IN THE

Supreme Court of the United States

OCTOBER TERM, 1895.

No. 210.

H. A. PLESSY, PLAINTIFF IN ERROR,

vs.

J. H. FERGUSON, JUDGE, &c.

BRIEF FOR PLAINTIFF IN ERROR.

This writ of error brings up a judgment rendered in the supreme court of Louisiana, denying to the plaintiff in error writs of prohibition, etc., asked for against the defendant in error as judge of a certain criminal court of that State; as to which writs the following extract from the opinion of the court below will be a sufficient introduction:

"When a party is prosecuted for crime under a law alleged to be unconstitutional, in a case which is unappealable, and where a proper plea setting up the unconstitutionality has been overruled by the judge, a proper case arises for an exercise of our supervisory jurisdiction in determining whether the judge is exceeding the bounds of judicial power by entertaining a prosecution for a crime not created by law. * * *

"Relator's application conforms to all the requirements of this rule. He alleges that he is being prosecuted for a violation of act No. 111 of 1890; that said act is unconstitutional; that his plea of its unconstitutionality has been presented, and overruled by the respondent judge, and that the case is unappealable.

"He therefore applies for writs of certiorari and prohibition in order that we may determine the validity of the proceedings, and in case we find him entitled to such relief may restrain further proceedings against him in the cause." (Record, p. 24.)

Thereupon, after consideration, the court held the act in question to be constitutional, and ordered that the relief sought be denied (p. 30).

In Weston *vs.* City Council, 2 Peters, 449, 464, it is held that an application for a writ of prohibition is of itself a "suit," so that a writ of error may lie to this Court from any judgment which puts an end to such application, no matter whether the suit in connection with which it is asked for be thereby ended or not.

The petition below for writs of prohibition and certiorari appears at pages 1, etc., of the record, and the return to a provisional order thereupon at pages 12, etc.

Supposing that the rule under which this case is to be heard may be that laid down in *Ex parte* Easton, 95 U. S., 68, 74, and therefore that nothing material to the determination of the cause can be looked for except in the record of the criminal court, this brief will be confined to that record.

The scope of the grave questions involved in this case is large and very interesting. These are accordingly treated with great research and freedom by the learned and able counsel with whom the undersigned are associated. Nothing has occurred to us by way of addition to what has been submitted from that point of view. Leaving these matters, therefore, in the effective position in which they have been thus placed, we ask attention to a more narrow line of suggestion.

The information in question, omitting formalities, alleged that the present plaintiff in error, Homer Adolph Plessy, upon the 7th of June, 1892, "being then a passenger traveling wholly within the limits of the State of Louisiana on a passenger train belonging to a railway company carrying passengers in their coaches within that State, and whose officers had power and were required to assign and did assign the said Plessy to the coach used for the race to which he belonged, unlawfully did then and there insist on going into a coach to which by race he did not belong, contrary to the form of the statute," &c. (p. 14).

To this information Plessy pleaded, with other matter, as follows (p. 16):

"1. That he is a citizen of the United States and a resident of the State of Louisiana.

"2. That the railroad company referred to in the said information is a corporation duly incorporated and organized by the laws of the State of Louisiana as a common carrier, &c.

"4. That said defendant bought and paid for a ticket from said company entitling him to one first-class passage from said city of New Orleans, in the State of Louisiana, to the city of Covington, in the State of Louisiana, and had the same in his possession and unused at the time alleged in

the information aforesaid as the basis thereof, and that the coach or car which he went into and occupied was a first-class one, as called for by said ticket, and defendant was being conveyed therein as a passenger of the said railway company from the city of New Orleans to the city of Covington, and the said ticket is still in defendant's possession, unused, up to the present time.

"5. And the defendant was guilty of no breach of the peace, no unusual or obstreperous conduct, and uttered no profane or vulgar language in said car; that he was respectably and plainly dressed; that he was not intoxicated or affected by any noxious disease, and that no objection was made to his personal appearance, conduct, or condition by any one in said coach or car, nor could such objection have been truthfully made.

"6. That the information herein is based on an act of the legislature of the State of Louisiana designated as act 111 of the sessions act of the General Assembly of this State, approved July 10, 1890, and the said act in its several parts is in conflict with the Constitution of the United States."

The other paragraphs in the plea are immaterial to the purposes of this brief.

To that plea the State demurred; and thereupon issue was joined (p. 19).

Thereupon the criminal court dismissed the plea, and ordered the defendant to plead over (pp. 19, &c.).

The statute in question may be found at page 6 of the Record, and is as follows:

"SEC. 1. All railway companies carrying passengers in their coaches in this State shall provide equal but separate accommodations for the white and colored races, by providing two or more passenger coaches for each passenger train, or by dividing the passenger coaches by a partition, so as to secure separate accommodations: *Provided*, That this section shall not be construed to apply to street railroads. No person or persons shall be permitted to occupy seats in coaches

other than the ones assigned to them on account of the race they belong to.

"SEC. 2. The officers of such passenger trains shall have power and are hereby required to assign each passenger to the coach or compartment used for the race to which such passengers belong. Any passenger insisting on going into a coach or a compartment to which by race he does not belong shall be liable to a fine of $25, or in lieu thereof to imprisonment for a period of not more than twenty days in the parish prison. Any officer of any railroad insisting on assigning a passenger to a coach or compartment other than the one set aside for the race to which that passenger belongs shall be liable to a fine of $25, or in lieu thereof to imprisonment for a period of not more than twenty days in the parish prison; and should any passenger refuse to occupy the coach or compartment to which he or she is assigned by the officer of such railway, said officer shall have power to refuse to carry such passenger on his train, and for such refusal neither he nor the railway company which he represents shall be liable to damages in any of the courts of this State.

"SEC. 3. All officers and directors of railway companies that shall refuse or neglect to comply with the provisions and requirements of this act shall be deemed guilty of a misdemeanor, and shall, upon conviction before any court of competent jurisdiction, be fined not less than $100 nor more than $500; and any conductor or other employé of such passenger train having charge of the same who shall refuse or neglect to carry out the provisions of this act shall, on conviction, be fined not less than $25 nor more than $50 for each offense. All railroad corporations carrying passengers in this State, other than street railroads, shall keep this law posted up in a conspicuous place in each passenger coach and ticket office: *Provided*, That nothing in this act shall be construed as applying to nurses attending children of the other race."

SEC. 4. [Repeals inconsistent laws, &c.]

As already said, the proceedings on the part of the defendant in the information for a prohibition were unsuccessful, the supreme court of the State holding that the statute above is constitutional.

Pursuing our suggestion above, we submit, under the first assignment of error (Record, p. 38), that—

The provisions of the above statute violate The XIVth Amendment, by abridging the privileges and immunities of Plessy in his character as a citizen of the United States—one such privilege being that of making use of the accommodations of even mere intra-state common carriers of passengers without being amenable to police on account of Color. At all events, when such carriers do business to or from places at which the United States has permanent public offices for transacting business with its citizens.

The record of the information does not show whether Plessy is *White* or *Colored;* so that it may be that at the time alleged he was a White man insisting upon a seat in the car for Colored men; or, *vice versa,* a Colored man insisting upon a seat in the White car.

But, if it appear upon the face of the statute, taken in connection with those matters of history of which a court will take notice, that the expression in question does necessarily attempt to enforce by law an inequality betwixt White and Colored citizens that otherwise is *at most* only a social matter, if one at all; and, moreover, that it is not competent for a statute to give *force of law* to mere social inequalities turning upon Color, *then it is as much a constitutional privilege and duty of a White citizen to resist any attempt to make him an instrument for enforcing such legal inequality as it is for a Colored citizen to resist being made a victim thereof.* The constitutional liberty of the party so acted upon is as much offended in the first case as in the second. Indeed, an offer

of *the douceur* of an upper seat to a White man might to a properly constituted mind have the effect of rendering a matter so utterly disloyal to the spirit of fundamental law only the more offensive.

This point requires no elaboration. The draughtsman *of the information* below was well advised in leaving out an averment as to the particular Color of the person charged. And this omission was approved of by both of the State tribunals before which it came. Equally, whether he be White or Colored, Plessy has sustained injury, if the statute of 1890 be unconstitutional, as creating a legal inequality betwixt citizens, based upon Color.

That it does attempt to create such legal inequality is another proposition, as we submit, that may well be treated *briefly* under the light of those public matters of which a court takes notice.

Inasmuch as the policy of the statute appears to be only to separate *White* and *Colored* persons, it will make no difference whether in effecting it conductors or other employés in charge of passenger trains shall conclude that all persons who are not *Colored* (*i. e.*, in the American definition of that word) are *Whites;* or are either *Whites*, or statutory *non-descripts*, outside of the policy of the statute.

In either such case it is submitted as quite certain that the discrimination in question is along the line of the late institution of slavery, and is a distinct disparagement of those persons who thereby are statutorily separated from

others because of a Color which a few years before, with so small exception, had placed them within that *line*. It therefore amounts to a *taunt by law* of that previous condition of their class—a taunt by the State, to be administered with perpetually repeated like taunts *in word* by railroad employés, in places of public business resort within Louisiana.

It is also submitted that in such a case it is not of the smallest consequence that the car or compartment set apart for the Colored is "equal" *in those incidents which affect physical comfort to that set apart for the Whites.* These might even be *superior*, without such consequence! Such considerations are not at all of the order of those now in question. Whatever legally disparages and whatever is incident to legal disparagement is offensive to a properly constituted mind. The White man's *wooden* railway benches, if the case were such, would be preferred to any *velvet cushions* in the Colored car. If Mr. Plessy be Colored, and has *tasted of* the advantages of free American citizenship, and has responded to its inspirations, he abhorred the equal accommodations of the car to which he was compulsorily assigned!

This is an ancient common-place, and need not be extended. It will not be treated as declamation. It is founded upon the most unchanging and most honorable principles of human nature, such as must be taken into serious account in all wise legislation. These agitate and, when occasion arises, *determine* all bosoms, from Saxon to Sepoy. We submit that there are opinions in some courts which go utterly astray in reckoning the "conveniences" of Colored cars as compensation for injury to that spirit of the free citizen which "THE PEOPLE OF THE UNITED STATES" must have anticipated as to arise and to be fostered in the breasts

of those whom they generously associated with themselves by the late Amendments—*generously*, indeed, but not wisely, unless that anticipation be realized. In the meantime loyalty to the common country requires all persons, whether in authority or not, to further that experiment by all means within their power.

Sir Walter Scott reports *Rob Roy* as announcing proudly that *wherever he sate, was the head of the table.* Everybody must concede that this is true socially of the White man in this country, as a class. Nor does anybody complain of that. It is only when social usage is confirmed by statute that exception ought or legally can be taken thereto. The venom to free institutions comes in just there. A spirit of independence is even nourished in the poor man by observing the exclusive airs of good society. He can return its indifference or its disgust with interest, leaning upon his sense of the impartiality of THE LAW to both. But when law itself pronounces against his humble privileges the case becomes specifically different. What was mere *fact* yesterday,—to adopt the fine language of Junius, becomes *precedent* today. A pernicious *down-grade* is established. A *class* of citizens becomes depressed, and either gives way, so as to make a *reductio ad absurdum* of constitutional "AMENDMENTS;" or it awaits sullenly some one of those recurring opportunities for association, revolution, and vengeance which human affairs have afforded in the past, and more in the future will afford, to justly discontented classes. As a touchstone to the equality of statutes like the present, let us suppose that this one had required all persons of Celtic race to be associated with the Colored in one car or compartment, and White persons other than those of Celtic race to be placed in another; would not such a division have been explosively

resented and effectively redressed at once by the Celts, and that with loud applause from everybody? And *Why?* except for reasons which under free institutions apply to one citizen as well as to another. The above hypothesis is only an illustration of a suggestion which we submit, that in discussing, whether in or out of office, the place and rights of Colored citizens, White citizens are apt, sometimes insensibly, to fall into a lower tone of thought and discussion than for other citizens.

Color is of itself no ground for discipline or for police. *Police*, like "Fraud," is not susceptible of exact definition. Each of these things, however, has a specific character, well understood by courts for all practical purposes and safely to be left to future determination amid the changing affairs of men; but it is certain that Color no more brings men within the operation of the laws of *police* than of those of *fraud*. And, such is the animating principle of the Constitution of the United States that it is not competent for a State so to change its common law as to affect this immunity.

The institution of *Marriage*, including the *Family* and the rearing of the young, has, on the contrary, always been amenable to the laws of police. That branch of police which looks to the interest of future generations and of the republic to come, punishes bigamy; and refuses certain privileges to children born out of marriage; and entrusts the discipline and education of minors to the parents. These are a mere sample of that constant policing which marriage, with its incidents, has always received. Whether therefore two races shall intermarry, and thus destroy both, is a question of police, and, being such, the *bona fide* details

thereof must be left to the legislature. In the meanwhile it cannot be thought that any race is interested on behalf of its own destruction! And if, instead of the old plan of allowing parents to educate children as they choose, government steps in and takes the matter into its own hands, no constitutional objection upon mere general grounds can be made to provisions by law which respect, so far as may be, a prevailing parental sentiment of the community upon this interesting and delicate subject. In educating the young government steps "*in loco parentis*," and may therefore in many things well conform to the will of natural parents. This is all a part of *Marriage* and *The Family*, and should be treated conformably therewith.

Separate cars, and *separate schools*, therefore, come under different orders of consideration. A conclusion as to one of these does not control determinations as to the other any more than the gift heretofore of *a common freedom and citizenship* "concluded to" *intermarriage*.

Lord Chatham said with great force that the poor Englishman's cottage was a place into which no man could come without being asked; that the cottage might be in such ruin that every wind of heaven careered through it at every point, but that nevertheless the King himself could not enter without permission. The reason of this, in the last analysis of the matter, is because man requires to be nursed by the advantages of retirement and a sentiment of independence as well as by those of society and intercourse. He can, therefore, absolutely control his home as above for himself and its other inmates; but when he goes abroad upon business or other occasion the case is different. Then—and this is in the interest of the community as well as of himself—

he becomes, in a more special or active sense, a social being. And so accordingly is the law of common carriers: All men who comply with reasonable police and certain conditions arising from more or less expensive accommodations travel together: "The poor and the rich meet together,"—in the wholesome atmosphere of an impression that "God has made them both." To turn the old institution of common carriers into an instrument for the application of a novel law of police turning upon Color, is, therefore, in the nature of *a debauch* of a wise, wholesome, and long-standing institution.

We will assume that no more need be said upon the question whether the necessary operation of the Louisiana statute "No. 111 of 1890," is to injure Colored citizens in matters of great public as well as private importance, and proceed to discuss the other vital question in this proceeding, viz., *The existence of a Federal question in the record.*

In the first place, we submit that the *separation* required by the statute is necessarily in the nature of *mayhem* of a right to move about this country quite inseparable from any proper definition of the term "citizen of the United States," or from any proper catalogue of his privileges. No statute can be constitutional which requires a citizen of the United States to undergo policing founded upon Color at every time that *intra-state* occasions require him to use a railroad—a policing, that is, which reminds him that by law (?) he is of either a superior or an inferior class of citizens. As already suggested, either classification is *per se* offensive, and technically an injury to any citizen of the United States as *such.*

We have no cause to quarrel with the general proposition that there are two classes of civil rights within the United States; for the administration of one of which citizens even of the United States must ordinarily resort to the States. Whether the line of distinction betwixt these classes, as heretofore sometimes indicated, may not cede territory that is really Federal, may be left to future consideration. What we now submit is that for citizens of the United States any State statute is unconstitutional that attempts, because of personal Color to hinder, even if by insult alone, travel along highways, between any points whatever. The facts of the present case, as will be seen hereafter, may not need a proposition quite so broad as the above; but it seems that upon principle the law of the matter leads up to a definition so worded.

With all deference to what may possibly have heretofore been suggested to the contrary *arguendo*, a perpetually recurring injury done by statute upon the ground of Color alone,—*Color* referable distinctly to that slavery which but a few years ago so generally attended upon it,—creates a status of American "*servitude*" within the XIIIth amendment.

We beg leave, most respectfully, to enter this protest in passing, recollecting at the same time that the emphasis of our brief is upon the XIVth Amendment.

Right of transit under interstate trade is *ratione rei*, and *secundum quid;* the present claim of right of transit is *ratione personæ*, and *absolute*. Any person, whether a foreigner or a citizen of the United States, may claim the former right as incidental to some temporary business in which he is en-

gaged. In that case the business is the primary element, and confers some passing Federal quality upon any person or anything therein engaged, whether a citizen of the United States or a bale of goods.

The present question, however, requires consideration of what the expression, "*We, the People of the United States,*" signifies, for all persons therein included, who are not under question or discipline because of crime or police. In other words, this is a case in which certain high officers of the Government created by the "People of the United States" are required to "*sight back,*" as it were, upon such creators, and determine judicially their position within *the survey:* their "privileges and immunities," one or both.

It is hardly too much to say that in executing such a function the court occupies a sort of *holy ground,* and must act under the influence of certain *favorable* presumptions.

Nor will it be questioned that by force of the recent amendments the "Citizens of the United States" are by contemplation of law that very People who created the Constitution, and upon whose will and force it rests and is to rest. This consideration may not formally advance the present argument, but nevertheless it seems to be a fit attendant thereupon.

The record shows that Plessy was a perfectly innocent citizen of the United States at the time of the transaction, arrest, and other proceedings in question. The matter which brought about his arrest by the State officials was not one as to which, upon one hand, a State and, upon the other hand, the United States might well differ in regard to its being punishable or not: that is, one as to which the

United States are indifferent, such indifference at the same time manifesting no opposition upon its part to any contrary determination thereupon which any State may reach for *intrastate* affairs. For, the United States cannot allow the matter of the Color of its citizens to become a ground of legal disparagement, or legal offense within the States, unless with a disparagement of itself. A social point of honor that was vindicated with great spirit by England as to *habeas corpus* in the person of a poor tailor's apprentice, *Jenks*, and as to general warrants, in that of the scamp and outlaw, *Wilkes*, may in this country by like inspiration be responded to on behalf of a Colored man. *Noblesse oblige!* The people of England of all grades regarded both of those cases as touching the very apple of its eye; and here may the people of the United States as well.

Amongst the constitutional principles that have been sanctioned by this Court, those that perhaps come nearest to the one now in question are to be found in the cases of Railroad *vs.* Brown, 17 Wall., 445, and Crandall *vs.* Nevada, 6 Wall., 35.

[At the same time it is not forgotten that in Civil Rights Cases, 109 U. S., 3, the opinion of the majority of the Court, after putting the present *case* by way of hypothesis, very carefully and expressly reserved it for future consideration.]

(1.) In Brown's case the facts were that the plaintiff in error was a railroad company doing business betwixt Alexandria and Washington city, which, by act of Congress of 1863, was under an obligation "that no person shall be ex-

cluded from the cars on account of color." Thereupon, in February of 1868, before the adoption of either the XIVth or XVth amendment, the defendant in error, Catherine Brown, a colored woman, bought a ticket from Alexandria to Washington. On going to take her place she found two cars in the train alike comfortable; the one set apart for colored persons and the other for white ladies and gentlemen accompanying them, the regulation being that upon the *return* trip the latter became the colored car, and the former that for whites. Thereupon she was told not to go into the car for whites; and when she refused and persisted in entering, she was put out. After that she went into the other car and was safely carried to Washington. Subsequently she sued the company for having *excluded* her from its cars on account of color; and having recovered $1,500 damages, one question upon the writ of error was whether what had been done to her amounted to an *exclusion.*

Upon this point the Court, through Mr. Justice Davis, said:

"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 accommodations for them.

"This is an ingenious attempt to evade a compliance with the obvious meaning of the requirement. It is true that 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 the 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 acted in the belief that this discrimination was unjust. It told this 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 races in the use of the cars be placed on an equality " (pp. 452–'3).

In the above case, therefore, there could not possibly be a charge of inequality betwixt the accommodations for the two races, inasmuch as the car that, when going from Alexandria to Washington, was assigned to Colored persons, upon the return trip from Washington to Alexandria an hour or so later was assigned to Whites, and *vice versa*. So that in going towards Washington Mrs. Brown has resisted an assignment to the very car which, upon the same principle, she would persist in occupying when leaving Washington.

The allusion by the Court (p. 423) to " the temper of Congress " in 1863 was not more in the interest of the contention by the defendant in error in that case than a like allusion to the temper of the Congress of 1866, which drafted the Fourteenth Amendment, or to that of the people who in 1868 ratified this Amendment, is for Plessy in the present case.

And as to any special meaning of the word " excluded " properly derivable in Brown's case from the presumption that the money interest of common carriers had already, *i. e.*, before March 3, 1863, impelled them to carry all Colored persons—at all events, *in some way or other*, it appears that if the Court had been disposed to treat the matter before them in a plodding way, and had administered justice upon minor grounds, it would have adverted in that connection to those numerous statutes within the United States which in 1863, and for many years before, laid heavy pen-

alties upon railroad companies for transporting the great mass of Colored persons, unless upon certain stringent conditions—*ex gr.*, the Virginia statute of 1836: Code of 1860, pp. 635, 791, 793—which had operated upon the railroad company in question. Under such reference it might reasonably, as reason sometimes goes, have held that the purpose of the act of 1863 was to relieve the railroad from that liability.

We submit that the grounds upon which the Court discussed and determined the matter in Brown's case were in accordance with the general American temper upon such topics, and with the celebrated aphorism of Mr. Burke, when taking an American part in Parliament, in 1775, viz: "A great empire and little minds go ill together."

Brown's case is cited here merely as authority for the position that the discrimination now in question is, in legal phrase, *an injury;* the language of the amendments which, since 1863, have embodied and rendered permanent the public temper of that day, in the meanwhile amply replacing that "temper of Congress" discernible, as the Court said, in the statute of 1863.

(2.) In Crandall *vs.* Nevada, which presents a case of taxation by a State of *inter-state* travel, Mr. Justice Miller, speaking for the large majority of the Court, placed the decision upon higher grounds than those which are as valid for a bale of goods as for a citizen; and vindicated the right of free transit to the latter to and from national court-houses, post-offices, custom-houses, etc., even when within the same State, as follows:

"The citizen has a right to come to the seat of government to assert any claim he may have upon that govern-

ment, or to transact any business with it; to seek its protection, to share its offices, or to engage in administering its functions. He has a right of free access to its ports to which all the operations of foreign trade and commerce so conduct him, to the sub-treasuries, the land offices, the revenue offices, and the courts of justice in the several States; and this right is in its nature independent of the will of any State over whose soil he must pass in its exercise."

That these words were intended to apply to *intra-state* transit, post-offices, etc., appears *upon its face;* and also, *secondly*, because Mr. Justice Clifford, who dissented, limited his dissent to the *opinion* and not the judgment, and that for the reason that the majority went beyond the bounds of inter-state commerce for principles upon which to base its judgment; and, *lastly*, because it is impossible to hold that the United States protects (*ex. gr.*,) a citizen of the United States resident in Mississippi during transit to their court-house, post-office, etc., in New Orleans, but does not protect a like citizen resident in Louisiana during similar transit. A Federal right in behalf of these cases is that of an unmolested approach to public offices of the United States; and this exists for citizens during *intra-state* travel as well as that betwixt the States.

In the meantime the Court will take judicial notice that New Orleans is the seat of a number of United States offices; and likewise that Covington, since at least 1842, has been a post-office. (5 Stats., 575, top.)

And if it be true that Plessy could successfully resist this prosecution in case he had alleged and shown that at the time when he *insisted*, etc., he was upon his way to the post-office at Covington upon business therewith, we submit that he must succeed even in the absence of such allegation and proof.

For, if the very general provisions and words of the statute in question be not valid, constitutiona lly, for all intrastate railroad travel it is not valid for any.

In Trade-mark Cases, 100 U.S., 82, Congress had inflicted a penalty upon counterfeiters of trade-marks registered pursuant to other statutes of the United States, which latter had allowed any persons entitled to the use of any trademark to register the same. It was objected that such penal statute was unconstitutional, because the registering statute had not confined its allowance to trade-marks in inter-state commerce. One answer to this, upon the part of the Government, was that those general words were by fundamental principles of construction to be limited to matters within national jurisdiction. However, the Court said, through Mr. Justice Miller:

"The language is plain. There is no room for construction, unless it be as to the effect of the Constitution. The question to be determined is whether we can introduce words of limitation into a penal sta ute so as to make it specific when, as expressed, it is general only * * * To limit the statute in the manner now asked for would be to make a new law, not to enforce an old one. This is no part of our duty. If in the case before us we should undertake to make by judicial construction a law which Congress did not make, it is quite probable that we should do what, if the matter were now before that body, it would be unwilling to do, viz., make a trade-mark law, which is only partial in its operation and which would complicate the rights which parties would hold—in some instances under the act of Congress and in others under State law."

To the same effect is the subsequent case, Baldwin *vs.* Franks, 120 U. S., 678, 685.

We submit again that it is plain that the statute now in question is intended to operate upon all intra-

state railroad travel for any purpose. For, all intra-state trains are obliged thereby to have the two cars or compartments; and the conductors of these trains are in turn obliged completely to separate White travellers therein from Colored accordingly, and that without regard to any consideration but the one of Color. Whether Louisiana, which excepts *street cars* from the Color separation in question—perhaps because of the impracticability thereof—would have been willing to compel an introduction of the two car system in case it had been known that notwithstanding this there would be found in both cars persons *of the other color*, travelling upon Federal business as parties, jurors, witnesses, etc., of the United States courts, or to the office of a United States commissioner or revenue officer, internal or customs, or to a post-office, may be more than doubtful.

And besides, questions as to Color, difficult though these may be in some cases, are upon the whole much less unreasonably intrusted to conductors for determination upon bare inspection than questions as to the purposes of intended travel, etc. The legislature would hardly have placed the latter at the mercy of a like peremptory decision.

However, it is enough to say here that there is no authority or machinery therefor.

Upon the whole, therefore, this case is for the present topic a converse of that of *Reese* (92 U. S., 214, 220), in which Colored citizens failed to receive a certain virtual protection to political rights because the act of Congress relied upon for

that had employed therefor only certain general terms which also covered other offenses than those to *Color*, etc. When asked to interpret the statute so as to confine its operation to matters within the jurisdiction of the United States, the Court replied that by its structure, as above, the statute was not susceptible of being so dealt with; and that a court is not competent to add to a statute words (*ex. gr.*,) needed to confine its provisions within constitutional limits.

In the present case, upon the special view now under discussion, a like addition of words is needed in order to prevent the statute from covering certain cases of *intra-state* travel as to which its application would be unconstitutional. The statute must therefore fail *for all cases.*

And so it makes no difference here whether Plessy did or did not allege that at the time in question he was traveling upon business with or for the United States—*i. e.*, to a post-office or to serve process, etc.

However, in concluding we submit that the better solution of a question which is so like to recur under many different guises is to place it upon the broadest ground of which it is susceptible—*i. e.*, the ground of a general right of all "citizens of the United States" to immunity from the statutory annoyance under consideration. Petty *diversities* in respect to constitutional rights are not valid in common sense, and do not tend to "insure domestic tranquillity." Since the time of Edward the Confessor, "The Peace of the King's Highway," (Cowell; titles, *Peace of the King, Watling Street*) has been a separate topic of law from that of "The Peace of the King:"—more particular than that, and more

jealously protected against "molestation and annoyance." The corresponding "peace" in this country is not in general intrusted to the care of the United States. It is enough, however, for the present case that it shall be guarded by them from adverse State legislation.

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