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COURT RECORD.

SATURDAY, MAY 23, 1874.

United States Circuit Court.

United States vs. W. J. Cruikshank et al. Conspiracy and murder. On trial.

Superior Criminal Court.

Judge Atocha to-day pronounced the following important decision:

State of Louisiana on the relation of C. Rodriguez for habeas corpus—The relator in his petition sets forth that he is "illegally deprived of his liberty, and held in confinement by the keeper of the Parish Prison by virtue of a commitment wrongfully and illegally issued by the Hon. A. H. McArthur, judge of the First Municipal Police Court, for a violation of the provisions of act No. 9 of the General Assembly of the State of Louisiana, passed at the session of the year 1874, under which a fine of $25 has been imposed, or in default of payment, that the relator be imprisoned in the Parish Prison for the term of five days; and he asks to be released from custody on the following greunds:

First—That the act is unconstitutional. Because: 1. The title does not express the object of the law; 2. The right of trial by jury is denied; 3. Judicial powers are conferred, in contravention of article ninety-four, of the constitution.

Second—That the act No. 9 is an attempt by the Legislature to enforce by criminal process doubtful private rights.

It is proper to consider the grounds of this application as they are presented. The title of this act is as follows: "An act relative to the unlicensed sale of lottery tickets in the city of New Orleans, and conferring on police courts the power to suppress the same." The title to an act is unquestionably intended and required to give reasonable notice of the object of the law; if that be accomplished the constitutional provision is complied with. To demand or expect more would necessitate that the title should contain a specific definition of every provision of the act, which would be simply absurd. "The title of a law is not to be strictly construed; if it state the object according to the understanding of reasonable men, it satisfies the constitution." Municipality No. 3 vs. Michoud, 6 A., 605; City National Bank vs. Mahan, 21 A., 752; 23 A., 745; 21 A., 694; 24 A., 88.

That the title of the act under review reasonably expresses the object is so palpably evident that it seems to me not to require discussion. It can not be even pretended that there is ambiguity in the language used. Any person of ordinary sense upon reading the title can not fail to understand that the act intends to provide against selling of lottery tickets without a license, and for enforcing the prohibition through the action of police courts, which necessarily implies the imposing of some penalty. That is all the act provides for. I conclude that the objection to the title is without reason.

The next objection is, that the act denies the right of trial by jury, guaranteed by the constitution. The article of the constitution here invoked, is the same as found in the constitution of the United States, and in the previous constitutions of this State, almost in the same words. The meaning and intent of this article have been the subject of frequent interpretation in this State. State vs. Gutierez, 15 A., 190; State vs. Noble, 29 A., 325. In Vermont the constitutional provision is similar to that of this State, with a light variation in language, but all to the same purport; and in that State it has been held, as in the decisions in this State referred to, that the provision is not intended to apply to small offenses against the police regulations of the State. The State vs. Collin, 27 Vermont, 318; in re Dougherty, 27 Vermont, 325. So that is a well considered and settled principle, that there may be cases in which a jury trial may not be awarded, without violating the article of the constitution on the subject. A great deal of the outcry about the sanctity of the privilege of jury trial, arises from the fact that for the purpose of evading penalties the most petty violations of city ordinances and police regulations are magnified into offenses. The constitution has no reference whatever to anything except that which is properly an offense, a crime. Act No. 9 does not create any offense, any crime; it simply prohibits the carrying on of a certain traffic within the limits of the city of New Orleans, without complying with named conditions, intended simply to protect the rights guaranteed by the State to certain parties.

Until urged in argument upon the return to the writ, I had supposed that the right of a State Legislature to enact police regulations was no longer an open question under the decisions by the Supreme Courts of the United States and of this State, and I find by reference to the authorities, that my supposition was correct. State vs. Fosdick, 21 A. 256; Diamond vs. Cain, 21 A. 309; Slaughterhouse cases, 16 Wallace 62; Railroad Company vs. Fuller, 17 Wallace 568. In the latter case, the Supreme Court of the United States, speaking of a police regulation, repeat and adopt the language in the case of Gibbons vs. Odgen, 9 Wheaton 1, as follows: "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 which can be most advantageously exercised by the States themselves.'" There can be no question of the right of a State to establish police regulations for any part or for the whole of the territory of the State.

As to whether the provisions of act No. 9 constitute a police regulation, I will now consider in connection with the objection that judicial powers are conferred in contravention to article ninety-four of the constitution of this State.

The first paragraph, which is the only portion of the article under discussion at this time, reads as follows:

"No judicial powers, except as committing magistrates in criminal cases, shall be conferred on any officers other than those mentioned in this title, except such as may be necessary in towns and cities, and the judicial powers of such officers shall not extend further than the cognizance of cases arising under the police regulations of towns and cities in the State."

Upon perusal of this article for the first time, the impression is created that the prohibition takes a wide range, and restricts within very narrow limits the authority of the Legislature to confer judicial powers upon any officer existing or created other than those named in title four of the constitution; but, on careful consideration, the meaning and object of the article are very clear. This article means neither more nor less than the Legislature shall not have the power to confer jurisdiction to try and determine cases wherein persons are charged with crime upon any officers except those mentioned in title four of the constitution; but it expressly permits the conferring of jurisdiction to try and determine violations of police regulations. Experience has taught me that the mistake generally made in construing article ninety-four of the constitution is similar to that made in regard to article six; those who fall into the error confound offenses and crimes with simple violations of police regulations; for if the argument hold good that police magistrates can not summarily dispose of cases arising under police regulations, such as defined in act No. 9, then the entertaining of jurisdiction by them under any police regulation or city ordinance is in contravention of article ninety-four of the constitution.'

I think the distinction I make will be considered logical by all who choose to reflect upon the subject. Every violation of law is not necessarily a crime.

My attention having been called to a decision rendered by the learned judge of the Sixth District Court in a case similar to the one at bar, I have taken special pains to examine that decision, and I freely admit that I commenced its perusal with a predisposition to concur with the views of the learned judge, because I entertain great respect for his opinions on questions of law; but I regret to say that the very decisions he has quoted lead me to a conclusion entirely different from the one he has arrived at. In the quotation from Mr. Dillon on Municipal Corporations, a distinction is made which seems to have escaped the learned judge. The language is as follows:

"Under the general term of ordinances have sometimes been included all the regulations by which a corporation is governed, including special charter or statute regulations, as well as by-laws."

Here it will be perceived a distinction is made, and very properly, between statute regulations and by-laws. Again, quoting from the same authority:

"According to Lord Coke the word 'by' or 'bye' signifies a habitation, and thence, a by-law in England, or a by-law or ordinance in this country, may be defined to be the law of the inhabitants of the corporate place or district, made by themselves or the authorized body, in distinction from the general law of the country or the statute law of the State." Thus it is evident that a statute regulation and a by-law are not one and the same thing. A Legislature does not enact by-laws; but it can establish police regulations. Article ninety-four of the constitution does not designate who shall enact the police regulations referred to in the article; it merely restricts the judicial power to be conferred on officers created by the Legislature, that is, the power to adjudicate finally, or to dispose of summarily, to cases arising under police regulations of cities and towns; but it does not prohibit the establishing of these police regulations by the Legislature. Indeed, in the case of Diamond vs. Cain (21 A., 319,) it has been expressly decided that the whole subject of the city corporation and police is, by the constitution, left in the power and discretion of the Legislature.

An act of the Legislature should not be declared unconstitutional unless this be apparent beyond all reasonable doubt. 21 A., 694, and authorities there cited. I entertain no doubt that act No. 9 is constitutional, but had I a doubt, under the decision just quoted, I would resolve the doubt in favor of the act.

The second ground urged on behalf of the relator is that act No. 9 is an attempt by the Legislature to enforce by criminal process doubtful private rights. I can not perceive the force of this assertion. The Supreme Court of this State has in two decisions (23 A., 743; 24 A., 88) sustained the monopoly of the traffic in lottery tickets in favor of one company. In exchange for the monopoly and privileges granted, the State receives $40,000 yearly; the State is bound to protect whatever rights or privileges it confers, and to see that they be not interfered with or abridged; and for that purpose it may enact either general or local laws. The only party in my opinion having any right to complain that the act affects the city of New Orleans only, is the Lottery Company for whose protection it is enacted. The provisions of act No. 9 are restrictive upon the company, for even its own lottery tickets can not be sold by others than itself, except under a license from the company. Under the act no one is deprived of the right of selling lottery tickets; it is merely required that those desiring to sell shall do so under such conditions as to maintain the rights and privileges of the company holding the monopoly; which would seem to be equitable.

If the grant to the company be valid (I have shown it has been decided so to be by the highest authority) it is contrary to public order and good faith to infringe it. A measure to protect it is a measure to maintain the public order and prevent the minor violations of law, and is therefore a bona fide police regulation.

Entertaining the views I have announced I can not grant the relief prayed for under the writ, and must order the relator to be taken into custody by the sheriff and held under the commitment issued by the judge of the First Municipal Police Court.

Fourth District Court.

Judge Lynch rendered the following decision:

Peter Joseph vs. David Bidwell.—In this case the plaintiff, Peter Joseph, alleges that David Bidwell is indebted to him in the sum of $5000 for damage which the said Bidwell has caused him, in this: That the said David Bidwell is the proprietor of the Academy of Music, in the city of New Orleans, a place of business, where, for payment, the public witness and enjoy plays of different kinds peculiar to theatres of amusement and pleasure; that said Academy of Music is a public place, from which the State of Louisiana and the city of New Orleans require each a license to pursue said business of entertaining the public with plays for pay; that said license is a contract between the State and city each, and said Bidwell, to conduct his said business in accordance with the laws of the State of Louisiana, and especially to make no discrimination in the accommodation of any person because of race, color or previous condition of servitude, under penalty of forfeiture of license and closing of business; that on Saturday, the seventh day of March, 1874, in the evening, plaintiff, in company with a friend, went to said Academy of Music for the purpose of witnessing and enjoyjoying the play of that evening; that tickets were purchased for admission, and paid for at the ticket office, and delivered to petitioner and his friend; that they then advanced to enter said place of amusement, when plaintiff was refused admittance in the presence of many persons, by David Owens, the doorkeeper of said Academy of Music at said time, and who was then and now is the employe and agent of said David Bidwell at said Academy of Music in the admission of persons thereto; that said Owens not only refused petitioner admission, but assaulted him in the presence of many persons, and pushed him out of the entrance to the building; that in violation of law, and the stipulations of his license to carry on said business, the said Bidwell refused petitioner admittance because of his color, and nothing else; that he has, in truth, been refused admittance in violation of law and his contract, because petitioner has African blood in him; that this refusal was done and so intended to degrade petitioner as a man among his fellow-citizens, and by assaulting him, and driving him from said place of amusement in the presence of many persons who were there—more completely to treat with contempt the laws of Louisiana, the rights of petitioner, and for his mortification and injury in this refusal to allow the enjoyment of his rights; that under the laws of the United States and of the State of Louisiana, he is entitled to all the civil and political rights of any other citizen, which include the right of entering said place of amusement, and the said Bidwell had no right to refuse him admission. He prays that said Bidwell be cited, and a trial by jury ordered; that judgment be rendered in his favor, and against Bidwell, for the sum of $5000 and costs of suit.

The answer of the defendant is a general denial of all the facts and allegations contained in plaintiff's petition. The case was tried before a jury.

At the trial plaintiff offered evidence to prove what had occurred between him and Owens, the doorkeeper of the Academy of Music on the evening of the seventh of March, and especially that the said Owens committed an assault and battery on him. Defendant's counsel objected to the evidence, as the petition contained no allegation that Bidwell could have prevented the acts of Owens but did not do so. The court sustained the objection so far as to allow no evidence of the alleged assault and battery, but overruled the objection to the evidence showing the refusal of admission to plaintiff. The jury failed to find a verdict, and after its discharge defendant's counsel moved to continue the case for the purpose of impaneling another jury to try the same, claiming, in support of their motion, that the second section of the act No. 23 of the acts of 1871, requiring the court immediately to decide the case without further testimony, argument or delay, is in conflict with the seventh amendment of the constitution of the United States, and with articles 6, 10, 110 and 114 of the constitution of the State of Louisiana. The motion in behalf of the defendant, after argument, was overruled, and the section two of the said act was decided to be constitutional. The case immediately thereafter, on motion of plaintiff's counsel, was submitted for determination to the court.

The evidence shows that the plaintiff is a native of this city, and has resided here all his lifetime; that he is a captain in the Metropolitan Police, and the owner of considerable real estate; that on Saturday evening, March 7, 1874, accompanied by one James Rierdon, a white man, he went to the door of the Academy of Music, walked up to the box office, when Rierdon bought two parquette tickets, and paid $1 for each ticket. With the tickets Rierdon received two slips of paper, each of which designated the numbered seat in the parquette to which the holder was assigned. Rierdon handed to plaintiff one of the tickets and one of the slips. On arriving at the entrance to the parquette, the doorkeeper, David Owens, allowed Rierdon to enter, but when plaintiff presented his ticket, Owens refused him admission; that plaintiff asked Owens repeatedly the cause of his exclusion, but could receive no other answer than "Look at your ticket, and you will see why." Plaintiff demanded repeatedly to be admitted, but was as often refused, and finally departed with Rierdon. Neither Owens nor any other person connected with the establishment offered to return the price of the ticket to its holder.

It is also shown that the plaintiff is reputed to be a man of color, of good character and sober habits, and that on the occasion in question his demeanor was orderly and peaceable; that the Academy of Music is a place of public resort, licensed by the State and city.

The ticket held by plaintiff contains the following printed inscription:

"Spalding & Bidwell's Academy of Music. Admission ticket. Contract between the managers of the Academy of Music and the holder of this ticket: It is agreed, and this ticket is sold with the understanding, that the management shall have the right to refuse admission to the holder upon returning the regular price of the ticket."

The defendant testifies that on the evening referred to he was confined to his room by sickness, and had been sick for several days previously; that he had no knowledge whatever of the matter which gave rise to this action until the following Tuesday, March 10, when he read the announcement of the case in the evening papers; that if he had been there himself at the time of the difficulty he would have made up his mind to conform to the law; that if the law requires the plaintiff to be admitted, he will admit him; that he has never refused a colored man admission in his life, but on the contrary, he has admitted them repeatedly.

On the cross-examination of the defendant he says the ticket held by the plaintiff entitled the holder to a seat in a private box, in what is known as the "Family circle," for one dollar admission; that the family circle and other portions of the theatre are assigned to colored people; that a committee of colored people waited on him to get him to partition off a place for their use, and that they selected that place; that he fixed it nicely, carpeted it, etc.; that they stated to him that they wanted to be by themselves; that that portion of the building is what is known as the family circle; it is the circle immediately above the "dress circle;" that the price of admission to the family circle is fifty cents, excepting the boxes that have been appropriated for colored people, the said boxes being one dollar each; that the ticket held by plaintiff was sold that night for that purpose, and is a parquette ticket; that the ticket held by plaintiff was not intended to be a family circle ticket; that this ticket carries parties to that place; that he admits colored persons into any portion of the theatre if they desire to go there; that he has taken out a license under the requirements of the law. He states that Owens was then and still is in his employment, and is a courteous, gentlemanly man, who has been in defendant's employment for many years; that he has never instructed Owens to eject any class of people from his theatre, and he does not do it unless he has some good reason.

From the importance of this case, affecting as it does not alone the two citizens who are plaintiff and defendant, but also the interest of all the colored citizens of the State of Louisiana, and testing their right to frequent all places of public resort in common with and on the same terms as white people, it is expedient that I should here quote the constitutional provisions and statutory enactments under and by which the status of the colored man has been changed from his former abject and degraded condition of political and legal disability to complete and unqualified citizenship, because it is by these constitutional provisions, and the enactments thereunder, that this and similar cases are to be determined.

1. The declaration of independence and the first article of the constitution of Louisiana proclaim that all men are created equal; that they are endowed by their Creator with certain inalienable rights; that among these are life, liberty and the pursuit of happiness; to secure these rights governments are instituted among men, deriving their powers from the consent of the governed.

2. The fourteenth amendment to the constitution of the United States says: That all persons born or naturalized in the United States and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside; no State shall make or enforce a law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty or property without due process of law, nor deny to any person within its jurisdiction the equal protection of its laws.

3. The fifteenth amendment provides that the right of citizens of the United States to vote shall not be denied or abridged by the United States, or by any State, on account of race, color or previous condition of servitude.

4. The second article of the constitution of Louisiana declares that all persons, without regard to race, color or previous condition, born or naturalized in the United States, and subject to the jurisdiction thereof, and residents of this State for one year, are citizens of this State. The citizens of this State owe allegiance to the United States, and this allegiance is paramount to that which they owe to the State. They shall enjoy the same civil, political and public rights and privileges, and be subject to the same penalties.

5. The tenth article of our constitution provides that all courts shall be open, and every person, for injury done him in his lands, goods, person or reputation shall have adequate remedy by due process of law, and justice administered without denial or unreasonable delay.

6. Article thirteen of the constitution declares that all persons shall enjoy equal rights and privileges upon any conveyance of a public character, and all places of business, or 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.

7. Article 100 of the constitution provides that the members of the General Assembly, and all other officers, before they enter upon the duties of their office shall take the following oath:

"I do solemnly swear that I accept the civil and political equality of all men, and agree not to attempt to deprive any person or persons, on account of race, color or previous condition, of any political or civil right, privilege or immunity enjoyed by any other class of men: that I will support the constitution of the United States and the constitution and laws of the State of Louisiana," etc.

8. The civil rights bill passed by Congress on the ninth of April, 1866, expressly provides that the colored people shall have the same equal rights with the white people, and shall enjoy the full equal benefits of all laws and proceedings for the security of person and property as enjoyed by white citizens, and shall be subject to the like penalties, and none other, any law, statute or ordinance, regulations or customs to the contrary notwithstanding. Civil rights bill, article 1.

9. On the twenty-third of February, 1869, the Legislature passed the act No. 37, entitled "An act to enforce the thirteenth article of the constitution of this State, and to regulate the licenses mentioned in the said thirteenth article." It is necessary to transcribe, as bearing on this case, the third section of said act which provides: "That all licenses hereafter granted by this State, and by all parishes and municipal cities therein, to persons engaged in business, or keeping places of public resort, shall contain the express condition that the place of business or public resort shall be opened to the accommodation and patronage of all persons, without distinction or discrimination on account of race or color, and any person who shall violate the condition of such license shall, on conviction thereof, be punished by forfeiture of his license, and, moreover, shall be liable at the suit of the person aggrieved, to such damages as he shall sustain thereby, before any court of competent jurisdiction."

10. The section three of act No. 68 of 1870 provides that the thirteenth article of the constitution shall be printed on the face of all State licenses issued to tax collectors.

11. The act No. 23 of 1871, entitled "an act to regulate the mode of trying cases arising under the provisions of article thirteen of the constitution of Louisiana, or under any acts of the Legislature to enforce the said article thirteen of the said constitution, and to regulate the licenses therein mentioned," provides that all cases brought for the purpose of vindicating, asserting or maintaining the rights, privileges and immunities guaranteed to all persons under the provisions of the thirteenth article of the constitution of Louisiana, or under the provisions of any act of the Legislature to enforce the said thirteenth article, and to regulate the licenses therein mentioned, or for the purpose of recovering damages for the violation of said rights and immunities, shall be tried by the court or by a jury. If the jury does not agree, or fails to render a verdict, either for the plaintiffs or defendants, the jury shall be discharged and the case shall be immediately submitted to the judge upon the pleadings and evidence already on file, as if the case had been originally tried, without any further proceedings, arguments, continuation or delay; each party having the right to appeal to the Supreme Court in all cases where an appeal is allowed by law.

From the importance of this case, affecting as it does not alone the interests of a citizen, but of all our colored fellow-citizens in the State of Louisiana, and testing their right to frequent all places of public resort in common with white people without violence, outrage or insult, I have quoted caretully all the laws which secure the rights, the franchises and the privileges of the colored people of this State, and place them on a footing of perfect equality with any other class of citizens of the United States.

By the laws of the State and of the city of New Orleans, the defendant could keep no theatre or other place of public resort without obtaining a license from the State and city, and agreeing to obey the conditions imposed by the law-maker, to wit: First—To open the establishment freely for the accommodation and patronage of any person, without distinction of race, color or previous condition. Second—To subject himself to an action in damages by the party injured by a refusal to comply with the terms on which he received his license. The defendant was free to accept or reject those terms, but after applying for and accepting the license he became bound. Plaintiff, under article thirteen of the constitution of Louisiana, had the right to enter the theatre on the evening in question, and if he did not renounce or forego that right by a special contract with the proprietor or his representative, the refusal to admit him, which is proven beyond contradiction, was a deprivation of a constitutional right, for which, under act No. 38, session acts of 1869, the defendant would be liable to him in damages. Here it becomes necessary to inquire what effect is to be given to the manual acceptance of the ticket by the plaintiff. Did its manual acceptance create a contract between the parties by which the defendant had the right to refuse admission to the holder upon returning the regular price of the ticket? The inscription on the ticket was only a proposition emanating from the defendant; to make it a contract its acceptance by the plaintiff and his consent to it must be shown. Such acceptance and consent may be shown either expressly, or by implication. There was no evidence whatever expressly—by words either written or spoken—to show the acceptance of the aforesaid proposition by plaintiff, or his assent thereto. Neither was there an implied acceptance or consent manifested by the actions of the plaintiff at the time; he was neither silent nor inactive, but outspoken and persistent in the rejection of defendant's proposition, and the assertion of his right to enter the Academy of Music. The ticket does not establish a contract as claimed by defendant to have taken place between him and plaintiff. On the face of the ticket in large capitals are the words "Admission Ticket." It was an admission ticket as its name implies. It could not be at the same time evidence of the right of admission and also evidence of the right to prevent admission as claimed for it by defendant. But the proposition printed on the ticket, while not evidence of a contract between a holder and the proprietor of the Academy of Music, is evidence of the monstrous assumption of the latter to exercise the power "to refuse admission to the holder, upon returning the regular price of the ticket." In other words, it is an assumption of the defendant that he could override the law and the rights of certain members of the community by resorting to the stratagem of printing the aforesaid proposition on his tickets of admission.

The plaintiff did not renounce or forego his right to enter the Academy of Music on the evening of the seventh of March, 1874, nor did he consent to make that right depend on the sufferance or option of the defendant or any of his agents or employes. It makes no difference whether it was Owens or defendant himself that prevented plaintiff from going into the theatre. The act of Owens, while acting within the scope of his functions as doorkeeper or ticket taker, was in law the act of defendant himself. Nor does his want of knowledge of the matter at the time divest him of responsibility for the act of his agent. The defendant says that if he had been there himself at the time he would have made up his mind to conform to the law; if the law requires the plaintiff to be admitted, he will admit him. He fails to tell in what manner he would have conformed to the law, whether by admitting plaintiff to the family circle, or to seat No. 679 in the parquette, which was sold to him for that evening.

Defendant says he has never refused a colored man in his life, but on the contrary he has admitted them repeatedly. He does not, however, say that he has ever admitted colored people on the same terms as white people, and to the parquette or dress circle. He assigns the former to the family circle, an inferior location in the theatre, and the price of admission to which is but one-half that charged for admission to the portions set apart for white people. Defendant states that a committee of colored people waited on him to get him to partition off a place for their use, that they selected the family circle, and he fixed it off nicely, carpeted it, etc. They stated to him that they wanted to be by themselves.

It does not appear that Peter Joseph was one of that committee, or that he had any desire to go into the family circle. If the committee of colored persons had had access to the parquette and dress circle, I can not think they would ever have asked defendant to partition off a place for their use in the family circle. But that committee only spoke for themselves. If they were satisfied with the family circle, that was no reason why a colored man who was not satisfied with it should be prevented from going to the parquette. It was truthfully said by the defendant, therefore, that Owens "does not eject any class, unless he has got some good reason." The reason of Owens was simply to keep a colored man from the parquette, as the rules allowed none of that class to enter that part of the Academy of Music.

Here it becomes necessary to inquire whether the defendant complies with the requirements of the law by merely allowing colored people access to the family circle and the private boxes therein, and there isolate them from white people, and whether such isolation is not a discrimination on account of race and color, which is prohibited by the thirteenth article of the constitution and the act passed for the enforcement of the same.

One Catharine Brown, a colored woman, on the eighth of February, 1868, anterior to the fourteenth and fifteenth amendments to the constitution of the United States, bought a ticket to come from Alexandria to Washington. The ticket was issued in the name of the Washington, Georgetown and Alexandria Railroad Company, as were all the tickets at each end of the route. No tickets were distinguished as for white persons or colored persons, nor for any particular sort or class of cars. All were exactly alike. When the woman went to take her place in the cars there were standing there two cars alike comfortable; the one, however, set apart for colored persons, and the other "for white ladies and gentleman accompanying them," the regulation having been that in going down from Washington to Alexandria the first car should be occupied by the former and the other car by the latter, and that in coming back the use should be simply reversed. When the woman was about to get into one of the cars a servant of the persons managing the road, stationed near the cars to direct passengers, told the woman not to get into the car which she was about to enter, but to get into the one before it; that he had been instructed by persons in charge of the road not to permit colored persons to ride in the car into which she was getting, but to have them go in the other car. The woman, however, persisted in going into the car appropriated for white ladies, and the man put her out with force and, as she alleged, some insult. She then got into the car into which she had been directed to get—the one assigned to colored people, was carried safely into Washington and got out there. Hereupon she sued the Washington, Alexandria and Georgetown Railroad Company in the Supreme Court of the District of Columbia. On the trial evidence was introduced by the defendant to show that the ejection had not been with insult or unnecessary force; that the regulation of separating white from colored persons was one which was in force on the principal railroads in the country; that unless the said regulation had been adopted on this road, travel upon it would have been seriously injured and that without such a regulation the receipts of the road would have decreased.

The counsel for the company requested the court to instruct the jury that if by a standing regulation certain cars were appropriated and designated for the use of white persons, and certain others for the use of colored, and all the cars were equally safe, clean and comfortable, and if this sort of regulation was one in force on the principal railroads of the country, and one which, unless it had been adopted on this road the travel on it would have been seriously injured and the receipts of the road decreased, and if the regulation itself increased the expenses of the road considerably—then, in case no insult or greater force than was necessary had been used, and the plaintiff, after taking a seat in a car appropriated for colored persons, was carried safe into Washington, and got out there, the plaintiff could not recover. The court refused to give the instruction, and a verdict having been given in $1500 for the plaintiff and judgment entered on it, the company brought the case to the Supreme Court of the United States, assigning among other causes of error the refusal to give the said charge requested.

Mr. Justice Davis in delivering the opinion of the court says:

"The third and last assignment of error asserts the right of the company to make the regulation separating the colored from the white passengers.

"If the defendant in error had a right to retain the seat she had first taken, it is conceded the verdict of the jury should not have been disturbed.

"It appears that the Washington and Alexandria Railroad Company in 1863 was desirous of extending its road from the south side of the Potomac near to the Baltimore and Ohio depot in Washington, and Congressional aid was asked to enable it to do so. The authority to make the extension was granted, and the streets designated across which the roads should pass. This grant was accompanied with several provisions. Among the number was one that no person shall be excluded from the cars on account of color.

"The plaintiff in error contends that it has literally obeyed the direction, because it has never excluded this class of persons from the cars, but on the contrary has always provided accommodation for them.

"This is an ingenious attempt to evade a compliance with the obvious meaning of the requirement. It is true the words taken literally might bear the interpretation put upon them by the plaintiff in error, but evidently Congress did not use them in any such limited sense. There was no occasion, in legislating for a railroad corporation, to annex a condition to a grant of power that the company should allow colored persons to ride in its cars. This right had never been refused, nor could there have been in the mind of any one an apprehension that such a state of things would ever occur, for self interest would clearly induce the carrier, South as well as North, to transport, if paid for it, all persons, whether white or black, who should desire transportation. 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. Congress, in the belief that this discrimination was unjust, acted. It told the company in substance that it could extend its road within the District, as desired, but that this discrimination must cease, and the colored and white race, in the use of the cars, be placed on an equality. This condition it had the right to impose, and in the temper of Congress at the time it is manifest the grant could not have been made without. It was the privilege of the company to reject it, but to do this it must reject the whole legislation with which it was connected. It can not accept a part and repudiate the rest. Having, therefore, constructed the road as it was authorized to do, and in this way greatly added to the value of its property, it will be held to a faithful compliance with all the terms accompanying the grant by which it was enabled to secure this pecuniary advantage. The judgment below must be affirmed." 17 Wallace's Reports, page 445.

The case above cited is analogous to the present case, and the doctrine of the decision therein rendered governs the rights of the parties to this suit.

Catharine Brown, like Peter Joseph, was a person of color, she was a passenger over the Washington and Alexandria railroad. An act of Congress (12 Stat. at Large, 805) provided that no person shall be excluded from the cars on account of color. He sought admission to a theater licensed on the express condition that it shall be open to the accommodation and patronage of all persons without discrimination on account of race or color. (Acts of 1869, No. 38.) Her right was secured by an act of Congress before the passage of the fourteenth and fifteenth amendments to the federal constitution. His rights are secured by those amendments, by the thirteenth article of the constitution of Louisiana, and the statute enacted to enforce that article. She was excluded from a railroad car in which there were white persons, while she held a ticket not distinguishable from the ticket of a white person. He was excluded from the parquette of a theater open to white persons, while holding a ticket in every respect like the ticket of a white person. She refused a seat in a car as safe, clean and comfortable as that set apart for white persons, and in fact a car used by white and colored persons alternately. He was not permitted to enter a theater unless he consented to accept inferior accommodation in a place set apart for a particular class of the population, in defiance of law. She got into the car assigned to colored people, and was conveyed safely to the end of her journey. He was obliged to abandon his efforts to reach his objective point—chair No. 679 in the parquette of the Academy of Music. She received a consideration and benefit for her ticket; he received nothing for his. It is the discrimination in the use of the Academy of Music on account of color, which is the subject of discussion in this cause; and not the allegation that the plaintiff could not enter that theatre at all.

The court is satisfied from the evidence that the defendant discriminated against the plaintiff on the evening of the seventh of March, 1874, on account of color and race, and violated the law. That said defendant then and there infringed on the right of the plaintiff to enter the parquette aforesaid, and is liable to the latter for damages.

In an action of this kind proof of special damage is not necessary to recover. The actual pecuniary damage can rarely be proved, and is never the sole rule of assessment. The court has no fixed rule of assessing damages, but must take into consideration the disgraceful nature of the injury done to the plaintiff, and its effect on his standing in society, in exposing him to public contempt or ridicule, and causing him mental suffering. The trouble and expense incurred by him in seeking relief must also be considered. In the case of Mrs. Josephine Decuir vs. John G. Benson, the plaintiff, a respectable colored lady, brought her action against the owner of the steamboat Governor Allen for refusing her the same accommodation as that accorded to white cabin passengers, while traveling on that boat from New Orleans to the parish of Pointe Coupee. The suit was instituted in the Fifth District Court of this parish, and tried before Judge Cullom, who gave a judgment in favor of plaintiff as damages, in the sum of one thousand dollars. An appeal was taken to the Supreme Court, where the judgment was affirmed. That case presented the same question as that which is to be determined in the present action.

When the constitutional provisions, the laws, and the judicial decisions herein referred to are considered, and the circumstances of this case carefully examined, it is impossible to discover anything in the management of the Academy of Music which precludes the plantiff from recovering damages. This court has before it as plantiff a citizen vindicating his manhood and citizenship, and appealing to the laws of the land for the redress of a premeditated injury done him by the defendant through one of his agents. It is the duty of the court to grant that redress.

It is therefore ordered that there be judgment in favor of the plantiff, Peter Joseph, and against the defendant, David Bidwell, in the sum of $1000, as damages, and also the costs of suit.

John J. Clermont vs. John O'Neil.
Charles Lewis vs. Hugh McCloskey.
George Washington vs. same.

Actions under civil rights bill. Suits for $500 each. Judgment for $200 each.

EQUALITY BEFORE THE LAW.

The following argument was made by General T. Morris Chester before the Fourth District Court last Wednesday, in the somewhat noted civil rights case of Lewis vs. McCloskey:

May it please the court and gentlemen of the jury, a case of much simplicity, free from the intricacies and technicalties of law, involving the dignity of manhood and the rights of citizenship, is presented for your consideration and appeals to you for judgment and justice. Charles Lewis, a resident of New Orleans, an elector of Louisiana and a citizen of the United States, and a man in the image and likeness of his Creator, in the exercise of his natural rights as a human being and his constitutional privileges as an American citizen, entered the place of public resort kept by Hugh McCloskey, situated at No. 76 St. Charles street, and respectfully asked for a glass of soda water. The privilege of vending soda in the city of New Orleans is acquired by license and upon that license the law is printed that the vendor who retails under its authority shall make no distinction on account of race or color. The plaintiff, after being served with cakes, was refused the privilege of purchasing a glass of soda water, for which he was able and willing to pay the price usually required. He deported himself in a respectable and respectful manner, and was neither impertinent in his demand nor objectionable in his dress or person. Walking along one of the principal thoroughfares of the city, breathing the same air and affected by the same influences as other men, he, with some friends entered McCloskey's establishment to quench his thirst. Instead of complying with his request, as the defendant or his employes were obliged to do, the plaintiff was refused with indignity and reproach, in which his manhood was insulted and his citizenship was outraged. By this unlawful act, this personal degradation, amid numerous spectators, along one of the principal streets in the city, the defendant has damaged the plaintiff in feelings, reputation and civil standing to the sum of $500.

This is one of those important cases, involving more than the claims of the plaintiff, in whose decision 365,000 human beings are deeply interested, who are anxiously awaiting the realization of that justice which they have a right to expect under the constitution and laws of this commonwealth. Government in the exercise of its powers and functions is subversive of personal independance and public prosperity when administered in the interest of a class. It is mischievous in its tendencies and destructive of the best interests of society when it refuses to extend the just application of its laws alike to all of its citizens. It is fatal to liberty when the color of a man's skin, deepened by the sun of heaven in its fructifying influence in the land of his fathers, ostracises him in violation of organic law, from all public places, and outlaws him in public estimation. It was base enough to refuse to accommodate the plaintiff and to drive him from the establishment with indignity and contempt; but the unblushing audacity of the defendant, in resisting this action, would seem to imply that in his mind this court is corrupt in its administration of public justice, as he is odious in the conduct of his business. With the declaration of American independence, which declares that all men are created free and equal, and endowed with certain inalienable rights, among which are life, liberty and the pursuit of happiness; with the constitution of the United States, which recognizes the manhood and citizenship of natives and naturalized persons; with the organic law of Louisiana, which abrogates and annuls all distinctions founded upon color in public places and upon public conveyances for which a license is necessary; with the statutes of the nation and the State, conferring equal civil rights upon all men, irrespective of race or color, and with the gospel of peace which enjoins mankind to do unto others as they would that others should do unto them, this defendant has the extraordinary effrontery to come into this court, after having violated the laws of God and man upon no better plea than the customs engendered by an infamous system, which, with all of its proscriptions and ostracisms, was overthrown when the nation reconstructed her foundations and entered upon the march of universal liberty and progressive civilization.

When government emancipated the negroes from an unjust and enforced servitude, the act restored their humanity and sanctified their manhood, a higher rank and a holier designation than citizenship. It exalted