

Mayville N. Y.  
March 12 + 1872

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My dear Sir: I am in receipt of yours of the 8th  
inst, enclosing copy of proposed plea

I like it. The only comment or suggestion  
I have to make is whether it is not better  
to omit the clause I have marked in  
the margin, "of both white and colored  
races." I do not think we should imply  
anything in that ~~last~~ line. "A common  
carrier of passengers," is one who holds  
himself out as engaged in the regular  
transportation of passengers, who are <sup>simply</sup> ~~not~~  
to be <sup>simply</sup> ~~simply~~ <sup>things</sup> ~~things~~ of the human race who pay fare.

I return the draft fearing it may  
be your only copy.

As to standing on demurrer,  
should the information allege  
that he was an inter-state

passenger.

I should be afraid to do it for the following reasons:

\* While a demurrer on the ground that the net on which the information is based, ~~would~~ ~~carry up~~ was unconstitutional, would carry up all the questions included in the plea there are some important negatives which I fear would not be covered by presumption. Those which now occur to me are:

(1) - The contract to carry first class as contained by the ticket.

(2) - The allegation of personal vices, & propriety of conduct.

I think these ought to appear. They may not be absolutely necessary; but you know the first effort of the Supreme Court is always to hunt a hole to crawl out of deciding anything they can possibly evade. If these were admitted I do not see why we should not stand on demurrer provided you put in all the points in your plea as grounds of demurrer so that the points would be releasable by the court.

As to <sup>the</sup> prosecution, not being inclined to favor you, of course, it is not to be expected. Neither is it to be supposed, I think, that a man will put himself to much trouble to delay a case he feels sure of winning.

I do not see, if your plea is admissible in your practice, why we need very much favor. The prosecution would I should think naturally demur to this plea. I do not see which he should care to try the merely formal allegations of fact which it contains. If he demurs, he simply admits the facts stated concerning

- (1) the RR. as an interstate common carrier of passengers.
- (2) that defendant had a contract for transportation.
- (3) - That he was clearly and orderly

While your plea is in effect a demurrer saving these allegations, do we would admit ~~to~~ the allegations of the indictment. I do not see any reason why he should

with deference to your plea and let the matter  
slide into its course. There are really no facts to  
try.

I guess reckon ~~that~~ he will do pretty  
much as you or I would in his  
place and I know I am too lazy  
to make myself trouble for nothing.

Yours truly

---

L. W. Sawyer

March 12th 1892