fairly have cost her to do so should be awarded her as damages.

I cannot think it just or prudent to do more under all the circumstances.



It is the imperative duty of courts, whether it be pleasant or not, to declare fearlessly what the law is, whether it be wise or not, and to make themselves the impartial mediums through which rights may be enforced and wrongs repressed. They are not, for these reasons, to be used as the stepping-stones to fortunes.

This court will impartially interpret and enforce the laws of every description found to be in consonance with constitutional authority, but it will never under any circumstances suffer itself to become a medium of pecuniary speculation. The supreme court has already been called upon to interpret the act of 1869 already quoted; and in the case of C. S. Sauvinet vs. J. A. Walker et. als., reported in the 24th An., recognized it as law, entitled to full force and effect. Guided by the decision in that case, also by the doctrine laid down by this court in J. K. Bells vs. Thomas Leathers, and for the reasons assigned in the foregoing opinion, I think the plaintiff should have judgment for one thousand dollars, with legal interest the date hereof, and for the costs of these proceedings. I cannot conclude without expressing the fond and sincere hope, that the time may speedily come when a fostering government may by wise laws and a mild administration, aided by an independent judiciary, venerable by its gravity, its inflexible integrity, its benign dignity, profound wisdom, and official independence, and supported by a willing, patriotic people, inspired by a unity of political purposes, and striving for the general welfare, may submerge and do away with every necessity for investigations of causes like this, and when all distinctions germinating in prejudice, and unsupported by law, may be finally forgotten, and when the essential unity of American citizenship shall stand universally confessed and sincerely acquiesced in by the national family.

*Judgment.*

Fifth district court for the parish of Orleans.

MDME. JOSEPHINE DECUIR }  
                                   *vs.* } No. 4028.  
 JOHN G. BENSON. }

In this case, for the reasons assigned in the written opinion of the court this day delivered and on file, it is ordered, adjudged, and decreed that there be judgment in favor of plaintiff, Mrs. Antoine Decuir, and against defendant, John G. Benson, captain and owner of the st'boat Governor Allen, for the sum of one thousand dollars, with legal interest thereon from June 14th, 1873, until paid, and costs of suit.

Judgment rendered June 14th, 1873.

Signed June 17th, 1873.

(Signed)

E. NORTH CULLOM, *Judge.*

*Motion for new trial.—Filed June 16th, 1873.*

Fifth district court for the parish of Orleans.

MDME. JOSEPHINE DECUIR }  
                                   *vs.* } No. 4028.  
 JOHN G. BENSON. }

On motion of Bentricks Egan, attorney for defendant in the above

cause, it is ordered by the court that plaintiff do show cause on  
 268 why a new trial should not be  
 granted in the above cause on the following grounds :

1<sup>o</sup>. Because the judgment is contrary to the law and the evidence on file.

2<sup>o</sup>. Because the testimony of the clerk of the boat shows that the plaintiff never tendered any passage-money for the accom'odation she pretends to have been denied; that she made no demand for it, and when leaving the boat paid for a passage in the colored bureau \$5, which was for the accom'odation she received.

3<sup>o</sup>. Because the damages allowed by the court are excessive, and totally unsupported by the evidence to be found in the record.

*Motion for new trial dismissed.—Extract from minutes, June 16th, 1873.*

Fifth district court for the parish of Orleans.

Present, the Hon. E. North Cullom, judge.

MRS. JOSEPHINE DECUIR }  
                                   *vs.*                } No. 4028.  
 JOHN G. BENSON.

269 In the matter of the rule herein taken on this day for a new trial, the court seeing no reason to change its opinion herein as heretofore expressed, allowed said rule for a new trial to be filed, and ordered that the same be dismissed.

*Motion for appeal.—Filed June 27th, 1873.*

Fifth district court for the parish of Orleans.

MDME. JOSEPHINE DECUIR }  
                                   *vs.*                } No. 4028.  
 JOHN G. BENSON.

On motion of Bentricks Egan, attorney for John G. Benson, defendant in the above cause, and on suggesting to the court that the said John G. Benson is informed and believes that there is error to his prejudice in the final judgment rendered by this honorable                against him in the above cause on the 14th June, and signed on the 17th of June,  
 270 1873; that he is aggrieved by said final judgment and is desirous of taking a suspensive appeal therefrom to the honorable supreme court of the State of Louisiana :

Therefore it is ordered by the court that the said John G. Benson be allowed a suspensive appeal from the above judgment, returnable in the supreme court of the State of Louisiana on the first Monday of November, 1873, on giving bond conditioned according to law in the sum of fifteen hundred dollars.

*Appeal bond.—Filed June 27th, 1873.*

Fifth district court for the parish of Orleans.

MRS. JOSEPHINE DECUIR }  
                                   *vs.*                } No. 4028.  
 JOHN G. BENSON.

Know all men by these presents that we, John G. Benson, as principal,



and Geo. W. Kirks, P. C. Montgomery, T. P. Leathers, Chas. Thorn, F. A. Blanks, H. J. Brinker, J. W. Tobin, E. L. Israel, R. Sinnott, Joseph A. Aiken, J. H. Irwin, A. Barker, N. Boushmann, John Janney, Geo. D. Hite, D. D. Dannels, M. N. Wood, Geo. W. Rea, and William Fagan, as sureties, are held and firmly bound unto Thomas Duffy, clerk of the fifth district court for the parish of Orleans, his successors, executors, administrators, and assigns, in the sum of fifteen hundred dollars, for the payment whereof we bind ourselves, our heirs, executors, and administrators, firmly by these presents, sealed with our seals, and dated in the city of New Orleans, on this twenty-seventh day of June, in the year of our Lord one thousand eight hundred and seventy-three.

Whereas the above bounded John G. Benson this day filed a motion of appeal from a final judgment rendered against him in the suit of Mme. Josephine Decuir vs. John G. Benson, No.      in the fifth district court for the parish of Orleans, on the 14th day of June, 1873, and signed on the 17th day of June, 1873:

Now the condition of the above obligation is such that the above-bound John G. Benson shall prosecute his appeal and shall satisfy whatever judgment may be rendered against him, or that the same shall be satisfied by the proceeds of the sale of his estate, real or personal, if he be cast in the appeal; otherwise that the said sureties shall be liable in his place.

(Signed) JOHN G. BENSON.

(Signed)

(do)

GEO. W. KIRK, fifty dollars.

(do)

P. C. MONTGOMERY, fifty dollars.

(do)

T. P. LEATHERS, one hundred & fifty dolls.

(do)

CHAS. THORN, twenty-five dollars.

(do)

F. A. BLANKS, fifty dollars.

(do)

H. J. BRINKER, twenty-five dollars.

(do)

J. W. TOBIN, fifty dollars.

(do)

E. L. ISRAEL, fifty dollars.

(do)

R. SINNOTT, fifty dollars.

(do)

J. A. AIKEN, one hundred dollars.

(do)

J. H. IRWIN, one hundred & fifty dollars.

(do)

P. A. BARKER, one hundred dollars.

(do)

H. BOUCHMAN, fifty dollars.

(do)

JOHN JANNEY, one hundred dollars.

273 (Signed)

GEO. D. HITE, two hundred & fifty dollars.

(do)

D. D. DANNELS, fifty dollars.

(do)

M. N. WOOD, one hundred dollars.

(do)

GEO. W. REA, fifty dollars.

(do)

WM. FAGAN, fifty dollars.

This bond seen as as satisfactory in amount.

Approved by and signed—

E. K. WASHINGTON,  
Attorney for Plaintiff.

NEW ORLEANS, LA., June 27th, 1873.

*Clerk's certificate.*

State of Louisiana, fifth district court for the parish of Orleans.

I, Thomas Duffy, clerk of the fifth district court for the parish of Orleans, and as such duly commissioned and sworn, do hereby certify that

the foregoing two hundred and forty-seven (247) pages contain a full and complete transcript of all the proceedings had, testimony and evidence adduced, and all the documents filed in the late eighth district court and in our (fifth district) court upon the trial of the cause wherein Mrs. Josephine Decuir is plaintiff and John G. Benson is defendant, the same being numbered No. 4028 of the docket of the fifth district court for the parish of Orleans.

In testimony whereof I have hereunto set my hand and affixed the seal of the said court, at the city of New Orleans, this      day of      , in the year of our Lord one thousand eight hundred and seventy-three, and the ninety-eight' year of the Independence of the United States.

(Signed)

THOMAS DUFFY, *Clerk.*

275      Supreme court of the State of Louisiana.

*Motion to place on summary docket.*

Filed Nov. 4, 1873.

(Signed)

M. P. JULIAN,  
*Dep'y Clerk.*

MRS. JOSEPHINE DECUIR	}	No. 4829. Appeal from the 5th district court, No. 4028.
vs.		
JOHN G. BENSON.		

This case being a suit under the civil-rights law, and, as such, entitled to preference under act of 1870, No. 93, extra session, (see Ray's Digest, 1st volume, page 288,) the clerk of the supreme court is requested to place the same on the summary docket of said court.

(Signed)

E. K. WASHINGTON,  
*Atty. for Plaintiff & Appellee.*

*Motion to fix case for trial.*

Filed Dec. 1, 1873.

(Signed)

T. McC. HYMAN, *D'y Clk.*

MADAME JOSEPHINE DECUIR, APPELLEE,	}	No.      .
vs.		
JOHN G. BENSON, APPELLANT.		

276      Appeal from the 5th district court, parish of Orleans, No.      .  
                                 Supreme court, No.      .

On motion of E. K. Washington, atty. for plaintiff & appellee, and on suggesting to the court this case is brought under the civil rights bill, and as such, by act No. 39, extra session of 1870, is entitled to preference over all other causes, ordered that the clerk of this court be directed to fix said case for trial within the shortest possible delay.

*Motion & order to fix.—Extract from the minutes.*

MONDAY, December 1st, 1873.

The court was duly opened, pursuant to adjournment.

Present, their honors John T. Ludeling, chief-justice, and James G. Taliaferro, Rufus K. Howell, William G. Wyly, Philip H. Morgan, associate justices.



277 MADAME JOSEPHINE DECUIR }  
                                   *vs.* } No. 4829.  
                                   JOHN G. BENSON. }

On written motion of E. K. Washington, esq., of counsel for plaintiff & appellee, it is ordered by the court that this cause be fixed for trial with preference.

*Answer.*

Filed Dec. 15th, 1873.  
 (Signed)

M. P. JULIAN, *Dy. Clk.*

MRS. JOSEPHINE DECUIR }  
                                   *vs.* } Supreme court. No. 4829.  
                                   JOHN G. BENSON. }

Plaintiff & appellee, in answer to the appeal herein taken, now comes into court & prays that the judgment of the lower court be affirmed with costs.

(Signed)

E. K. WASHINGTON, *Atty.*

278 *Extract from the minutes.—Tuesday, December 16th, 1873.*

The court was duly opened.

Present, their honors John T. Ludeling, chief-justice, and James G. Taliaferro, Rufus K. Howell, William G. Wyly, Philip H. Morgan, associate justices.

MRS. JOSEPHINE DECUIR }  
                                   *vs.* } No. 4829.  
                                   JOHN G. BENSON. }

This case was ordered by the court to be continued with preference.

*Extract from the minutes, Tuesday, January 20, 1874.*

The court was duly opened.

279 Present, their honors, John T. Ludeling, and James G. Taliaferro, Rufus K. Howell, associate justices; Philip H. Morgan, associate justice; absent, William G. Wyly, associate justice.

MRS. JOSEPHINE DECUIR }  
                                   *vs.* } No. 4829.  
                                   JOHN G. BENSON. }

This case was called for trial, and having heard argument from E. K. Washington, esq., of counsel for plaintiff & appellee, and Bentinck Egan, esq., or counsel for the defendant, appellant herein, the court took said case under advisement upon the briefs for both parties and the papers now on file.

*Opinion of the court.*

Filed April 6, 1874.  
 (Signed)

M. P. JULIAN,  
*Dep'y Clk.*

MRS. JOSEPHINE DECUIR }  
                                   vs.        } No. 4829.  
 JOHN G. BENSON.            }

Mr. Chief-Justice LUDELING.

280       The plaintiff alleges that, in July, 1872, being in the city of New Orleans, & desiring to go to her plantation in the parish of Point Coupée, she went on board the steamboat Governor Allen, a packet engaged in the business of common carrier of passengers, & plying between New Orleans & Vicksburg, & that she was refused a berth in the cabin & denied the right to take her meals at the table with the other passengers, & that she was forced to remain in a small compartment in the rear of the boat, without the common convenience granted to other passengers, solely on the ground that she is a colored person. She alleges that she is well educated, resided in Paris, France, several years, & that the treatment above mentioned is not only a gross infraction of her rights under the Constitution & laws of the United States & of this State, but was also an indignity to her personally, which shocked her feelings & caused her mental pain, shame, & mortification. She prays for \$25,000 actual damages & \$50,000 exemplary damages.

281       The defendant filed an exception, in which he pleaded want of jurisdiction in the State court *ratione materiæ*, as, he alleges, "the matters set up are admiralty matters, over which the United States court alone has jurisdiction." This plea was overruled & the other parts of the exception were referred to the merits. In his answer the defendant reiterates the objections urged in his exception. They are as follows:

1st. A general denial.

2d. That the steamer Gov. Allen was, on the 20th of July, 1872, and had been for some years before, enrolled and licensed under the laws of the United States to pursue the coasting trade, and was in the month of July, 1872, actually engaged in commerce and navigation, between the ports of New Orleans and Vicksburg, in the State of Mississippi, and that the 13th article of the constitution of the State of Louisiana, and the act, No. 38 of 1869, of said State, so far as they attempted to regulate steamboats, are in conflict with article 1, section 8, of  
 282       the Constitution of the United States, giving Congress exclusive power to regulate commerce among the several States, and are consequently null and void.

3d. That he has by law a right to regulate and prescribe rules for the accommodation of passengers on the steamer Gov. Allen; that the boat is private property, and does not belong to the public, and any law attempting to prevent him from regulating said steamboat to the best advantage, and for the interest of her owner, would be violation of article 14, section 1st, of the amendment of the Constitution of the United States, prohibiting any State from depriving any person of his property without due process of law.

4th. That there is now, and always has been, a well-known regulation on the steamer Gov. Allen, as well as all other boats engaged in commerce and navigation between the ports of New Orleans and the various ports and places on the Mississippi and tributary rivers, that  
 283       colored persons are not placed in the same cabin as white persons, or allowed to eat at the same table with them; that this regulation is reasonable, usual, and customary, and is made for the protection of their business, and was well known to the plaintiff in this cause in July, 1872, and had been known to her for many years previous.



5th. That the steamer Gov. Allen has a cabin called the bureau, for exclusive accommodation of colored persons, provided with state-rooms and all the conveniences of the cabin appropriated for the exclusive use of white persons; that plaintiff was tendered a state-room in said bureau-cabin appropriated for the exclusive use of colored persons, according to the well-known rules and regulations of the boat, and instead of accepting it took a seat in the recess of the boat, in the rear of the ladies' cabin, where she was offered a stretcher, which she declined.

6th. That she was distinctly informed before she came on the boat, by the clerk to a person who applied to him on her behalf, that she  
284 could not be accommodated in the cabin for white persons, but would be put in the bureau or cabin for colored persons, and that she came on the boat with that understanding and without complaint, and only paid \$5, the amount charged in said cabin, and that the other passengers are charged \$7 to Hermitage Landing.

There was judgment in favor of the plaintiff for one thousand dollars, & the defendant has appealed. We think the exception to the ruling of the court was properly overruled. (See 20 An., 432, & 22 An., 244.)

The evidence sustains the material allegations of the petition. The defendant himself, a witness in the case, states: "I would not have given her a room if they had not all been taken." He had previously stated that he did not know if there was a vacant room; that he thought there were unoccupied berths in some of the rooms. When

asked if the reason for refusing to give her a berth in the cabin  
285 was on account of her being a colored person, he answered:

"Yes, sir; as being contrary to the rules of the boat." Two constitutional questions are presented for solution: Is the act of 1869, No. 38, in conflict with article one, sect. eight, of the Constitution of the United States?

*It is in conflict with article 14, section one, of said constitution:*

It is insisted that act No. 38 of the general assembly, passed in 1869, violates article 1, section 8, of the Constitution of the U. States, because it undertakes to regulate commerce. This is a mistake. The act does not make any regulations of commerce. The act was passed to carry into effect the provisions of article 13 of the State constitution, which declares that "all persons shall enjoy equal rights & privileges upon any conveyance of a public character; & all places of business or public resort, or for which a license is required by either State, parish, or mu-

nicipal authority, shall be deemed public places of a public char-  
286 acter, & shall be open to the accomodation & patronage of all persons, without distinction or discrimination on account of race or color." The act contains five sections. The first and fourth alone are applicable to this case. The first section provides "that all persons engaged within this State in the business of common carriers of passen-

gers shall have the right to refuse to admit any person to their railroad cars, street-cars, steamboats, or other water-crafts, stage-coaches, omnibuses, or other vehicles, or to expel any person therefrom, after admission, when such person shall, on demand, refuse or neglect to pay the customary fare, or when such person shall be of infamous character, or shall be guilty, after admission to the conveyance [of the carrier, of gross, vulgar, or disorderly conduct, or who shall commit any act tending to injure the business of the carrier, prescribed for the management

of his business after such rules & regulations shall have been  
287 made known, provided said rules & regulations make no discrimination on account of race or color, & shall have the right to refuse any person admission to such conveyance when there is not room



or suitable accommodations, and, except in cases above enumerated, all persons engaged in the business of common carriers of passengers are forbidden to refuse admission to their conveyance, or to expel therefrom any person whomsoever." The fourth section provides "that for a violation of any of the provisions of the first & second sections of this act, the party injured shall have the right of action to recover any damages, exemplary as well as actual, which he may sustain, before any court of competent jurisdiction."

The first section forbids those engaged in the business of common carriers of passengers from discriminating against the passengers on account of race or color, & that is the substance of the section 288 so far as it is applicable to this case. It was enacted solely to protect the newly-enfranchized citizens of the United States, within the limits of Louisiana, from the effects of prejudice against them. It does not in any manner affect the commercial interest of any State or foreign nation, or of the citizens thereof.

The objection that the act No. 38 violates section one of article 14, is utterly untenable. No one is deprived of life, liberty, or property, without due process of law, by said statute.

The position that because one's property cannot be taken without due process of law, therefore a common carrier can conduct his business as he chooses, without reference to the rights of the public, is so illogical that it is only necessary to state it to expose its fallacy. "The rights & responsibilities of the common carrier may be briefly stated thus:

289 he is bound to take the goods of all who offer, if he be the carrier of goods, & the persons of all who offer, if he be a carrier of passengers; to take due care & to make due transport & due delivery of them.

"He has a lien on the goods which he carries & on the baggage of the passengers for his compensation.

"He is liable for all loss or injury to the goods under his charge, unless it happens from the act of God or from the public enemy." (Parsons' Mercantile Law, p. 207.)

If he be a common carrier of passengers he must receive all who offer, carry them over the whole route, demand only the usual compensation, & treat all alike, unless there be actual or sufficient reason for the distinction, such as the filthy appearance, dangerous condition, or misconduct of a passenger, & for failure in any of these particulars he is responsible to the extent of the damage occasioned thereby, includ-

290 ing pain or injury to the feelings. (Chamberlain vs. Chandler, 3 Mason, p. 142; 5 La.; Keene vs. Lizardi, 431; Block vs. Bannerman, 10 An., p 1; 1 McLeary, 550; 3 McLean, 24; Parsons' Mercantile Law, p. 207; 3 Kent, ed. 1832, p. 160.)

In Keene vs. Lizardi, Judge Porter, as the organ of the court, quoted the following language of Judge Story as expressing the ideas of the court on this subject:

"In respect to passengers, the case of the master is one of peculiar responsibility & delicacy.

"The contract with him is not for mere ship-room & personal existence on board, but for reasonable food, comforts, necessities, & kindness.

"It is a stipulation, not for toleration merely, but for respectful treatment, for the decency of demeanor which constitutes the charm of social life, for that attention which mitigates evils without reluctance, & that promptitude which administers aid to distress. In respect to 291 females, it proceeds yet further; it includes an implied stipulation against general obscenity, that immodesty of approach which



borders on lasciviousness, & against that wanton disregard of the feelings which aggravates every evil & endeavors by the excitement of terrors & cool malignancy of conduct to inflict torture on susceptible minds."

In truth, the right of the plaintiff to sue the defendant for damages would be the same whether act No. 38 existed or not, but the act is in perfect accord with the Constitution of the United States:

"All persons born or naturalized in the United States, & subject to the jurisdiction thereof, are citizens of the United States & of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States," &c. (14 amendment of the Constitution of the United States.)

292 It is settled, in this State at least, that colored persons now have all the civil & political rights which white persons enjoy. (See Succession of Cabalero & Hoss & Elder vs. Hart et al., 25 An.)

Mrs. Decuir was denied the right to go into the ladies' cabin; she was compelled to remain in a small compartment back of the ladies' cabin, or to go into the "colored bureau," & to take her meals there also. If she had been a white lady, it will not be denied that she would have had just cause for complaint. Under the Constitution & laws of the United States & of this State she was entitled to the same rights & privileges while upon the defendant's boat which were possessed & exercised by white persons. In a recent case, C. Justice Beck of Iowa held the following language, which we adopt: "These rights & privileges rest upon the equality of all before the law, the very foundation principle of our Government.

293 "If the negro must submit to different treatment, to accommodations inferior to those given to the white man, when transported by public carriers, he is deprived of the benefits of this very equality. His contract would not secure him the same privileges & the same rights that a like contract made with the same party by his white fellow-citizen would bestow upon the latter." (Coger vs. N. W. Union Packet Company, American Law Register for March, 1874.)

The defendant relies also upon the fact that by regulation & the established course of business on steamboats, colored persons were not received as cabin-passengers & were not allowed the use of the cabins; that they have the right to make regulations for the comfort & convenience of the passengers, & that said regulation was reasonable.

294 That the common carrier may make reasonable rules & regulations for the government of the passengers on board his boat or vessel is admitted, but it cannot be pretended that a regulation which is founded on prejudice & which is in violation of law is reasonable.

The appellee has not asked for an increase of the judgment.

It is, therefore, ordered & adjudged that the judgment of the district court be affirmed, with costs of appeal.

DECUIR }  
vs. } 4829.  
BENSON. }

WYLY, J., dissenting:

Article 13 of the Constitution provides that "all persons shall enjoy equal rights and privileges upon any conveyance of a public character."

\* \* \* Act No. 38 of the act of 1869, an act to carry said article into



effect, provides in substance that for certain causes (such as im-  
 295 proper conduct, infamous character, or refusal to pay the fare,) all  
 persons engaged in the business of common carriers shall have  
 the right to refuse to admit passengers, or to expel them from their  
 steamboats or other water-crafts, railroad-cars, or other vehicles, pro-  
 vided they make no distinction on account of race or color.

And for violating this provision the party injured shall have the right  
 to recover any damage, exemplary as well as actual, which he may sus-  
 tain. Assuming that the meaning of this legislation is that no colored  
 person shall be excluded from the cabin and table of a steamboat  
 usually occupied by white passengers, and if so excluded he shall have  
 the right to recover damages on account thereof, the question is, were  
 these enactments obligatory on the steamboat Governor Allen, engaged  
 in carrying passengers and freight between New Orleans and  
 296 Vicksburg, Louisiana and Mississippi? Was the steamboat Gov-  
 ernor Allen, engaged in commerce between the States under a  
 license issued by the United States, bound to observe this local or State  
 legislation regulating the entertainment of passengers, requiring them  
 to set at the same table and occupy the same cabin?

This legislation being in force, could the Governor Allen provide for  
 her passengers two cabins and tables, affording equal accom'odations,  
 one exclusively for white passengers, and the other exclusively for col-  
 ored passengers, and, having so provided, assign each passenger to his  
 proper place?

I speak not now of the right resulting from a contract, express or  
 implied, between the passenger and the boat; because if the boat con-  
 tract to carry a colored passenger in the white cabin, and fails to do  
 so, it will be responsible for a breach of that contract.

297 Such a contract would depend for its existence in no manner  
 upon the legislation to which I have referred.

The inquiry is, has the State of Louisiana authority to make it un-  
 lawful for a steamboat engaged in commerce between the States to pro-  
 vide separate cabins and accom'odations for the white and colored pas-  
 sengers?

In my opinion she cannot do so without encroaching upon the power  
 conferred by the Constitution of the United States upon Congress, to  
 regulate commerce among the States.

If Louisiana can require the passengers to be mixed, and make it un-  
 lawful for the whites to be assigned to one cabin and the colored to  
 another, why may not Mississippi require the white and the colored pas-  
 sengers to have separate apartments, and make it a penal offence for  
 them to be mixed in the same cabin?

If one State has jurisdiction on the subject, why has not the  
 298 other? If each have jurisdiction, each can pass just such laws  
 as it deems necessary in the premises.

Now, what would be the consequence of such a state of affairs? The  
 result would be that the boat could carry no passengers.

If it should carry passengers, mixed in the same cabin, conformably  
 to the laws of Louisiana, it should incur the penalty prescribed by Mis-  
 sissippi for mixing white and colored passengers.

If the States have authority to pass conflicting laws which in effect  
 would prohibit the transportation of passengers on steamboats from one  
 State to the other, why may they not enact similar laws in regard to  
 freight?

And if they can legislate upon the subject of passengers and the sub-  
 ject of freight passing on steamboats between the States, are they not, in



effect, regulating commerce among the States, in contravention of the Constitution of the United States ?

299 It was to prevent this very conflict of authority between the States that the founders of our Government wisely provided that Congress alone should have power to regulate commerce among the several States.

I cannot regard the constitutional provision and the statute of this State, as applied by the majority of the court in this case, otherwise than as enactments of a State to regulate commerce between the States, in contravention of the Constitution of the United States. They are in no sense enactments springing from the exercise of police power ; because the police power of a State cannot extend beyond its own limits. It cannot be brought into activity to regulate commerce between the States ; to prescribe how freight shall be carried or passengers accommodated upon steamboats running from one State to another.

Having shown, as I think conclusively, that the enactments of Louisiana, as applied in this case by the majority of the court, 300 contravene the Constitution of the United States, I think I may safely affirm that it was not unlawful for the Governor Allen to have two separate cabins and tables, one for the white and the other for the colored passengers, affording like accommodations to each, and in assigning each passenger to his proper place the captain or clerk committed no illegal act.

If there was no law prohibiting the universal custom of steamboats in this trade from have separate cabins for the white and colored passengers, that custom surely was not an unlawful custom. I entirely agree with our learned brother below that every custom must yield to positive law, and it was useless for the defendant to prove a custom contravening a prohibitory law.

But the precise question is, was the custom, which the defendant proved by overwhelming evidence to be universal among all the 301 boats navigating the Lower Mississippi, an unlawful custom—was it a custom in contravention of a prohibitory law ?

Laying out of view the enactments of Louisiana, which I think I have fully shown have no application to boats like the Governor Allen, engaged in commerce between the States, I boldly assert that the custom in question was not unlawful—that it contravened no prohibitory law.

Now, let us examine the testimony of the witnesses in regard to the custom or regulation to which I have referred.

Thomas P. Leathers, a witness, says : “ I have been engaged in steamboating for the last thirty-six years ; my principal trade has been between New Orleans and Vicksburg, Mississippi ; have been running boats there for the last thirty-three years as master. I am now master

of the steamer Natchez, a weekly packet between New Orleans 302 and Vicksburg ; was on the steamer Governor Allen when Mr.

Washington came on board and applied for a passage for some person—did not see who. Heard the clerk the boat tell him that if she was a colored person she could only be accommodated in the colored cabin. Think this was in July, 1872 ; the Allen was then running in place of my boat, the Natchez, carrying the mail ; heard nothing more. This was Saturday evening before the boat backed out from the wharf. Witness went with the boat to Carrollton. Witness is familiar with the custom and regulation of steamboats carrying colored persons ; it is usual to have a colored cabin for their accommodation, separate and distinct from all others. This custom is well known among all persons traveling upon the river, both white and black. It is a reasonable regu-



lation, and prevails among all boats coming to this port. The colored passengers on my boat are accom'dated as well as the white, and are provided with the same bill of fare, but distinct and separate apartments. The rule on my boat is to keep the officers in a separate cabin; the waiters have a separate one; the ladies have a separate one; the gentlemen have a separate one; the ladies' servants have a separate one, and the colored passengers another. Each one is separate and distinct from the others, and have separate tables. The steamboat Governor Allen is regulated the same way my boat is regulated. This regulation and custom among steamboats coming to this port, of keeping the white and colored cabin-passengers separate has prevailed ever since I have been steamboating. I have never heard of any other. This regulation is made for the accommodation of the whole traveling community, because there are a large majority of white people who do not wish to be mixed up with the colored people, and the colored people do not wish to be mixed up with the white people. It would be impossible to run a steamboat without this regulation. It is just as essential as to keep the gentlemen and ladies' cabin separate. I think the colored travel in my trade is between a fourth and fifth of the whole—that is, the white persons traveling are about four-fifths of the whole, or near that. About one-half that travel is for pleasure. If I did not have rules and regulations for my boat and accommodation of my passengers, I do not think I would have any, either white or colored. The white passengers are charged about 25 per cent. more than the colored, though they get the same accommodation. Lieutenant-Governor Dunn was a passenger on my boat just before his death. I gave him a state-room in the colored cabin, where he preferred to be, as he asked for it. I have also have Senator Ravels travel on my boat, and he informed me that the separate cabin was the only way to give satisfaction to the white and colored race; that they must be kept separate. He was always accommodated in the colored cabin. I have also frequently had other colored members of the legislature, of both Louisiana and Mississippi, and always put them in the colored cabin, and never heard of any complaint from them on the score."

John W. Cannon states, in substance, that he is master and owner of the steamer R. E. Lee, and owner of her and the steamer Katie; that he has been steamboating as master and owner for the last thirty-six years, in nearly all trades out of New Orleans, and has been in the Vicksburg and Bend trade for the last fifteen or eighteen years, except during the war, making about a trip a week; that he is familiar with the custom of carrying colored passengers; that they are always carried separate and apart from the white people; that they were carried in the "nursery" until the boats got what was called the colored cabin, under the ladies' cabin; that this regulation in regard to carrying colored persons is well known; that they are never carried in any other way; that since the war he has had the Quitman, the Grey Eagle, the Gov. Allen, the Belle Lee, the Pargoud, the Magenta, the R. E. Lee, and the Katie, all first-class boats, with the exception of the Grey Eagle, and she was a comfortable passenger-boat; that this regulation of keeping the colored and white passengers separate is well known to the traveling community, and is for the protection of their business; that white people would not travel on a boat if they knew negroes were put in the same cabin with them, or even that they had stayed in the same state-rooms where the white people would have to sleep after them, the prejudice in the public mind being so strong; that



the colored passengers are treated the same as the white; they  
 307 have the same food and attention, get their meals at the same  
 time, and have servants to wait upon them; that the Gov. Allen  
 has a very comfortable bureau, and as good rooms as she has got above;  
 there are some twelve or fourteen of them, and some very large ones;  
 that he has never known any boats to put negroes in the cabin, or at  
 the white table; that they could not get along without observing this  
 rule strictly; that the Lee generally carries from 30 to 230 or 300 pas-  
 sengers—has generally from 70 to 80 and 100; supposes about a third  
 of them colored.

Capt. John G. Benson, the defendant, states, in substance, that he has  
 been steamboating off and on since 1848, and for the last three or four  
 years has been running in the New Orleans and Vicksburg trade; that  
 the clerk of the boat came to him after the boat had backed out and said  
 there was a woman on board of the boat disposed to make a little trouble  
 if she could; that she was registered to get off at Hermitage  
 308 Landing; that the passage of a white person to that landing was  
 \$7 and a colored person \$5; that there is a regulation on his boat  
 to keep the white and colored people separate, by having a cabin for  
 the colored people separate from the white; that this is a regulation  
 prevailing on the river; that the object of it is to protect a person in his  
 business; that if a person adopted any other, and allowed negroes to  
 occupy rooms in the main cabin, he would not carry any other people;  
 that this regulation is for the accommodation of the traveling public;  
 that the average colored travel is from a fourth to a fifth of the white;  
 that this regulation of keeping the colored people separate from the  
 white is well known to the travelling community; that it has prevailed  
 on the river since he has been on it; that he has a colored cabin on the  
 steamer Governor Allen, called the "bureau," where they get  
 309 precisely the same attendance, food, and accommodation as the  
 white passengers, and are charged from a fourth to a fifth less.

A large number of witnesses were examined, and they all concur as  
 to the universality of the regulation or custom prevailing on all the  
 boats navigating the waters of the Lower Mississippi; that white and  
 colored passengers are accommodated in separate apartments; and they  
 state that this rule or custom was well known to the travelling public  
 generally.

This regulation was known to the plaintiff; her counsel went to the  
 clerk of the boat before the hour of departure to endeavor, in her case,  
 to get him to vary from that custom, and to allow her to travel in the  
 same cabin with the white passengers. This request was peremptorily  
 refused.

About the time, however, the boat was backing out, the plaint-  
 310 iff came aboard; and being refused accommodation in the white  
 cabin, she remained in the room known as the recess, in the rear  
 of that cabin, during the trip, refusing to accept the accommodations  
 tendered her in the colored cabin.

Just before arriving at her place of destination, (the Hermitage Land-  
 ing,) the plaintiff went to the office and settled her fare, paying five dol-  
 lars, the usual charge for colored passengers, the rate for white pas-  
 sengers being seven dollars. Now the question is, when the plaintiff  
 went aboard the Governor Allen as a passenger in July, 1872, what  
 was the implied contract arising between her and the boat, or the de-  
 fendant, the captain?

Was the implied contract the securing of a passage in the white or  
 colored cabin?



In my opinion the contract was made in reference to the custom of that boat and all others carrying white and colored passingers. 311 Entering that boat as a colored passinger, in view of the well-known regulation referred to, the plaintiff tacitly consented to take accommodation in the colored cabin. And the obligagion of the defendant was to furnish her as good a room and as good fare, in that apartment, as he gave to any passenger on the boat.

Now, the complaint is not that the accommodation in the colored cabin was not as good as it was in the white cabin, (and the proof is, there was no difference in the comforts of the two apartments,) but it is because there was a discrimination on account of color, and the plaintiff was denied entertainment in the same cabin with the white passengers.

The basis of plaintiff's action is a breach of contract, and on account thereof, she claims damages to the amount of seventy-five thousand dollars.

312 But the difficulty in her case is, she had no contract for passage in the same cabin with the white passingers, and being excluded therefrom, there was no breach of contract on the part of the defendant, and consequently there is no ground either for the amount of damages claimed by her or for the amount of \$1,000.00 awarded by the court a qua.

If the clerk of the boat, when applied to by the counsel of the plaintiff, had consented to give the plaintiff accommodation in the white cabin, and afterwards refused to allow her to occupy the same, there would be a strong case in favor of the plaintiff to claim damages for breach of contract; and the authorities relied on by plaintiff with so much confidence, to wit: *St. Armand vs. Lizardi*, (4 L., 244,) and *Keene vs. Lizardi*, (5 L., 431, and 6 L., 319,) would be applicable. Those authorities 313 and that of *Chamberlain vs. Chandler*, (3 Mason, 142,) are correct expositions of the law most eloquently expressed, in regard to the responsibility of owners for the breach of duty by their officers, showing that they are responsible even for the mental suffering occasioned by the injustice & disrespectful and brutal conduct of said officers.

I fully endorse what is said in those cases, believing that part of the contract between the passinger and the boat or its owners is an implied stipulation for the good conduct and proper behavior of their officers.

If there is a breach of contract in this respect or any other respect, damages may be claimed on account thereof.

If there be a breach of contract in the case at bar, of course the plaintiff can claim damages. But if the custom or regulation in regard to the mode of carrying colored passingers to which I have referred 314 be not unlawful, on entering the boat as a passinger the plaintiff impliedly accepted the defendant's offer to carry colored passingers in pursuance of that regulation, and she impliedly consented to take accommodation in the colored cabin. The defendant held himself out as prepared to take colored passengers, subject to a certain regulation universally prevailing on all boats navigating the waters of the Lower Mississippi; and when a colored passenger entered his boat, the *Governor Allen*, the implied contract was that his passage should be in the colored cabin.

When a white passinger entered it, the implied agreement was that he should be accommodated in the white cabin; and if denied accommodation in the colored cabin, he could not claim damages for breach of contract.

It was the duty of the defendant, however, to provide suitable accom-



modations and to make each cabin equally comfortable; and this  
315 he is shown to have done.

In conclusion, I maintain there was no breach of contract, if the regulation of the boat was not unlawful, because that regulation formed part of the implied contract which arose between the plaintiff and defendant in July, 1872, when she entered the boat as a passenger. Laying out of view the enactments of Louisiana, which are not applicable to boats engaged in commerce between the States, I find nothing in the common law, which is the law of the United States, prohibiting boats from making regulations for the common benefit of all the passengers, from separating the white and the colored into different apartments, giving to each equal accommodations.

This custom or regulation is proved to have existed at least for the last thirty years, and perhaps ever since the American people  
316 commenced to navigate the Mississippi River.

Congress, which alone has authority to regulate commerce among the several States, has not seen proper to enact a law making this custom or regulation unlawful, although the subject in the shape of the civil-rights bill has been lately under its consideration.

Until the lawgiver speaks, it is our duty to be silent.

For this State to interpose its enactments, and for this court to apply them, to a subject solely confided by the Constitution of the United States to Congress, is a glaring usurpation of authority.

For the reasons stated, I deem it my duty to dissent in this case.

*Extract from the minutes, Monday, April 6, 1874.*

The court was duly opened, pursuant to adjournment.

317 Present, their honors John T. Ludeling, chief-justice; and James G. Taliaferro, Rufus K. Howell, William G. Wyly, Philip H. Morgan, associate justices.

MRS. JOSEPHINE DECUIR }  
vs. } No. 4829.  
JOHN G. BENSON. }

Appeal from the 5th dist. court for the parish of Orleans.

It is ordered and adjudged that the judgment of the district court be affirmed, with costs of appeal.

(Mr. Justice Wyly, dissenting, read a separate opinion of this case.)

*Petition & argument for rehearing.*

Filed April 17, 1874.

(Signed)

M. P. JULIAN, D'y Clerk.

JOSEPHINE DECUIR, APPELLEE, }  
vs. } No. 4829.  
JOHN G. BENSON, APPELLANT. }

318 Appellant prays the court to grant him a rehearing in this case; and, in support of this application, his counsel respectfully submit the following argument.

We rely and insist upon all the matters of defense set up in the pleadings, and urged in our original brief and oral argument; but we limit this argument to one single point, because it seems so plain and so conclusive, that we presume it must have been overlooked by the court in the pressure of business.

The plaintiff's entire case rests upon the first and fourth sections of the act of the legislature, approved 23d February, 1869, No. 38, p. 37; Ray, p. 93. See also, our original brief, p. 15. The decree of the court is based upon these two sections alone; for the other sections of the act relate exclusively to places of public resort, for which license, whether State or parochial or municipal, is required.

By the first section of this act two distinct things are forbidden, and no other thing whatsoever is included in the prohibition.

1st. The carrier of passengers is forbidden to refuse to admit to his conveyance any person whomsoever, except for the causes set forth and specified in the first section.

2d. The carrier of passengers is forbidden, after having admitted a person to his conveyance, to expel such person, except for the same specified causes.

The fourth section simply gives the right of action to the person injured by the violation of the prohibitions of the preceeding sections, to recover damages, exemplary as well as actual.

Obviously, this statute limits the right of action which it gives against the carrier of passengers to two distinct classes of cases:

1st. Where the carrier refuses to make and enter into the passenger contract with a person proposing so to contract.

2d. Where the carrier, after having made and entered into the passenger contract, violates that contract by the expulsion of the passenger from his conveyance. All other violations of the passenger contract are left under the dominion and protection of the general laws by which that contract is regulated; and no matter how flagrant may be the conduct of the carrier towards the passenger, no matter how gross may be his violation of the duties and obligations springing from the passenger contract, whether express or implied, this statute affords no remedy to the passenger, except in the one single specified case, the expulsion of the passenger from the conveyance for any cause whatsoever, save and except for some one of the causes set forth specially in the act.

The proof shows that the defendant did not violate either of the prohibitions of the first section of the act.

1. The defendant did not refuse to admit the plaintiff to his conveyance. On the contrary, the plaintiff was admitted on board the steamboat Governor Allen, the defendant's conveyance; and she received the accommodation she was informed and knew before she came on board that she would have, and for which she paid.

2. The defendant did not expel the plaintiff from his conveyance after she had been admitted on board. On the contrary, she remained on board, and was conveyed and transported to her place of destination, and left the boat there in pursuance of her original intention and design. It is manifest, therefore, that the case does not fall within the purview or the terms of the statute relied on by the plaintiff; and that the defendant has not incurred any liability under this statute, for the simple reason that he has not violated either of the only two prohibitions in the statute which are applicable to carriers of passengers.

We respectfully ask, therefore, that a rehearing be granted; that the decree pronounced be set aside, and that the judgment appealed from be reversed and annulled.

(Signed)  
( " )

R. H. MARR,  
BENTINCK EGAN,  
*For Appellant.*

NEW ORLEANS, April 15, 1874.



*Extract from the minutes, Wednesday, April 22, 1874.*

The court was duly opened; present, their honors John T. Ludeling, chief-justice; and James G. Taliaferro, Rufus K. Howell, William G. Wyly, Philip H. Morgan, associate justices.

MRS. JOSEPHINE DECUIR }  
                                   *vs.* } No. 4829.  
 JOHN G. BENSON. }

It is ordered that the rehearing applied for in this case be refused.

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*Certificate.*

I, M. P. Julian, d'y clerk of the supreme court of the State of Louisiana, holding sessions at the city of New Orleans, do hereby certify that the foregoing three hundred and twenty-three (323) pages contain a full, true, and complete transcript of the proceedings had in the 5th district court for the parish of Orleans, in a certain suit wherein Mrs. Josephine Decuir was plaintiff and John G. Benson was defendant, and also of all the proceedings had in this supreme court on the appeal taken by said defendant, which said transcript of appeal is now on the files of this honorable court, under No. 4829.

In testimony whereof I have hereunto set my hand and affixed the seal of this honorable court at the city of New Orleans, this 23rd  
 324 day of September, anno Domini 1874, and in the ninety-ninth year of the Independence of the United States of America.

[SEAL.]

M. P. JULIAN, *D'y Clerk.*

(John M. Howell, clerk, being absent.)

325 Know all men by these presents that we, John Gillis Benson, as principal, and John W. Tobin, John W. Cannon, T. P. Leathers, sureties, are held and firmly bound unto Josephine Decuir, in the full and just sum of two thousand dollars, to be paid to the said Josephine Decuir, her certain attorney or attornies, executors, administrators, or assigns, to which payment well and truly to be made we bind ourselves, our heirs, executors, administrators, severally by these presents, sealed with our seals, and dated this 22nd day of April, in the year of our Lord one thousand eight hundred and seventy-four.

Whereas lately, at a term of the supreme court of the State of Louisiana, at New Orleans, in a suit depending in said court between Josephine Decuir and John Gillis Benson, appellant, a final judgment was rendered in favor of said Josephine Decuir, appellee, and against said John Gillis Benson, appellant, affirming the judgment of the lower court in said cause, and the said John Gillis Benson having obtained a writ of error to the supreme court of the State of Louisiana and filed a  
 326 copy thereof in the clerk's office of the said supreme court to reverse the judgment in the aforesaid suit, and a citation directed to the said Josephine Decuir, citing and admonishing her to be and appear at a Supreme Court of the United States to be holden at Washington the second Monday of October next.

Now, the condition of the above obligation is such that if the said John Gillis Benson shall prosecute his said writ of error to effect, and

answer all damages and costs if he fail to make his plea good, then the above obligation to be void, else to remain in full virtue and force.

JOHN GILLIS BENSON.	[L. S.]
J. W. TOBIN.	[L. S.]
J. W. CANNON.	[L. S.]
T. P. LEATHERS.	[L. S.]

Sealed and delivered in presence of—

JOHN S. TWOMEY.

Witness:

R. H. MARR.

Approved:

JNO. T. LUDELING,  
*Chief-Justice S. Court La.*

(Indorsed :) 4829. Bond for writ of error. Filed April 23rd, 1874  
M. P. Julian, d'y clerk.

327 UNITED STATES OF AMERICA, ss :

The President of the United States to the honorable the judges of the supreme court of the State of Louisiana, and holding sessions in New Orleans, Louisiana, greeting:

Because in the record and proceedings, as also in the rendition of the judgment of a plea which is in the said supreme court, before you, or some of you, being the highest court of law or equity of the said State in which a decision could be had in the said suit between Josephine Decuir, plaintiff and appellee, and John Gilles Benson, defendant & appellant, wherein was drawn in question the validity of a statute of the State of Louisiana, approved 23d February, 1869, No. 38, entitled "An act to enforce the thirteenth article of the constitution of this State, and to regulate the licenses mentioned in said thirteenth article," on the ground of its being repugnant to the Constitution and laws of the United States, & the said decision was in favor of the validity of the said statute, a manifest error hath happened, to the great damage of the said John Gillis Benson, as by his complaint appears:

We, being willing that error, if any hath been, should be duly corrected, and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that then under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you have the same at Washington, on the second Monday of October next, in the said Supreme Court, to be then and there held, that, the record and proceedings aforesaid being inspected, the said Supreme Court may cause further to be done therein to correct that error, what of right, and according to the laws and customs of the United States should be done.

Witness, the honorable Morrison R. Waite, Chief-Justice of the said Supreme Court of the United States, this 22d day of April, in the *the* year of our Lord one thousand eight hundred and seventy-four.

[SEAL.]

F. A. WOOLFLEY,

*Clerk of the United States Circuit Court for the District of Louisiana.*

Allowed:

JNO. T. LUDELING,  
*Chief Justice S. Court of La.*



(Indorsed:) United States circuit court. No. . John Gilles Benson, plaintiff in error, versus Josephine Decuir, defendant in error. Writ of error.

Copy of a writ of error lodged in the clerk's office of the supreme court of the State of Louisiana, in pursuance of the statute in such cases made and provided, this twenty-third (23) day of April, one thousand eight hundred and seventy-four.

R. H. MARR,  
BENTINCK EGAN,  
*Attorneys of Plaintiff in Error.*

4829. Filed April 23rd, 1874. M. P. Julian, dy. clk. supr. court.

328 THE UNITED STATES OF AMERICA:

The President of the United States to Josephine Decuir, greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States, to be holden at the city of Washington, on the 2nd Monday of October next, pursuant to a writ of error filed in the clerk's office of the supreme court of the State of Louisiana, wherein John Gillis Benson is plaintiff in error, and you are defendant in error, to show cause, if any there be, why the judgment rendered against the said plaintiff in error, as in said writ of error mentioned, should not be corrected, and why speedy justice should not be done to the parties in that behalf.

Witness the honorable Morrison R. Waite, Chief-Justice of the Supreme Court of the United States, this twenty-third day of April, in the year of our Lord one thousand eight hundred and seventy-fourth.

JNO. T. LUDELING.  
*Chief-Justice Supreme Court of Louisiana.*

329 (Indorsed:) Supreme court of the State of Louisiana. No. 4829. John Gillis Benson, plff. in error, vs. Josephine Decuir, deft. in error. Citation in error. For service on Mad'me Josephine Decuir.

Rec'd May 11th, 1874., and on the 14th day of same month year, served a copy of within citation in error on the defendant herein, Josephine Decuir, by personal service on her attorney, E. K. Washington, who accepted service of same.

Ret. same day.

Sh'ft's fees, \$1.

HENRY BENIT,  
*D'y Sh'ff Parish of Orleans.*

The deputy sberiff, H. Benit, duly sworn, deposes that all the facts & allegations of this return are true.

HENRY BENIT,  
*D'y Sh'ff Parish of Orleans.*

Sworn to & subscribed before me this 16th day of May, A. D. 1874.

M. P. JULIAN,  
*D'y Clk.*

(Indorsement on cover:) No. 294. John G. Benson, plff. in error, vs. Josephine Decuir. Louisiana sup. ct. Filed 6th October, 1874





# SUPREME COURT OF THE UNITED STATES.

No. 294.

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ELIZA JANE HALL, ADMINISTRATRIX OF  
JOHN G. BENSON, PLAINTIFF IN ERROR,

*versus*

JOSEPHINE DECUIR, DEFENDANT.

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*Brief and Argument for Plaintiff in Error.*

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John G. Benson was master and owner of the "Governor Allen," a steamboat enrolled and licensed for the coasting trade, advertised and plying as a regular packet, carrying passengers and cargo, between the ports of New Orleans, in the State of Louisiana, and Vicksburg, in the State of Mississippi.

Josephine DeCuir, a colored woman, of African descent, desired to go from New Orleans to Hermitage, a landing place in the Parish of Pointe Coupee, in the State of Louisiana, on the Mississippi River, on the route of the boat, about 160 miles distant, and not more than sixteen hours run from New Orleans.

On the 20th of July, 1872, the day of the departure

of the boat from New Orleans, one of the counsel who represented defendant in error, in this litigation, and who went to Hermitage on the same trip, went on board the "Governor Allen," and attempted to engage a state-room for her in the ladies' cabin. He was informed by the clerk of the boat that his client could not be accommodated in the ladies' cabin, but that she could be accommodated in the bureau, a part of the boat specially provided and set apart for colored passengers.

After this, defendant in error went on board. Nothing shows that her presence was known to any officer of the boat, until after the departure from the wharf. She refused to accept accommodations in the bureau, which were offered to her, and chose to remain in the recess, in the rear of the ladies' cabin, where she took her meals, and was furnished such other accommodations as could be afforded there.

The boat arrived at Hermitage about 9 o'clock next morning, and defendant in error paid the price of passage demanded of her, which was two dollars less than that charged passengers in the ladies' cabin; and she went ashore at the place of her destination, having spent one night, and had two meals, supper and breakfast, on board. On the 29th of July, a week after, this suit was brought to recover \$25,000 actual damage, and \$50,000 exemplary damages.

In her petition, printed Record 1 and 2, defendant in error does not allege that the accommodations in the bureau were inferior to those in the ladies' cabin, and



the fact was proven, as stated by Justice Wyly, R., 93, that there was no difference in the comforts of the two apartments ; nor does she charge that any officer of the boat was guilty of any rudeness or indecency towards her, or offered to her any personal indignity beyond the refusal to allow her accommodations in the ladies' cabin. She bases her action on the ground that " she was denied the equal rights and privileges granted to all persons under the provisions of Article 13, of the Constitution of Louisiana, in regard to the equal rights and privileges of all persons, irrespective of race and color, and under the laws of the United States, and the provisions of Act No. 38, of the General Assembly of 1869, on the sole ground of her being a person of color ;" and, " by this denial, she was greatly insulted and wounded in her feelings."

Plaintiff in error excepted to the jurisdiction, on the ground that the cause of action relied upon was cognizable only in Admiralty, touching which no argument will be offered here. Other matters were plead by way of exception, which it is not necessary to notice in this connection, because, in the judgment overruling the exception, the right was reserved to plead the same matters in the answer ; and they are set up in the answer to the merits. Record, 3-5.

The defenses are substantially :

1. The general issue.
2. That the steamboat " Governor Allen " was, on the 20th of July, 1872, and had been for many years before,

enrolled and licensed, under the laws of the United States, to pursue the coasting trade, and was, in the month of July, actually engaged in commerce and navigation, between the ports of New Orleans, in the State of Louisiana, and Vicksburg, in the State of Mississippi; and that Article 13 of the Constitution of Louisiana, and the Act No. 38 of 1869, of said State, so far as they attempt to regulate steamboats, are in conflict with Article 1, Section 8, of the Constitution of the United States, which gives to Congress exclusive power to regulate commerce among the several States, and are consequently, null and void.

3. That plaintiff in error has by law, a right to regulate and prescribe rules for the accommodation of passengers on the steamer "Governor Allen;" that said boat is private property, and does not belong to the public; and that any law attempting to prevent him from regulating and managing said steamboat to the best advantage, and for the interest of her owner, would be in violation of Article 14, Section 1, of the Amendments to the Constitution of the United States, which prohibits any State from depriving a person of his property without due process of law.

4. That there is, and always has been, a well known regulation on the steamer "Governor Allen," as well as all other boats engaged in commerce and navigation between the port of New Orleans and the various ports and places on the Mississippi and tributary rivers, that colored persons are not placed in the same cabin as white



persons, or allowed to eat at the same table with them; that this regulation is reasonable, usual and customary, and is made for the protection of their own business, and was well known to defendant in error, in July, 1872, and had been known to her for many years previous.

5. That the steamboat "Governor Allen" has a cabin called the "bureau," for the exclusive accommodation of colored persons, provided with staterooms and all the conveniences of the cabin, appropriated for the exclusive use of white persons; that defendant in error was tendered a stateroom in the bureau cabin, appropriated for the exclusive use of colored persons, according to the well known rules and regulations of the boat, and instead of accepting it, she preferred the recess in the rear of the ladies' cabin, where she remained during the voyage.

6. That defendant in error was distinctly informed before she went on the boat, by the clerk, through a person who applied to him on her behalf, that she could not be accommodated in the cabin for white persons, but would be in the bureau, or cabin for colored persons; and that she went on board with that understanding, and without complaint, and paid \$5, the price charged in the bureau cabin, while other cabin passengers were charged \$100. Hermitage Landing. R., 5, 6, 85, 86.

The judgment of the court, of first instance, was in favor of defendant in error, for \$1000. R., 80. On appeal, the Supreme Court of Louisiana decided that Article 13 of the Constitution, and Act No. 38 of 1869,

are not regulations of commerce ; that they are not in conflict with Article 1. Section 8, of the Constitution of the United States, and that they do not violate Article 14, Section 1, of the Amendments to the Constitution. Opinion of the majority, by Ludeling, C. J., R., 86, 87. The judgment of the inferior court was affirmed, R., 94, Justice Wyly dissenting, R., 88 to 94 ; and Benson, after an ineffectual application for a rehearing, R., 94, 95, took this writ of error. R., 96, 97.

Article 13 of the Constitution of Louisiana, of which the clause in italics alone is applicable to carriers, is as follows :

*" All persons shall enjoy equal rights and privileges upon any conveyance of a public character ;* and all places of business or of public resort, or for which a license is required by either State, parish or municipal authority, shall be deemed places of a public character, and shall be opened to the accommodation and patronage of all persons, without distinction or discrimination on account of race or color."

The Act of the General Assembly of the State of Louisiana, No. 38, approved 23d February, 1869, is entitled: " An Act to enforce the Thirteenth Article of the Constitution of this State, and to Regulate the Licenses mentioned in said Thirteenth Article."

This Act consists of five sections, of which the first and fourth alone are applicable to carriers. Section 2 relates exclusively to public inns, hotels, or places of public resort. Section 3 relates exclusively to licenses granted



by the State, and by parishes and municipalities *therein*,  
 “ to persons engaged in business, or keeping places of  
 public resort ;” and it provides that such licenses shall  
 contain the express condition that such “ places of busi-  
 ness or public resort shall be open to the accommoda-  
 tion and patronage of all persons, without distinction  
 or discrimination on account of race or color ;” and  
 Section 5 simply repeals all inconsistent laws. The sec-  
 tions which are in question, are as follows :

“ Section 1. All persons engaged within this State, in  
 the business of common carriers of passengers, shall  
 have the right to refuse to admit any person to their  
 railroad cars, street cars, steamboats, or other water  
 crafts, stage coaches, omnibuses, or other vehicles, or  
 to expel any person therefrom after admission, when  
 such person shall, on demand, refuse or neglect to pay  
 the customary fare, or when such person shall be of  
 infamous character, or shall be guilty, after admission  
 to the conveyance of the carrier, of gross, vulgar or  
 disorderly conduct, or who shall commit any act tend-  
 ing to injure the business of the carrier, prescribed for  
 the management of his business, after such rules and  
 regulations shall have been made known ; *provided*,  
 said rules and regulations make no discrimination on  
 account of race or color ; and shall have the right to  
 refuse any person admission to such conveyance where  
 there is not room or suitable accommodations ; and,  
 except in cases above enumerated, all persons engaged  
 in the business of common carriers of passengers, are

forbidden to refuse admission to their conveyance, or to expel therefrom any person whomsoever.

" Section 4. For a violation of any of the provisions of the first and second Sections of this Act, the party injured shall have a right of action to recover any damage, exemplary as well as actual, which he may sustain, before any court of competent jurisdiction." See Acts of 1869, p. 37 ; Revised Statutes of 1870, p. 93 ; Opinion in this case, R., 86, 87.

Plaintiff in error complains, and assigns for error, apparent on the face of the Record, that the Supreme Court of Louisiana ruled and decided erroneously, to his prejudice in these particulars :

FIRST. In maintaining the validity of Article 13, of the Constitution and Act No. 38, of the Legislature of 1869, of the State of Louisiana, as interpreted and applied by said Court to the cause of action propounded in this case.

SECOND. In deciding that the said Article of the Constitution and Act of the Legislature, as interpreted and applied by said Court, in so far as they relate to steamboats enrolled and licensed for the coasting trade, and plying between ports and places in different States, are not regulations of commerce.

THIRD. In deciding that said Article of the Constitution and Act of the Legislature, as interpreted and applied by said Court in this case, are not in conflict



with Article 1, Section 8, clause 3, of the Constitution of the United States.

FOURTH. In deciding that the said Article of the Constitution and Act of the Legislature, as interpreted and applied by the said court in this case, do not violate Article 14, Section 1, of the Amendments to the Constitution of the United States.

It is not alleged that there was, and it is manifest that there was not, any special contract which required plaintiff in error to furnish defendant in error accommodations in the ladies' cabin ; nor was there any implied contract forbidding him to assign to her accommodations in the "bureau" cabin. Indeed, the simple fact of embarking, after having been informed that certain specified accommodations would not be furnished, and with full knowledge that certain other specified accommodations alone would be furnished, would be an acceptance of the accommodations thus offered, and would constitute a special contract, entitling the passenger to the accommodations so specified, offered and accepted, and obliging him to pay the price.

Where the passenger embarks without having made any special arrangement, and without knowledge as to the accommodations which will be afforded him, the law implies a contract obliging the carrier to furnish suitable accommodations, according to the room at his disposal ; but such passenger is not entitled to any particular apartments or special accommodations.

There is no law of the United States, there is no law of Louisiana, there could be no law under any other government than an absolute despotism, forbidding the carrier to offer and the passenger to accept, either expressly or impliedly, accommodations which might not be so desirable in all respects as other accommodations in the same conveyance ; and if it had been the fortune of defendant in error to have been born a white woman, she could not reasonably have expected to recover damages for not having been furnished, after she embarked, accommodations which she knew, before she embarked, that she would not have.

The defendant in error chose to put her case upon the Constitution of Louisiana and the Act of 1869, and the laws of the United States, granting to all persons equality of rights and privileges.

So far as the laws of the United States are concerned, there is nothing to prohibit discrimination, by carriers, in the accommodations afforded to passengers, on account of race and color, unless the Civil Rights Act, approved 1st March, 1875, be interpreted to have that effect; and a male passenger, basing his right on the laws of the United States, might have complained that he was not allowed a stateroom in the ladies' cabin, with as much force and propriety as a colored passenger could have complained that he was furnished apartments and accommodations not inferior to, but different in locality, from those furnished to white passengers. It may be seriously questioned whether this Act of 1875, prohibits a reasonable separa-



tion of passengers ; but it cannot affect the rights of defendant in error ; because it was passed nearly three years after the cause of action propounded by her arose.

The prohibitions of the Amendments to the Constitution of the United States protect individuals against violations of their rights by the States and by the Federal Government, that is, by organized power. The right to accommodations in the ladies' cabin of a steamboat does not appertain to any one otherwise than in virtue of a contract, nor do the prohibitions of the recent Amendments to the Constitution reach the acts of individuals. This is clear from the very language of the prohibition : No STATE shall, etc. ; and the decisions of this Court in the Slaughter-House cases ; in the Kentucky election case, and in the Louisiana Grant Parish case, have settled this interpretation beyond doubt or controversy.

Equality of rights is the law of the United States, and of the State of Louisiana ; but *equality* does not mean *identity* ; and, in the nature of things, *identity* in the accommodations afforded to passengers is not possible. The passenger, according to his contract, is entitled to proper lodging and diet ; but there is no law which requires the master of a boat to put in the same apartments persons who would be disagreeable to each other, or to seat, at the same table, those who would be repulsive, the one to the other. The master is bound to exercise certain discipline, which the comfort and safety of his passengers, as well as his own interest, indispensably require. The law makes him a common carrier ; but it

does not forbid him to provide separate apartments for his passengers. All the passenger boats which have been built for the lower Mississippi, within the last ten years, have provided separate apartments for colored passengers ; and this arrangement is not only reasonable, but it is wise. It is to no purpose to say that the unwillingness of most white people to occupy the same apartments with colored people, and to eat at the same table with them on steamboats and at hotels, is a prejudice. We must deal with things as they are, not as we may imagine they ought to be. Laws cannot change human nature. This feeling exists ; it is almost universal ; it is natural ; and the master of a steamboat, on the Western and Southern waters, who should attempt to place white and colored passengers promiscuously in the same apartments, or require them to sit, confusedly, at the same table, would incur the risk of constant disorder and conflicts, and drive from his boat the greater part of the traveling community, to the ruin of his business.

What the passenger has a right to require, is such accommodation as he has bargained for, or, in the absence of a special contract, such suitable accommodations as the room and resources at the disposal of the carrier enable him to afford ; and in locating his passengers, in apartments and at their meals, it is not only the right of the master, but it is his duty, to exercise such discretion and control as will promote, as far as practicable, the comfort and convenience of all. Most people would prefer not to force themselves, and not be forced into asso-



ciation and contact with those whose tastes, and habits, and walk in life are widely different from their own ; and in most cases it would be a cruelty to both parties to compel people to occupy the same apartments with their cooks, or to be seated at the same table, on a boat or at a hotel, with their menial servants, more particularly where these persons are marked, indelibly, by characteristic distinctions, indicating so wide a difference in their respective social positions.

Kindred questions have arisen in several of the States ; and a recurrence to them may not be out of place.

The law of Ohio authorized the trustees or directors of the public schools to establish separate schools for the colored children ; and, in 1850, the Supreme Court of Ohio decided that this was reasonable and just, and not in conflict with the constitutional rights of the colored people : *State vs. Cincinnati*, 19 Ohio, 178. The same doctrine was maintained in *Van Camp's case*, 9 Ohio State Reports, 406.

So well was the Legislature of Ohio convinced of the propriety of keeping the colored children and white children separate in the schools, that it provided, by section 31 of the school law, as amended in 1864, that where the number of colored children was so small, or their distance from each other so great, as to render the establishment of separate schools impracticable, the full amount of the school money raised on the number of colored children should be set apart and appropriated

each year for the education of such colored children, under the direction of the Board of Education.

A suit was brought in 1871 to test the right of those having charge of the public schools to make a classification and separation of scholars on the basis of color; and it was urged that the Fourteenth Amendment forbids any such discrimination. The Supreme Court said :

“ At most, the Fourteenth Amendment only affords to colored citizens an additional guaranty of equality of rights to those already secured by the Constitution of the State.”

After stating that, in the schools established for colored children, there is no substantial inequality of school privileges, the Court goes on to say :

“ The plaintiff, then, cannot claim that his privileges are abridged on the ground of inequality of school advantages for his children, nor can he dictate where his children shall be instructed, or what teacher shall perform that office, without obtaining privileges not enjoyed by white citizens. Equality of rights does not involve the necessity of educating white and colored persons in the same school, any more than it does that of educating children of both sexes in the same school, or that different grades of scholars must be kept in the same school. Any classification which preserves, substantially, equal school advantages, is not prohibited by either the State or Federal Constitution, nor would it contravene the provisions of either. There is, then, no ground upon which the plaintiff can claim that his



rights under the Fourteenth Amendment have been infringed." State *ex rel.* Garnes vs. McCann, 21 Ohio State Reports, 211, December term, 1871.

So, in New York, the establishment of separate schools for colored children, by the directors of the public schools at Buffalo, was held to be just, reasonable and legal. 40 Howard's Practice Reports, 249.

In Massachusetts, the school laws made no discrimination with respect to race or color. Nevertheless, the School Committee of Boston established separate schools for the colored children, and that had been the practice for more than half a century. Roberts, a colored girl of suitable age, applied for admission in the primary school nearest her place of residence. Being refused on no other ground than that of color, after ineffectual attempts to obtain a ticket of admission, she went into the school nearest her residence, and was ejected by the teacher. Thereupon, she brought suit by her father and next friend, against the city of Boston, to recover damages under a statute of 1845, which authorized any child, unlawfully excluded from a public school, to recover damages against the city or town by which the school is supported.

The colored citizens of Boston, in 1846, had petitioned the School Committee to abolish the separate school system, and the committee had refused to do so, on the ground that the continuance of the separate schools for colored children "is not only just, but it is best adapted to promote the education of that class of our population."

The case was argued for plaintiff by Charles Sumner, who, among other points, made the following :

1. "According to the spirit of American institutions, and especially of the Constitution of Massachusetts, Part First, Articles I and VI, *all men, without distinction of color or race, are equal before the law.*

2. "The Legislature of Massachusetts has made no discrimination of color or race, in the establishment of the public schools. The laws establishing public schools speak of *schools for the instruction of children* generally, and *for the benefit of all the inhabitants of the town*, not specifying any particular class, color or *race.*

5. "The separation of children in the public schools of Boston, on account of color or race, is in the nature of caste, and is a violation of equality.

6. "The School Committee have no power under the Constitution and laws of Massachusetts, to make any discrimination on account of color or race, among the children in the public schools." *Roberts vs. City of Boston*, 5 Cushing.

Dealing with the doctrine of equality before the law, so earnestly pressed upon the court by Mr. Sumner, Chief Justice Shaw, delivering the opinion of the court, says, page 206 :

"This, as a broad, general principle, such as ought to appear in a declaration of rights, is perfectly sound. It is not only expressed in terms, but pervades and animates the whole spirit of our constitution of free govern-



ment. But when this great principle comes to be applied to the actual and various conditions of persons in society, it will not warrant the assertion, that men and women are legally clothed with the same civil and political powers, and that children and adults are legally to have the same functions, and be subject to the same treatment, but only that *the rights of all, as they are settled and regulated by law, are equally entitled to the paternal consideration and protection of the law.* What those rights are, to which individuals in the infinite variety of circumstances by which they are surrounded in society, are entitled, must depend on laws adapted to their respective relations and conditions."

The Chief Justice takes care, however, immediately to concede "in the fullest manner, that colored persons, the descendants of Africans, are entitled by law, in this commonwealth, to *equal rights, constitutional, civil and social.*"

Again, page 209 : "It is urged that this maintenance of separate schools tends to deepen and perpetuate the odious distinction of caste, founded in a deep-seated prejudice in public opinion. *This prejudice, if it exists, is not created by law, and probably, cannot be changed by law. Whether this distinction and prejudice, existing in the opinion and feelings of the community, would not be as effectually fostered by compelling colored and white children to associate together in the same schools, may well be doubted.*"

On the whole, the conclusion of the court was, that the committee had the power to establish separate schools,

and that the action could not be maintained. November term, 1849.

In Nevada, the court held, under a statute similar to that of Massachusetts, that it was perfectly within the power of the trustees of public schools "to send all blacks to one school and all the whites to another, or, without multiplying words, to make such classification, whether based on age, sex, race or any other existent condition, as may seem to them best." *State vs. Duffy*, 7 Nevada, 340; 10 American Reports, 713; January term, 1872.

In Michigan, under a statute which declares that all residents of any district shall have an equal right to attend any school therein, it was held that no discrimination could be made by reason of race or color; but this decision turned solely upon the wording of the statute.

In Indiana, a statute prohibits the marriage of colored persons with white persons, under severe penalty. Gibson, a colored man, was indicted under the statute, the indictment was quashed, and the State appealed. The case for the accused was put upon the single ground, that all State laws prohibiting the intermarriage of negroes and white persons were abrogated by the Fourteenth Amendment and the Civil Rights Bill. The court held that marriage, being a civil contract, falls under the exclusive dominion of the State. The language of Justice Agnew, in 55 Pennsylvania State Reports, which will be quoted hereafter, is cited and fully concurred in and endorsed by the court. The judgment appealed from was reversed, and the case remanded, with directions to the



court below to put the accused on his trial for the crime charged in the indictment, marriage with a white woman. State vs. Gibson, 36 Indiana, 389 ; November term, 1871.

In Pennsylvania, a suit was brought by a colored man for damages for having been expelled from the body of a car by the conductor, in accordance with the rule and regulation of the railroad company, restricting colored passengers to the front platform. The defendant set up this regulation, and the court held it to be a good defense.

Judge Hare, delivering the opinion, says :

“ When a nation suffers, as ours does, from the misfortune of having two races within its bosom, one long civilized, the other just emerging from the shades of barbarism, and each marked by diversities of manners, color and physiognomy, there is much in the relation between them, which must be left to the lessons of experience and the tribunal of public opinion, which cannot be arbitrarily forced or hastened, without producing or augmenting repulsion and endangering a collision, which must, necessarily, prove disastrous to the weaker party.” Goines vs. McCandless, 4 Philadelphia Reports, 257, decided in 1861.

Miles, a colored woman, entered a car at Philadelphia, bound for Oxford. She took a seat near the middle of the car. A rule of the company required the conductor to make colored people sit at one end of the car. The conductor got a seat for her at the place fixed ; but she positively and persistently refused to take it. After repeated efforts to get her to take the seat provided for

her, and warning her of the rule of the company, which required him to put her out if she refused, the conductor finally put her out, using no more force than was necessary for that purpose. She brought suit for damages, and the company plead the rule in defense.

Among other things, the defendants asked the court to charge that, "if the jury find that the seat which the plaintiff was directed to take was, in all respects, a comfortable, safe and convenient seat, not inferior in any respect to the one she was directed to leave, she cannot recover." This was refused; and the court charged: "That a regulation which prohibits a well behaved colored woman from taking a vacant seat in a car simply because she is colored, is not a regulation which the law allows." And the court further charged, "that defendants could not compel plaintiff to change her seat simply on account of color."

There was a verdict for plaintiff; and defendants appealed, assigning the instruction of the court for error. Delivering the unanimous opinion of the court, Justice Agnew said:

"It is admitted, no one can be excluded from carriage by a public carrier, on account of color, religious belief, political relations, or prejudices. \* \* \* The simple question is, whether a public carrier may, in the exercise of his private right of property, and in the due performance of his public duty, separate passengers by any other well defined characteristic than that of sex. The ladies' car is known upon every well regulated railroad,



implies no loss of equal right on the part of the excluded sex, and its propriety is doubted by none.

“ The right of the carrier to separate his passengers, is founded upon two grounds—his right of private property in the means of conveyance, and the public interest. The private means he uses, belong solely to himself, and imply the right of control for the protection of his own interest, as well as the performance of his public duty. He may use his property, therefore, in a reasonable manner. It is not an unreasonable regulation to seat passengers, so as to preserve order and decorum, and to prevent contacts and collisions arising from natural or well known customary repugnancies, which are likely to breed disturbances by a promiscuous sitting. This is a proper use of the right of private property, because it tends to protect the interests of the carrier as well as the interests of those he carries. If the ground of regulation be reasonable, courts of justice cannot interfere with his right of property. The right of the passenger is only that of being carried safely, and with a due regard to his personal comfort and convenience, which are promoted by a sound and well regulated separation of passengers. An analogy and an illustration are found in the case of an inn-keeper, who, if he have room, is bound to entertain proper guests ; and so a carrier is bound to receive passengers. But a guest at an inn cannot select his room or his bed at pleasure ; nor can a voyager take possession of a cabin, or a berth, at will, or refuse to obey the reasonable orders of the captain of a vessel. But, on the other hand, who would

maintain, that it is a reasonable regulation, either of an inn or vessel, to *compel* the passengers, black and white, to room and bed together? If a right of private property confers no right of control, who shall decide a contest between passengers for seats or berths? Courts of justice may interpose to compel those who perform a business concerning the public by the use of private means, to fulfill their duty to the public, but not a whit beyond.

“The public also has an interest in the proper regulation of public conveyances for the preservation of the public peace. A railroad company has the right, and is bound to make reasonable regulations to preserve order in their cars. It is the duty of the conductor to repress tumults as far as he reasonably can, and he may, on extraordinary occasions, stop his train and eject the unruly and tumultuous. But he has not the authority of a peace officer to arrest and detain offenders. He cannot interfere in the quarrels of others, at will, merely. In order to preserve and enforce his authority, as the servant of the company, it must have a power to establish proper regulations for the carriage of passengers. It is much easier to prevent difficulties among passengers by regulations for their proper separation than it is to quell them. The danger to the peace engendered by the feeling of aversion between individuals of the different races cannot be denied. It is the fact with which the company must deal. If a negro take his seat beside a white man, or his wife or daughter, the law cannot repress the anger, or conquer the aversion which some will feel. How-



ever unwise it may be to indulge the feeling, human infirmity is not always proof against it. It is much wiser to avert the consequences of this repulsion of race by separation, than to punish afterward the breach of the peace it may have caused. These views are sustained by high authority. Judge Story, in his law of Bailments, stating the duty of passengers to submit to such reasonable regulations as the proprietors may adopt for the convenience and comfort of the other passengers, as well as for their own proper interests, says : "The importance of the doctrine is felt more strikingly in cases of steamboats and railroad cars." § 591. See, also, § 476, *a*; Angell on Carriers, § 528 ; 1 American Railway cases, 393, 394.

"The right to separate being clear, in proper cases, and it being the subject of sound regulation, the question remaining to be considered is, whether there is such a difference between the white and black races within this State, resulting from nature, law and custom, as makes it a reasonable ground of separation. The question is one of difference, not of superiority or inferiority. Why the Creator made one black and the other white, we know not. But the fact is apparent, and the races distinct, each producing its own kind, and following the peculiar law of its constitution. Conceding equality, with natures as perfect and rights as sacred, yet God has made them dissimilar, with those natural instincts and feelings which He always imparts to His creatures when He intends that they shall not overstep the natural

boundaries He has assigned to them. The natural law, which forbids their intermarriage, and that social amalgamation which leads to a corruption of races, is as clearly divine as that which imparted to them different natures. The tendency of intimate social intermixture is to amalgamation, contrary to the law of races. The separation of the white and black races upon the surface of the globe is a fact equally apparent. Why this is so, it is not necessary to speculate ; but the fact of a distribution of men, by race and color, is as visible in the providential arrangement of the earth as that of heat and cold. The natural separation of the races is, therefore, an undeniable fact ; and all social organizations which lead to their amalgamation are repugnant to the law of nature. From social amalgamation it is but a step to illicit intercourse, and but another to intermarriage. But to assert separateness, is not to declare an inferiority in either. It is not to declare one a slave and the other a freeman—that would be to draw the illogical sequence of inferiority from difference only. It is simply to say that, following the order of Divine Providence, human authority ought not to compel these widely separated races to intermix. The right of such to be free from social contact, is as clear as to be free from intermarriage. The former may be less repulsive as a condition, but not less entitled to protection as a right. When, therefore, we declare a right to maintain separate relations, as far as is reasonably practicable, but in a spirit of kindness and charity, and with due regard to equality



of rights, it is not prejudice, nor caste, nor injustice of any kind, but simply to suffer men to follow the law of races established by the Creator Himself, and not to compel them to intermix contrary to their instincts."

The judgment was reversed because of the erroneous instruction to the jury ; and a *venire facias de novo* was awarded. *W. C. and Philadelphia R. R. Co. vs. Miles*, 55 Pennsylvania State Reports, 211, decided in 1867.

In Michigan, a colored man brought suit against the owner of a steamboat, plying between Detroit and Toledo, to recover damages. The first count charged the refusal of defendant to give plaintiff a cabin passage, although there was room, and plaintiff offered to pay for the same. The second count charged that defendant refused to carry plaintiff in the cabin, although he demanded to be so carried, and tendered the fare, and the vessel was not full of passengers ; and the third count charged refusal to carry generally, the defendant setting up no ground of refusal except that plaintiff was a colored man.

Defendant plead the general issue ; and gave notice of special matter—to be shown at the trial, as follows :

"1. That plaintiff was a colored man and not a white man ; and that, by the custom of navigation, and the usage prevailing among steamboats, employed in carrying passengers on Detroit River and Lake Erie, colored persons were not allowed the privileges of cabin passengers.

"2. That by regulation and established course of business of said boat, colored persons were not received as

cabin passengers, and were not allowed to use the cabin ; and said regulation and usage were averred to be reasonable.

“ 3. That plaintiff, by his color and race, was excluded from the ordinary social and familiar intercourse with white persons by the custom of the country ; and that his admission into the cabin of said steamboat would have been offensive to the other cabin passengers.”

Plaintiff demurred ; the demurrer was overruled ; there was judgment for defendant, and plaintiff took a writ of error.

Manning, J., delivering the opinion of the Court, affirming the judgment, said :

“ The last (third) count is bad, as it contains no averment that plaintiff offered, or was ready and willing to pay fare. The right to be carried is a superior right to the rules and regulations of the boat, and cannot be affected by them. If defendant had refused to carry plaintiff generally, he would be liable unless he could show some good excuse relieving him from the obligation. While this is a right that cannot be touched by rules and regulations, *the accommodations of passengers while being transported is subject to such rules and regulations as the carrier may think proper to make, provided they be reasonable. The right to be carried is one thing ; the privileges of a passenger on board of the boat, what part of it may be occupied by him, or he have the right to use, is another thing. The two rights are very different. The latter, and not the former right, is subject to reasonable rules and regulations, and,*



where such rules and regulations exist, is to be determined by them. Hence the allegation in the second count, as it relates to the accommodation of passengers while being transported, must be understood as a statement of a right that is subject to rules and regulations, where they exist.

“ The refusal to allow the plaintiff the privilege of the cabin on his tendering cabin fare, was nothing more nor less than denying him certain accommodations while being transported, from which he was excluded by the rules and regulations of the boat.

“ All rules and regulations must be reasonable<sup>d</sup>; and to be so they should have for their object the accommodation of the passengers. Under this head we include everything calculated to render the transportation most comfortable and least annoying to the passengers generally, not to one or two, or any given number carried at a particular time, but to a large majority of the passengers ordinarily carried. Such rules and regulations should also be of a permanent nature, and not to be made for a particular occasion or emergency.

“ As the duty to carry is imposed by law for the convenience of the community at large, and not of individuals, except so far as they are a component part of the community, the law would defeat its own object if it required the carrier, for the accommodation of particular individuals, to incommode the community at large. He may do so if he chooses ; but the law does not impose it upon him as a duty. It does not require the carrier to

make any rules whatever ; but if he desires to do so, looking to an increase of passengers from the superior accommodations he holds out to the public, to deny him the right would be an interference with a carrier's control over his own property, in his own way, not necessary to the performance of his duty to the public as a carrier." *Day vs. Owen*, 5 Michigan, 525.

In *Jencks vs. Coleman*, 2 Sumner, 224, Judge Story says :

"The right of the passenger to a passage on board of steamboats, is not an unlimited right ; but it is subject to such regulations as the proprietors may prescribe for the due accommodation of passengers, and for the due arrangement of their business. The proprietors have not only this right, but the further right to consult and provide for their own interests, in the management of such boats, as a common incident to their right of property." See, also, *Angell on Carriers*, § 525 ; *Parsons on Contracts*, Vol. 2, p. 226, *et seq.*

Now, if it is reasonable and right, a social necessity, in Massachusetts, in New York, in Ohio, in Nevada, where the colored population is comparatively small, to have the colored and the white children educated in separate schools, how much more reasonable it must be, how much greater the social necessity in the States in which the colored people are so much more numerous, and where they have so recently ceased to be slaves.

Public schools, however, are the creatures of the law, and they belong to the public. The law which alone



gives the right to be educated at the public expense, may well impose conditions on the enjoyment of the benefaction ; and it may either have the children separated by sex or by race and color ; or, however unwise and inexpedient such a measure might prove to be in the existing state of public sentiment, it may have them all, male and female, black and white, taught, confusedly, in the same schools, and in the same classes.

Carriers of passengers occupy a position altogether different. The vehicles and vessels which they use in their business do not belong to the public ; they are private property. The law did not create property. There is no period in man's history at which this right did not exist ; and it owes its origin to the very nature of man, to his instincts, to his wants, and his necessities, and to that Divine edict which gave him dominion over the earth and its other inhabitants and its fruits. One great object of law is the protection of this natural right ; and while the use and enjoyment of property may well be subject to such regulations and conditions as the common good may require, the law cannot invade the right of dominion, the right of ownership, by arbitrary restrictions, limitations, impositions, which would virtually strip it of its value, its utility to the owner.

Accordingly, it was properly held in Pennsylvania and in Michigan, and the rule rests upon principles which cannot be questioned, that the carrier not only has the right, in virtue of his ownership, and as an incident to his right of property, but it is also his duty, to separate

his passengers by sex and by color, in accordance with the prevailing public sentiment, and the requirements of peace, good order, decorum, the comfort and convenience of the public and his own interests. How much more reasonable, how much more necessary must such a regulation be in the States in which the colored people have so lately been released from a servile condition ; where they are so numerous, where they are, necessarily, inferior intellectually, socially, morally, to the educated colored people of Massachusetts, Ohio, New York, Pennsylvania, Michigan, most of whom were never slaves, and whose opportunities for cultivation and improvement, moral, social, and intellectual, have been so greatly superior to those of the masses of the colored people of the South, born slaves, and many of them ignorant even of the alphabet.

It is idle, it is utterly inconsequential, to call the feeling which makes this regulation necessary a prejudice. It is the *fact*, the *existence* of this feeling, which is to be dealt with ; and its wide-spread prevalence elevates it far above mere prejudice. It is, indeed, one of the noblest instincts of humanity, pride of race. All the repulsion, all that keeps the colored and the white races apart in the United States, is the effect, the consequence of that natural instinct, that pride of race, without which no people can ever become truly great ; without which degrading illicit connections, or marriages scarcely less degrading, would soon fill the the land with a degenerate progeny, possessing neither the best physical qualities



of the black race, nor the best moral and intellectual qualities of the white race; and whatever tends to bring the two races, so clearly distinguished, so really distinct, into such intimate association as would facilitate and encourage amalgamation, would soon prove destructive of the best interests of society, and would be most disastrous to posterity.

Misguided professors of a false philanthropy may talk about equality before the law, and from an unquestioned truth, which they do not comprehend, and which they continually misapply, may deduce consequences, the most absurd and mischievous; but statesmen, the true friends of social advancement, and of the rights and privileges of citizens, judicial tribunals and enlightened legislative bodies, will not turn a deaf ear to the teachings of such men as Chief Justice Shaw, Justices Agnew and Manning, and Judge Hare, nor will they exclude the light of reason and experience. They must and will deal with the difficult and most momentous social problems, now forced upon us for solution, in a broad and catholic spirit, in all kindness and charity, with proper respect for the natural, constitutional and statutory rights of all; and will seek to adjust the delicate race relations by wise and comprehensive measures, adapted to the actual condition of things. and designed to conserve and to promote the best interests, the prosperity, the security, the happiness of all.

God made the white and the black races distinct; and He separated them geographically, as plainly as He has

done by instincts, habits, color and physiognomy. This great law of separation cannot be violated with impunity; and the attempt to abrogate it, if persisted in, may have the story of its failure told in mournful characters, and in the expulsion or extermination of the weaker race.

The transportation of passengers in the United States is an immense business, in which millions of capital are invested. Rival boats, and numerous lines of railway which touch the rivers and navigable waters, and tap the currents of travel at all important points, keep up the most active and powerful competition, which has already secured to the public all that seems attainable in speed, safety and comfort, affording facilities and accommodations which are far in advance of any possible requirements of the law, and have made it a luxury to travel. Proprietors of vessels and vehicles are compelled to conform to the taste and convenience of travellers; and no carrier of passengers can afford, in the conduct of his business, to do violence to, or to disregard the feelings, the sentiments, even the prejudices of the community at large. Whenever and wherever the state of public opinion and the condition of society may require that colored passengers and white passengers shall be accommodated promiscuously, in the cabins and at the tables of steamboats, pecuniary interest, always sensitive, and stimulated by a sleepless competition, will not be slow to perceive and to adapt itself to the change. In the meantime, it is not only safe, but it is wise to leave all that pertains to the mere details of accommodations to be afforded to passen-



gers to the salutary influence of competition, and to the control of public opinion, which even legislation cannot long oppose, and which, ultimately, shapes the law in accordance with its imperious behests.

Passengers on steamboats are not huddled together, male and female, in the same apartments; and separation on the basis of sex is a requirement of common decency. The ladies' cabin is set apart for the accommodation of female passengers; and they, and their attendants, take their meals at a separate table, or at one end of a common table. No one pretends that this uniform separation violates the law of equality; nor can it be tortured into an assertion of the superiority of the one sex or the other.

It is equally a necessity of the existing condition of society that separate apartments should be provided for the accommodation of white and colored persons at hotels and on steamboats and other conveyances, more particularly on boats navigating the Western and Southern waters, where the voyages are frequently of several days duration, and the passengers are lodged and dieted on board. Equality of comfort is all that any law can possibly require. Anything beyond this would be a lawless invasion of the right of private property; and the fact is established, as stated by Justice Wyly in his dissenting opinion, that there was no difference in the comforts of the two apartments on the "Governor Allen." No law of the United States applicable to this case forbids such separation; and no law of Louisiana has any such effect, unless it be Article 13 of the Constitution, and Act No. 38 of the Legislature of 1869.

Equality requires that all the rights which belong by law to citizens, should be equally under the protection of the law, without any distinction whatsoever. If the law gives to every citizen, white or black, the right to go on board a passenger steamer and to choose his apartments and accommodations at pleasure, then that right is under the protection of the law, and it may be legally enforced. But it has been shown that no such right exists. On the contrary, the owner of a boat, while he is compelled by law to carry the passenger if he have room and suitable accommodations, is under no legal obligation to furnish him a spacious stateroom, much less to seat all his passengers at one table, or to supply them with luxuries and elegancies, to which the great mass of travellers are strangers at home.

What may be the meaning of the words in the first section of Act No. 38, "*or shall commit any act tending to injure the business of the carrier, prescribed for the management of his business, after such rules and regulations shall have been made known,*" can only be matter of conjecture. If it be admissible, in construing a statute, to guess at the idea which the Legislature intended to express, it might not be difficult to supply words which would express that idea. But there would always be the risk that the *guess* might be merely the result of the impressions and ideas of the guesser, and not in accordance with the legislative will, which the words actually used have failed to develope and express. If the intention of the Legislature was to authorize carriers to protect themselves



against the acts and conduct of passengers injurious to their business, the words used in the act, as just quoted, might be associated with other words, which the Legislature did not choose to use, so as to make the clause read thus : “ Or shall commit any act tending to injure the business of the carrier, *or shall refuse to obey the rules and regulations prescribed by the carrier* for the management of his business.”

The words italicised are not in the text, as originally promulgated in 1869, nor are they in the re-enactment, Revised Statutes of 1870, both of which are identical ; so that the supplied words, if they do express a very good meaning, were not omitted accidentally. The Revised Statutes were enacted as a body of laws, signed by the Speaker of the House, the Lieutenant-Governor, as President of the Senate, and approved and signed by the Governor, on the 14th of March, 1870. See last page of Revised Statutes.

It would be a very dangerous precedent for a judicial tribunal, in construing a statute, especially one involving such serious consequences as this does, to supply words which the Legislature, dealing with the same subject twice in consecutive years, has not chosen to use ; and the words used on these two occasions must be taken to express all that the Legislature desired and intended to enact as law.

It will be observed that the whole of the first section preceding the proviso, relates exclusively to causes for which the carrier may refuse to admit a person to, or may

expel him from his conveyance ; and that there is not a single one of the several causes enumerated which would not authorize the carrier, in any part of the civilized world, to refuse to admit a person as a passenger, or to expel him after admission. This right of the carrier does not depend upon any law of Louisiana, nor yet upon any law of the United States ; but it is inherent, resulting from the relations existing between the carrier and his passengers and the public generally, and the carrier's right of dominion and control over his own property—a right given to man by the Creator, which codes and statutes are bound to respect, and are designed to protect. The proviso relates only to rules and regulations making discrimination on account of race and color ; and the remainder of the section differs, in no respect, from the general, unwritten law applicable to carriers of passengers.

Now, the defendant in error was not refused admission to the conveyance, the boat ; nor was she expelled therefrom after admission. The statute undertakes to enumerate and define the causes which authorize the carrier to refuse to admit a person as a passenger, or to expel him after admission—a right which exists by the general common law, the great unwritten law of the civilized world, independently of this statute, or of any law of Louisiana. The only wrongs which the statute contemplates and provides for, are, the refusal of the carrier to admit a person as a passenger, and the expulsion of the passenger after admission, where no one of the several enumerated causes exists.



As the statute stands, all that is said about rules and regulations is without meaning ; but, eking out the meaning by supplying words which the Legislature might have used if it really intended to enact what these words express, all that would be expressed about rules and regulations, would be that the refusal to obey the rules and regulations, prescribed by the carrier for the management of his business, would authorize the expulsion of the passenger, provided such rules and regulations make no discrimination on account of race or color. The first clause of the first section of the act contemplates and recognizes two acts of lawful authority by the carrier : One the refusal to admit a person as a passenger for the several causes enumerated, the other, the expulsion of the passenger for the same causes. The proviso is not a general prohibition of discrimination by the carrier on account of race or color. It cannot be stretched beyond the design to limit the right to expel a passenger, for a violation of the rules and regulations prescribed by the carrier for the management of his business, to those cases in which such rules and regulations make no discrimination on account of race or color.

This is too obvious to justify discussion ; and it would have sufficed merely to make the statement but for the extraordinary decision of the Supreme Court of Louisiana, under review.

The statute provides for two wrongs only :

1. The unlawful refusal of the carrier to admit a person as a passenger.

2. The unlawful expulsion of the passenger after admission.

The case stated in the petition, the complaint, falls under neither of these categories. Defendant in error was not refused admission as a passenger, nor was she expelled after admission. On the contrary; she went on the boat, and remained on board, and she was conveyed to her place of destination. Her complaint is, that a discrimination was made against her, on account of her race and color, and that she was refused accommodations in the ladies' cabin. She does not pretend that the accommodations which were offered to her in the bureau were not equal in comfort to those afforded in the ladies' cabin. If she cannot recover under the Article of the Constitution and Act of the Legislature of Louisiana, which do not seem to meet the exigencies of her case, she must be remitted to the general law applicable to carriers of passengers, no principle of which was violated in this case. She went on board with full knowledge of the accommodations which would be afforded her. There was no violation of any contract between her and the carrier, and no wrong was done to her which could support a claim for vindictive damages. If she occupied a rocking chair in the recess, and took there the two meals, supper and breakfast, all that she required on her short voyage, it was her deliberate choice—her preference for these accommodations, rather than the stateroom, and the accommodations which she might have had in the bureau. Passengers on steamboats, especially in hot



weather, do not usually remain in their staterooms, except when they go there to sleep. They prefer to be on the guards, or in front, or in the cabin, or in the recess; and a seat in a rocking chair, during a short July night, on a steamboat, cannot be very uncomfortable to a person in ordinary health. There is not the slightest foundation for actual damage in this case; and it is difficult to perceive how the defendant in error, could have been entitled to \$1000, punitive damages. She did not ask for an increase of the judgment of the lower court, as the Chief Justice significantly remarks. If she had done so, there is no telling what amount might have been allowed her by the Supreme Court.

The object of the discussion, thus far, has been to establish these propositions:

1. That the regulation, by which separate apartments were assigned to colored passengers on the "Governor Allen," was, in all respects, reasonable, wise, and necessary for the due performance of the public duty of the carrier to the community at large, and for the proper protection of his own property and interests, and for the management of his own business.

2. That the right of the carrier to make and enforce this regulation is an incident to his right of property, of which the law cannot deprive him, any more than it can deprive him of the property itself.

The Supreme Court of Louisiana applies the Article of the Constitution and Act of the Legislature to the case

made by the pleadings; and it decides that the carrier has no right to prescribe the rule in question. In thus deciding, the court invades the right of private property. It deprives a citizen of his property without any process of law whatever. For, if a carrier cannot make and enforce such regulations as experience has shown to be necessary for the comfort and safety of his passengers, and for the promotion of his own interests as a carrier of passengers, then the owner, the carrier, is virtually deprived of his property, the conveyance, because he is deprived of the right and the power to use it profitably in the only business for which it is adapted and designed.

Whatever might be found to be the meaning and effect of the Article of the Constitution and Act of the Legislature of Louisiana, under consideration, by applying to them the ordinary rules of criticism, there can be no doubt as to the interpretation put upon them by the Supreme Court of Louisiana. That Court says the meaning is, that carriers of passengers are forbidden, under heavy pecuniary liability, to provide and assign to colored passenger apartments and accommodations separate from those provided for and assigned to white passengers. From the wording of the act : " All persons engaged, *within this State*, in the business of common carriers of passengers," it might be supposed that the Legislature had some idea that its authority to deal with the subject was limited to carriers of passengers pursuing their business wholly *within the State* ; but the Supreme Court of Louisiana decides, in this case, that a steamboat, enrolled and



licensed for the coasting trade, a common carrier of passengers and cargo, pursuing that business on the Mississippi river, a public navigable water of the United States, between the port of New Orleans, in the State of Louisiana, and Vicksburg, in the State of Mississippi, is subject to this prohibition.

It is obvious that such a separation of passengers is reasonable, conducive, nay, necessary, to the preservation of peace, good order, decorum, and the comfort of the great mass of the traveling public, as well as to the protection and promotion of the business and interests of the carrier. The owner of the conveyance, the carrier, has the right to prescribe this separation, as one of the rules for the management and conduct of his business, and to require those who choose to become passengers on his conveyance to submit to it, unless such rule is forbidden by competent law-making power and authority. The Supreme Court of Louisiana decides, in this case, that Article 13 of the Constitution and Act No. 38 of the Legislature of 1869, forbid such separation, and that they are valid and obligatory.

It is plain that this prohibition, thus interpreted and applied, is intended to regulate and control the business in which the steamboat "Governor Allen" was employed; and that business was navigation and commerce, between different States. Two questions remain to be considered :

**FIRST.** Do this Article of the Constitution and Act of

the Legislature of Louisiana, conflict with Article 1, Section 8, clause 3, of the Constitution of the United States?

SECOND. Do this Article and Act of the Legislature conflict with Article 14, Section 1, of the Amendments to the Constitution?

FIRST. The first section of the Act in question was evidently intended to enumerate, limit and define the causes for which the carrier may refuse to admit a person as a passenger, or may expel him after admission; and it is equally clear that this Article and Act of the Legislature, as interpreted and applied by the Supreme Court of Louisiana, forbid the carrier to separate his passengers on account of race or color, as he would otherwise have the right to do. In both senses, these provisions attempt to control and regulate the business of the carrier; that is, to subject him to the terms and conditions prescribed, upon which, alone, he is to be permitted to conduct his business. Was that business such commerce as Article 1, Section 8, clause 3, of the Constitution of the United States empowers Congress to regulate?

1. It would not be possible for the business of the carrier to be conducted with profit to himself, or with convenience to the public, if that business were subject to the conflicting rules, conditions and restrictions which might be prescribed by the laws of the several States within which he might choose to employ his vessel. Numerous steamboats, aggregating a



vast tonnage, are employed in this business on the Mississippi, the Ohio and their tributaries. Seven States are bounded by the Mississippi between New Orleans and St. Louis; and a boat going from New Orleans to Pittsburg passes along the borders of eleven States.

Boats receive and discharge cargo and passengers, and, for that purpose, stop at landing places, in all the several States on their respective routes. If one of these States, Louisiana, can define the causes for which the carrier may refuse to receive cargo or passengers, or for which he may expel a passenger ; or can prohibit the separation of passengers on account of race or color, each one of the other States might prescribe wholly different causes, which, alone, would justify such refusal or expulsion within their respective jurisdictions ; or might require the separation of passengers on account of race or color. The power to forbid by law implies, also, the power to give the sanction of law to that which is not *malum in se*. One State might prescribe rules for the transportation of gunpowder and other explosive and combustible articles ; while another State might establish different and conflicting rules ; and the carrier might thus be subjected to actions for damages, or to prosecutions, in one of the States on his route, for doing that which others of the States authorized and required him to do in the prosecution of his business. If one of the States, Louisiana, can give colored passengers on a steamboat, plying between different States, the right to recover vindictive damages for being separated from the white passengers,

any other State might give the white passengers, on the same voyage, the right to recover like damages for being forced into association and contact with the colored passengers. No business could live under such conditions ; and uniformity in the regulation of inter-State commerce is an absolute necessity.

It was for the purpose of establishing uniformity in the laws controlling this business, in view of the public interest and convenience, that the power to regulate commerce among the several States was given to Congress : and the decision in *Gibbons vs. Ogden*, 9 Wheaton, has established the construction that the intercourse which consists in the transportation of passengers and cargoes, by means of ships and other vessels plying between different States, is "commerce among the several States," within the meaning of the Constitution.

Commerce is regulated, as well by rules which operate directly upon the persons who engage in it, as by rules which apply to the instruments, the vessels, the conveyances by which it is conducted; *Wheeling Bridge case*, 18 Howard ; and a rule which the owner of the conveyance is required to observe in the conduct of his business, is as much a regulation of commerce as the rule which subjects a steamboat to inspection in hull and machinery, or which requires certain appliances, apparatus, outfit, and construction, designed for the safety and comfort of passengers ; or that which requires enrollment and license for the coasting trade.



As the owner of the boat in this case, was engaged, and employed his boat in the transportation of passengers and cargo, any rule which he was compelled to observe in the conduct of that business, and having reference only to that business, was necessarily a regulation of that business ; and as that business was commerce, and was conducted between different States, any rule which controlled that business, on any part of the route, was a regulation of "commerce among the several States."

The Act of Congress, approved 28th February, 1871, entitled "An Act to Provide for the Better Security of Life on Board of Vessels Propelled in Whole or in Part by Steam, and for other purposes," is a regulation of commerce ; and it embodies all the rules to which Congress has chosen to subject vessels propelled by steam as contradistinguished from vessels otherwise propelled. Section 41 of this Act is remarkable :

"All steamers navigating the lakes, bays, inlets, sounds, rivers, harbors, or other navigable waters of the United States, when such waters are common highways of commerce, or open to general or competitive navigation, shall be subject to the provisions of this Act." The proviso excepts public vessels of the United States, vessels of other countries, and boats navigating canals exclusively.

Many of the waters specified in this section are wholly within a State, as the harbor of New Orleans, for example, which is wholly within the State of Louisiana ; and

numerous vessels, propelled by steam, are engaged in service within the harbor, such as towing and moving ships and other vessels. There are steamboats plying between New Orleans and landing places on the Mississippi river, some above, some below the city, wholly within the State of Louisiana. Others ascend the Mississippi to the mouth of Red river, and go up that river to Shreveport; and others, again, enter the Ouachita, and go up that river to Monroe, the whole route in each one of these cases, being within the State of Louisiana, although the Red river is navigable and navigated above Shreveport, into the State of Texas and the Indian Territory; and the Ouachita river is navigable and navigated above Monroe into the State of Arkansas. These boats are all common carriers of passengers and cargo; but their business is not "commerce among the several States," in the restricted sense which would apply the phrase only to voyages from a port in one State to a port in a different State.

Obviously, Congress cannot regulate this commerce if its powers are limited to interstate and foreign voyages. And yet, this act of 1871, subjects all vessels propelled by steam, navigating the public waters of the United States, to the same rules and regulations, whether they extend their voyages into other States, or limit them to one State. Whence comes this power?

This Court having decided that "navigation," on the public waters of the United States, is subject to the regulating power of Congress, Congress must exercise



power and control over these waters, the highways on which commerce between different States and foreign countries is conducted, in whole or in part. The commerce which exists between New Orleans and the seaports, foreign and domestic, with which it has intercourse through the mouths of the Mississippi, and that which exists between New Orleans and the vast empire watered by the Mississippi and its tributaries, could not be conducted with convenience or safety, if the numerous steamboats, plying wholly within the State of Louisiana, might be navigated by reckless or incompetent persons, by whose negligence or want of skill, the lives and property afloat on vessels engaged in inter-State or foreign trade, whether prosecuting their voyages, or moored at the wharf, would be exposed to the risk of collisions, or explosions, or fire, which, occur too frequently from inexcusable negligence, notwithstanding the wholesome regulations to which Congress has subjected all American merchant vessels propelled by steam, navigating any public water of the United States.

The Constitution having vested in Congress the power to regulate commerce with foreign countries and among the several States, it was not difficult to deduce from the terms and the purposes of the grant the power and the duty of Congress to place that commerce, at its every stage, within the United States, under proper regulation and protection. Accordingly, it subjects the commerce which is carried on by means of steam vessels navigating wholly within a State, on the public waters of the United

States, which are, in whole or in part, the highways of inter-State and foreign commerce, to the rules and regulations without which that commerce might be interfered with or endangered. The vessel, no matter whence she comes nor whither she is bound, must keep a proper lookout ; must display certain lights ; must observe certain rules, and give certain signals when meeting other vessels ; must sound fog whistles at prescribed intervals ; the boilers and machinery must be subject to certain inspection ; captains, mates, pilots and engineers must be examined by public officials, be classified and obtain license, without which they cannot serve in their respective capacities ; and the boat itself must be enrolled and licensed, a *sine qua non*, the full authority of the Government of the United States to pursue the coasting trade, without which no steamboat can be employed in that business.

Section 41, of the Act of 1871, derives its authority from the manifest fact that Congress cannot exercise its unquestioned power to regulate commerce among the several States and with foreign countries, if it cannot, also, regulate and control the navigation by steamboats of any public water in the United States, on which inter-State and foreign commerce is conducted, in whole or in part. Although many of the steamboats which arrive at, and depart from, the port of New Orleans, perform their voyages entirely within the State of Louisiana, few of them make a trip without either passengers or cargo coming from or destined for ports and places in other



States, or in foreign countries. Such boats are auxiliaries to inter-State and foreign commerce, the promoters of that commerce, either at its inception, or in its intermediate or its final stages; and the power to regulate inter-State and foreign commerce would be wholly inadequate to the purposes contemplated, if it extended merely to the persons and the vessels directly engaged in inter-State or foreign voyages. To be effectual, this power must extend to the entire business of navigation and commerce on the public waters of the United States on which inter-State and foreign commerce is carried on, although some of the vessels engaged in this navigation never extend their voyages beyond the limits of a single State, or some of the passengers, or part of the cargo, on an inter-State voyage, may be destined for ports in the State in which the voyage begins.

This doctrine is clearly recognized in *Foster vs. Davenport*, 22 Howard, 245, and in *Sinnott vs. Davenport*, in the same volume. An act of the Legislature of Alabama required the owners of steamboats navigating the waters of Alabama, before leaving the port of Mobile, to file in the office of the Probate Judge of Mobile County, a statement in writing, setting forth the name of the vessel, the names and residence of the owners, and their respective interests in the vessel. In *Sinnott's* case, the boat plied between the port of New Orleans, and ports and places on the Alabama river; in *Foster's* case, the vessel was a towboat, used also as a lighter, and engaged exclusively in the domestic trade and commerce of the

State, on the waters of Mobile Bay ; and both the boats were enrolled and licensed for the coasting trade. In both cases this court decided that the act in question was an attempted regulation of commerce ; that it was an infringement of the right conferred by the license, and that it was in conflict with the power to regulate commerce, which the Constitution has vested exclusively in Congress.

It would cause the most inextricable confusion if a boat, leaving the port of New Orleans, bound for Vicksburg, were subject to the laws of Louisiana with respect to that part of the voyage, which is wholly within the State of Louisiana, and to the passengers or cargo received and to be discharged in that State; to the laws of Mississippi with respect to passengers or cargo received and to be discharged in that State; and to the laws of the United States, with respect only to the cargo and passengers received in one of the States, to be discharged in the other. Where the voyage is inter-State, all that pertains to it, from the port of departure to the port of ultimate destination, is subject to the regulating power of Congress.

It can make no difference, therefore, that defendant in error embarked at New Orleans, and that her place of destination was within the State. The article of the Constitution and act of the Legislature of Louisiana attempt to regulate the business in which the boat was engaged. They prescribe rules for the conduct of that business ; and that business was navigation on a public



water of the United States, intercourse, commerce between different States which is not only subject to the regulating power of Congress, along the entire route, from the inception to the termination of each and every voyage, but which the Congress has regulated, in the most minute details and particulars, by numerous acts, from 1789 down, particularly, by the Act of 28th February, 1871.

Congress has regulated this commerce by providing for the sale, and for recording conveyances and mortgages of ships and other vessels; enrollment at the customhouse of the district in which the owner resides; the character of iron to be used in the manufacture of steam boilers; tests to which boilers are to be subjected; the transportation of certain dangerous articles; number of passengers to be carried; liability for jewels, bullion and other valuables; watch to be kept in the cabins at night; by enforcing compliance with all the provisions of the Act of 1871, applicable to steamboats, including the rules relating to inspections, qualifications and license of officers, signals, lights, boats, axes, pumps, valves, floats, life-preservers, appliances, apparatus, outfit, etc.; and by requiring and granting a license for the coasting trade, which cannot be obtained until all the requirements of the laws of the United States have been complied with.

These requirements constitute the terms and conditions which the Government of the United States has chosen to impose upon the business, the coasting trade;

and the license is the evidence that these terms and conditions have been fully complied with, and of the right and title of the owner to employ his boat in the specified trade.

2. The supreme law of the land gives the right to pursue the coasting trade, on the terms and conditions which it has seen fit to prescribe ; and no State can interfere with this right, either to abridge or to enlarge it, or to subject it to any terms or conditions whatsoever.

It would be easy to demonstrate the necessity for uniformity in the regulation of commerce among the several States, and to show that the whole power over the subject must be vested in Congress, exclusively, in order to secure this uniformity. But this Court would not listen patiently to argument in support of principles long since established, and recognized by an unbroken current of repeated decisions. It suffices to cite the following, among the numerous cases in point : *Sturges vs. Crowningshield*, 4 Wheaton ; *Houston vs. Moore*, 5 Wheaton ; *Gibbons vs. Ogden*, 9 Wheaton ; *Ogden vs. Saunders*, 12 Wheaton ; *Brown vs. Maryland*, 12 Wheaton ; *Boyle vs. Zacharie*, 6 Peters ; *Prigg vs. Commonwealth*, 16 Peters, pp. 617, 618 ; *Passenger Cases*, 7 Howard, pp. 400, 414, 464 ; *Wheeling Bridge case*, 18 Howard ; *Sinnott vs. Davenport*, 22 Howard ; *Foster vs. Davenport*, 22 Howard ; *Gilman vs. Philadelphia*, 3 Wallace.

The power granted to Congress is exclusive ; and the whole subject has been placed beyond the reach and con-



trol of the States, so far as those vessels are concerned of which the Government requires, and to which it grants enrollment and license for the coasting trade.

It may not be out of place to observe that Congress, by the Act of 1st, March, 1875, attempts to formulate and declare the right of "all persons, within the jurisdiction of the United States, to the full and equal enjoyment of the accommodations, advantages, facilities and privileges of inns, public conveyances on land and water, theatres and other places of public amusement." It may be that Congress has exceeded its powers ; that it has trespassed upon the right of private property ; and that it has invaded the domain of State authority, so far as inns, theatres and other places of public amusement are concerned ; but, so far as the Act relates to common carriers of passengers, it is an assertion, by Congress, of the right to regulate commerce, by enforcing equality of rights on public conveyances.

It would be a strained construction of this act to say that it prohibits such separation of passengers as decency, good order, and the comfort and convenience of the community at large require, and as the carrier's right of private property may authorize him to establish and insist upon ; but it does require equality of comforts in the accommodations on public conveyances, which is perfectly compatible with the rule of separation.

This act, as already stated, was passed nearly three years after the cause of action propounded in this case arose ; and while it cannot be invoked for the benefit of

defendant in error, it serves to show that Congress assumes jurisdiction and control of the equality of rights on all public conveyances: and, by all the analogies, if the power thus asserted is vested in Congress, it does not belong to the States; nor could it be exercised by them, since no State can give extra-territorial effect to its legislation.

SECOND. The article of the Constitution, and act of the Legislature of Louisiana, in so far as they forbid the carrier to prescribe reasonable rules and regulations for the use of his boat, in the conduct of his business, such as the comfort and convenience of the public generally, and his own interest require, attempt to deprive him of his property without due process of law. The right to use his property, in the only business for which it is adapted, in subordination to the regulating power alone, is as much his property, and is as valuable to him as the thing which he so uses.

The license confers the right to use the boat in accordance with its terms; and the right thus conferred is as much the property of the owner as the boat itself. When any State attempts, whether by its Constitution, or by act of the Legislature, to deprive the owner of the full, free and perfect enjoyment of this right, or to abridge it by subjecting it to terms and conditions, such attempt is in violation of Section 1, Article 14, of the Amendments to the Constitution; and is, moreover, an invasion of that supremacy which, by Article 6, clause 2, belongs to the laws and Constitution of the United States. The license would be a cheat and a delusion if



any State could interfere with the exercise of the right which it professes to give, or could require anything to be done in order to pursue the business which it professes to permit and to authorize.

It seems clear, therefore, that the article of the Constitution and act of the Legislature of Louisiana, as interpreted and applied by the highest judicial authority in the State, are in conflict with and violate Article I, Section 8, clause 3, of the Constitution of the United States, and Article 14, Section 1, of the Amendments to the Constitution; and that the judgment of the Supreme Court of Louisiana is erroneous, and should be avoided and reversed.

R. H. MARR,

Of Counsel for Plaintiff in Error.

NEW ORLEANS, December, 1876.





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**Supreme Court of the United States,**

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Writ of Error to the Supreme Court of the State of Louisiana No ———

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**JOHN G. BENSON, PLAINTIFF IN ERROR,**

*versus*

**Mrs. JOSEPHINE DEQUIR, DEFENDANT IN ERROR.**

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**E. K. WASHINGTON,**

*Attorney for Defendant in Error.*

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Clark & Hofeline, Book Printers, 9 Bank Place,

# Supreme Court of the United States.

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Writ of Error to the Supreme Court of the State of Louisiana No —

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JOHN G. BENSON, PLAINTIFF IN ERROR,

*versus*

MRS. JOSEPHINE DECUIR, DEFENDANT IN ERROR.

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ARGUMENT FOR DEFENDANT IN ERROR.

The basis-misconception into which plaintiff in error has fallen in his writ of error to your Honorable Court—is this: That the law respects the rights of property more than it does the rights of man. The reverse is the truth. The law is not capable of having a nobler object than to conserve *personal* rights. Those of property are subsidiary to these. There is more in the Constitution of the United States than a regard for property, or the regulations of commerce. That instrument owed its origin as an irrepressible assertion and vindication of the manhood of man.

If Captain Benson has rights over his property which are protected by the laws, Madame Decuir has rights as a person which are also protected, and if there arise a



bare question or conflict as to the relative value of these rights, his rights over his property must fall before her rights, as regards her own person. If she, as a person and as a citizen, has rights equal to him, and be equal before the law to him in the exercise of said right, he cannot allege his rights over his property in derogation of her rights as a citizen, under the law. The Constitution of the United States cannot be held to be naturally self-repugnant and contradictory. If even the act of the General Assembly of the State of Louisiana, No. 38, session of 1869, were repugnant to section 8, article 1st of the Constitution of the United States, then the said constitution is repugnant to itself in its 1st section, article 14th, and its 15th article, section 1st—which cannot be admitted; for the organic basis of the government of a country cannot be held by your court to involve absurdity and incongruity. But there is no such collision. Congress may regulate commerce between the States. The constitution, by an irrevocable fiat, has fixed the rights of persons. Madame Decuir asserts a violation of personal rights of equality before the law as a citizen of the State of Louisiana, and of the United States. She says plaintiff in error has trenched on said right as a person, and made an inadmissible discrimination against her because she is a *colored person*. Hence no right of Captain Benson's *property* is, in the nature of the case, involved. Her citizen's rights were involved. He says, because she is a *colored person*, she must be deprived. She answers, color is not an element of citizenship. The 13th article of the

constitution of the State of Louisiana, and the statute of 1869, No. 38, of said State, and the articles of the constitution of the United States above referred to, expressly abolish the consideration of color, where the rights of citizenship are at issue, and hence her rights to equal privileges before the law would, as intimated in the opinion of the Supreme Court of Louisiana, have existed, though no such act as No. 38, session of 1869, had ever been passed.

The said act is not the exclusive basis of the opinion of the State court. Hence, if her rights, under general law, exist as a citizen, it is even questionable whether your Honorable Court have jurisdiction of this case by writ of error, as it cannot be held that general law is repugnant to the constitution of the United States, or that the statute of any State asserting the common equality of all its citizens, draws in question any law of Congress. See 13 Wallace, 287. The statute No. 38 must be viewed as declarative of what the law is, with respect to all citizens. Certainly the constitution of the United States, and all the laws of Congress, of recent years, are in harmony with this equality. Had the statute declared an *inequality*, and established *grades* of citizens, and distinctions on account of color, then, indeed, it would have been unconstitutional. The 14th article of the constitution of the United States says, "all persons, born or naturalized," etc., "are citizens of the United States, and no State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States."



The 13th article of the constitution of Louisiana, says: "All persons shall enjoy equal rights and privileges upon any conveyance of a public character," etc. The act of 1869, states in substance, no common carrier shall make rules discriminating between persons on account of color, etc. These several constitutions, and the act No. 38, in pursuance thereof, all relate to the rights of persons, and are in harmony with each, and are all on the same subject matter, and must be construed in *pari materia*. It is a mere perversion of the reasoning faculty to ignore those articles of the constitution of the United States, which treat specifically of the rights of persons, when plaintiff in error alleges that State constitutions, or State statutes on the rights of persons, are repugnant to the constitution of the United States in the articles of it which relate to things of commerce. Things should not be compared to dissimilar, but to a thing *sui generis*. If the steamboat H. W. Allen be enrolled and licensed under the laws of the United States, for purposes of commerce between the different States, this does not detach Captain Benson, its commander and owner, from all immunity from a State penalty for infringing the personal rights of a passenger in a contract for a passage, commencing and ending within the bounds of the State of Louisiana. Congress, by the 8th section of the first article of the constitution of the United States, may regulate commerce between the several States. The voyage of the plaintiff in the State court, commenced and ended in the State of Louisiana. It was not a matter affecting several States, so far as the

parties to this suit are concerned. The word "commerce," generally refers to the exchanging of commodities between different countries or States. Passage in a steamboat from the parish of Orleans to the parish of Pointe Coupée, in Louisiana, is not "commerce between the several States." The gist of this action is not a thing commercial in its character. Defendant in error has nothing to do with the steamer H. W. Allen, except as an ordinary means of conveyance between New Orleans and Pointe Coupée parish. The words, "commerce between the States," do not extend to that commerce which is completely internal and carried on between different parts of the same State. See 9th Wheaton, p. 1. Still less does the power of review possessed by your honorable court extend to such a case as this, where not commerce, but the personal rights of a passenger, traveling between the ports of the same State, are involved. "The limitations of the power of Congress over commerce \* \* necessarily exclude from federal control all that commerce which is carried on within the limits of a State, and does not extend to or affect other States." See 10th Wallace, 557. In numerous decisions, the basis of which is 9th Wheaton, 1, quoted above, your court say: "The act of 1852 cannot be applied to steamboats navigated within the body of a State. It is well settled that the constitutional power of Congress does not embrace the purely internal commerce of a State." In 20th Howard, page 84, your court say: "The Supreme Court has no jurisdiction to inquire whether a statute of a State



conflicts with the constitution of *the State*, and to declare it void for that reason." Hence the present question before your Honors is simply whether act No. 38, of the General Assembly of Louisiana, session of 1869, conflicts with the constitution of the United States. Of course this statute can have no *extra State* force. Its effect is solely within the limits of Louisiana. It contains, indeed, nothing that is new law, excepting merely that whenever common carriers make rules and regulations, such rules, etc., shall not specially discriminate between, or operate unequally on whites or colored persons. It is prohibitory. It says to common carriers: "Make rules and regulations, or by-laws—you have the right; but let such rules operate equally on white and colored persons; make no discrimination against the colored passengers, on account of color merely." Now what article of the constitution of the United States, or what law of Congress is infringed by this? Is there any article or any law which says common carriers have a right to distinguish on account of color? What conflict exists? Certainly the article or laws referred to by plaintiff in error contain no such inhibition, nor is any repugnance shown. Because the plaintiff in the State court, a woman of culture and refinement, in going from New Orleans to another point in the State of Louisiana, may wish a seat at the table or a room in the ladies' cabin, surely this is not a violent invasion of the right of congress to regulate commerce between the States. The constitution of the United States does not discriminate on account of color. It calls

all citizens, and says article 14th: "No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States." Hence the act No. 38, so far from being in collision with the constitution of the United States, is in direct subserviency to it. This act does not purport to regulate commerce, and contains not one word in relation to that subject.

In the case heretofore referred to, 9th Wheaton, page 1, your court say: "The power of Congress to 'regulate commerce among the States,' comprehends navigation within the limits of every State in the Union, so far as that navigation may be in any manner connected with commerce with foreign nations, or among the several States, or with the Indian tribes." This is clear and precise. Now the case of the plaintiff in the State court is not within any such category as the above. It is not relative to the Indian tribes, or foreign nations, nor with any other State in this Union. It does not operate an unlawful obstruction to navigation should Madame Decuir, under act No. 38, in question, ask leave to sit down at a dinner table, or occupy a room in the ladies' cabin for sixteen hours, she being in a slight degree colored, and merely an humble citizen of the United States. Various attempts have been made to protect these citizens of the United States in their mere citizen-rights. The constitution of the United States, in its 14th and 15th amendments has tried to do something. The State of Louisiana, in its constitution, 13th article, and act No. 38, of 1869, has tried to do something. The Supreme Court of



Louisiana, in this case and in the case of Sauvenet vs. Walker, before your court, has tried to do something. Captain Benson, plaintiff in error, however, demurs and says: "My boat is licensed and enrolled under the laws of the United States for the coasting trade, and if any *such* citizens of the United States come on board, I claim the right to discriminate against them, and degrade them, and put them in my "Colored Bureau," and the acts of Congress regulating commerce are what I rely on." It remains now to see whether your honorable court can do anything in the premises. I incline to the opinion that you will, *ex officio*, take notice that the record does not present such a case as gives your court jurisdiction, since *quoad* the parties to it—it is nothing more than a question of passage from one port within a State to another. And the fact that Capt. Benson's steamer may be enrolled to traffic between several States, is too remote to be specially affected in the actual case; that, as between plaintiff and defendant, the steamer H. W. Allen was but as a common carrier within the State. Your court is the direct creature of the constitution. In 1st Wallace, 252, you have said: "Affirmative words in the constitution declaring in what cases the Supreme Court shall have original jurisdiction, must be construed negatively as to all other cases." In 3d Wallace, 782, you say: "The power to regulate commerce has never been construed to include the means by which commerce is carried on within a State." Hence, if your court has jurisdiction, it would be tantamount to claiming a right to interfere in the rules

and regulations of the H. W. Allen, steamer, or in other words to protect Capt. Benson in claiming exemption from State laws, while within a State. It is a matter of the internal police of his boat while within the State of Louisiana which plaintiff in error misinterprets as an interference with commerce. In 18th Howard, page 71, your court say: "A vessel enrolled and licensed for the coasting trade, does not thereby acquire the right to violate a State law for the preservation of its fisheries." *A fortiori*, in this case, where instead of "fisheries," we may substitute "rights of its citizens." It is true your court say, in 22d Howard, 244: "A State has no power to impose restrictions on vessels carrying on the coasting trade within a State," but act No. 38 imposes no restrictions on vessels engaged in the coasting trade, *per se*. No matters of trade or commerce are restricted by this act. Captain Benson proposes to be a common carrier of passengers. He has two classes, steerage and cabin. Madame Decuir proposes to be a cabin passenger, and to pay what he demands. He refuses to give her the rights of a cabin passenger. In other words, he restricts her rights as a cabin passenger, under his implied contract with cabin passengers, and under the law. She claims nothing special, but general rights as a cabin passenger. He admits she is a cabin passenger, but says because she is of African descent, he will restrict her from going to the table, or having a state-room. In all this there is nothing restrictive in act No. 38, but rather enlarging. He cannot complain of the law as restricting him in his



capacity as a coaster, when it only restricts him in his prejudices, and extends to her the common rights of all cabin passengers. Had the act No. 38 stated: "Colored passengers shall be put into a colored bureau, and shall not be allowed access to the cabin in general, nor a seat at the table, and shall be charged one-fourth less than the ordinary fare for passage," it could well have been held as an unconstitutional restriction on a coaster. Such a law would have deprived Capt. Benson, as well as colored citizens of their reserved common rights as citizens. Various documents, such as a very extraordinary paper called Magna Charta, extorted from King John of England, on the 19th of June, A. D. 1215; the Declaration of Independence, of July 4th, 1776; the Constitution of Louisiana of 1868, articles 2nd and 13th; that of the United States of 1789, article 4th, section 2d, and its amendments, articles 14th and 15th, appear to indicate that if a human being be anything else than a slave, he has a solemn and omnipotent *residuum* of right inherent in him as an equal man, on which, if any government entrenched, the said government becomes a rebel to mankind. To discriminate against any one on account of his color, is to attack the basis-condition of his being and nature: for color is neither a moral nor a legal fault. If it be said that act No. 38 is unnatural and contrary to the instincts of man, this may be both true and untrue. It may lead to legal equality, which is a right of each citizen of this country; but not to social equality, which is a right of each individual's choice. Social is from the

word “socius,” a companion, an intimate, which implies an assent, a selection, a concurrence of views, which no power of law can coerce. The only way to prevent social equality, in the sense understood, is to make all equal before the law, since then the wills of each individual must be consulted, before that end is attained in both.

It was long ago decided, in 4th Cranch’s Circuit Court Reports, page 235, “That neither the constitution of Maryland, nor that of the United States, deprives a colored person, merely as such, of any civil rights of a citizen.” In 7th Peters, 663, your court say in substance: “To justify a court in pronouncing an act of the legislature unconstitutional, the incompatibility must not be speculative, argumentative, or to be found only in hypothetical cases, or supposed consequences—it must be clear, decided and inevitable; such as presents a contradiction at once to the mind without straining, either by forced meanings or remote consequences.” In Baldwin’s Reports, page 60, is this authority: “The federal courts can only inquire into the constitutionality of a State law, not into its policy, wisdom or justice.”

In 12th Wheaton, 270, is this authority: “It is but a decent respect to the wisdom, the integrity and the patriotism of the legislative body, by which any law is passed to presume in favor of its validity, until its violation of the constitution is proved beyond all reasonable doubt.” In very many decisions of your court, the rule is stated to be to accept the decisions of the State courts as correct, and to follow them when the same questions arise in



the Federal courts, where no question of national authority is involved. In the present case, Act No. 38 has been pronounced constitutional by the highest tribunal in Louisiana. Indeed Act No. 38 is nothing more than an exercise of the police power of a State. The police power of a State appears to comprehend the laws, ordinances and other measures which require the citizens to exercise their rights in a particular manner. In 7th Cushing's Reports, page 84, this power is defined: "The power is vested in the Legislature to make, ordain and establish all manner of wholesome and reasonable laws, statutes and ordinances, either with penalties or without, not repugnant to the constitution, as they shall judge to be for the good and welfare of the commonwealth and of the subjects of the same." Another authority quoted in Cooley's Constitutional Limitations, page 573, says: "This police power of the State extends to the protection of the laws, limbs, health, comfort and quiet of all persons, and the protection of all property within the State. According to the maxim: "*Sic utere tuo ut alienum non lædas*," which being of universal application, it must of course be within the range of legislative action to define the mode and manner in which every one may so use his own as not to injure others." "By this general police power of the State, persons and property are subjected to all kinds of restraints and burdens, in order to secure the general comfort, health and prosperity of the State: of the perfect right in the Legislature to do which, no question, ever was, or upon acknowledged natural principles ever

can be made, so far as natural principles are concerned." When a captain directs colored cabin passengers into the colored bureau, an inferior and badly ventilated series of rooms, underneath the ladies' cabin, and refuse them the ordinary rooms and places at table, he is exercising a police control over his boat on account of their color, which, in the absence of express legal inhibition, he has perhaps a legal right to do. But when the State comes in, and from a regard to the welfare, comfort and safety of all its citizens, says to him, "On your steamer, you being a common carrier, all must be treated equally, without discriminating on account of color," is the State exercising any other than its police power; and if he have a right to exercise a police over his boat, has the State less power than he in regard to the comfort, well-being and equality of all its citizens, when he exercises a discrimination in favor of his white passengers, according to his or their ideas? Is his idea of what is reasonable to be taken in preference to that of law, which, according to Lord Coke, is the perfection of reason, and which must be so taken, held and decreed till it is abolished by the power that made it?

In a recent case, the "Live Stock, &c., Association, vs. the Crescent City, &c., Company," on writ of error from this State, your honorable court substantially recognize a power in a State to establish police regulations, and that said power does not conflict with the fourteenth amendment to the constitution of the United States. Indeed the burthen of all the late centuries, appears to be what



I call the GRAVITATION OF MAN ; considered as a human being. To evolve this, the ages groan, and are in pain to be delivered. Christianity labors at this problem, and the "one blood" of which inspiration teaches all races of man are made, will yet make the right of equality on the mere basis of being a man, an inalienable birthright and heritage. For the distinctions of color and conditions are less than the basis of a common human nature, and the latter will submerge all the former, and the common ground of equality before the law in no way obliges any one individual to select as an associate, even on board a steamer, any one, white or black. The *law* may dispense equal rights to all ; but matters of taste and *individual* preference are not cognizable by law. A and B, two white persons, may prefer each other as intimates, but it would be impossible, anomalous, and in fact derogatory to the law itself, if under organic law, C, a colored citizen, should, on pretence of being a colored citizen, be deprived by the law itself, of his equal rights as a citizen, when color is neither an element of, nor disqualification for, citizenship. If the idea of the general government be a reserve of certain enumerated sovereign powers, on a basis of indestructible States, a State law inhibiting its special citizens from discriminating against the common citizens both of it and the general government, cannot in its nature be repugnant to the latter, unless the latter has made such discrimination. And it is incumbent on plaintiff in error to prove such antagonism, and when such discrepancy is proved, he has extracted the manhood

out of man, and emasculated the constitution of all meaning. It more especially devolves on us who are of the Old South—who have been and are now the rebels to all sectional administrations of the affairs of the nation, who originated this nation and its salient ideas—to *give* to these people on broad, generous and magnanimous grounds their mere rights under the law. And having supported them for two centuries: having paid three thousand million of dollars for them, and having lost it, and having once subjugated swamps—now slowly re-seeking their aboriginal desolation, to throw into the vortex, as *discordia semina rerum* of the new creation—the metaphysical rights of the Anglo Saxon race, which have coerced in all climates, ameliorations and sciences for twelve centuries!

It cannot be legally said that act No. 38 is repugnant to the constitution of the United States in its 14th amendment. Act No. 38 does not deprive Captain Benson, a citizen of the United States, of his “property,” nor does it abridge any of his privileges or immunities. All things on earth are relative, and no man has an unlimited control over anything. Capt. Benson has no right to set fire to his own boat, if by so doing he involved human life or rights, in the steamboats adjoining. All rights are limited by the laws, or general good of all. The right to control his property is not absolute, unlimited and destructive to other rights of other persons. “The *equal* protection of the laws” is what this amendment secures to all. Hence his control over the boat, his property, cannot be construed to take away the right of Madame Decuir, a passenger on it,



to *her* privileges and immunities as a citizen of the United States. He must so use his property as not to prejudice her rights. For this purpose laws are made. To assert, as act No. 38 in effect does, that all cabin passengers shall be treated alike, without specially discriminating against such as are colored, is not entrenching on the personal or property rights of Capt. Benson; but the assertion of his claim to so discriminate, would be specially entrenching on her rights as a citizen, and although the law does not abridge his rights, yet he abridges *her* rights without law. The State of Louisiana has, in this act No. 38, conformed its laws to the constitution of the United States.

In the Slaughter-House case, 16th Wallace, page 81, your court say: "We doubt very much whether any action of a State not directed by way of discrimination against the negroes as a class, or on account of their race, will ever be held to come within the purview of this provision. It is so clearly a provision for that race, and that emergency, that a strong case would be necessary for its application to any other." Hence the 14th amendment was specially created to prevent any State from passing such laws as discriminate. You also say substantially, in the same case: "That the main purpose of the three last amendments was the freedom of the African race; the security and perpetuation of that freedom, and their protection from the oppressions of the white men who had formerly held them in slavery."

Hence it is clear, that if a State law were to discriminate on account of color, it would be held by you repugnant

to said 14th amendment. How then could a State law *forbidding* such discrimination be held to be repugnant? Then, also, how could a clause of the constitution giving Congress the regulation of commerce be held up as a vindication of said discrimination, unless the constitution be repugnant to itself, and self-annulling? By what kind of mental obliquity does plaintiff in error confound clauses of the constitution not in *pari materia*? Should Congress even pass a law directing a discrimination against colored persons, by common carriers, would it not be held by you unconstitutional and void—as an invasion of your right to expound the constitution. These amendments may be the work of fanatical politicians, rather than of wise statesmen—they may be an illustration of the maxim that “extremes beget extremes” On the pages where they are written the future may write a fierce reaction—the rights of the Anglo Saxon race may not be among the exploded issues of the past But they are present *lex scripta*, and on a mere question (for the facts are not of course before you) whether act No. 38 is repugnant to the constitution, as it now is, all that is said in support of such repugnance “*est vox et præterea nihil.*”

In a late case, 17th Wallace, page 560, your court, in a case in relation to the duties of railroad companies, where it was claimed the statute conflicted with the right of Congress to regulate commerce, say: “No discrimination is made between local and interstate freights, and no attempt is made to control the rates that may be charged.

\* \* \* The public welfare is promoted without wrong



or injury to the company. The statute was doubtless deemed to be called for by the interest of the community to be affected by it, and it rests upon a solid foundation of reason and justice. It is not in the sense of the constitution in anywise a regulation of commerce. It is a police regulation, and as such forms a portion of the immense mass of legislation which embraces everything within the territory of a State, not surrendered to the General Government, all of which can most safely be exercised by themselves." The above reasoning fully covers the case in regard to act No. 38. The power it exercises is one that may be exercised, if not exclusively by the State, at least concurrently with Congress, or exclusively till Congress shall legislate on the subject, and till then the exercise of the power is valid, and both can stand together afterwards. *Ubi eadem est ratio, eadem est lex.*" If there be anything sublime in law, it is where it adjudicates on the rights of man. If there be anything, especially the *peculium* of a government, it is the conservation and equality of its citizens. The colored race, as *citizens of the United States*, are the children of these three amendments. *Ubi lex non distinguit nos debemus non distinguere.* Your court had often decided they were not citizens. The fundamental law has now said they are, and has not discriminated against them on account of color *per se*. Cases apparently incongruous are often harmonized by an analytical evicition of the common reason on which they depend. In act No. 38, the legislature of Louisiana have done nothing more than give statutory

power to the policy of the constitution of the United States. Hence all cases referred to and enunciated by the learned attorneys for plaintiff in error, are obsolete.

A common carrier holds a special attitude as to the public. He is bound to carry all who offer. He may establish rules and regulations, and even discriminations. He may say to a gentleman: "Stay out of the ladies' cabin," and *vice versa*. He may say to steerage passengers: "Keep below." He may exclude an offensive, disorderly or disgusting or troublesome passenger from the boat altogether, but for all these there is an obvious and reasonable cause—the fault of the individual, which operates on all alike. But to say to one, "because you are a negro, you must not come into the cabin—must not set at the table, and I charge you less," is not by law reasonable cause, because *that* hurts the *amour propre* both of the person who is not to blame for being a negro, and of the nation who says he is its citizen. It is in effect saying, "You belong to a servile, inferior class by nature, irrespective of your personal character," and is an attack on the Divinity who made him such. Slavery, it is true, was a moral, humane and legal institution, while it lasted. It encouraged social contact, but denied legal equality. If what is called social equality be an evil, the only way to destroy it is by legal equality. No legal philosopher will dispute this. Madame Decuir never belonged to the servile class. She was, before the war, a large owner of inherited slaves. Before that time she traveled freely both in this country and Europe. It is



since the rise of the question of legal equality has begun that more strict social demarkation has taken place on account of color alone, though she is hardly distinguished from one of the Caucasian race. Legal equality puts both races on their *amore propre*. Social equality is the negation of self *pro tanto*, and the acceptance *pro quanto* of the self of another.

History is economical of its principles and never repeats itself in regard to them, though it may give many illustrations of one principle, "line upon line, precept upon precept, here a little and there a little." Vattel says, book ii, chapter 6th, "Whoever uses a citizen ill indirectly offends the State which ought to protect the citizen, and his sovereign should revenge the injuries, punish the aggressor, and if possible oblige him to make entire satisfaction, since otherwise the citizen would not obtain the great end of the civil association, which is safety." The essential requisite of a citizen is, that the person be a man or woman naturally possessed of all rights whatsoever, except what the law inhibits, and no law at present makes *color* advantage or demerit, or any element whatever of a citizen, and plaintiff in error cannot legislate on the subject.

It is clear, that under the decree of your honorable court in the recent case of "Railroad Co. vs. Brown," 17th Wallace, page 446, where you say: "It was the discrimination in the use of the cars on account of color where slavery obtained, which was the subject of discussion at the time, and not the fact that the colored race could not

ride in the cars at all ( \* \* \* ) that this discrimination should cease," &c. ; that any legislation on this subject on the part of Congress would be an act of impertinence on the part of that body ; in that 1st, it would be unnecessary, and thus commit the most odious sin of legislation in governing where there was no need of governing—2d, in usurping the functions of your co-ordinate branch of the government, and expounding what you have already expounded—3d, in covertly attacking through ignorance or disregard, the reserved constitutional rights of the thirty-eight States of this Republic, and monopolizing for partisan purposes the essential rights of said States—4th, in attacking the organic theory of this republic, which is a general government, with special enumerated powers, and State governments, with all powers not thus enumerated. It is clear this nation is not superannuated, and yet retains some of the vigor and vitality of youth. The *excuse* for the existence of the United States is stated simply and with *naiveté* in the Declaration of Independence, "that all men are possessed of certain inalienable rights." Now it is the *discrimination* against colored people, on account of their color, that constitutes the gist of the offence both in the case above decided and in the case now before you. If you have decided such discrimination is unequal, unjust and illegal, nothing could be a more direct *sequitur* than that an act of a State Legislature forbidding such discrimination, is in harmony with the organic law as you have expounded it. The history of the ages discloses one maxim at least, "That the liberty of each citizen ends



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where the liberty of another citizen commences." Capt. Benson, in his liberty to manage his own property, has no right to entrench upon the personal rights of Madame Decuir as a citizen, and discriminate against her because she is colored. This is the very basis of this suit; and he admits in his own evidence, as a fact, that he did discriminate, which makes out the case under the laws of Louisiana against him. The constitutional question, as to whether Act No. 38, General Assembly of Louisiana of 1869, be repugnant to the constitution of the United States, is, I humbly apprehend, the sole question before your honorable court.

All of which is respectfully submitted.

E. K. WASHINGTON,

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