

My dear Pitt: I have your letters of the
4th and 9th inst.

A month's ~~absence~~ illness
leaves me in poor condition to
write clearly of such ^{an abstract} ~~a complex~~
matter.

The plan indicated in yours of
the 9th, is substantially the same as
I suggested to Mr. Wentworth, for getting
the case to the ^{US} Supreme Court on Habeas
corpus, except that it seemed to
me better to apply to the Circuit Court
Judge in the first instance, for the
writ and get him to admit the party to
bail pending appeal from his denial,
which I take it, is to be expected. I
think this is feasible on the authority
of the Virginia Bond case (I am
writing in my bed room and have
no means of referring to the cases by
name, not having been to my office

~~unimpaired~~ in a month. By the way, it is barricaded now by six feet of snow. My memory is that this was the procedure adopted for bringing that case up. No appeal was taken to the State Supreme Court.

Have you any confidence in the point mentioned by you in regard to multiphonousness in the title?

Of course, I know nothing of your decisions, but I confess I do not see good ground for it in the title; You know; I only guess as to this. Is it wise to mix this statel question with the Federal one? Is it worth the ~~the~~ risk of delay?

I take it, that what our clients most desire is a reference out of jurisdiction by the Supreme Court upon the question whether a railroad, chartered by a state has a right to assort its passengers according to race? Whether a state has the power to authorize or con-

fall such assortment? Whether it can
 be made a crime for a man on a cow?
 man to sit in ~~the~~ cow assigned to one
 race when the conductor decides that he
 belongs to another? Whether a conductor
 can be authorized to determine the
 questions of ~~color~~? race? And whether
 whether it can be made a criminal of
 force to occupy a seat of the same class
 for which a ticket calls because it is in one end
 of a car and not in the other? And, finally, whether
 or an act is constitutional which exempts
 from liability in damages both the road
 and its agent for damages resulting from
 his acts?

If these questions are to be un-
 covered in the affirmative by the highest
 tribunal they want to know it; if in the
 negative, they want to know it.

This being the case, it seems to me
 that if you agree as to the procedure in-
 dicated, it would be the best possible
 thing to take the course you ^{suggest} indicate as
 to the purchaser, buying a ticket
 through, say to Chicago, have the com-
 plaint and arrest made as you indi-
 cate, refuse to pay fine and have sentence
 to ~~prison~~ ^{prison} Apply to Circuit ^{W.}

x x

x

~~xxxx~~

Court Judge for writ of Habeas Corpus, you
take it up direct, from my
bill and appeal. I am not sure, under
the same jurisdiction how whether it
goes to the Appellate Court or
decision. By this I sincerely mean
to suggest, of course, I speak to you in
all matters of procedure. A man who
has been ^{substantially} ~~practically~~ out of practice for
half a dozen years, has no right to
an opinion on such points ~~as~~ =
one who has been in the true right
along. My only idea is to go direct to
the Federal Judge and avoid the State
court after sentence of imprisonment
passed.

I suppose of course, the decision
below, will be as you suggest, and a
mere. Indeed, I think it ^{is very} desirable that it
should be, as it gives control of
the appeal further proceedings. That
being the probability, I would sug-
gest great fullness in answering
the complaint of the white sulker

Judge for Habeas Corpus and take the case up through Federal Courts. I suppose you could get client let to bail if habeas writ was refused. This would bring the case to a hearing at an early day. Of course, I mean this merely as a suggestion and wish to defer

(Insert X)

which, as I understood, is to be the basis of the prosecution. It seems to me desirable that the following things appear in it:

- 1- At least a specific reference to the charter of the R. R. Company, by title and page of act.
- 2- An allegation that it is secured or run through various states by arrangement or consolidation — as may be the case.
- 3- The "Separate Car Act" I think would better be set out in full in the body of the complaint or as an exhibit.
- 4- Then of course the ~~case~~ alleged unlawful act.

5

Naturally, the answer will set out
the fact of ~~illegality of the~~ ^{U.S. citizenship}
the purchase of ticket and ~~to other ma-~~
terial facts and deny the right to
assault ^{by you} or punish for refusal to
obey instructions ~~and whatever else you~~
~~deem necessary~~
Then he came to leave judgment
refer to the Separate Con Act as set
out in the complaint as its sole
basis. I am particular about this
lest the court above should try to
dodge the real issue. Of course, the
officer will bring in the commit-
ment ^{ment} and this referring to the complaint
brings in the whole without question
on need of special affidavit. At
least if admitted that makes
the case.

Now, as to the grounds on which
we shall rest.

Make whatever show you think
you can on the Interstate Commerce
matter. I have no suggestions there. In
fact, I think the Court has blocked it.

self and will not like to go any more back
on its decisions. If it holds with us we
must show it a way around that
stump. I leave that branch of the
matter entirely with you. Set it in
as ~~well~~ ^{strong} as your professional assurance
conscience will allow.

I think the real fight will come
hence, on broader grounds and
I would at least formally raise
the following points below:

- * The act is ⁱⁿ violation of the ^{inherent} constitution =
al rights of citizens of the United States.
Art. XIII.
- 1 - It establishes an invidious distinc-
tion between citizens based on
race which is obnoxious to the fundamental
principles of national citizenship
- 2 - That it ~~unfairly~~ abridges the
privileges and immunities of citi-
zens of the United States, Art. XIV.
- ~~3 - That it confers judicial~~
- 3 - That ^{section 2 is an unconstitutional grant of} ~~it~~ ^{confers} judicial power.
~~upon the executive.~~
- 4 - That section 2 is an unconstitu-
tional denial of equal protection

Upon further thought, I am of the opinion, that, I may have spoken too lightly of the Inter-State Commerce matter, though I am not yet able to see that we can allege an infraction of the Inter State Act. Of course, it might be raised on a sleeping-car ticket, being a denial of an express right - in fact, taking his property without ^{due process} of law - but would that cover the whole ground? Would not the decision turn on this and dodge the other questions?

Again, is it not an obstruction to Interstate travel; by compelling change of cars, &c.? In this connection it might be well to see in the answer that the road is continuous and passes into states where no such law exists. There may be something in it.

I cannot now think of anything more to be said. Of course, in a conversation at long range which must be left ~~out~~ ^{uninterrupted} normal, but I trust you will soon ~~be~~ ^{be} ~~able~~ ^{able} to supply such omissions as

Protection of the Cross.

- 5 - That section 2 - is an unconstitutional denial of a right inherent in every citizen.
- 6 - That a ~~road~~ common carrier, ^{of passengers} authorized by public charter cannot distinguish between citizens entitled to use its ~~cars~~ ^{cars, or other means of} transport, ^{as to place or privilege} except on grounds of the accommodation furnished, ~~or~~
- 7 - That a State cannot make a ~~mere~~ refusal to obey the command ^{of an} agent of a corporation ^{an} ~~offense~~ ^{criminal offense} of a ^{citizen of the United States} ~~person~~.
- 8 - That a ~~person~~ ^{citizen of the United States} paying for a seat ~~place~~ on the cars or other means of conveyance, has a right to occupy every seat on place of the grade for which his ticket calls, which may be unoccupied unless disorderly or personally obnoxious to health or decency.
- 9 - Legislation restricting or extending the rights or privileges of any

Class of citizen of the United States, based on race or color, is unconstitutional and void.

- 10 - That while a state may by law require a common carrier of passengers to provide equal accommodations for ~~them~~ ^{them on ~~same~~ caste} ~~both races~~, it has no power to compel any citizen to occupy any particular car or compartment on account of his race or caste.
- 11 - That race is a scientific and legal question of great difficulty and that no state has or ever had the power to authorize the agent of a corporation to determine finally ~~their~~ ^{the} question what citizens of the United States are white ~~or~~ ^{and who are} colored or to what ~~race~~ ^{on caste} they individually belong.

12 - That no state ~~has a constitutional~~
right can legally exempt any individual
from ^{legal} responsibility for his own acts or
those of his agent, or deprive any citizen
of a right to sue and recover damages
for the wrongful conduct of another.

No doubt these points are ~~not~~
~~necessarily~~ ~~minute~~ stated with un-
necessary minuteness. I never saw
the law, in properis verbis, until I re-
ceived a copy yesterday. It is better to have
too many points below than not enough
however, and a sick man must be al-
lowed to be a little diffusive. No doubt
others may occur to you and some
of these may be altogether immat-
erial. I mention them as they occur
to me.

Is there a statutory definition
of "coloured man" or "~~coloured people~~"
persons of color in your state?
If so, what is it? and
