Supreme Court of United States.

Writ of Error to the Supreme Court of the State of Louisiana No ——

JOHN G. BENSON, PLAINTIFF IN ERROR,

versus

MRS. JOSEPHINE DECUIR, DEFENDANT IN ERROR.

E. K. WASHINGTON,

Attorney for Defendant in Error.

Clark & Hofeline, Book Printers, 9 Bank Place,

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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 or 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 he 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 distinctionson 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 dscriminate 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 theState 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, bnt 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 unconstitution restrictional 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 extra-ordinary 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 govment 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 nm 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 eviction 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 w at 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.

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Attorney for Defendant in Error.