THE COURTS.

Superior District Court.

IMPORTANT DECISION ON CIVIL RIGHTS.

JOSEPHINE DECUIR VS. JOSEPH G. BENSON.

Judge Cullen yesterday read an important decision in this case, of which the following is a synopsis:

The plaintiff in this case is a lady of color, genteel in her manners, modest in her deport, neat in her appearance, and quite fair for one of mixed blood, and of a decided preponderance of Caucasian and Indian blood. She was never a slave, nor a descendant of a slave.

She left this city on or about July 20, 1872, for the purpose of returning to the parish of Pointe Coupee, where she was married, taking passage on board of the steamer Gov. Allen, then engaged in the business of common carrier. There is no dispute about the facts. Mrs. Decuir applied for passage, and was refused a cabin passage. A cabin passage was offered her in what is called the "bureau," situated below the place assigned to the white passengers, and is kept exclusively for people of color, which is not as comfortable for a lady as the cabin above. A lady's cabin was asked, but the defendant peremptorily refused to permit Mrs. Decuir to occupy one.

On her arrival at the Hermitage, she disembarked and paid for a first-class passage.

She now institutes a suit, declaring that defendant refused her equal rights and privileges accorded to the white passengers, on account of her race and color, and that the exposure, mortification and mental anguish she suffered entitle her to exemplary damages to the sum of $75,000.

As the constitution of the United States and of this State has fixed the unlimited citizenship of the colored race in the United States, I must examine this case as if Mrs. Decuir were a purely white lady, suing for her rights. Courts cannot make distinctions where the law does not, and availing myself of the strong language of Judge Konyon, "they are bound and shackled by certain rules from which they cannot depart."

Counsel has furnished a lengthy brief, in which he endeavors to show that if plaintiff was not treated as a white lady, it was because she had not made a tender in advance of the amount of money which white ladies paid. This is a mere technicality. The statute of 1867 declares that "when such person shall, on demand, refuse or neglect to pay the customary fare." It was, therefore, the duty of the defendant to first make the demand before he could, under the law, deny her the rights and privileges accorded to white ladies on board his boat.

With regard to the second objection, that it was the custom to give such accommodations to women of color, I have but little answer to make. Custom cannot contravene the written law. On this law the courts depend, and they are bound to carry it out. Counsel has laid much stress on the fact that plaintiff knew all about the rules and regulations which steamboats had established, when she got on board the Gov. Allen.

This is doubtless true, but it is equally true that Capt. Benson knew of the existence of laws whose authority had suspended these rules and regulations, and a systematic disregard of these laws can furnish no argument to excuse their violation, but, on the contrary, the courts must vindicate their authority more promptly.

It is the province of the Legislature to enact laws, and of the courts to interpret, construe and administer them. Whether laws are adapted to the present state of society or not, is an important matter, it is true, but one with which courts have nothing to do. Social necessities are often in advance of legislation, but whenever "the supreme power of the State" speaks on it, society must pause, and the people obey. Its the duty of the courts to prescribe what the law is, not what it ought to be.

Another point urged by counsel is that an interference of a State with the rules and regulations of vessels is, in substance, an attempt to regulate commerce, which belongs to the General Government. But the slaughterhouse case expressly recognized the fact that, notwithstanding the convulsions through which we have passed, the States still have certain sovereign powers which they may lawfully exercise.

The cases referred to by the counsel in support of this proposition are not now in point, because they antedate all the recent changes in the constitution of the United States, providing for the regulation of the status of the colored race in America. As well might he invoke the Dred Scott case as authority for the denial of the black man's citizenship.

It is useless to go further. The law under which this action is brought, is article thirteen of the State constitution: "All persons shall enjoy equal rights and privileges upon any conveyance of a public character." Now, is a steamboat a conveyance of a public character? I am not aware that the right of the Legislature to control steamboats by law has ever been seriously questioned.

The law has given common carriers the right to refuse carriage or to expel passengers who refuse to pay their fare, on demand, or when they shall be of infamous character, or guilty of gross, vulgar, or disorderly conduct; provided such rules make no discrimination on account of race or color.

It only remains to fix the quantum of damages. I am unwilling to allow exemplary damages, and shall only allow the real damages she suffered. She was obliged to engage a lawyer to prosecute this suit, and to undergo other expenses, I therefore award her one thousand dollars.

I cannot conclude without expressing the fond and sincere hope that the time may speedily come when a fostering government may, by wise laws and a mild administration, aided by an independent judiciary, and supported by a willing, patriotic people, inspired by a unity of political purposes, and striving for the general welfare, may submerge and do away with every necessity for investigation of causes like this; and when all distinctions germinating in prejudice and unsupported by law may be finally forgotten, and when the essential unity of American citizenship shall stand universally confessed and sincerely acquiesced in by the national family.

STATE OF LOUISIANA EX REL. J. J. HAYES VS. CITY OF NEW ORLEANS.

This came up for trial yesterday, on a rule taken by the city of New Orleans to dissolve the injunction issued herein.

After hearing argument of counsel, the court considering the law and the evidence to be in favor of the plaintiff, ordered that the said rule be made absolute dissolving the said injunction, as in case of bond.

The facts of the case are as follows: The plaintiff alleges that by act of the Legislature of 1872, establishing a hospital for small-pox and other contagious diseases, and establishing a site for the erection thereof, petitioner being the owner of said site, and is therefore entitled to receive all said cases of indigent sick in his said hospital.

That in violation of said act, the city of New Orleans, through its administrators, having been and are now continuously violating the said requirements of law, by sending the same to the hospital of Dr. Antoux, and have appropriated money out of the city treasury to pay said Antoux, therefore, he prays that the said city be enjoined from appropriating any moneys out of the city treasury for the care or per diem of such to any other person than the relator, J. J. Hayes.