

A.W.T. PAPERS Mar 1892

CHAUTAUQUA COUNTY NY HISTORICAL SOCIETY 2013

March 14th 1892

Gas. C. Walker Esq

Dear Sir,

Yours of Feb'y 26th received.

I agree with you that our clients should make
no clamor at all about the case. Let it go
on as if they had no interest in it more
than in any other case. Especially let there
be no public comment on the proceedings
at any stage. I think it will suffice if you
reach this to Mr. Besdames and ask him to
inform Mr. Mortimer that this is my wish
and judgment.

By the term "the white outlook," I usually
meant the person on whose information
the warrant was issued.

It seems to me that your "plea to the
jurisdiction" after indictment might be
so drawn that the State would demand,

It is not strictly, it seems to me, a plea to the jurisdiction, but rather a plea in abatement for lack of cause of action.

and yet state all the necessary facts. I do not think it will be necessary to state in the pleadings, the grounds of objection as fully as I stated them in my letter of Jan. 14th but only to prepare a basis for them -

It seems to me that the following ^{such a} ~~the~~ are the essential averments for ~~the~~ ^{as} ~~abatement~~ which you propose to make to the indictment:

- 1 - That the ~~for~~ defendant is a citizen of the United States and a resident of the State of Louisiana.
- 2 - That the Knoxville and Nashville Railroad Company is a corporation organized under the laws of ^{the State of} ~~the~~ ^{and having its principal office} ~~in~~ ^{the city of} ~~in~~ ^{in the State} of ~~the~~ ^{and doing business} ~~as a~~ ^{as a} common carrier of passengers

the said
3 - That ~~it is~~ a common carrier of passengers is regularly engaged in ~~and~~ doing business as such in ~~engages~~ running lines from the city of New Orleans in the state of Louisiana to ~~come to~~ the city of Mobile in the state of Alabama.

4 - That the defendant bought and paid for a ticket of said company entitling him to one first-class passage from said city of New Orleans to said city of Mobile and had the same in his possession and control at the time of the act ^{as the charges thereof} alleged in the indictment, and that the amount or amount he was in possession of ~~was~~ ^{of the} a first-class one as ~~was~~ called for by the said ticket.

5 - That said Defendant was guilty of no breach of the peace, ^{no noise or obscenity} ^{and uttered no profane or vulgar language} or conduct ⁱⁿ said case; that he was respectably and cleanly dressed; that he was not intoxicated, nor affected by any noxious disease; and that ~~he~~ no objection was made to his personal appearance, conduct or condition ~~so~~ by any one in said case nor could such objection have been truthfully made.

6 - That the indictment is based on the following act of the Legislature of the State of Louisiana passed at the Session of _____ and known as Chapter _____ of the laws of said session.

(Set forth the act in totidem verbis.)

That said act is in conflict with the Constitution of the

United States, the passenger belongs

7- That Section 2 of said Act is an essential part of the same; that said section ~~proves~~ pretends to confer upon the conductor of a ~~bus~~ railroad train ~~and~~ the power to determine the question of race and to ~~to~~ arrest the passengers upon said train in accordance with his decision. That the refusal of the passenger to abide by the decision of the conductor is attempted to be made a criminal offense and is the gist of the present indictment: that the legislature has no power to confer judicial ~~and~~ functions upon "an officer of a passenger train" nor to make a punishable refusal to accept his decision as to "the

race to which the passenger belongs"
a crime on to attach to ~~said~~ make
said act punishable by fine and ~~imprisonment~~
imprisonment.

8 - That said ~~act~~, ~~section~~ being an
essential part of said act, is likewise
unconstitutional and void, in that it
provides a summary remedy for such
pretended criminal act by authorizing the
officer to refuse to carry such pretended
continuously passenger and exempting
both the company and the officer
from any claim for damages on
the part of said passenger, ~~this same~~
being ~~a denial of rights~~ ^{the infliction of punishment} without process
of law and the denial to the citizens
of the United States of the equal protec-
tion of the laws.

9 - That the purpose and object of said act, as appears upon its face, is to assort and classify all passengers upon railroads doing business within the state according to race and make their rights and privileges dependent on said classification, and is therefore void.

10 - That ~~as to~~ race is a scientific and legal question of great difficulty; that the State has no power to authorize any person to determine the same without testimony, to make the rights or privileges of any citizen of the United States, dependent on the fact of race or its determination by such unauthorized person; to compel the individual citizen to accept such determination or to make refusal to comply with the same a penal offense.

11 - That the State has no right to distinguish between the rights and privileges of citizens of the United States on the ground of race in public railway trains within said state.

12 - That the state has no power to distinguish by law between the rights and privileges of citizens of the United States on the terms used by common carriers, undertaking and carrying on a general passenger traffic between different states of the Union.

13 - That ^a ~~the~~ State has no ^{power or authority} right to grant exclusive rights or privileges to citizens of one race which are denied to citizens of another race or to make the refusal to submit to such denial a penal offense.

It seems to me that the State would not readily and readily demur to a plea containing these averments, especially with the general idea that the Supreme Court of the United States has already decided against ~~them~~ it.

It really contains no averments of fact about which there could be any material controversy and I should think there would be no doubt about the demurrer being interposed. — I cannot see any professional reason for ~~forcing~~ requiring us to prove the facts alleged.

I cannot see any use in making the extraordinary application to the State Supreme Court and if it means any delay, I would not do it. *Ex Parte Royell* 117 W.D. R. seems to be explicit on the subject, especially ~~where~~ ^{where} there the more so as there is no appeal. We ^{shall then} have exhausted the ordinary process of the state courts and our client

will be imprisoned without warrant of law
and in violation of the Constitution of the
United States. This is our contention.

It has never been held on authority,
that one must exhaust the exhaustive
remedy jurisdiction of the State Courts be-
fore going into the Federal tribunals.
For instance, one need not apply to the
State Courts for a writ of Habeas Corpus
before going to the Federal Judge.

Why then, for Coramam and Prohibi-
tion? I think it enough when one
man is in jail and the law denies
an appeal. His state remedy is then
"exhausted".

I have omitted the purely state
question of multiplicity. If that
should be held with us and the case

go off upon it our clients would suffer
for a virtual defect. What they want
is not a verdict of not guilty, nor
a defect in this law but a decision
whether such a law can be ^{legally} enforced,
and enforced in any state and we should get
everything off the track and out of the
way for such a decision. I don't

I leave the form and character of the
plea entirely to your better judgment
but think it should contain the arguments
I have given and that application should
be made at once to the Federal Judge
for a writ of Habeas Corpus. Of course,
the officer's return will bring up the whole
proceedings at the hearing and the judge
will of course ^{of course} ~~admit~~ ^{to} ~~be~~ ^{be} ~~bound~~ ^{to} ~~to~~ ^{to} ~~bind~~ ^{to} ~~bind~~ ^{to} ~~bind~~ ^{to}
ing further action. Yours truly
Albin W. Tourgeon