THE MEMPHIE (TENN.) APPEAL AVALANCHE, Thursday, December 25, 1884

A DARKY DAMSEL

OBTAINS A VERDICT FOR DAMAGES AGAINST THE CHESAPEAKE AND OHIO RAILROAD - WHAT IT COST TO PUT A COLORED SCHOOL TEACHER IN A SMOKING CAR - VERDICT FOR $500

Judge Pierce yesterday rendered his decision in the cast of Ida B. Wells vs. the Chesapeake and Ohio Railroad. The suit has attracted a good deal of attention. Judge Greer, appearing for the plaintiff and Mr. Holmes Cummins for the railroad. From the testimony it appeared that the railroad company had on sale at the time of the grievance of but one kind of passenger tickets, and that plaintiff purchased one good until used from Memphis to Woodstock, paying full price. She took a seat in the ladies' coach, and when approached by the conductor after the train left the depot handed his the ticket. He refused to accept it, and ordered her to go to the other coach, which was similar to that in which she was seated, but which was occupied exclusively by white men and negroes, many of whom were smoking. The plaintiff refused to go, and the conductor, seizing her by the arm, attempted to force her into the other coach. She continued to resist, and was finally put off the train. Judge Pierce rendered the following decision.

Opinion of the Court

On the facts of this case the Court is of the opinion that plaintiff was wrongfully ejected from the defendant's car, because she was thereby refused the first-class accomodation to which she was entitled under the law. The policy of Tennessee on this subject has been embodied in statutes. The act of 1881, chapter 155, passed April 7, 1881, ispro-fessedly adopted in order to prevent railroad companies, which collect

first-class fares from colored passengers, from compelling them"to occupy second=class cars where smoking is allowed, and no restrictions are enforced to prevent vulgar and obscene language". It provides that all railroad companies shall furnish to colored passengers, who pay first-class rates, either separate cars, or separate compartments of cars, which are to be"kept in good repair, and with the same conveniences and subject to the same rules governing other first-class cars, preventing smoking and obscene language." For failing to have these provisions "strictly enforced" by their employees, every railroad company operating om tjos State is liable to a statutory penalty,

The amendatory act of 1882, chapter 6, passed May 20, 1892, further provides that all such passengers, paying first-class passenger rates shall be entitled to "accomodations equal in all respects to the first-c;ass cars pn the train, and subject to the same rules governing other first-class cars." and increases the penalty recoverable for a violation of these requirements.

By these enactments the policy of the State is declared to be to allow a complete separation of the races when traveling upon railroad trains, while at the same time allowing no discrimination against either race in the way of inequality of accomodations.

Judicial authority is not wanting for the establishment of these precise rules for the government of said railroad trains, even in the absence of legislative interposition.

In 1867 it was decided in Pennsylvania that as a matter of law, a railroad carrier may so classify the passengers and separate the black and white races, provided each class has comfortable, safe and convenient accomodations, not inferior in any of these respects to those enjoyed by the other. (Railroad vs. Miles, 55 Penn. St. 209) This decision found some favor with the justice of the United States Supreme Court, in

Hall vs. DeCuir 95 U.S. 485. In 1870 it was decided in Illinois that "public carriers, until they furnish separate seats, equal in comfort and safety to those furnished for other travelers, must be held to have no right to discriminate between passengers on account of race, color or nativity alone." (Railroad vs. Williams, 55 Ill. 185) This was said in a case where a respectable colored woman was refused a seat in a ladies car, there being no accomodations offered her on that train equal to those furnished white women.

The statutes of this State thus establish the same rule which the courts would undoubtedly apply in the absence of statutes. The defendant in this case has failed in its legal duty to the plaintiff in refusing to allow her first class accomodations and requiring her to accepp those which were inferior. The rules which defendant professed to establish and pretended to enforce are commendable, and if enforced would be in compliance with the law. But in this case there was only a pretended enforcement of them. Defendant "kept the word of promise to the ear" only. Although the car assigned to colored passengers on the trip in question was first-class in its construction and equal to that assigned to white passengers, and had, in fact, been assigned to and used by white passengers on a former trip on the same day, and although the professed rule was that no smkoing, drunkenness or vulgar conduct was allowed in that car, still the actual allowance of smoking and drunkenness in that car reduced it below the grade of first-class. The Legislature of this State has indicated in the statute above cited that cars in which smoking is allowed are to be rated as second-class cars. To compen persons to whom smoke is offensive or unpleasant to inhale it is an act of cruelty, and to suffer them to be exposed unnecessarily to the annoyance is, on the part of a railroad carrier, negligence,

A nominal rule on the subject is not a compliance with the law. The statute enjoins it upon the carrier to have this regulation "strictly enforced" by its employees.

A classification of its passengers by a railroad company, so as to separate the races, is not only within its discretion because its patrons may so desire, but is required by the statutes before recited. The plaintiff's case, however, does not rest upon an objection to this classification. The wrong complained of is the failure to furnish, with the classification, accommodations for the colored passengers equal to those accorded to the white passehgers. If defendant, in addition to providing two cars of equal first0class construction, had made the classification of its passengers complete as to both cars, and by preventive measures had insured to passengers in the forward car the same quiet, good order, decorum and conveniences in all respects, that were enjoyed by those in the rear car, it could then have justified the removal from either car a passenger not entitled to ride there under the rules. But defendant, having failed to provide for plaintiff in the forward car the accomodations to which she was entitled, had no right to require her to ride in it, nor to remove her from the rear car; and such removal was a wrong for which she is entitled to damages.

The provision of the statute for a penalty of $300 in each case of failure of a railroad company to comply with the statute, has no effect upon plaintiff's right of recovery.

The penalty is prescribed for the mere failure to provide first-class accomodations..

Plaintiff sues here for the greater wrong of ejecting her from the only first-class car on the train, an aggravation of the first offense of failing to comply with the defendant's statutory and legal duty.

Judgement for plaintiff for $500 damages.