CASES

ARGUED AND DETERMINED

IN THE

SUPREME COURT OF TENNESSEE,

FOR THE

WESTERN DIVISION.

JACKSON, APRIL TERM, 1887.

CHESAPEAKE, OHIO & SOUTHWESTERN RAILROAD COMPANY *v.* WELLS.

(*Jackson.* April 5th, 1887.)

RAILROADS. *Passenger's rights and duties. Surrender of ticket. Seat in reserved coach. Mulatto.*

A railroad company is not liable in damages to a mulatto passenger, who, having declined a seat in a coach free to persons of both sexes, regardless of race or color, and equal in all respects to any coach in the train; and having also refused to surrender her ticket unless admitted to a seat in another coach reserved exclusively for white ladies and their gentlemen attendants; quits the train, of her own accord, on being informed by the conductor of his purpose to eject her, on account of her refusal to surrender her ticket.

(See Code (M. & V.), §§ 2364–2367.)

(See Memphis & Charleston Railroad Company *v.* Benson, *post.*, p. 627, citing and explaining this case.)

FROM SHELBY.

Appeal in error from Circuit Court of Shelby County. J. O. PIERCE, J.

Action begun before a Magistrate, by a mulatto, against the Chesapeake, Ohio & Southwestern Railroad Company for an alleged violation or withholding of her rights as a passenger on one of defendant's trains. Judgment before the Magistrate, and also in Circuit Court upon trial without a jury, against the railroad company. The company appealed.

HOLMES CUMMINS for Railroad Company.

GREER & ADAMS, and T. F. CASSELLS, for Wells.

TURNEY, C. J. On 4th May, 1884, defendant in error, a mulatto, purchased of plaintiff in error a ticket over its road from Woodstock to Memphis, a distance of ten miles. She passed through the front car to the platform, where she was stopped by the conductor and told to take a seat in the front car. She refused to give up her ticket unless allowed a seat in the rear car. The conductor told her he would have to put her off. The train was stopped at about 400 yards, when she was politely assisted from the car by a colored porter. She left the train of her own accord because not allowed to pass within the rear car. Persons of either sex were allowed in the front car without regard to color or race. She says she saw one person smoking in that car, and that it was filled with tobacco smoke; while another passenger says there was no one smoking, nor was there any tobacco smoke. There were only six passengers in

the front car, one of them a woman. The rear car was set apart for white ladies and their gentlemen attendants.

The two coaches were alike in every respect as to comfort, convenience, and safety; were furnished and equipped alike, and with like accommodations.

We know of no rule that requires railroad companies to yield to the disposition of passengers to arbitrarily determine as to the coach in which they take passage. The conduct of the plaintiff below was upon an idea without the slightest reason. Having offered, as the statute provides, "accommodations equal in all respects in comfort and convenience to the first-class cars on the train, and subject to the rules governing other first-class cars," the company had done all that could rightfully be demanded.

We think it is evident that the purpose of the defendant in error was to harrass with a view to this suit, and that her persistence was not in good faith to obtain a comfortable seat for the short ride.

Judgment reversed, and judgment here for plaintiff in error.

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A railroad company is not liable in damages to a mulatto passenger, who, having declined a seat in a coach free to persons of both sexes, regardless of race or color, and equal in all respects to any coach in the train; and having refused to surrender her ticket unless admitted to a seat in another coach reserved exclusively for white ladies and their gentlemen attendants; quits the train, of her own accord, on being informed by the conductor of his purpose to eject her, on account of her refusal to surrender her ticket.

(See Code (M & V.) ##2364 - 2367.)
(See Memphis & Charleston Railroad Company v. Benson, post., p. 627, citing and explaining this case.)

From Shelby

Appeal in error from Circuit Court of Shelby County. J. O. Pierce, J.

Chesapeake, Ohio & Southwestern Railroad Company v. Wells

Action begun before a Magistrate, by a mulatto, against the Chesakeake, Ohio & Southwestern Railroad Company for an alleged violation or withholding of her rights as a passenger on one of defendant's trains. Judgement before the Magistrate, and also in Circuit Court upon trial without a jury, against the railroad company. The company appealed.

Holmes Cummins for Railroad Company

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Turney, C. J. On 4th May, 1884, defendant in error, a mulatto, purchased of plaintiff in error a ticket over its road from Woodstock to Memphis, a distance of ten miles. She passed through the front car to the platform, where she was stopped by the conductor and told to take a seat in the front car. She refused to give up her ticket unless allowed a seat in the rear car. The conductor told her he would have to put her off. The train was stopped at about 100 yards, when she was politely assisted from the car by a colored porter. She left the train of her own accord because not allowed to pass within the rear car. Persons of either sex were allowed in the front car without regard to color or race. She says she saw one person smoking in that car, and that it was filled with tobacco smoke; while another passenger says there was no one smoking, nor was there any tobacco smoke. There were only six passengers in the front car, one of them a woman. The rear car was set apart for white ladies and their gentlemen attendants.

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We think it is evident that the purpose of the defendant in error was to harrass with a view to this suit, and that her persistence was not in good faith to obtain a comfortable seat for the short ride.

Judgment reversed, and judgment here for plaintiff in error.

Memphis & Charleston Railroad Company v. Benson

(This is continuation of above case. I copied it because it contained reference to the Ida B. Wells case.)

He based his refusal to go into the forward car upon the ground that it was a smoking-car, and that the foul air of such a car was likely to make him ill.

There can be no doubt that the contract of a carrier of passengers by railway is one not only to furnish the passenger with transportation, but with the comfort of a seat. The contract is no more performed by furnishing him with a seat without transportation than it is when he is offered transportation without a seat. It is equally well settled that the passenger need not surrender his ticket until he is furnished with a seat, for the ticket is the evidence of the contract which entitled him to one. But it cannot be that one may ride free because not furnished with a seat. If the passenger chooses to accept trantportation without a seat, he must, on demand, pay his fare. If unwilling to ride without transportation is furnished him in a seat, he must get off at first opportunity, and by so doing may bring his action for breach of contract, and recover as damages such sum as will compensate him for such breach, including such damages as are the natural and immediate results of such breach. Rorer on Railroads, 968, 969; Davus v. Railroad, 53 Mo., 317; Railroad v. Leigh, 45 Ark.., 368.

It results that for the indignity and vexation consequent upon the ejection in this case there can be no recovery. This result is made the more certain by the facts of this case, it appearing that at the time this passenger entered the car at the terminal station he saw that this car assigned to ladies, and gentlemen with ladies, was overcrowded, and he knew that he must either ride standing or take a seat in the car called the smoking-car. He gave the railway company no opportunity to furnish additional seats while at this terminal station. We have at this term, in the case of Railroad Company v. Ida Wells, I Pickle, 613, held that a railway company may make reasonable regulations concerning the car in which a passenger might be required to ride, provided that equal accommodations were furnished to all holding first-class tickers, and that a regulation assigning a particular car to persons of color, that car being in all respects equal in comfort to any other in the train, was reasonable. This rule has been sustained in the courts of many States. Westchester Railroad Company v. Miles, 55 Penn., 209; Chicago & Northwestern Railroad v. _____, 55 Ill. 185.

So we think a regulation setting apart a car for ladies, or gentlemen accompanied by ladies, a reasonable regulation. A passenger may not dictate where he will sit or in which car he will ride. If he is furnished accommodations equal in all respects to those furnished other passengers on the same train, he cannot complain, and this was the substance of our decision in the Ida Wells case. The doctrine is equally applicable here. - - -