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. The blackness and length of the 'air, which is straight, confirm 243 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 appartment 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 of his said boat refuse to her, on account of her race and color, and 245 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 notonly been proclaimed by Judge Story, but has latterly been reiterated by the present supreme court of Louisiana. The United States court in admiralty have nothing to do with this case. (See 20 246 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 cannot make distinctions where the law does not, and availing 247 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 privileges *of* accorded to white ladies on board his boat. But, 248 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 construeing 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 watercrafts, 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 princip*als* 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 apprised of the existence and validity of the laws which govern 263 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 punitory 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 evidence is positive and conclusive that she was denied those rights 264 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 author-
265 ity, 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
266 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
267 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 Bentrick Egan, attorney for defendant in the above