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Carriers of Passengers--Separate Compartments for Members of Different Races--Interstate Commerce (Mitchell v. United States, 313 U.S. 80 (1941))

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RECENT DECISIONS

CARRIERS OF PASSENGERS — SEPARATE COMPARTMENTS FOR MEMBERS OF DIFFERENT RACES—INTERSTATE COMMERCE.—In 1937, *X*, a negro resident of Chicago, and a member of the House of Representatives of the United States, boarded the Illinois Central Railroad at Chicago, Illinois, after purchasing a round-trip ticket to Hot Springs, Arkansas. Unable to secure sleeping-car accommodations to his destination, *X* reserved a compartment to Memphis, Tennessee, and from there paid ninety cents for a Pullman seat to Hot Springs. When the train crossed the state line into Arkansas, the conductor ordered *X* to move to the second-class car provided for negro passengers, in keeping with the Arkansas State Law.[1] *X* was forced under threat of arrest to occupy a filthy, foul-smelling car, divided into three compartments; one for colored smokers, a second for white smokers, and a third for colored men and women. The car, in contrast to the rest of the train, was not air-conditioned nor well ventilated; sanitary facilities were crude and for the most part lacking. Such a car was part of the company's equipment until three months after this occurrence, when the Illinois Central Railroad replaced it with a modern air-conditioned coach. *X* brought a suit for damages before the Interstate Commerce Commission. From a plea entered by the attorneys for the Railroad, which stated that such conduct was justifiable and reasonable, and that dining cars and sleeping cars could not be provided for negro passengers due to the negligible trade from them, and that such an incident would not be likely to recur—the Commission found for the Railroad and dismissed the complaint. On certiorari to the United States Supreme Court, *held,* reversed, on the ground that the Arkansas statute was unconstitutional; that it was a violation of the Interstate Commerce Clause in the Federal Constitution,[2] and further it deprived the plaintiff of the protection provided for in the Federal Constitution under Amendment Fourteen.[3] *Mitchell* v. *United States,* 313 U. S. 80, 61 Sup. Ct. 873 (1941).

From 1877 until 1914, similar cases, each involving the question of discrimination against the negro race in interstate commerce, were brought before the Supreme Court. It was a judicial problem to determine whether in each case the state legislature sought to regulate intrastate or whether they were interfering with interstate commerce in violation of the Federal Constitution. In every case but one[4] the

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[1] POPE'S DIG. § 1190. *Separate Coach Law*—requires segregation of the races into equal but separate and sufficient accommodations. Such laws are prevalent in the Southern states: Maryland, Alabama, Kentucky and Louisiana.

[2] U. S. CONST. Art. I, § 8(3): "* * * confers upon Congress alone the power to regulate commerce among the several states * * *."

[3] U. S. CONST. AMEND. XIV: "* * * No state shall make or enforce any law which shall abridge the privileges or immunities of the citizens of the United States. * * *."

[4] Carry v. Spenser, 72 N. Y. St. Rep. 108, 36 N. Y. Supp. 886 (1893) (for

highest state courts and the Supreme Court held that such "separate coach laws" were regulatory of intrastate commerce and therefore constitutional.[5] The long history of this subject evolving finally in victory for the negro race presents a confused and ironic picture at best. The earliest case on record, similar to the one under discussion, was *De Cuir* v. *Hall*[6] where a Louisiana statute which attempted to prohibit segregation of races in the state was declared unconstitutional. As it was pointed out, while the law assumed to regulate intrastate commerce only, it in effect would influence the conduct of those passengers traveling through several states on a journey. Yet, thirteen years later, when Kentucky passed her segregation statute the Supreme Court held it was not unconstitutional,[7] but that the regulatory measure was meant to be purely intrastate. Certainly such a reversal was irreconcilable. Cases which followed were disposed of in the same manner,[8] the Supreme Court holding: "* * * the construction of a state statute by the highest court of the state is conclusive in the United States Supreme Court."[9] It is for these reasons that the instant case proves so interesting. Regardless of the decisions of the high state courts, regardless of earlier narrow decisions, regardless of contentions that the demand for Pullman seats by negroes is negligible over this and other lines, the Supreme Court has at last seen fit to render a decision which took sixty-four years in its evolution.

G. M. P.

CHARITABLE SUBSCRIPTIONS — CONSIDERATION — PROMISSORY ESTOPPEL.—The decedent, who was interested in the welfare of Hillsdale College, the claimant here, consented to donate $1,000 towards the building of a new library. The decedent signed the subscription agreement in question with the understanding that two memorial windows would be placed in the building in honor of his parents. The

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the plaintiff, a colored woman traveling from New York to Tennessee. *Held,* she was an interstate passenger. Law, intrastate in purpose was unconstitutional as it sought to regulate interstate traffic).

[5] Cand. O. R. R. v. Kentucky, 179 U. S. 388, 21 Sup. Ct. 101 (1900) State v. Jenkins, 124 Md. 376, 92 Atl. 773 (1914).

[6] 95 U. S. 485, 4 L. ed. 547 (1877).

[7] Louisville, N. O. & Texas R. R. v. Mississippi, 133 U. S. 587, 10 Sup. Ct. 348 (1890) (with strong dissenting opinion by Justice Harlan: "* * * and where interstate carrier laws exist within different states, the one requiring segregation, the other forbidding it—each is an infraction of the United States Constitution, and both are unconstitutional.").

[8] McCabe v. Atchinson, 235 U. S. 151, 35 Sup. Ct. 69 (1914); State *ex rel.* Abbott v. Hicks, 44 La. Ann. 770, 11 So. 74 (1892); Alabama & Va. Ry. v. Morris, 103 Miss. 511, 60 So. 11 (1912).

[9] Louisville, N. O. & Texas R. R. v. Mississippi, 133 U. S. 587, 10 Sup. Ct. 348 (1890).