Supreme Court of the United States.

OCTOBER TERM, 1882.

RICHARD A. ROBINSON & SALLIE J. ROBINSON,
Plaintiffs in Error,

—vs.—

MEMPHIS & CHARLESTON RAILROAD CO.,
Defendant in Error.

ARGUMENT AND BRIEF OF HUMES & POSTON,
For Defendant in Error.

STATEMENT OF CASE.

This is an action of debt to recover the penalty prescribed by section 2, of chapter 114, act of Congress, approved March 1st, 1875, for "denying to any citizen, except for reasons applicable by law to citizens of every race and color and regardless of any previous condition of servitude, the full enjoyment of any of the accommodations, advantages, facilities or privileges of public conveyances by land," etc.

The undisputed facts of the case showed that the wrong complained of, was the exclusion of the plaintiff Sallie J. from the ladies' car of a train on defendant's road, and requiring her to go into the next car, where she remained for about fifteen minutes, while the train was traveling a distance of six miles, when the conductor allowed her to

go back into the ladies' car and complete her journey in that car.

It was claimed by the defendant and proved by its conductor and other corroborating witnesses that said temporary exclusion of plaintiff from the ladies' car was because he believed her to be a prostitute and her companion to be her paramour, and not because of her color, race or previous condition of servitude, and that upon discovering that he was mistaken in this belief he promptly and at once, without further application or request from her, told her that she might go back into the ladies' car, which she thereupon did. It was shown also on behalf of the defendant by the evidence of the conductor that he habitually excluded prostitutes, whether white or black, from the ladies' car.

There was no evidence whatever offered tending in the least degree to show that this exclusiou from the ladies' car was because of her color, race or previous condition of servitude, unless it be the bare fact that she was a colored woman and had been previously a slave.

ARGUMENT.

We think that upon this proof the circuit judge might well have instructed peremptorily a verdict for the defendant.

This is a highly penal law, and by well settled law to be construed strictly.

U. S. v. Wildberger, 5 Wheaton 93.
U. S. v. Morris, 14 Peters 464.

The evidence to show its violation must not only preponderate, but establish it beyond reasonable doubt.

U. S. v. Brig. Burdett, 9 Peters 682.

The case last cited was a proceeding to enforce a forfeiture of the vessel for a violation of the revenue laws. It was held that while the evidence offered on behalf of the Government aroused a strong *suspicion* that the offense was committed, yet it was not sufficient. This court said:

"The object of this prosecution against The Burdett is to enforce a forfeiture of the vessel and all that pertains to it, for a violation of a revenue law. This prosecution is a highly penal one, and the penalty should not be inflicted unless the infractions of the law shall be established beyond reasonable doubt."

The plaintiffs had the benefit of a trial where only a preponderance of the evidence was required for them to recover—yet they failed to establish even a preponderance.

We think it hardly needs argument to show that the forfeiture imposed by this act, and the misdemeanor created by it, were for refusing the equal accommodations, &c., of the carrier *because of color, race and previous condition of servitude.*

That such is the spirit of the act is clearly manifested in its title, preamble and entire body. Section 2, declaring the forfeiture, uses such apt, unambiguous words as to leave no doubt on this point; * * "denying to any citizen except for *reasons* by law applicable to citizens of every race, &c."

Under the very terms of the act the *reason* for denying the accommodations is of the essence of the offense prohibited. The 2nd assignment of errors of plaintiff insists that the court below erred in admitting evidence to show defendant's *reason* for denying plaintiff admittance to the ladies' car of its train.

This evidence was clearly competent under the very terms of the act to determine whether the denial was " for *reasons* applicable to citizens of every race," &c.

That defendant's reason for the denial or exclusion, to-wit, that he believed plaintiff a prostitute, was well or ill founded, cannot force upon defendant a reason never thought of nor acted upon, namely, to deny because of race, color, &c.

The plaintiff had the full benefit of the claim that the defense set up of believing the plaintiff a prostitute was a pretence, in the following charge of the court:

" If you find from the evidence that the conductor supposed the plaintiff an improper character because she was traveling with a man supposed at the time to be a white man, and for no other reason whatever, you may look to the facts that she is conceded to be a woman of respectable character, that her companion was in fact a colored man, and that their conduct was irreproachable, as throwing light on the question of the conductor's motive."

See record, page 14.

And the position of the defendant asserting an unfounded belief against a woman's virtue, was not calculated to impress either judge or jury favorably to defendant's cause, but rather to make them wary and willing to find that this asserted belief was a sham and pretence.

Whether, at common law, a belief or actual knowledge that a proposed passenger is a prostitute or otherwise of bad character, is, or not, sufficient grounds for a carrier to refuse admission to the ladies' car or apartments, is not here involved, and need not be discussed. The common

law remedies for such wrongs, when committed, are ample. So ample, and redressed so liberally indeed, by courts and juries where legal rights are denied because of unfounded suspicions against female virtue, as to render it extremely improbable that defendant would, in order to save the comparatively small penalty of this statute, have *untruly* set up as the reason for exclusion, what, in a common law action, would have almost inevitably resulted in a much larger judgment against it.

The charge of the judge is in a small compass, and we deem it unnecessary to discuss it, believing and insisting that it correctly expounded this act of Congress, and gave plaintiffs the benefit of all the law applicable to their case.

We think it is not necessary in this case to argue the constitutionality of the act of Congress, as, in our opinion, the case will be disposed of upon the grounds that it is not within either the letter or spirit of said act.

HUMES & POSTON,
Counsel for Defendant in Error.