IN THE SUPREME COURT OF THE UNITED STATES.

HOMER ADOLPH PLESSY, Plaintiff in Error,

VS.

J. H. FERGUSON, Judge of Section "A" Criminal District Court for the Parish of New Orleans.

Error to the Supreme Court of Louisiana.

Brief for Plaintiff in Error.

STATEMENT OF CASE.

The Plaintiff in Error was arrested on the affidavit of two witnesses charging him with violation of Act No. 111, of the Laws of Louisiana, session of 1890, averring that he was "a colored passenger on a train of the East Louisiana Railroad Company," who did "insist upon going into and remaining in a compartment of a coach of said train which had been assigned to white passengers." (See pp 4-5 of printed record.)

On this affidavit, a warrant issued and he was brought before A. R. Moulin, Recorder, by whom, examination being waived, he was bound over to section A of the Criminal Court of the Parish of New Orleans, giving bond in the sum of $500 for his appearance to answer said charge. (Printed Record, p. 5.)

On the 22d November, 1892, an information was duly filed in said Court based on said proceedings before said Recorder, charging said Plessy with violation of said statute, 111, Acts of 1890, of the State of Louisiana. (See pages 5-6 of printed record.)

To this information, the said Plessy upon arraignment, filed a plea in bar of the jurisdiction of the Court, based on the averment that said Act, No. 111, of 1890, was null and void, being in conflict with the Constitution of the United States. (Printed Record, pp 8-10 and 16-18.)

To this plea the District Attorney demurred. (Printed Record pp. 18-19.) And on this the defendant joined issue. (Printed Record p. 19.) On the issue joined, respondent in error, the Judge of said Court, over-ruled the plea of the defendant Plessy and ordered that he plead over to said presentment. (Printed Record pp. 19-23.)

Thereupon, the said Plessy, by his counsel made application to the Supreme Court of the State of Louisiana for a writ of Prohibition and Certiorari, based upon his plea in the court below. On the hearing, the

court denied the application. (Printed record gives opinion of court in full, pp. 23-31.)

Thereupon, the defendant Plessy, filed a petition for a re-hearing of the same by said Supreme Court, setting forth errors assigned in the opinion of the Court. (Printed Record, pp. 31-32.) This petition the court refused. (Printed Record, p. 33.)

Thereupon, the defendant filed a petition for a writ of error to this Court, (Printed Record, pp. 33-37,) which petition was allowed, and upon filing the assignment of errors, (Printed Record pp. 38-41,) the writ issued to the Respondent herein out of the Circuit Court for the Fifth Circuit.

The case turns wholly upon the question of the constitutionality of Act No. 111, of the legislature of the State of Louisiana, session of 1890, which is given in full in the printed Record, pages 6-7. The first section enacts that all railways in the state shall provide "equal but separate accommodations for the white and colored races, by providing separate coaches or compartments on all passenger trains," and declares that "no person shall be permitted to occupy seats in coaches other than the ones assigned to them on account of the race they belong to."

Section 2, provides (1) that "the officers of such passenger trains shall have power and are required to assign each passenger to the coach or compartment used for the race to which such passenger belongs." (2) That "any passenger insisting on going into a coach or compartment to which by race he does not belong," shall be liable to a fine of twenty-five dollars or twenty days imprisonment. (3) That if any passenger "shall refuse to occupy the coach or compartment to which he may be assigned by the railway official, such officer "shall have power to refuse to carry such passenger on his train," and (4) that for such refusal "neither the officer nor the railway company shall be liable for damages in any of the courts of the state."

Section 3 provides that any railway company and the officers of any railway company, which shall neglect or refuse to carry out this act, shall be liable to fine therefor.

The Plaintiff in Error was a passenger on the East Louisiana railroad as charged in the affidavit on which the warrant of arrest was based, (printed record, p. 4,) from New Orleans to Covington, both points in the state of Louisiana, and was the holder of a first-class ticket. The affidavit states that he is a colored man and that he insisted on entering a white compartment, in violation of this Act. The presentment (Printed Record, pp. 5-6) does not aver anything as to the race of the plaintiff but merely that he insisted on entering a compartment to which by race he did not belong. In his plea in bar, the

plaintiff in Error avers that he held a first-class ticket—was orderly and cleanly, which, is admitted by the state's demurrer, (Printed Record pp. 16-18.) In his petition for re-hearing, he describes himself as "of mixed Caucasian and African blood, in the proportion of one-eighth African and seven-eighths Caucasian," the African admixture not being perceptible. (Printed Record, p. 31.) By his plea the Plaintiff in Error put in issue the Constitutionality of this Act, the Court sustained its validity, and he brought the question here by his Writ of Error.

ASSIGNMENT OF ERRORS.

The following assignment of errors in the judgment of the court below was filed with the application for the writ, (Printed Record pp. 48-51,) and sets out particularly each error asserted and intended to be urged.

FIRST. The court erred in its opinion and decree maintaining the constitutional validity of the Act of the General Assembly of the State of Louisiana, No. 111, approved July 10th, 1890, entitled An act to promote the comfort of passengers on railroad trains, &c., &c., and that the same is not in conflict with nor a violation of any right under the XIIIth and XIVth amendments of the Constitution of the United States: that the same is the lawful exercise of the police power of the State; that the subject-matter thereof is a regulation of domestic commerce, and therefore exclusively a State function; enforces substantial equality of accommodation supplied to passengers of both races on railroad trains operated within the limits of the State of Louisiana; that the same is in the interest of public order, peace and comfort, and impairs no right of passengers of either race.

This was error (1) for the reason that the statute imports a badge of servitude imposed by the State law; perpetuates the distinction of race and caste among citizens of the United States of both races, and observances of a servile character coincident with the institution of slavery, heretofore enacted by the white race and compulsorily submitted to by the colored race. The said statute discriminates between citizens of the white race and those of the colored race, and does not apply to all white persons and all colored persons alike, and the same abridges the rights, privileges, and immunities of citizens on account of race and color.

(2) The said statute does not enforce substantial equality of accommodation to be furnished to passengers of both races on railroad trains, but authorizes the officrs thereof to assign passengers to separate coaches without reference thereto.

(3) The statute impairs the right of passengers of the class to which relator belongs, to wit, octoroons, to be classed among white persons, although color be not disernable in their complexion, and makes penal their refusal to abide by the decision of a railroad conductor in this respect.

(4) The said statute does not extend to all citizens alike the equal protection of the laws, and provides for the punishment of passengers on railroad trains without due process of law, by authorizing the

officers of railroad trains to refuse to carry such persons as refuse to abide by their decision as to the race to which said passengers belong, and by making said refusal a penal offence.

(5) The statute is not in the interest of public order, peace, and comfort, but is manifestly directed against citizens of the colored race.

(6) The statute exempts individuals of a certain class, to wit, nurses attending children of the other race, from the operation of the law, and is therefore amenable to the charge of class legislation.

(7) The said statute is an invasion and deprivation of the natural and absolute rights of citizens of the United States to the society and protection of their wives and children traveling in railroad trains when said citizens are married to persons of the other race under the law and sacrament of the church—marital unions between persons of both races, which are not forbidden by the laws of Louisiana.

(8) The statute deprives the citizen of remedy for wrong, and is unconstitutional for that reason.

(9) Neither the said statute, nor the laws of the state of Louisiana, nor the decisions of its courts have defined the terms "colored race" and "persons of color," and the law in question has delegated to conductors of railway trains the right to make such classification and made penal a refusal to submit to their decision.

(10) The East Louisiana Railroad and other railroads to which said statute applies are organized by the laws of the State of Louisiana as common carriers, acting by virtue of public charters and carrying passengers for hire, and cannot be authorized to distinguish between citizens according to race.

(11) Race is a question of law and fact which an officer of a railroad corporation cannot be authorized to determine.

(12) The state had no power to authorize the officers of railway trains to determine the question of race without testimony, and to make the rights and privileges of citizens to depend on such decision, or to compel the citizen to accept and submit to such decision.

SECOND. The court erred in its opinion and decree that the statute in question explicitly requires that the accommodation shall be equal and does not authorize the officers of the railway trains to assign passengers according to their own judgment and without reference as to whether the accommodations are equal or not.

This was error, because criminal statutes are construed *stricti juris* and not by implication, and the literal text of the law terminating the second section of the statute is as follows:

"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 for damages in any of the courts of this State."

THIRD. The court erred in its opinion and decree that the statute does not authorize the conductor or other officer to assign a passenger to a coach to which by race he does not belong; that it obviously means that the coach to which the passenger is assigned shall be, according to the requirements of the act, to the coach to which the passenger by race belongs.

This was error for the same reason. The aid of implication is required to help out the construction of a criminal statute—that the coach to which the passenger is assigned must be the coach to which by race he belongs—when the text of the law subjects the passenger to fine and imprisonment if he "should refuse to occupy the coach or compartment to which he or she is assigned."

FOURTH. The Court erred in its opinion and decree that the said statute does not exempt the officer or conductor from damages for refusing to carry a passenger who refuses to obey an assignment to a coach to which his race did not belong.

This was error, because the text of the statute is plain: "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 for damages in any of the courts of this state."

FIFTH. The Court erred in its opinion and decree that the discretion vested in the officer to decide primarily the coach to which by race each passenger belongs is only that necessary discretion attending any imposition of a duty to be exercised at his peril and at the peril of his employer and that the statute utterly repels the charge that it vests the officers of the company with a judicial power to determine the race to which the passenger belongs.

This was error, because the 2nd section of the act expressly provides "that 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 passenger belongs," and terminates with the provision that in case of refusal on the part of the passenger to occupy the coach to which he is assigned "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 for damages in any of the courts of this state."

Wherefore, for these and other errors apparent on the record, the said Homer A. Plessy prays that the said judgment of the Honl. the supreme court of the State of Louisiana be reversed, and that the said writ of prohibition prayed for and provisionally issued in these proceedings be made peremptory.

ALBION W. TOURGEE,
JAS. C. WALKER,
Att'ys for Pl'ff in Error.

QUESTIONS ARISING.

Some of the questions arising on this statement of facts and the decision of the court below, as we conceive, are as follows: Has the State the power under the provisions of the Constitution of the United States, to make a distinction based on color in the enjoyment of chartered privileges within the state?

Has it the power to require the officers of a railroad to assort its citizens by race, before permitting them to enjoy privileges dependent on public charter?

Is the officer of a railroad competent to decide the question of race?

Is it a question that *can* be determined in the absence of statutory definition and without evidence?

May not such decision reasonably result in serious pecuniary damage to a person compelled to ride in a car set apart for one particular race?

Has a State power to compel husband and wife, to ride in separate coaches, because they happen the one to be colored and the other white?

Has the State the power to exempt the railroad and its officers from an action for damages on the part of any person injured by the mistake of such officer?

Has the State the power under the Constitution to authorize any officer of a railroad to put a passenger off the train and refuse to carry him *because* he happens to differ with the officer as to the race to which he properly belongs?

Has the State the power under the Constitution, to declare a man guilty of misdemeanor and subject to fine and imprisonment, *because* he may differ with the officer of a railroad as to "the race to which he belongs?"

Has the State a right to declare a citizen of the United States guilty of a crime because he peacefully continues to occupy a seat in a car after being told by the conductor that it is not the one set apart for the race to which he belongs?

Is not the question of race, scientifically considered, very often impossible of determination?

Is not the question of race, legally considered, one impossible to be determined, in the absence of statutory definition?

Would any railway company venture to execute such a law unless secured against action for damage by having the courts of the state closed against such action?

Is not the provision exempting railway companies and their servants and officers, from action for damages in carrying into effect the provisions of this statute, of such importance as to be essential to the operation of the law in question?

Is not a statutory assortment of the people of a state on the line of race, such a perpetuation of the essential features of slavery as to come within the inhibition of the XIIIth Amendment?

Is it not the establishment of a statutory difference between the white and colored races in the enjoyment of chartered privileges, a badge of servitude which is prohibited by that amendment?

Is not *state* citizenship made an essential incident of *national* citizenship, by the XIVth Amendment, and if so are not the rights, privileges and immunities of the same within the scope of the national jurisdiction?

Can the rights of a citizen of the United States be protected and secured by the general government without securing his *personal* rights against invasion by the State?

Does not the exemption of nurses in attendance upon children, render this act obnoxious as class legislation and rebut the claim that it is *bona fide* a police regulation necessary to secure the health and morals of the community?

CONSTITUTIONAL PROVISIONS INVOLVED.

The Plaintiff in Error relies on the following provisions of the Constitution of the United States in support of his contention that the said statute No. 111, of the State of Louisiana, 1890, is null and void.

THE THIRTEENTH AMENDMENT.

> Section 1.—Neither SLAVERY nor involuntary servitude except as a punishment for crime whereof the party shall have been duly convicted, shall exist within the United States or any place subject to its jurisdiction.

THE FOURTEENTH AMENDMENT.

Section 1—*Affirmative Provisions.*

> "All persons born or naturalized in the United States and subject to the jurisdiction thereof, are—
>
> 1—Citizens of the United States," and
>
> 2—(Citizens) " of the state in which they shall reside."

Restrictive Provisions.

> 1—"No State shall make or enforce any law which shall abridge the privileges and immunities of citizens of the United States."
>
> 2—"Nor shall any State deprive any citizen of life, liberty or property, without due process of law."
>
> 3—"Nor deny to any person within its jurisdiction, the equal protection of the laws."

This section has been separated into its constituent clauses, the more readily to show the construction for which the Plaintiff in Error contends.

POINTS OF PLAINTIFF'S CONTENTION.

I—The exemption of officers and railway companies from suits for damage by persons aggrieved by their action under this law.

The Court below held that the language of this section did not exempt from damage resulting from *bona fide* exercise of the power

conferred upon them by its provisions. The language of the act is explicit: "should any passenger refuse to occupy"—not the coach used for the race to which he belongs but—"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 he represents, shall be liable for damage, *in any of the courts of this state*." Is not this a clear denial to the person thus put off the train, of any right of action? Is it not that very denial of the "equal protection of the laws" which is clearly contemplated by the third restrictive provision of the Fourteenth Amendment?

If so, is this provision of such importance as to be essential to the validity of the law as a whole? Our contention is that no individual or corporation could be expected or induced to carry into effect this law, in a community where race admixture is a frequent thing and where the hazard of damage resulting from such assignment is very great, unless they were protected by such exemption. The State very clearly says to the railway, "You go forward and enforce this system of assorting the citizens of the United States on the line of race, and we will see that you suffer no loss through prosecution in OUR courts." Relying on this assurance, the company is willing to undertake the risk. Without it they might well shrink from such liability. The denial of the *right to prosecute*, then, becomes essential to the operation of the act, and if such "denial" is in derogation of the restriction of the Fourteenth Amendment, the whole act is null and void. It is a question for the Court to determine upon its knowledge of human nature and the conditions affecting human conduct, in regard to which it would be idle to cite authorities. If it is NOT a violation of this provision it would be difficult to imagine a statutory provision which could be violative of it.

II—We shall also contend that, in any mixed community, the reputation of belonging to the dominant race, in this instance the white race, is *property*, in the same sense that a right of action or of inheritance is *property;* and that the provisions of the act in question which authorize an officer of a railroad company to assign a person to a car set apart for a particular race, enables such officer to deprive him, to a certain extent at least, of this property —this reputation which has an actual pecuniary value—"without due process of law," and are, therefore, in violation of the Second restrictive clause of the first section of the XIVth Amendment of the Constitution of the United States.

This provision authorizing and requiring the officer in charge of

the train to pass upon and decide the question of race, is the very essence of the statute. If this is repugnant to the Constitutional provision, all the rest must fall.

There is no question that the law which puts it in the power of a railway conductor, at his own discretion, to require a man to ride in a "Jim Crow" car, that is, in the car "set apart exclusively for persons of the colored race," confers upon such conductor the power to deprive one of the reputation of being a white man, or at least to impair that reputation. The man who rides in a car set apart for the colored race, will inevitably be regarded as a colored man or at least be suspected of being one. And the officer has undoubtedly the power to entail upon him such suspicion. To do so, is to deprive him of "property" if such reputation *is* "property." Whether it is or not, is for the court to determine from its knowledge of existing conditions. Perhaps it might not be inappropriate to suggest some questions which may aid in deciding this inquiry. How much would it be *worth* to a young man entering upon the practice of law, to be regarded as a *white* man rather than a colored one? Six-sevenths of the population are white. Nineteen-twentieths of the property of the country is owned by white people. Ninety-nine hundredths of the business opportunities are in the control of white people. These propositions are rendered even more startling by the intensity of feeling which excludes the colored man from the friendship and companionship of the white man. Probably most white persons if given a choice, would prefer death to life in the United States *as colored persons*. Under these conditions, is it possible to conclude that the *reputation of being white* is not property? Indeed, is it not the most valuable sort of property, being the master-key that unlocks the golden door of opportunity?

III—The Plaintiff in Error also contends that the provision of this act authorizing the conductor to "refuse to carry," *anglice* put off the train, any passenger who refuses to accept his decision as to "the race to which he belongs," is a deprivation of the *liberty* and *property* of the citizen "without due process of law," and as such is in conflict with the third restrictive clause of the XIVth Amendment.

The passenger is deprived of his liberty by being removed by the power with which the statute vests the conductor, from a place where he has a *right to be;* and of his property, by being refused and denied the enjoyment of that for which he has paid his money, to wit, the ticket purchased by him to the point of destination. This gave him the right to ride upon *that train* or any train, to the point designated. To take away that right, compell the passenger

to go on foot or by other means to such point, is to seize, convert and destroy his property by pretended force of law. It is *pro tanto* an act of legalized spoilation,—an act of forcible confiscation—a taking of property and interference with liberty under legalized forms and statutory methods, but without "*due* process of law."

IV—The plaintiff also contends that the provisions authorizing the officers of a train to require parties to occupy the particular cars or compartments set apart for distinct races, is a statutory grant of authority to interfere with natural domestic rights of the most sacred character.

A man may be white and his wife colored; a wife may be white and her children colored. Has the State the right to compel the husband to ride in one car and the wife in another? Or to assign the mother to one car and the children to another? Yet this is what the statute in question requires. In our case, it does not appear that the plaintiff may not have had with him a wife belonging to the other race, or children differing with him in the color of their skins? Has a State the right to order the mother to ride in one car and her young daughter, because her cheek may have a darker tinge, to ride alone in another? Yet such things as these, the act in question not only permits, but actually requires and commands to be done under penalty of fine and imprisonment, for failure or neglect. Are the courts of the United States to hold such things to be within the purview of a State's right to impose on citizens of the United States?

V—The plaintiff also insists that a wholesale assortment of the citizens of the United States, resident in the state of Louisiana, on the line of race, is a thing wholly impossible to be made, equitably and justly by any tribunal, much less by the conductor of a train without evidence, investigation or responsibility.

The Court will take notice of the fact that, in all parts of the country, race-intermixture has proceeded to such an extent that there are great numbers of citizens in whom the preponderance of the blood of one race or another, is impossible of ascertainment, except by careful scrutiny of the pedigree. As slavery did not permit the marriage of the slave, in a majority of cases even an approximate determination of this preponderance is an actual impossibility, with the most careful and deliberate weighing of evidence, much less by the casual scrutiny of a busy conductor.

But even if it were possible to determine preponderance of blood and so determine racial character in certain cases, what should be said of those cases in which the race admixture is equal. Are they white or colored?

There is no law of the United States, or of the State of Louisiana defining the limits of race—who are white and who are "colored"? By what rule then shall any tribunal be guided in determining racial character? It may be said that all those should be classed as colored in whom appears a visible admixture of colored blood. By what law? With what justice? Why not count every one as white in whom is visible any trace of white blood? There is but one reason to wit, the domination of the white race. Slavery not only introduced the rule of caste but prescribed its conditions, in the interests of that institution. The trace of color raised the presumption of bondage and was a bar to citizenship. The law in question is an attempt to apply this rule to the establishment of legalized caste-distinction *among citizens*.

It is not consistent with reason that the United States, having granted and bestowed *one equal citizenship* of the Udited States and prescribed *one equal citizenship in each state*, for all, will permit a State to compel a railway conductor to assort them arbitrarily according to his ideas of race, in the enjoyment of chartered privileges.

VI—The Plaintiff in Error, also insists that, even if it be held that such an assortment of citizens by race in the enjoyment of public privileges, is not a deprivation of liberty or property without due process of law, it is still such an interference with the personal liberty of the individual as is impossible to be made consistently with his rights as an equal citizen of the United States and of the State in which he resides.

In construing the first section of the XIVth Amendment, there appears to have been, both on the part of the Courts and of textual writers, an inclination to overlook and neglect the force and effect of its affirmative provisions.

The evident effect of these provisions taken alone and construed according to the plain and universal meaning of the terms employed. is to confer upon every person born or naturalized in the United States, two things:

(1)—National Citizenship.

(2)—Statal Citizenship, as *an essential incident* of national citizenship.

This grant both of *national* and *statal* citizenship in the Constitution of the United States, is a guaranty not only of *equality* of right but of *all natural rights and the free enjoyment of all public privileges* attaching either to *state* or national citizenship. Its effect is (1) to make national citizenship expressly *paramount and universal:* (2) to make Statal citizenship *expressly subordinate and incidental* to national citizenship.

The State is thereby ousted of *all control over citizenship*. It cannot make any man a citizen nor deprive any one of the estate of citizenship or of any of its rights and privileges.

What are the rights, "privileges and immunities of a citizen of the United States?" Previous to the adoption of this section of the Constitution they were very vague and difficult of definition. Now they include all "the rights, privileges and immunities" of a citizen *of a State*, because that citizenship is made incidental to, and co-extensive with *national* citizenship in every State; and the United States guarantees the full enjoyment of both. It is evident that National citizenship *plus* State citizenship covers the whole field of individual relation, so far as the same is regulated or prescribed by law. All the rights, "privileges and immunities," which *can attach* to the individual as a part of the body-politic, are embraced either by the relation of "Citizen of the United States" or by the relation of *citizen* "of the *State* in which he may reside." The United States having granted *both* stands pledged to protect and defend both.

This provision of Section 1 of the Fourteenth Amendment, *creates* a *new* citizenship of the United States embracing new rights, privileges and immunities, derivable in a *new* manner, controlled by *new* authority, having a *new* scope and extent, dependent on national authority for its existence and looking to national power for its preservation.

VII.—It may be urged against this construction that it ousts the exclusive control of the State over "its own citizens" by inference based on the effect of the grant of citizenship.

That this is the real force of this provision of the Constitution would seem to be the only conclusion that can be reached from any reasonable interpretation of the language employed. The language of the affirmative provisions of the section, certainly includes everything that can be embraced by citizenship *of the United States and* citizenship of *the State of residence*. This leaves no room for any *exclusive State jurisdiction* of the personal rights of the citizen. If this provision means anything, it means that the government of the United States will not permit any legislation by the State which invades the *rights* of such citizens. These are fully covered by the grant of citizenship of the United States AND citizenship of the State. This construction is strengthened by the negative provisions which are supplemental of the positive ones. These prohibit the making or enforcement of any law "abridging the privileges and immunities of citizens of the United States;" provide that "life, liberty or property shall not be taken without due process of law;"

and forbid the denial to any person of the equal protection of the law. All these are express restrictions of statal power already made subordinate and incidental to the national jurisdiction by the positive provisions of the same section.

These restrictive provisions were not intended to be construed by themselves, but in connection with and as supplemental to the affirmative provisions—taken together they constitute this section, the *magna charta* of the American citizen's rights.

VIII—Taken by themselves, however, and read in the light of the construction put upon Section 3 Article II of the Constitution, these negative provisions would seem quite sufficient to oust the *exclusive* jurisdiction of the State and establish the appellate or supervisory jurisdiction of the United States in all matters touching the personal rights of citizens.

It has no doubt occurred to every member of the Court, though no allusion seems hitherto to have been made to it, that the construction and phraseology of this section is strikingly similar to that of Section 3 of the IVth Article of the Constitution: "No person held to service or labour in one State under the laws thereof, escaping into another shall, in consequence of any law or regulation therein, be discharged from such service or labour, but shall be delivered up on the claim of the party to whom such service or labour may be due."

The celebrated case of Prigg vs. Pennsylvania, 16 Peters, 539, which finally determined the force of this section decided two things; (1) That the Courts of the United States had jurisdiction to consider and pass upon the validity of the acts of a State touching the rendition of fugitives from labour—to undo or invalidate all that migbt be done or attempted by virtue of State authority, in regard to the estate or condition of one claimed as a fugitive from labour; (2) That whenever the United States legislated upon the question, such legislation *wholly ousted* the State jurisdiction. What this section was to the fugitive from slavery, the provisions of the first section of the XIVth Amendment are to the rights and liberties of the citizen. In the former case, the Federal jurisdiction is inferred from the declaration "No person held to service, * * * shall be discharged therefrom;" in the other case, the jurisdiction is much more clearly indicated by the unqualified grant of national *and* state citizenship in the constitution. As the former gave jurisdiction concerning every matter relating to persons escaping from service or labour, so the the latter gives jurisdiction of *all* matters pertaining to the rights of a citizen of the United States and the essential incident of such citizenship, his status as a citizen of any state. As in that case,

state legislation was to be judged by its effect upon the acquired right of the master over the slave, so in this case, the statute is to be judged by its effect upon the *natural and legal rights* of the citizen. The Plaintiff in Error only asks that the rule of construction adopted by this Court *to perpetuate the interests of Slavery*, be *now* applied *in promotion of liberty* and for the protection of *the rights of the citizen*.

IX—The prime essential of all citizenship is *equality* of personal right and the *free* and secure enjoyment of all public privileges. These are the very essence of citizenship in all free governments.

A law assorting the citizens of a State in the enjoyment of a public franchise on the basis of race, is obnoxious to the spirit of republican institutions, because it is a legalization of *caste*. Slavery was the very essence of caste; the climax of unequal conditions. The citizen held the highest political rank attainable in the republic: the slave was the lowest grade of existence. ALL rights and privileges attached to the one; the other had *no legal rights*, either of person or property. Between them stood that strange nondescript, the "free person of color," who had such rights only as the white people of the state where he resided saw fit to confer upon him, but he could neither become a citizen of the United States *nor of any State*. The effect of the words of the XIVth Amendment, was to put *all* these classes on *the same level of right*, as *citizens;* and to make this Court the final arbiter and custodian of these rights. The effect of a law distinguishing between citizens as to race, in the enjoyment of a public franchise, is to legalize caste and restore, in part at least, the inequality of right which was an essential incident of slavery.

X—The power of the State to establish "police regulations.

The theory that the State governments had exclusive jurisdiction of certain specific areas of individual relation, which prevailed under our government up to the adoption of the XIVth Amendment, was so unique as to become a sort of fetich in our legal and political thought. The idea that certain phases of personal right were *wholly excluded* from the jurisdiction of the general government, was entirely correct. There was no definition of national citizenship in the constitution except in regard to naturalization, and so no relation was established between the individual and the general government requiring the latter to define or secure his natural rights or equal privileges and immunities. All the general government could do was to exercise the special jurisdiction conferred by the constitution. All outside of that was the *exclusive* domain of the States. The State might extend or withhold citizenship at its pleasure, the only check

upon its power in this respect being that imposed by the Court in Scott *vs.* Sandford, that the State could not make any colored person a citizen, so as to entitle him to any right as such, outside its own jurisdiction. Such exclusive jurisdiction still exists in regard to matters of political organization and control, and, indeed, in regard to all internal affairs, so long as the same do not conflict with the personal rights and privileges of the citizen. Of these, a final and corrective jurisdiction is reserved to the general government. It has the right, through its Courts, to inquire into and decide upon the force, tenor and justice of all provisions of State laws affecting the rights of the citizen. As in the case of fugitives from labor before the Congress had legislated upon the subject, the Federal Courts had jurisdiction to pass upon state laws and decide whether their purpose was to promote or to hinder such rendition, so now, the Court has jurisdiction to decide whether a State law is promotive of the citizen's right or intended to secure unjust restriction and limitation thereof.

It was natural that so great a change should prove a shock to established preconception. To avoid giving full and complete effect to the plain words of this amendment, the theory of exclusive state control over "police regulations" was formulated in what are known as the "Slaughter House Cases," 16 Wallace, 36.

In this case, an act of the legislature of Louisiana required all slaughter of food animals to be conducted at certain abattoirs to be erected by a company created by the act, during a period of twenty-five years. It was assailed on the ground that it deprived certain persons plying the trade of butcher, of the free exercise of their calling. The Court held that the law was a "police regulation" to promote the public health and that the state had the right to enact such legislation without being subject to the inhibition of the XIVth amendment unless it discriminated against the rights of colored citizens *as such*.

The demurring judges, Chief justice Chase, justices Field, Swayne and Bradley, concurring in the opinion of Mr. Justice Field, did not question the right of the State to make laws which should restrict individual right and privilege whenever the same were necessary for the promotion of public health and morals, but they contended that the XIVth Amendment conferred the jurisdiction to inquire whether this was the *real purpose* of the act, whether any discrimination against the colored citizen as such, was made by it or not. In other words, the Court held that the act was a police regulation intended to secure the public health and did not discriminate against *colored citizens* as such. The dissenting justices held that the promotion of the public health was

a mere pretence for the grant of an exclusive privilege which impaired the rights of many for the benefit of the few, and that the XIVth Amendment by its express terms did embrace an assertion of the rights of *all citizens* without regard to race or color. Two things are noticeable in these opinions. (1) That the Court expressly refrains from asserting that cases may not arise which will be within the purview of this Amendment, which do not embrace any distinction against the colored citizen as such. (2) That so strong a dissenting portion of the Court concur in the construction of this Amendment given by Mr. Justice Field, found on pages 95 to 101, including these significant declarations:

"It recognizes, if it does not create, citizens of the United States, and makes their citizenship depend upon the place of birth and not upon the laws of any State or the condition of their ancestry. A citizen of a State is now only a citizen of the United States residing in that State. The fundamental rights, privileges and immunities which belong to him as a free man and a free citizen, now belong to him *as a citizen of the United States.*"

Speaking of the "privileges and immunities" of the first restrictive clause, he says: "The privileges and immunities designated are those which of right belong to the citizens of all free governments."

The opinion of the Court, p. 72 et seq, treats the affirmative provisions of this Amendment as a "*definition* of citizenship not only citizenship of the United States but citizenship of the States," and regards the negative ones as restrictive only of discrimination directed against colored citizens, *as such*.

The opinion in Strauder *vs.* West Virginia, 100 U. S., 303, clearly shows, however, that the Court had, in the interval, advanced from the position held in the "Slaughter House Case" to an unhesitating avowal of the conclusion, that the Fourteenth Amendment was intended and would be effective, in preventing discrimination as to right. In this opinion *only* the prohibitive clauses of the Amendment are considered and the language of the Court is based upon the inference to be made from them without any regard for the positive endowing force of the affirmative provisions.

"It ordains," says the Court "that no state shall deprive any person of life, liberty or property, without due process of law, or to deny to any person within its jurisdiction, the equal protection of the laws. What is this but declaring that the law in the States shall be the same for the black as for the white; that all persons, whether colored or white, shall stand equal before the laws of the States, and, in regard to the colored race for whose protection the

Amendment was primarily designed, that no discrimation shall be made against them by law because of their color? The words of the Amendment are prohibitive but they contain a necessary implication of a most positive immunity or right most valuable to the colored man—the right to exemption from unfriendly legislation against them as colored—exemption from legal discrimination *implying inferiority* in civil society, lessening the enjoyment of the rights which others enjoy, and *discriminations which are steps towards reducing them to the condition of a subject race.*"

In our case, the Plaintiff in Error contends that this is the precise purpose and intended and inevitable effect of the statute in question. It is a "step toward reducing the colored people and those allied with it, to the condition of a *subject race.*"

XI—What an exclusive jurisdiction in the State to make and enforce "Police regulations" imports.

It is needless to cite authorities as to what constitute police regulations. All attempts at definition agree that they are regulations necessary to secure the physical health and moral welfare of society. No one questions the necessity of such regulations in any community or that they must to some extent interfere with the enjoyment of personal right and privilege. Every man must surrender something of his liberty for the well-being of the community of which he is a part. Two questions are of importance in regard to the jurisdiction of such regulations accorded to the State in the Slaughter House Cases. The one is, "How are police regulations to be distinguished from other criminal or correctional legislation? Is there any distinctive form or character by which they may be distinguished?

The Court very properly declares that the term is "incapable of exact definition." It even adopts the words of the decision in Thorpe *vs.* Rutland and Burlington Railroad, 27 Vermont 149, as indicating its character.

"It extends to the protection of the lives, limbs health, comfort and quiet of all persons and the protection of all property; and persons and property are subjected to all kinds of restraints and burdens in order to secure the general comfort, health and prosperity. Of the perfect right of the legislature to do this, no question ever was, or upon acknowledged general principles, ever can be made so far as natural persons are concerned."

No one pretends to contravene this right of the State to enact police regulations that shall to a limited extent affect personal liberty. The question is whether this is an unrestricted right; whether the State has the right under the claim of protecting public health or regulating public morals, to restrict the rights of the individual to *any extent* it may see fit? This seems to be the

force of the decision in the Slaughter House Cases. I say seems because the Court very clearly intimates that if it had been a case of discrimination against *colored citizens* as such, it would have been within the jurisdiction of this Court to consider at least the intent and character of this discrimination. As near as I am able to state it, then, the Court's definition of the relation of the XIVth Amendment to the State's power to enact and enforce police regulations is, that it has the sole power and sovereignty to do so, as long as it does not distinguish against the rights of colored citizens *as such*. It may distinguish against white citizens or invade the rights of all to any extent and the general government has no right to intervene; but if it imposes a greater burden or any inequality of privilege, upon the colored citizen, the general government is thereby vested with power to prevent or correct this inequality. This position viewed analytically, is a strange one. As has already been indicated, it is difficult to see how this section can be held to protect a colored citizen's right and not secure the rights of white citizens. If it did, it would be obnoxious to the objection of being class legislation just as opprobious and unjust as that by which slavery was establisbed.

But if the State has exclusive and final jurisdiction to make and enforce police regulations without question or review by the Federal Courts, why has it not sole sovereignty and exclusive jurisdiction over all the personal rights of the citizen in the same manner and to the same extent, as before the adoption of this Amendment? If this section means anything, it would seem that it must give authority to review the "police regulations" of the State just the same as any other legislation, to determine whether they unduly or unnecessarily interfere with the individual rights of the citizen or make unjust discrimination against any class; that if it gives the right to annull legislation inimical to one class, it must of necessity, give the same power as regards legislation injurious to any class.

In order to come within the scope of a "police regulation," even as defined in the "Slaughter House Cases," the act prohibited must be of a character to affect the general health or public morals of a whole community, not merely to minister to the wishes of one class or another. What is the act prohibited in the statute in question in this case? The sitting of a white man or woman in the car in which a colored man or woman sits or the sitting of a colored man or woman in the car in which white men or women are sitting,—is this dangerous to the public health? Does this contaminate public morals? If it does from whence comes the contamination? Why does it contaminate any more than in the house or on

the street? Is it the white who spreads the contagion or the black? And if color breeds contagion in a railway coach, why exempt nurses from the operation of the Act?

The title of an Act does not make it a "police provision" and a discrimination intended to humiliate or degrade one race in order to promote the pride of ascendency in another, is not made a "police regulation" by insisting that the one will not be entirely happy unless the other is shut out of their presence. Haman was troubled with the same sort of unhappiness because he saw Mordecai the Jew sitting at the Kings gate. He wanted a "police regulation" to prevent his being contaminated by the sight. He did not set out the real cause of his zeal for the public welfare: neither does this statute. He wanted to "down" the Jew: this act is intended to "keep the negro in his place." The exemption of nurses shows that the real evil lies not in the color of the skin but in the relation the colored person sustains to the white. If he is a dependent it may be endured: if he is not, his presence is insufferable. Instead of being intended to promote the *general* comfort and moral well-being, this act is plainly and evidently intended to promote the happiness of one class by asserting its supremacy and the inferiority of another class. Justice is pictured blind and her daughter, the Law, ought at least to be color-blind.

XII—The purpose and intent of the legislator as a rule of constitutional interpretation.

It is a remarkable fact connected with this decision, (the Slaughter House Cases,) and those which have followed it, that the rule that the purpose and intent of the lawmaker may be considered to explain doubt or ambiguity, seems in this case to have been used to *create* ambiguity and place upon this section a construction absolutely at variance with the plain and unquestioned purport of its words. No man can deny that the language employed is of the broadest and most universal character. "Every person," "no State," "any law," "any person" are the terms employed. The language has no more comprehensive or unmistakeable words. Yet in the face of these, the Court arrives at the conclusion that this section was intended *only to protect the rights of the colored citizen from infringment by State enactment!* This conclusion makes the "purpose and intent" inferred from external sources dominate and control the plain significance of the terms employed. Granting the assumption of the Court—which with deference, is only half-true—that the purpose of the section was to secure to the new-made colored citizen the same rights as white citizens had theretofore enjoyed, it does not follow that the language used should be wrested from its plain meaning to exclude

all other force and consequence. One of the most common things in all corrective legislation is the use of terms including other acts than those it is sought specifically to restrain. A wrong done to specific individuals or classes, is prohibited, not as to those classes alone, but as to *all;* or a specific offence calls attention to possible kindred offences, and the whole class is prohibited instead of the particular evil. Whatever may have been the special controlling motive of the people of the United States in enacting this section, or of the Congress which proposed it, one thing is certain, the language used is not particular but universal. If it protects the colored citizen from discriminating legislation, it protects also, in an equal degree, the rights of the white citizen. "All" can never be made to mean "some," nor "every person" be properly construed to be only one class or race, until the laws of English speech are overthrown.

This decision wholly neglects the fact that an amendment giving colored persons *exclusively* the protection it is admitted that this was intended to give them, would have been obnoxious to the severest opprobrium as *class-legislation of the rankest sort.* It would have been giving to the colored citizen a security, a "privilege and immunity," not conferred on white citizens. It would have left the national citizenship of the whites *dependent on ancestry* while that of the blacks was *determined by the place of birth.* It would have protected the one from State aggression and oppression and left the other unprotected. Suppose the colored people to secure control of certain states as they ultimately will, for ten cannot always chase a thousand no matter how white the ten or how black the thousand may be, such a provision as has been supposed or such as the Court conceives this to have been intended to be, would leave the personal rights of a white minority wholly at the mercy of a colored majority, without possibility of national protection or redress. Indeed, if the construction which the Court puts upon it be the correct one, if only the rights of *colored* citizens are protected by this section from impairment by statal action or neglect, it is little wonder that the white people of the south declare themselves ready to resist even to the death, the domination of a colored majority in any state. If such is the law and *only colored* citizens are secured in their rights by this amendment, I do not hesitate to say that they are fully justified in anything they may have done or may hereafter do, to prevent control of the machinery of the state governments by colored citizens.

It was said above, that the assumption that this section was adopted for the protection of the colored citizen, was at best only half-true. The history of the times shows that exclusive state

control over the persons and rights of the citizens of the state was not only the Gibraltar of slavery, but was the chief ingredient of that "paramount allegiance to the State," which was the twin of the doctrine of secession. Both rested on the same theory of the State's exclusive sovereignty over the inhabitance of the State. If slavery was one of the foundation stones of the Confederacy, as Mr. Stephens declared, the doctrine of "paramount allegiance" based on exclusive state-sovereignty over the personal rights of all inhabitants of the State, was certainly another. This exclusive sovereignty over the individual was well-founded, too, in the constitution. It came to be so fully accepted that Mr. Chief Justice Waite in Cruikshank's Case hereafter to be considered, even declares that it still exists. It was the nurse and secure defence of slavery and the excuse and justification of rebellion. A long and bloody war had just been concluded in which those in arms against the Union based the defence of their course wholly upon this theory. That the people of the United States should desire to eradicate this doctrine, is just as natural as that they should desire to secure the rights of the colored people they had freed. It was reasonable that they should seek to protect the nation against the recurrence of such peril. If they had such purpose, could they have effected it more fully than by the language of this section, creating a new and universal citizenship and making state-citizenship an incident of it? Thereby they would effect both ends with the same weapon. This they *meant* to do—and this they did, if the words of the constitution are to prevail, over a hypothetical limitation, based on a partial definition of the controling purpose of the framers. It was the *real purpose* to destroy both "paramount allegiance" and discrimination based on race, at one blow; and this the section under consideration does, if the terms employed are given their usual and universal significance. The people of the United States were not building for to-day and its prejudices alone, but for justice, liberty and a nationality secure for all time.

XIII—The case of the United States *vs.* Cruikshank, 92 U. S., 542, proceeds upon the same, as we conceive, mistaken view, both of the character and effect of the XIVth amendment. It wholly neglects the apparent effect of the affirmative clauses and dwells entirely upon the restrictive provisions. While admitting that all rights *granted or secured* by the Constitution of the United States, are within the protection of the general government, it entirely ignores the evident facts that the citizenship granted by this amendment differs *both in character and extent* from the citizenship of the United States, existing theretofore, and that *State*

citizenship with all its incidents, is directly *granted and secured* to classes never before entitled thereto, but expressly excluded therefrom. The opinion states, page 553, that it is the "duty of the States to protect all persons within their boundaries in the enjoyment of those inalienable rights with which they were endowed by their creator." And then, apparently oblivious of the fact that the States had failed to give such protection to the rights of their inhabitants and that their failure to do so in the past was *the sole reason* for the adoption of the XIIIth Amendment, and the apprehension that they might not do so in the future the sole reason for the adoption of the XIVth Amendment, the court proceeds to affirm that "sovereignty" for this purpose, (that is for the protection of the natural rights of the individual) "rests alone with the State." Truly, if this construction be the correct one, this section of the amendment is the absurdest piece of legislation ever written in a statute book. The States had many of them expressly denied a large portion of their population, not only liberty but *all natural rights*. The very definition of a slave was "a person without rights." (Code of Louisiana.) The nation conferred on more than half the population of this State liberty, national and state citizenship, embracing the inalienable rights of which they had been deprived and which were still denied by the State. Then, according to this construction, it said to the State: "The protection and security of these rights rests alone with you. I have made these people citizens and clothed them with the rights of citizens in the State and in the nation. You must not deny or impair these rights; *but if you do, it is your own affair*. I cannot prevent, restrain or hinder. Your sovereignty over them is paramount, exclusive and final. I cannot interfere to protect their rights or save their lives."

Does any man imagine—can any man believe when he recalls the heated war of words, the quarter-century of angry denunciation of this very theory, of the State's sole sovereignty over the lives and rights of its inhabitants, the years of bloody strife then just ended which resulted from this very theory, that the people of the United States meant to perpetuate this condition of affairs when they wrote these words in the Constitution which clothed these Ishmaels of our republic with the purple robe of citizenship? Does any one believe that they meant to restore *that very sovereignty* which was the excuse for resistance to national authority and which the bloody tide of war had only just overthrown? If that was their purpose, then Carlyle's grim designation of the people of Great Britain as "thirty millions of people—chiefly fools," should, when applied to the American people, be amended by leaving out the "chiefly" and saying "every last one a fool."

But the political aspect of these amendments was then to the fore and colored every man's thoughts. The old fetich of State-sovereignty which was essential to the stability of "a nation half-free and half-slave," still blinded the eyes which could not see that the system which was the Gibraltar of Slavery must, *ex necessitate*, be perilous to equal rights and liberty—that the Moloch of Slavery would never be the true God of Liberty. What was good for slavery must be bad for freedom.

This court, indeed, in Strauder *vs.* West Virginia, 100 U. S. 303, distinctly recognize the inconsistency of the ruling in Cruikshank's Case and admit that the effect of the amendment is to prohibit legislation prejudicial to *any* class of citizens whether colored or not.

"If in those states where the colored people constitute a majority of the entire population a law should be enacted excluding all white men from jury service, thus denying to them the privilege of participating equally with the blacks in the administration of justice, we apprehend no one would be heard to claim that it would not be a denial to white men of the equal protection of the laws. Nor, if a law should be passed excluding all naturalized Celtic Irishmen, would there be any doubt of its inconsistency with the spirit of the amendment."

It is but a step farther to what the Plaintiff in Error insists is the true construction, to wit, that "equal protection of the laws," is not a *comparative* equality—not merely equal as between one race and another, but a just and universal equality whereby the rights of life, liberty, and property are secured to all—the rights which belong to a citizen in every free country and every republican government.

In our case, the presentment does not allege the color or race of the Plaintiff in Error, but merely that he refused to abide by the assignment of the conductor to a compartment set aside for *his race* and *persisted* in sitting in one set apart for another race. He was by this presentment either a white man in a colored compartment or a colored man in a white compartment. In either case, assuming that he had paid his fare which is not in question, he had a right to ride where he chose, any law of the State to the contrary notwithstanding; for such a law discriminates in the enjoyment of a public right *solely* on the ground of race. The court will take notice of the fact that in all ages and all lands, it is the weak who suffer from all class discriminations and all caste legislation, and that, in this country, it is the colored race which must always be the victim of such legislation. In this case, if we take the evidence of the State's witnesses on which the presentment was

evidently based, and the self-description of the plaintiff in error who swears that he is seven-eighths white and that the colored intermixture is not visible, we have the case of a man who believed he had a right to the privilege and advantage of being esteemed a white man, asserting that right against the action of the conductor who for some reason, we know not what, was intent on putting upon him the indignity of belonging to the colored race. The mere statement of the fact shows, in the strongest possible light, the discrimination based on race which is the sole object of the statute.

XIV—The Civil Rights Case, 109 U. S. R. 3, while discussing at considerable length the provisions of this section of the XIVth Amendment is not applicable here, as it turns on the distinction between State acts and individual acts and considers only the effect of the prohibitive clauses of the section. It is to be noted, however, that although the learned Justice who delivered the opinion of the Court, mindful no doubt of his own dissenting opinion in the "Slaughter House Cases," declares that "positive rights and privileges are undoubtedly secured by the XIVth Amendment," yet shows that he has not considered its affirmative clauses as *grants of right*, since he adds: "But they are secured by way of prohibition against State laws and State proceedings affecting those rights and privileges."

Taken in its real significance, therefore, the opinion in the Civil Rights Cases, so far as it touches the questions at issue in this case, is strongly and expressly in favor of the Plaintiff in Error. The act of which he makes complaint is a "State act" and a "State proceeding" in regard to the rights granted by the XIVth Amendment.

The dissenting opinion of Mr. Justice Harlan in these cases is especially notable from the fact that we here first find formally and distinctly set forth the view that the national jurisdiction to protect the rights of the citizen is based on the affirmative as well as the prohibitive clauses of this amendment. He says:

"The first clause of this act is of a distinctly affirmative character. In its application to the colored race, *it created and granted*, as well citizenship of the United States as citizenship of the State in which they reside. It introduced all that race any of whose ancestors were imported and sold as slaves, into the political community, known as "The people of the United States." They became instantly citizens of the United States and of their respective States.

Not only were five millions of freedmen transformed into

national and *state* citizens by this amendment, but every citizen of the United States was endowed with a national citizenship determinable in a new manner and a state citizenship made an incident thereof and based wholly upon the national grant.

XV—The relation of the leading cases in which this section is construed, to the construction contended for by the Plaintiff in Error.

The decisions mentioned are really the only ones necessary to be considered in connection with the construction of this section. The others neither materially add to nor detract from what is there determined. In all these cases there is dissent which wisely leaves the door open for farther consideration. While the opinions in all of them enter into a general discussion of the legal effect of the section, it may be said that the Slaughter House Cases determine merely that the State has exclusive jurisdiction of such police regulations as are therein defined; that the Civil Rights Cases decide that Congress has no right to legislate in regard to the rights of citizens in places of amusement, &c., *until* the states have by legislation improperly restricted them; while the opinion in the case of the United States *vs.* Cruikshank, decides that the State has the same sole and exclusive jurisdiction over the lives, liberties and rights of all citizens residing in its borders that it had before the enactment of this amendment when slavery and its interests, not the liberties of the individual, were the objects the constitution was intended to secure.

Only by the most strained construction can this wholesale and compulsory racial assortment of passengers upon a railroad train, where all as citizens have an equal right as on a public highway, and where all pay an equal price for the accommodations received, be termed a police regulation. In the history of English jurisprudence only slavery has demanded that distinctions in civil rights or the enjoyment of public privilege be marked by race distinctions. To introduce them again into our jurisprudence is to reanimate in effect the institution which is denounced in form by the XIIIth Amendment, and the destruction of which threatened the nation's life. It is not a sort of legislation that ought to be helped by strained construction of the fundamental law. Even under the decision in the Slaughter House Cases, this is not to be classed among those "police regulations" which are beyond the jurisdiction of the court.

It also comes squarely within the exception made in the Civil Rights Cases; it is a statute expressly ordained by State legislation and carried into effect by State agencies and tribunals.

The act in question is exactly such an one as these two cases assert to be within the purview of this court's jurisdiction to review. It is an act of race discrimination pure and simple. The experience of the civilized world proves that it is not a matter of public health or morals, but simply a matter intended to re-introduce the caste-ideal on which slavery rested. The court will take notice of a fact inseparable from human nature, that, when the law distinguishes between the civil rights or privileges of two classes, it always is and always must be, to the detriment of the weaker class or race. A dominant race or class does not demand or enact class-distinctions for the sake of the weaker but for their own pleasure or enjoyment. This is not an act to secure *equal* privileges; these were already enjoyed under the law as it previously existed. The object of such a law is simply to debase and distinguish against the inferior race. Its purpose has been properly interpreted by the general designation of "Jim Crow Car" law. Its object is to separate the Negroes from the whites in public conveyances for the gratification and recognition of the sentiment of white superiority and white supremacy of right and power.

It is freely admitted that Cruikshank's case is squarely against us. If the opinion in this case is to be held as law, the relation of the State to the personal rights of the citizens of the United States residing therein, is precisely what it was before the adoption of this section of the constitution, and there is nothing to prevent a State from re-enacting nearly all the caste-distinctions, which slavery created. If that is the law, what is there to prevent a State from enacting the old rule of slavery jurisprudence, that insulting words from a colored man justify an assault by a white man or negative the presumption of malice in homicide. See the State *vs.* Jowers, 11 Iredell, N. C., 555: State *vs.* Davis, 7 Jones, N. C., 52, and State *vs.* Caesar, 9 Iredell, for a full discussion of this legal presumption of inequality. What is there, if the State's jurisdiction over personal rights is to remain as it was before this section was adopted, to prevent the State from adopting as "police regulations," laws requiring a colored man to remove his hat on meeting or addressing a white man? Compelling him to give way to his white superior on the highway and other acts of enforced inferiority?

Our contention is that the opinion in Cruikshank's Case cannot stand, because it is based on the false hypothesis that this section does not create or secure *new rights* to the individual but merely defines pre-existent rights and prohibits the States from impairing or denying them. We contend that it creates a *new citizenship*—new in character, new in extent; new in method of determination,

new in essential incident. That it endowed five millions of people with all the rights of national and state citizenship, both of which they were before forbidden by law to enjoy; that for these hitherto excluded classes, it created, granted and proclaimed a citizenship which embraced the old citizenship and added to it the privileges and immunities of the new one. That it enlarged the privileges and immunities of pre-existing citizenship, by changing the method of determination and adding to it the right of State-citizenship to attach immediately upon residence obtained in the State, without regard to State legislation. We insist that the inference of right, obligation and power of the general government to enforce, maintain and secure the lives, liberties and personal rights of the citizenship created, granted and declared by this Amendment, is infinitely clearer, stronger and more imperative than the inference drawn from the assertion of the owner's right to regain control of his fugitive slave, set forth in Section 3 of article IV. Upon the effect of such inference of right and power we adopt the whole of the argument of Judge Story in Prigg *vs.* Pennsylvania. The only difference in the cases is that in our case the inference is much stronger than in that and that the result to be attained, in that case, was in derogation of liberty, while in this, its maintenance and security is sought. In that case, the result was to deprive the slave even of the hope of escape: in this case, it would be to give the colored man a hope that some time in the future the promise of liberty and equality of civil right in the United States may be peacefully fulfilled. The one is a presumption in favor of justice and liberty as the other was a presumption in favor of inconceivable wrong. Shall this court which was so ready to commit the government to the perpetuation of wrong, hesitate to apply the same rule to secure the rights of its citizens?

XVI—The construction insisted on by the Plaintiff in Error does not impair the "exclusive jurisdiction" of the State, except as to the *personal rights* of citizens. In other respects it still remains. Neither is it open to the common objection that it would require national legislation in regard to all the rights, privileges and immunities of citizens. It merely asserts the right of the Federal Courts to pass upon legislative acts of the States touching such rights and the power of Congress to legislate in regard thereto, whenever it becomes necessary.

There are other parts of the Constitution which illustrate this relation. The power to provide uniform laws on the subject of bankruptcy and the inhibition of the States to pass laws impairing the obligation of contracts, are instances. In the absence of such

national legislation, the States may pass insolvent laws and even exempt within certain limits, the property of the debtor from execution; but the Federal Courts will inquire in regard to all such laws when presented to them, and determine how far they are consistent with the constitutional requirement. The enactment of a bankrupt law wipes them all away unless affirmed by it. So, too, in the absence of national regulation of inter-state commerce, statutes affecting it were passed by the State; the Federal Courts merely considering whether they were in obstruction of it or not. While laws taxing traders from other states more heavily than dealers resident within the state, no one questions the right of the state to tax them equally with its own citizens. The federal courts only inquire into the *equality* of such laws. So in the case of the rights of the citizen as provided in this Amendment; as long as the State protects and secures the rights of all citizens without injustice or discrimination, there is no need for legislative assertion of the national prerogative: the supervisory control of the Federal Courts over State legislation is sufficient. But suppose a State, say the State of Louisiana where the common law never prevailed, should repeal all statutes in regard to murder—all laws defining the crime, giving jurisdiction of its trial and prescribing its punishment—is there any doubt that the government of the United States would be able to provide for the security of its citizens resident in the State? The XIVth Amendment did not destroy the jurisdiction of the State over the rights of its citizens, nor even its exclusive jurisdiction in regard to other matters, but simply made its legislation in regard to the rights of citizens and its judicial action in relation thereto, reviewable by the courts of the United States and subject to restraint when found to be in derogation of the rights, privileges and immunities of the citizens to whom the nation has guaranteed the rights of equal citizenship in the State.

XVII—It has been decided in the case of the Louisville Railway Co. *vs.* Mississippi 133 U. S. R., 589, that the State may compell a railroad operated under its charter, to provide separate cars or compartments equal in character and accommodation, to be used by individuals of different races, if it sees fit to do so. But in this case the exception is expressly made that the right to compel individuals of different races to use these separate coaches is not thereby decided.

The act in question in our case, proceeds upon the hypothesis that the State has the right to authorize and require the officers of a railway to assort the citizens who engage passage on its lines, according to race, *and to punish the citizen if he refuses to submit to such assortment.*

The gist of our case is the unconstitutionality of the assortment; *not* the question of equal accommodation; that much, the decisions of the court give without a doubt. We insist that the State has no right to compel us to ride in a car "set apart" for a particular race, whether it is as good as another or not. Suppose the provisions were that one of these cars should be painted white and the other black; the invidiousness of the distinction would not be any greater than that provided by the act.

But if the State has a right to distinguish between citizens according to race in the enjoyment of public privilege, by compelling them to ride in separate coaches, what is to prevent the application of the same principle to other relations? Why may it not require all red-headed people to ride in a separate car? Why not require all colored people to walk on one side of the street and the whites on the other? Why may it not require every white man's house to be painted white and every colored man's black? Why may it not require every white man's vehicle to be of one color and compel the colored citizen to use one of different color on the highway? Why not require every white business man to use a white sign and every colored man who solicits custom a black one? One side of the street may be just as good as the other and the dark horses, coaches, clothes and signs may be as good or better than the white ones. The question is not as to the *equality* of the privileges enjoyed, but *the right of the State to label one citizen as white and another as colored* in the common enjoyment of a public highway as this court has often decided a railway to be.

Neither is it a question as to the right of the common-carrier to distinguish his patrons into first, second and third classes, according to the accommodation paid for. This statute is really a restriction on that right, since the carrier is thereby compelled to provide two cars for each class, and so prevented from making different rates of fares by the expense which would be incurred by a multiplicity of coaches. In fact, its plain purpose and effect is to provide the white passenger with an exclusive first class coach *without requiring him to pay an extra fare for it.*

XVIII—Has a state power to punish as a crime, an act done by a person of one race on a public highway, which if done by an individual of another race on the same highway is no offense?

This is exactly what the act in question does, what it was intended to do and *all* it does. A man of one race taking his seat in a car and refusing to surrender it, is guilty of a crime, while another person belonging to another race may occupy the same

without fault. The crime assigned depends not on the quality of the act, but on *the color of the skin*.

XIX—The criminal liability of the individual is not affected by inequality of accommodations.

While the act requires the accommodations for the white and black races to be "equal but separate," it by no means follows as a fact that they always are so. But the man who should refuse to go out of a clean and comfortable car into one reeking with filth at the behest of the conductor, would under this act be equally guilty of misdemeanor as if both were of equal desirability. The question of equality of accommodation cannot arise on the trial of a presentment under this statute. Equal or not equal, the refusal to obey the conductor's behest constitutes a crime. There is no averment in this case of equality of accommodation, but merely that the Plaintiff in Error was assigned "to the coach reserved for the race to which he the said Homer A. Plessy belonged" and that he "did then and there, unlawfully insist on going into a coach to which by race he did not belong." (See copy of information, printed Record, page 14.)

It does not appear to what race he belonged or what coach he entered, but, in the questionable language of the information, it is asserted that he did not belong to the *same race as the coach*. It is not asserted that the coach to which he was assigned was equal in accommodation to the one which it is alleged he committed a crime in entering. In his petition for certiorari (Printed Record, page one) the Plaintiff in Error avers himself to be "of mixed Caucasian and African descent, in the proportion of seven-eighths Caucasian and one-eighth African blood. That the mixture of colored blood is not discernable in him, that he is entitled to every right, privilege and immunity secured to citizens of the United States of the white race by the constitution of the United States, and that such right, privilege, recognition and immunity are worth to him the sum of Ten Thousand Dollars if the same be at all susceptible of being estimated by the standard value of money."

The affidavits of the state's witnesses, before the Recorder who bound over the Plaintiff in Error to the criminal court, where the same was filed before the information was entered therein, one of whom was the conductor of the train, (See printed Record, pages 4-5,) declare him to be "a person of the colored race" and that the car he entered and refused to leave was "assigned to passengers of the white race."

The crime, then, for which he became liable to imprisonment so far as the court can ascertain, was that a person of seven-eighths

Caucasian blood insisted in sitting peacefully and quietly in a car the state of Louisiana had commanded the company to set aside exclusively for the white race. Where on earth should he have gone? Will the court hold that a single drop of African blood is sufficient to color a whole ocean of Caucasian whiteness?

XX—The exception which is made in section four of the Act in question should not be passed over without consideration: "Nothing in this act shall be construed as applying to nurses attending children of the other race."

The court will take notice of the fact that if there are any cases in the state of Louisiana in which nurses of the white race are employed to take charge of children of the colored race, they are so few that it is not necessary to consider them as a class actually intended to be favored by this exception. Probably there is not a single instance of such relation in the state. What then is the force and effect of this provision? It simply secures to the white parent travelling on the railroads of the state, the right to take a colored person into the coach set apart for whites in a menial relation, in order to relieve the passenger of the care of the children making the journey with the parents. In other words, the act is simply intended to promote the comfort and sense of exclusiveness and superiority of the white race. They do not object to the colored person in an inferior or menial capacity—as a servant or dependent, ministering to the comfort of the white race—but only when as a man and a citizen he seeks to claim equal right and privilege on a public highway with the white citizens of the state. The act is not only class-legislation but class-legislation which is self-condemned by this provision, as intended for the comfort and advantage of one race and the discomfort and disadvantage of the other, thereby tending directly to constitute a "step toward reducing them to the condition of a subject race"—the tendency especially condemned in Slaudter *vs.* West Virginia, supra.

XXI—There is another point to be considered. The plaintiff insists that Act 111 of the Legislature of 1890, of the State of Louisiana is null and void because in tendency and purport it is in conflict with the Thirteenth Amendment of the Constitution of the United States; "Neither Slavery nor involuntary servitude—shall exist, &c."

What is meant by the word "Slavery" in this Amendment. It is evidently intended to embrace something more than a state of mere "involuntary servitude," since it is used in contradistinction to that term. It is the estate or condition of *being a slave*. What was the estate or condition of a slave? We have a right to suppose

that this term is used in the Amendment with relation to the estate or condition of those who had up to that moment been slaves in the United States. What was that legal condition? The slave as defined by the Code of Louisiana, by the courts of the various states, and by this court in Scott vs Sanford, was legally distinguished both from citizens and from "free persons of color," by one thing, he was a "person without rights." The fact that he was the property of another; that he was held in a state of involuntary servitude; that he might be bought and sold,—these were indeed incidents of his condition, striking and notable incidents, but they were all the results of one striking and distinctive feature of his legal relation to the body politic, which is expressed by the all-comprehensive statement that *he had no rights*. The master might grant him privilege, the State might restrain the master's brutality, but no right of person, of family, of marriage, of property, could attach to the slave. He was a person without rights before the law, and all the other distinctive facts of his status, flowed from this condition. He could not inherit, sue or be sued, marry, contract, or be seized of any estate, *because* he was "a person without rights."

The real distinction between the citizen and the slave was that the one was entitled to life, liberty, the pursuit of happiness and the protection of the law, while the other was beyond the domain of the law except when it took cognizance of his existence as the incident of another's right or as the violator of its behests. The law knew him only as a chattel or a malefactor.

This condition of utter helplessness and dependence came to be expressed in the public and private relations of the two classes. The slave was not only the property of his master, but he was also the defenceless and despised victim of the civil and political society to which he was subject as well as to his master. He could not resent words or blows from any citizen. Only in the last extremity was he permitted to defend his life. Impudent language from him was held the equivalent of a blow from one of the dominant class. He was in bondage to the whole white race as well as to his owner. This bondage was a more important feature of American slavery than chattelism—indeed it was the one feature which distinguished it from "involuntary servitude" which is the chief element of chattelism. Slavery was a caste, a legal condition of subjection to the dominant class, a bondage quite separable from the incident of ownership. The bondage of the Israelites in Egypt is a familiar instance, of this. It was unquestionably "Slavery;" but it was not chattelism. No single Egyptian owned any single Israelite. The political community of

Egypt simply denied them the common rights of men. It did not go as far as American Slavery in this respect since it did not by law deprive them of all natural and personal rights. It left the family and unlike our Christian slavery did not condemn a whole race to illegitimacy and adultery. It was this subjection to the control of the dominant race individually and collectively, which was the especially distinctive feature of slavery as contra-distinguished from involuntary servitude. The slave was one who had no rights—one who differed from the citizen in that he had no *civil or political* rights and from the "free person of color" in that he had no *personal* rights.

The object of the XIIIth Amendment was to abolish this discrepancy of right, not only so far as the legal form of chattelism was concerned, but so far as civil rights and all that regulation of relation between individuals of specific race and descent which marked the slave's attitude to the dominant race both individually and collectively was concerned.

There were in all the slave states specific codes of law intended for the regulation and control of the slave-class. They marked and defined not only his relation to his master but to the white race. He was required to conduct himself, not only "respectfully," which term had a very different signification when applied to the slave than when applied to the white man, but was expected and required to demean himself "submissively" to them. His position was that of legal subjection and statutory inferiority to the dominant race.

It was this condition and all its incidents which the Amendment was intended to eradicate. It meant to restore to him the rights of person and property—the natural rights of man—of which he had been deprived by slavery. It meant to undo all that slavery had done in establishing race discrimination and collective as well as personal control of the enslaved race.

It is quite possible that the term "involuntary servitude" may have been employed to prevent that very form of personal subjection which, soon after the emancipation of the slave, manifested itself in the enactment of the "Black Codes" which assumed control on the part of the State of all colored laborers who did not contract within a certain time to labor for the coming year and hired them out by public outcry. At least, it is evident that the purpose of this Amendment was not merely to destroy chattelism and involuntary servitude but the estate and condition of subjection and inferiority of personal right and privilege, which was the result and essential concomitant of slavery.

In the State of Louisiana, recently, Judge King of the Civil District Court of the Parish of Orleans, deciding the suit of one Raymond to annul his marriage, says: "a quadroon is one part of the African or negro race "xxx." Instead of marrying a woman of the white or Caucasian race, he has married one three-fourths Caucasian and one-fourth of the negro or African race." Ibid. Yet in this suit of Raymond against his wife, he set up for sufficient cause to annul his marriage, that he was mistaken in the belief that she was of pure Caucasian blood.

"Intermarriage between the races is not forbidden by the law of Louisiana. Succession of Colwell 34 La. An. 266, which declares marriages in this state between white and colored persons to be legal. It is forbidden in eighteen states of the American Union; and is made penal in Pennsylvania, California and Maine." Ibid.

In 1866, the state of Virginia enacted a law expressly including quadroons, in the class termed colored persons.

These opinions, statutes and constitutions, so widely at variance when compared, will enable this Hon. Court to estimate the magnitude of the task which the Louisiana Legislature has imposed upon railroad conductors by requiring them to classify and separate their passengers according to race and color. But we pass on now to trace the lines of a parallel marked and distinct between the subject we have just discussed and another subject apparently dissimilar, upon which this Honorable Court has already decreed.

The Supreme Court of the United States in the case of the Chicago, Milwaukee and St. Paul Railway Company *vs.* State of Minnesota, 134 U. S., 418, 10 Sup. Ct. R. p. 462, refused to make peremptory a mandamus ordered by the State Supreme Court of Minnesota on the relation of the Railroad and Warehouse Commission created by the State law, to compel the railway to reduce the Tariff of freight on milk from three cents to two and one half cts. per gallon between points within the limits of the State, on the ground that the State law authorizing the Commission to fix the charges and adopt such as "they shall declare to be equal and reasonable;" is unconstitutional as depriving carriers of their property without due process of law, in so far as it makes the decision of the Commission, as to what are "equal and reasonable charges," final and conclusive. The State Supreme Court had decreed that there was but one fact traversible, viz. that the Railway Company had violated the law by not complying with the recommendations of the Commission, and that the law neither contemplates nor allows any issue to be made, or inquiry to be had, as to the equality or reasonableness in fact of the charges they had declared.

But on appeal this Hon. Court held that the question was judicial and not legislative; that the laws of the State of Minnesota hsd

never fixed or declared what charges were "equal and reasonable;" therefore that the recommendations of the Commission were not "final and conclusive," on the contrary that they were the subject of judicial investigation; that the Minnesota law deprived the Railway Company of its rights to such investigation by due process of law, under the forms and with the machinery provided by the wisdom of successive ages for the investigation judicially of the truth of a matter in controversy, and substitutes therefore as an absolute finality the action of a Railroad commission, which, in view of the powers conceded to it by the State Court, cannot be regarded as clothed with judicial functions, or possessing the machinery of a court of justice.

In the same case, Mr. Justice Bradley dissenting said: "Due process of law does not always require a court. It merely requires such tribunals and proceeding as are proper to the subject in hand.

A line of federal cases, including Budd *vs.* New York, 143, U. S., 517, 53 Fed. R. p. 197; Mercantile Trust Co. *vs.* Texas Pacific Railway Company 51 Fed. R. p. 529, are to the same effect.

They establish and confirm the principle that where discretion has been left to State Railway Commissions to declare what rates shall be adopted as a tariff of freights and charges that is "reasonable and just," or that their recommendations shall be "conclusive evidence," or "sufficient evidence" of the reasonableness of the rates they fix, there still remains the question for judicial determination, according to the methods of investigation appertaining to courts of justice. "The effect of the provision in the laws being to deprive the railroad companies of the right to show that the rates fixed are not reasonable and just, the rates fixed by the Commissioners being in themselves evidence of their reasonableness, deprives them of their property without due process of law; and in so far as they are deprived of the same right of defense in the courts that other litigants would have under the same circumstances, they are denied the equal protection of the laws." The essential difference between the case of Budd *vs.* New York, 143 U. S. 517, and the other cases referred to was that the legislature itself had fixed the rate of freight, instead of leaving discretion to a local railway commission.

This is especially what we are contending for in the case now before this honorable Court. The legislature of the State of Louisiana instead of defining the terms "colored person and person of the colored race," has committed this important function, not to a railway commission, but to railroad conductors, whose judgment in this regard is to be accepted as final and conclusive, under penalty of fine and imprisonment; and without recourse to any of the courts of the State, which is expressly denied by the statute, in case a conductor should refuse to carry, and eject from the train, a passenger who will not accept his

judgment or decree as final and conclusive, as to whether he should be classed as of the white race, or of the colored race. Therefore we say that such provisions in the Louisiana statute of July 10th, 1890, deny the petitioner due process of law as respects his property and his liberty, and also that he is denied the equal protection of the laws which is a right every citizen of the State of Louisiana has, under the Federal Constitution, and there exists no sufficient reason why passengers on railroad trains should be isolated as exceptions to the general rule.

Again, it may be added, while a railroad conductor is perhaps the only person who can conveniently determine whether a passenger is of the white race or of the colored race, when a railway train is moving at the speed of thirty miles an hour, he cannot do so arbitrarily and without rule and regulation prescribing the limit within which his judgment shall be exercised; and there can be no due process of law unless such rule is provided by the legislature of Louisiana, in a word to define what is meant by the term "colored race," and how the facts shall be determined.

There is besides what we have said, a practical every day view to be taken of the working of the law in question; Intermarriages between persons of different races is legalized, and encouraged in the State of Louisiana, if not actively, it is by the silence and inaction of the legislature. To such as are thus united in the holy and sacred bonds of matrimony, the application of the statute we are discussing to their peculiar situation presents a very strange anomaly. A man has surely an absolute right to the companionship and society of his wife; and on the other hand, a wife has claims which cannot be denied on the protection of her husband. It would appear however, that these time honored truths fail to hold good on railway trains, operated within the limits of the State, since the adoption of Act 111, approved July 10th, 1890,entitled an act to promote the comfort of passengers,etc. The conductor is authorized, under the law in question, to assign the husband to one coach set apart for persons of one race, and the wife to another coach set apart for persons of a different race. And still it is persistently contended that this law does not discriminate on account of race or color. To pursue the principle another step beyond this: The statute actually separates parent and child. If the husband is white and the wife colored, their children partake of the status of their mother, so that the conductor of the railroad train has authority to assign them to the coach set apart for colored persons; on the other hand, the same rule does not hold good, if the husband is colored and the wife is white, their children do not partake of the status of their mother, as in the instance just referred to, they partake of the status of

their father, and the conductors has authority to assign them to the coach set apart for colored persons.

The trouble with this law is that it perpetuates race prejudice among citizens of the United States, and that the spirit of caste and race is exemplified in the spirit of legislation.

The fourteenth amendment prohibits a state from depriving a person of life, liberty, or property without due process of law, and from denying to any person within its jurisdiction the equal protection of the laws. It simply furnishes an additional guaranty against any encroachment by the State upon the fundamental rights which belong to any citizen as a member of society. "The duty of protecting all their citizens in the enjoyment of an equality of rights was originally assumed by the States, and it still remains there. The only obligation resting upon the United States is to see that the States do not deny the right. This the amendment guarantees, but no more. The power of the National Government is limited to the enforcement of this guaranty." U. S. *vs.* Cruikshank, 92 U. S. 542.

Another view of the subject-matter may be taken to show the impracticability of carrying the statute into operation without encroachment upon other fundamental rights of the citizen.

It has been decided by the Supreme Court of Louisiana, Exrel Abbott *vs.* Judge, 44 La.,Anl. 583, that the law is unconstitutional, as regulation of commerce between the States, a power which appropriately belongs to Congress. Interstate passengers, are, therefore, held not to be affected by the provisions of the statute. Its operation is then confined to passengers travelling wholly within the state. That is to say the law with respect to passengers within the state abridges privileges enjoyed by those who are travelling between the states, on the same trains.

A man and his wife set out upon their travels by railroad on the same passenger train, the one to traverse many states on the route, the other not to go beyond the limits of the State. Husband and wife, inter-state passenger and intra-state passenger are subject to different laws on the same train. If they are of different races, the first has the right to seek and enjoy the society of the other, but it is not the same with respect to the second, because he or she is not permitted to travel on the train, except in the coach assigned by the conductor, on account of race or color. We now approach the close of this division of our argument. Equal right means the same right shared by all alike. We are told that we are bound to accept as true what the title of the statute announces as its object, "to promote the comfort of passengers." But we must be permitted to urge at least a mild protest against the acceptance of the universality of this axiom, without impugning the sincerity of the legislature, when it is self-evident that

the text of the statute destroys our faith in the title that caps its headlines. Listen to what the Honorable Justice Harlan quoted in the Civil Rights Case: "It is not the words of the law but the internal sense of it that makes the law. The letter of the law is the body; the sense and reason of the law is the soul."

How far equal rights are protected under the statute, and that it may be truthfully said that this was the purpose of the statute, and that it legalizes no discrimination as to color, and is not class legislation, but is really intended for the comfort of persons of both races, we furnish an example, which we think, calculated to dispel every doubt on the subject: a white man, married to a colored person, boarding the train has the right to enter and take his seat in the white coach with his black servant, if the servant be the nurse of his children; but the children themselves, necessarily colored, or not, as the case may be, must occupy the colored coach, if the conductor please so to to assign them. On the other hand, although the white man and his black servant, employed as nurse, may occupy the white passenger coach, not so is it permitted to the colored wife; she is required to part with her husband at the coach door and take her seat in the coach intended for colored passengers. Thus the bottom rail is on top; the nurse is admitted to a privilege which the wife herself does uot enjoy, and which is refused to the children whom she is attending. If there be any answer to this, we will readily confess our surprise.

(8) The statute deprives the citizen of remedy for wrong, and is unconstitutional for that reason.

What is the wrong authorized by the act ? and what is the remedy the citizen is deprived of ? Has the relator been guilty of, or is he even charged with, any misbehavior, *malum in se*, *or malum prohibitum*, under a constitutional law, which has forfeited his right to personal liberty, however temporary or limited the period may be under the provisions of the statute of July 10th, 1890 ? Has he violated any state law, or mnnicipal ordinance, in the nature of a police regulation, to which any constitutional right reserved to him by the Federal Government must give way for the public welfare ? The demurrer to the plea he set up negatives every ground of complaint against him, except that he insisted upon remaining in a passenger coach of a local railway train "to which by race he did not belong." It is pretended that the law he is charged with violating was enacted to promote the comfort of passengers travelling on railroads operated wholly within the limits of the state, other than street railroads, by assigning to separate coaches and compartments on the trains, persons of the white race and those of the colored race. As a matter of law, nobody will challenge the state's right to regulate the operation of its own railways within the limitations prescribed by the Federal Constitution. But

this right to regulate and control must not interfere with the rights of citizens to the equal protection of the laws, nor deprive them of their liberty and property without due process of law; nor in carrying out this power must they be deprived of any right, privilege or immunity secured to them by the organic law. He complains that he has suffered all these wrongs, under authority of the state statute, and that the same law denies him remedy, or the right of recourse to any of the courts of the state. This is not equal protection of the laws.

Respondent sets up that relator has not been deprived of any right privilege or immunity by the statute of July 10th, 1890, or by the proceedings thereunder. This is a bold assertion to make against a man, be he white or colored, who has been arrested and thrown into prison for refusing to abide by the decision of a railway conductor, as to whether he is in point of fact white or colored, which refusal is made a crime by a statute of the state.

But, it is urged, the temporary deprivation of liberty which petitioner has suffered, until he gave bail, is only an incident that always attends the prosecution of those who are accused of offending the majesty of the state by the infraction of the law. Is the act of July 10th, 1890, a law? It is not a law. Why is it not a law? Because it has made to be a crime and punishable, such act as cannot be made a crime in the nature of things, even by the highest and most solemn expression of the state's legislative will, the right of a man and citizen to assert himself, to defend himself, to maintain his right, to complain when he is wronged, to expostulate with the wrong doer. This is a positive right, an absolute right, an inalienable right, a right protected by constitutional amendments. With equal reason might the legislature declare it to be a crime, and punishable, if a man defend his person, his family, or his property against unprovoked attack and unlawful intrusion. His deprivation of liberty for this cause, whether permanent or temporary, is a deprivation of the positive right to personal liberty, which it is one of the objects of the amendment to secure.

But the refrain is, the law is a local one, passed to promote the comfort of passengers on railroad trains, to prevent contact between the races.

Street railroads are not included in the provisions of the act; but who is there that does not know that contact between white and colored persons on street railroads is more immediate, and many thousand times more frequent, than on any other line or system of railroads carrying passengers for hire?

All police regulations are not necessarily constitutional; unconstitutional statutes are sometimes disguised in the habiliments of police regulations. Police regulations should be reasonable, and not involve

the sacrifice of natural and inalienable rights, nor can they make a crime out of a natural right.

Not any section of the statute under discussion, which contains any penal clause, is constitutional; certainly not that section which authorizes the conductor to drive a man from one coach to another, whether of equal accommodations or not. These are some of the wrongs the statute perpetrates. It forbids the courts of the state to afford remedy. "It affects the passenger's substantial rights to be able to show the facts and he cannot be constitutionally deprived of the power." Little Rock R. R. Co. 33 Ark. 816; 34 Am. Rep. 55.

"The legislature cannot, in defining crimes and declaring their punishment, take away or impair any inalienable right secured by the constitution." Lawton *vs.* Steele, 119 N. Y., 226; 16 Am. State Rep. 814.

"It is not competent for the legislature to give one class of citizens legal exemptions from liability for wrongs not granted to others; and it is not competent to authorize any person, natural or artificial, to do wrong to others without answering fully for the wrong." Park *vs.* Detroit Free Press Co., 72 Mich. 560. 16 Am. State Rep. 544.

"A statute which attempts to relieve newspaper publishers from responsibility for every injury to character by libel, whether intentionally false or not, is unconstitutional and void." Ibid.

"The legislature has no authority to direct courts what disposition they shall make of a particular case or question that comes before them; and any legislative commands about such matters, other than those contained in the general law of the land, are unconstitutional and void." Baggs' Appeal, 2 Rapalje's Dig.

"The legislature cannot prescribe a rule of conclusive evidence and divest rights by prescribing to the courts what should be conclusive evidence." Little Rock R. R. 33 Ark. 816, 2168, No. 5.

"An act of the legislature which undertakes to determine questions of fact and law, affecting the rights of persons or property, is judicial in its character and is therefore not a rightful subject of legislation. The legislature has no constitutional power to control the action of the courts." Am. and Eng. Ency. 682.

"The legislature cannot prescribe a rule of conclusive evidence. It may declare what may be received as evidence, but it cannot make that conclusively true which may be shown to be false. It is not within the province of the legislature to divert rights by prescribing to the courts what should be conclusive evidence." Little Rock R. R., *vs.* Payne, 33 Ark. 816; Cairo & Fulton R. R., *vs.* Parks, 32 Ark. 131.

Assignment of Errors, Point Second.

SECOND. The next point of our brief is directed to the fact that the statute authorizes the conductors of Railway trains to assign their passengers, according to their classification of them as persons of the white race and persons of the colored race, to separate coaches, without regard to the fact that the coaches and accommodations to which those of the other race are assigned should be substantially equal.

The Supreme Court of the state says this is not so; that the statute will not support such construction. Reaffirmation and denial amount to but little when the text of the statute (Pr. Rec. p. 6) is readily accessible. There is no rule more familiar than that criminal statutes are to be construed as *stricti juris*. The statute leaves too much to be supplied by implication, to help out conclusions respecting the intention of the legislature, a rule which does not obtain, and should not be permitted to prevail.

While it is true that the railroad companies are required by the statute to provide separate but equal accommodations for passengers of the white and colored races under penalty of fine, there is nothing in the text of the several sections to indicate that the accomodations to which a contumacious passenger is assigned by the conductor shall be equal to those from which he is expelled. This is left entirely to inference though the statute is penal, and therefore to be construed strictly. The court was in error; because the literal text of the law terminating the second section of the statute is as follows: "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 for damages in any of the courts of this State."

The conductor is here again made the supreme judge, from whose decree there is no appeal. It is not at all made a question whether the accommodations are equal or not. The conductor says the passenger must go to this or that coach, and no more about it, either in court or out of court. The one may be a palace car, the other a cattle car, but the passenger must obey at the *ipse dixit* of the conductor, who is not even an officer of the state, but a mere employe of a railroad. In you go, or off you go, if you "refuse;" and if you "insist," up you go to the Parish prison and the Criminal court.

If this text be applied, the law cannot escape the taint of unconstitutionality upon this ground alone, because the section promotes the conductor to the perilous elevation of a judge without appeal, and his decree is to be accepted, at the passenger's peril, not only as to who are white and who are colored, but as an imperative command that he

shall go where he is ordered, whether the accommodations are equal or not, and whether or not he be correctly classed as white or colored. If they are not equal, there is a clear discrimination between the passengers, founded on race or color. We do not mean to be understood to say that it is unconstitutional that a railway officer should so misbehave, no matter what his motive, but we do attack as unconstitutional the statute for so authorizing and enabling him to misbehave, to say nothing of the impunity it has attempted to couple with this authorization.

It is answered to our objection, if colored passengers are so assigned, under this law, to coaches which may or may not be equal as to comfort and accommodation, white passengers are called upon to take the same chances. Yes, when they are mistaken for colored persons. After all, however, discrimination in the matter is evident, and whether for or against the white race, or for or against the colored race, it is by state legislation on account of race or color, and such discrimination is forbidden.

The information (Pr. Rec. p. 4) presented by the counsel for the state of Louisiana, faithfully follows the statute by keeping silent as to whether the coach to which the conductor ordered the petitioner to go, was or was not equal in point of accommodations, compared with the coach from which he was expelled. Neither does the same pleading charge that the petitioner, H. A. Plessy, is a colored man, and that he insisted on remaining in a coach of a railway train set apart for persons of the white race; an allegation which has been industriously suppressed in the information, simply we infer, because there exists no positive law or precedent in Louisiana to authorize a legal conclusion whether an octoroon is to be classed as of the white race or of the colored race; although the affidavit contained in the record(p.4,)under which petitioner was arrested and thrown into prison for refusing to obey the command of the conductor, fully recites the fact. We condescend, however, to notice a mere sophism on the part of the respondent, that petitioner has not set up in his plea whether he is of the colored race or of the white race. We have been taught that affidavits, indictments and informations are the appropriate sources from which to seek for the knowledge of facts charged against accused persons; and that the burden of allegation and proof as to whether petitioner is of the white race or of the colored race devolves upon the state, as part of the accusation against petitioner. Any way this fact could only have been pleaded by defendant by way of answer, or set up by way of proof to the merits of the prosecution, and not by way of exception to the jurisdiction of the court, which is the only question we have anything to do with. The issue upon the plea in the lower court, narrowed down, was simply whether the court had a

right to entertain cognizance and jurisdiction of a cause alleged to be founded upon a state law in conflict with the amendments to the United States constitution. It is the only issue here, before the Supreme Court. Whether the petitioner, H. A. Plessy, is white or colored, or mostly white, or mostly colored, cuts no figure in the determination of the question of a court's jurisdiction or authority to hear and determine a case upon constitutional grounds. Every fact and argument is set up in the plea filed in the court below, that petitioner depends upon in this Honorable Court to show that the state courts were without constitutional authority to entertain the proceedings complained of against petitioner.

Indeed, neither the information nor the statute enlighten us whether a passenger who is an octoroon, and in whom color is not discernible, should be assigned to a coach set apart for colored passengers, or to a coach set apart for white passengers. It appears to us that in either event, such octoroon is made to suffer not for his own fault, but because at will, one conductor has authority under the state law to assign him to a coach among white passengers, and another conductor, with equal authority and reason, may assign him to a coach among colored passengers.

Assignment of Errors, Point Third.

THIRD. The court erred in its decree that "the statute obviously means that the coach to which the passenger is assigned shall be, according to the requirements of the act, to the coach to which the passenger by race belongs." Now the error upon this point consists in the absence of data, precedent, or statute upon which a conductor is to decide. How can the court itself say to what race belong quadroons, and octoroons and those persons who are of mixed Caucasian and African descent in the proportion of fifteen-sixteenths Caucasian and one-sixteenth part African blood? Will the court say, can the court say, whether these persons are of the white race, or of the colored race, to use the classification paraphrased in the statute? The court cannot, because these persons are not of any distinct race, they are of mixed races, representing almost in perfection the Caucasian type. There must be a time when color runs out entirely. When is this? When color ceases to be discernable, or at so many degrees removed from the African ancestor? Who, what law has fixed these degrees? Who will say from mere inspection whether the relator in this cause is of pure Caucasian blood or otherwise? The conductor of a railroad train is expected to do all this, without the aid of the legislature or of the court to guide him. The race to which the octoroon belongs is just where the state Supreme Court left it, to be decided by the railroad conductors.

The court is confident that the statute obviously provides that the passenger shall be assigned to the coach to which by race he belongs; but the trouble is the court takes for granted what is only assumed, and not granted or proved, that is to say the race to which the passenger belongs; when neither jurists, lexicographers, nor scientists, nor statute laws nor adjudged precedents of the state of Louisiana, enable us to say what race the passengers belongs to, if he be an "octoroon." We know that he is not of pure Caucasian type, neither can he be said to be of any of the colored races. Which race is the colored race referred to in the statute? There are Africans, Malays, Chinese, Polynesians; there are griffs and mulattoes. But which of all these is the colored race the statute speaks of? The legislature might have relieved us from this perplexity, but it has not done so.

Assignment of Errors, Point Fourth.

FOURTH. We are next to consider another important provision in the statute we are attacking. "That neither the conductor nor the railroad company he represents shall be liable for damages for such refusal (to carry the passenger who refuses to occupy the coach to which the conductor assigns him on account of race to which he belongs) in any of the courts of this state," (Louisiana.) Omitting the words in parenthesis, these are the concluding sentences of the second section of the statute.

Yet the Supreme Court of the state is clear in its opinion that the statute does not exempt the officer or conductor from damages for refusing to carry a passenger who refuses to obey an assignment to a coach to which his race does not belong. According to our construction the contrary of what the court has maintained is equally apparent. More than this, we think we discern the motive that induced the legislature to incorporate this important provision in the statute. The words certainly mean something intelligible. If they mean nothing, why encumber the statute with them? Our idea is that the assurance of immunity from damages held out to the railroad companies would quicken their interest in a matter to which they would otherwise be indifferent. The courts of the state are sought to be rendered powerless to condemn conductors and railroad companies as responsible for the consequences of their own acts and the abuse of discretion reposed in them by the provisions of the statute.

The legislature might with equal reason undertake by anticipation to say that the courts shall not condemn a policeman for clubbing an unresisting prisoner in his custody.

It is for the courts to adjudge, not for the legislature to command, whether railroads and conductors shall be held responsible by passengers whose rights are ignored or invaded.

In this same connection, we will add that by this provision the legislature of our state has undertaken to say what construction shall be placed on the statute, and to interpret the constitutionality of its own act, an undisguised assumption of judicial power.

"A mandate of the legislature to the judiciary, directing what construction shall be placed on existing statutes, is an assumption of judicial power, and unconstitutional." Governor *vs.* Porter, 5 Hum. 165.

"A statute providing that no person shall recover damages from a municipality for an injury from a defect in a highway, unless he resides in a country where similar injuries constitute a like cause of action, is unconstitutional." (Clearly because it denies equal protection of the laws.) Pearson *vs.* City of Portland, 69, Me. 278.

"Positive rights and privileges are undoubtedly secured by the XIVth Amendment, but they are secured by way of prohibition against state laws and state proceedings affecting those rights and privileges." Bradley, J. Civil Rights cases 109, U. S., p. 3.

"As to these words from Magna Charta, 'by the law of the land,' after volumes spoken and written, with a view to their exposition, the good sense of mankind has at length settled down to this that they were intended to secure the individual from the arbitrary exercise of the powers of government unrestrained by the established principles of private rights and distributive justice." Bank of Columbia *vs.* Okely, 4 Wheat, 244.

Assignment of Errors, Point Fifth.

FIFTH. This leads us to another branch of the argument closely connected with what has been said: That officers and conductors of passenger trains are authorized by the statute to "refuse to carry on such trains" any passenger who shall decline to submit to their judgment as final and conclusive that he is of the white race or of the colored race.

The opinion of the State Supreme Court was in effect that "the statute utterly repels the charge that it vests the officers of the company with a judicial power to determine the race to which the passenger belongs." This was error on the part of the court. We are again fortified by reference to the statute.

According to the 2nd section of the act it is expressly provided that "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 passenger belongs," and terminates with the provision that in case of refusal on the part of the passenger to occupy the coach to which he is assigned, "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 represent, shall be liable for damages in any of the courts of this state."

The only reason the court has given in its decree for overruling what we are here contending for, is to affirm what we have said in equivalent terms. The court said "the 'discretion' vested in the officer to 'decide' primarily the coach to which by race each passenger belongs is only that 'necessary discretion' attending any imposition of a duty, etc." What idea do these words convy? Neither more nor less than what we say ourselves.

"Discretion to decide" which are the words the court has used in the decree, are the equivalents of the words "judicial power," which the Court finds fault with us for using. When the conductor "decides" what coach the passenger belongs to, he "decides" at the same instant whether the passenger is of the white race or of the colored race, and if the passenger refuses to submit to the "discretion of the conductor to decide," or his "judicial power," or the "necessary discretion that attends the exercise of the duty imposed upon him," which is all one thing, the conductor shall have power to refuse to carry such passenger on his train. So that sentence follows speedily upon the heels of the judgment.

JAMES C. WALKER,
of Counsel for Plaintiff in Error.

XXII—"Privileges and Immunities of citizens of the United States."

It has been suggested that the omission of the term "rights" from the category of things exempted from impairment by State authority, was an intended reservation of state control. We beg to suggest that exactly the contrary is true.

"Right" as defined by Chancellor Kent, "is that which any one is entitled to have or do, or to require another to do, within the limits prescribed by law." Rights may be natural or conferred. The exercise of any right is a "privilege" in the legal sense. The distinction has been sought to be made between the exercise of natural and conferred rights, that the latter alone is the basis of privilege: but it does not rest on any solid ground. Privilege is the exercise of a legal right, however the same may attach.

"Immunity" is the legal guaranty of non-interference,—either with "right"—that is the abstract title on which the claim that one may "have or do or require another to do," any specific thing rests—or with the "privilege," which is based upon or constitutes the exercise or enjoyment of such right.

"Right," which is the basis both of "privilege" and "immunity" is, therefore, expressly included by the use of these terms. No "right," of any citizen of the United States, can be denied or contravened by the law of any State, without impairing the "privileges" and "immunities" of the citizen which correlatively depend thereon.

XXIII—The construction of the First Section of the Fourteenth Amendment contended for by the Plaintiff in Error, is in strict accord with the Declaration of Independence, which is not a fable as some of our modern theorists would have us believe, but the all-embracing formula of personal rights on which our government is based and toward which it is tending with a power that neither legislation nor judicial construction can prevent. Every obstacle which Congress or the Courts have put in its way has been brushed aside. Under its impulse, the Fugitive Slave law, and the Dred Scott decision, both specially designed to secure the perpetuation of slavery under the constitution, became active forces in the eradication of that institution. It has become the controlling genius of the American people and as such must always be taken into account in construing any expression of the sovereign will, more especially a constitutional provision which more closely reflects the popular mind. This instrument not only asserts that "All men are created equal and endowed with certain inalienable rights, among which are life, liberty and the pursuit of happiness," but it also declares that the one great purpose for

which governments are instituted among men is to "secure these rights."

Applying this guiding principle to the case under consideration, what is it natural and reasonable to conclude was the purpose of the people of the United States, when in the most solemn manner, they ordered this broad, unmodified and supremely emphatic declaration to be enrolled among the mandates of our fundamental law? Were they thinking how to enlarge the power of the general government over individual rights so as to include all, or how to restrict it so as to include as few as possible? Were they thinking of State rights or human rights? Did they mean to perpetuate the caste-distinctions which had been injected into our law under a constitution expressly and avowedly intended to perpetuate slavery and prevent the spirit of liberty from growing so strong as to work its legal annihilation—were they seeking to maintain and preserve these discriminations, or to overthrow and destroy them?

The Declaration of Independence, with a far-reaching wisdom found in no other political utterance up to that time, makes the security of the individual's right to "the pursuit of happiness," a prime object of all government. This is the controlling idea of our institutions. It dominates the national as well as the state governments. In asserting national control over both state and national citizenship, in appointing the boundaries and distinctive qualities of each, in conferring on millions a status they had never before known and giving to every inhabitant of the country rights never before enjoyed and in restricting the rights of the states in regard thereto,—in doing this were the people consciously and actually intending to protect this right of the individual to the pursuit of happiness or not? If they were, was it the pursuit of happiness by all or by a part of the people which they sought to secure?

If the purpose was to secure the unrestricted pursuit of happiness by the four millions then just made free, now grown to nine millions, did they contemplate that they were leaving to the states the power to herd them away from her white citizens in the enjoyment of chartered privilege? Suppose a member of this court, nay, suppose every member of it, by some mysterious dispensation of providence should wake to-morrow with a black skin and curly hair—the two obvious and controlling indications of race—and in traveling through that portion of the country where the "Jim Crow Car" abounds, should be ordered into it by the conductor. It is easy to imagine what would be the result, the indignation, the protests, the assertion of pure Caucasian ancestry. But the

conductor, the autocrat of Caste, armed with the power of the State conferred by this statute, will listen neither to denial or protest. "In you go or out you go," is his ultimatum.

What humiliation, what rage would then fill the judicial mind! How would the resources of language not be taxed in objurgation! Why would this sentiment prevail in your minds? Simply because you would then feel and know that such assortment of the citizens on the line of race was a discrimination intended to humiliate and degrade the former subject and dependent class—an attempt to perpetuate the caste distinctions on which slavery rested—a statute in the words of the Court "tending to reduce the colored people of the country to the condition of a subject race."

Because it does this the statute is a violation of the fundamental principles of all free government and the Fourteenth Amendment should be given that construction which will remedy such tendency and which is in plain accord with its words. Legal refinement is out of place when it seeks to find a way both to avoid the plain purport of the terms employed, the fundamental principle of our government and the controlling impulse and tendency of the American people.

ALBION W. TOURGEE,
of Counsel for Plaintiff in Error.

BRIEF OF JAMES C. WALKER, ESQ., OF COUNSEL FOR PLAINTIFF IN ERROR, ON POINTS SECOND, THIRD AND FIFTH OF ASSIGNMENT OF ERRORS, AND ON SUBDIVISIONS 7, 8 AND 9 UNDER POINT ONE, ASSIGNMENT OF ERRORS.

Assignment of Errors Subdivisions 7, 8, 9.

The Statute authorizes the Officers and Conductors of Passenger trains operated wholly within the limits of the State of Louisiana (1) to classify their passengers as of the white race and as of the colored race. (2) To assign them according to this classification, to separate coaches without regard to the fact that the coaches and accommodations to which those of one or of the other race are assigned should be substantially equal; (3) The officers and conductors of such passenger trains are authorized by the statute to "refuse to carry on such train" any passenger who shall decline to submit to their judgment as final and conclusive that he is of the white race or of the colored race; (4) The statute declares that "neither the conductor nor the railroad company he represents, shall be liable for damages for such refusal in any of the courts of this State," (Louisiana.)

We propose to take up these several points under the appropriate headings in the assignment of errors to which they have been referred as reasons indicating certain particulars in which the Supreme Court of the State erred in maintaining the constitutionality of the statute in question.

(7 and 9.) The said statute is an invasion and deprivation of the natural and absolute rights of citizens of the United States to the society and protection of their wives and children travelling in railroad trains, when said citizens are married to persons of the other race under the law and the sacrament of the church, marital unions between persons of both races, which are not forbidden by the laws of Louisiana.

(9) Neither the statute, nor the laws of the state of Louisiana, nor the decisions of its courts have defined the terms "colored race" and "persons of color" and the law in question has delegated to conductors of railway trains the right to make such classification and made penal a refusal to submit to their decision.

In a word the authority conferred by the statute upon the officers and conductors of railroads to classify and separate their passengers according as in their judgment they belong to the white race or to the colored race, is in conflict with the XIVth Amendment to the Federal Constitution in so far as it operates as a deprivation of liberty and property without due process of law and denies the equal protection of

the laws. We feel confident that upon this point, we are entitled to a reversal of the decree of the State Supreme Court.

To begin, the question is judicial and not legislative. It is judicial because the statute commits to the final and conclusive judgment of a railroad conductor whether a really white man is to be classed as a colored man. It is not a legislative question because neither the statute in question nor any other law of the state, nor any precedent of its tribunals within the scope of our research has ever defined the terms "colored persons" and "persons of the colored race." Recourse to the statute laws and judicial reports of other states makes manifest a most unaccountable variance in the conclusions arrived at.

The statute we are considering leaves uncertain and indefinite who are included among those classed as persons of the "colored race." How shall we surmount this difficulty? The legislature of Louisiana has left it to railroad conductors to surmount the difficulty, and to ensure correctness of judgment on their part, the statute exempts them from liability for error of judgment or wilful perversion of the power committed to them in any of the courts of the state. But of this later on.

It may not be an uninteresting fact, which we have authority to announce, however, that there are almost as many definitions of the terms, "colored persons" and "persons of color," as there are lexicographers and courts of the highest resort in the several states of the Union. After diligently scrutinizing the old Black Code of Louisiana, we find only designated as such, "negroes or blacks, griffs, mulattoes, and mulattoes of the first degree." The list seems to have been short. Under the Michigan State constitution the petitioner now before the court would be classed as a white man, as of mixed Caucasian and African descent, in the proportion of seven-eighths Caucasian and one-eighth African blood; moreover the admixture of colored blood is not discernable in petitioner's complexion. People *vs.* Dean, 14 Mich., 406. In North Carolina, according to the North Carolina Revised Code, (1850) ch. 107, §79, petitioner is classed as a "free negro." State *vs.* Chavers, 5 Jones, N. C., 11.

As we said before, Louisiana law and precedents are silent on the subject, as far as our research extends. But what, if it were otherwise? How would it affect a citizen's constitutional rights to be classed by law as a white man in one state and as a negro or person of color in another state? One would think that his reputation and social status as a white man ought to be worth something. Reputation is a species of property, and is valuable in proportion as it entails rights and privileges. whether social or political. The rights and privileges of a white man, as such, are not to be taken from him by State legislation.

The effect would be to make petitioner's rights and privileges dependant on such classification, and would therefore be void.

Nobody can ignore the fact that while the political rights and privileges of white and black are equal before the law, social recognition, as of the white race entails consideration, esteem and respect in the community, often based on no higher claim, from which, however the humbler citizen of the other race is practically excluded.

Although successive legislatures of this State have purposely neglected, or inadvertently omitted, to define what is meant by the term "colored person, or persons of the colored race," of which other States and communities have not been so unmindful, as appears by certain statutes and constitutions to which we directly refer, the General Assembly of the State, in the Act we are considering, No. 111, approved July 10th, 1890, has delegated this power whether legislative or judicial, to the officers and conductors of railway trains; authorizing them to adjudge who is white and who is colored, and thus to discriminate on the ground of race and color. The exercise of such suthority, we had almost said jurisdiction, must often be attended with great difficulty; must often depend upon closeness of observation, or upon evidence not always readily accessible. In a word the legislature has avoided this responsibility, and made it devolve upon the officers of common carriers, acting by virtue of public charters and carrying passengers for hire.

It may serve an useful purpose to refer at this time to a number of definitions of the terms "colored persons" and "colored race" which have been attempted by law writers, legislatures, and courts throughout the Union.

Colored Race—Negro, Mulatto. Am. and Eng. Ency. of Law, vol. 16, p. 484; 1 Bishop on Marriage and Divorce, 308. (Statutory definition in North Carolina.)

"A negro is a person having in his veins one-sixteenth or more of African blood." State *vs.* Chavers, 5 Jones 1. (N. Car.) 11.

"The term negro is identical in signification with the term colored person, and is a person with one-fourth or more of negro blood." Jones *vs.* Commonwealth, 80 Va. 544.

"The word negro means a black man, one descended from the African race, and does not commonly include a mulatto." Felix *vs.* State, 18, Ala. 720.

" Negro does not include a person who has less, though only a drop less, than one-fourth of African blood." McPharson *vs.* Com. 28 Gratt Va. 939; Am. and Eng. Ency. of Law, Vol. 15, p. 946.

"A Mulatto is a person begotten between a white and a black." Medway *vs.* Natick, 7 Mass. 88.

"Under this definition it has been decided that a person whose

father was a mulatto and whose mother was a white woman, was not a mulattò. But all courts have not followed this distinction, having considered a mulatto to be a person of mixed white, or European and negro descent, in whatever proportion the blood may be mixed." Am. and Eng. Ency. 947, and cases there cited.

"A mulatto is defined to be a person that is the offspring of a negress by a white man, or of a white woman by a negro." Thurman *vs.* State, 18 Ala. 276.

"In a suit for freedom, where the question at issue was whether plaintiff's were negroes, held that there was no error in allowing them to show their naked feet to the jury, evidence having been given by physicians that the foot was one of the distinguishing marks of race." Daniel *vs.* Guy, 23 Ark. 50.

"Persons are white, within the meaning of the Michigan State Constitution, who have less than one-fourth of African blood." People *vs.* Dean, 14 Mich. 406.

"Person of color, means a person of African descent." Heirn *vs.* Bridault, 37 Miss. 209.

"Free person of color, means a person descendant from a negro within the fourth degree inclusive, though an ancestor in the intervening generation was white." State *vs.* Dempsey, 9 Ired.(N.C.) L. 384.

"The instructions that according to N. C. Rev. Code, (1854) ch. 107, 79, a person must have in his veins less than one-sixteenth of negro blood, before he will cease to be a free negro, was held not to be error." State *vs.* Chavers, 5 Jones, N. C. 11.

"The question whether persons are colored or white, where color and features are doubtful, is for the most part for the jury to decide by reputation, by reception into society, and by their exercise of the privileges of a white man, as well as by admixture of blood." White *vs.* Tax Collector, 3 Rich S. C. 136.

"An indictment charging defendant as a free person of color, with carrying arms, cannot be sustained; for the act of North Carolina is confined to free negroes." State *vs.* Chavers, 5 Jones 11.

Under the provisions of the Michigan Constitution, conferring upon every white male citizen, and every civilized male inhabitant of Indian descent, the elective franchise a person who has one-eighth Indian blood, one-fourth African aud the remainder white is not entitled to vote. 1869. Walker *vs.* Brockway. 1 Mich. N. P. 57.

"On the question whether an individual is within the statute provision embracing persons having one-eighth or more negro blood, reputation, and the opinion of physicians may be given in evidence, but the weight of the evidence is for the jury." 1869. White *vs.* Clements, 39 Ga 232.