THE SEPARATION OF THE RACES IN PUBLIC CONVEYANCES

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INTRODUCTION

There is perhaps no phase of the American race problem which has been discussed quite so much within the last decade as the Jim Crow laws; that is, the statutes requiring separate accommodations for white and colored passengers in public conveyances. This has been the case largely because these legislative enactments are of general concern, while the other legal distinctions have directly affected only certain classes of either race. For instance, the laws prohibiting intermarriage concern only those of marriageable age; the suffrage qualifications apply only to males of voting age: the statutes requiring separate schools immediately affect only children and youths. But the laws requiring white and colored passengers to occupy separate seats of compartments or coaches concern every man, woman, and child, who travels, the country over. They affect not only those living in the States where the laws are in force, but the entire traveling public. The white man or the colored man in Massachusetts may not care anything about the suffrage restrictions of South Carolina, but, if he travels through the South, he must experience the requirements of the Jim Crow laws.

Inasmuch, then, as these statutes are of such general concern, it is proper that the people should know where they are, what they are, and the means of their execution. It is not the purpose of this article to take sides and discuss the justice or injustice of the laws, or the partiality or the impartiality of their execution, but rather to examine the provisions of the laws, and, so far as may be, to summarize the court decisions upon the different sections of the laws.

Before the Civil War, the slaves were not citizens, and their privi-

leges were largely determined by the will of their masters. It was not till 1865, therefore, that the use of public conveyances—railroad cars, street cars, and steamboats—was restricted.

ORIGIN OF "JIM CROW"

The phrase "Jim Crow" has become so inseparably affixed to the laws separating the races in public conveyances that one State, North Carolina, has indexed the laws under "J" in a volume of the annual statutes. The earliest public use of the phrase appears to have been in 1835, when Thomas D. Rice, the first negro minstrel, brought out in Washington a dramatic song and negro dance called Jim Crow. Joseph Jefferson, when only four years old, appeared in this dance [*Century Dictionary*, 546]. In 1841, Jim Crow was first used in Massachusetts to apply to a railroad car set apart for the use of negroes [*Ibid.*, 3233]. The phrase, then, has a somewhat more dignified origin than is ordinarily attributed to it by those who have considered it as only an opprobrious comparison of the color of the negro with that of the crow.

THE DEVELOPMENT OF LEGISLATION PRIOR TO 1875

The first Jim Crow laws are those of Florida and Mississippi in 1865 and Texas in 1866. The laws of Florida provided: "That if any negro, mulatto or other person of color shall intrude himself into . . . any railroad car or other public vehicle set apart for the exclusive accommodation of white people, he shall be deemed guilty of a misdemeanor and, upon conviction, shall be sentenced to stand in pillory for one hour, or be whipped, not exceeding thirty-nine stripes, or both, at the discretion of the jury, nor shall it be lawful for any white person to intrude himself into any railroad car or other public vehicle set apart for the exclusive accommodation of persons of color, under the same penalties" [Laws of Florida, 1865, p. 25]. The law of Mississippi was: "That it shall be unlawful for any officer, station agent, conductor, or employee on any railroad in this State, to allow any freedman, negro or mulatto, to ride in any first-class

passenger cars, set apart, or used by, and for white persons; and any person offending against the provisions of this section, shall be deemed guilty of a misdemeanor; and on conviction thereof, before the circuit court of the county in which said offense was committed, shall be fined not less than fifty dollars, nor more than five hundred dollars; and shall be imprisoned in the county jail, until such fine, and costs of prosecution are paid: Provided, that this section, of this act, shall not apply, in the case of negroes or mulattoes, traveling with their mistresses, in the capacity of nurses" [Laws of Mississippi, 1865, pp. 231–232]. Texas simply provided that "every railroad company shall be required to attach to each passenger train run by said company one car for the special accommodation of Freedmen" [Laws of Texas, 1866, p. 97].

Perhaps other Southern States would have undertaken similar legislation, had the legislatures been left unfettered; but under the Reconstruction régime, a number of the States passed laws prohibiting discrimination against negroes in public conveyances. In 1870, the Georgia legislature enacted a statute requiring the railroads in the State to furnish equal accommodations to all, without regard to race, color or previous condition, provided the same fare was charged. [Georgia Laws, 1870, pp. 427–428. Prior to January 1, 1861, the regular fare of persons of color in this State was only one-half that of white persons.] In 1871, Texas repealed the law of 1866 [*ante*] and prohibited public carriers "from making any distinction in the carrying of passengers" on account of race, color or previous condition, making the violation of the law a misdemeanor punishable by a fine of not less than one hundred or more than five hundred dollars, or imprisonment for not less than thirty or more than ninety days, or both [Texas Laws, 1871, 2d session, p. 16]. In 1873, Louisiana prohibited common carriers from making any discrimination against any citizen of the State or of the United States on account of race, color or previous condition, and went farther to prohibit common carriers from other States in the State to make such discriminations [Acts of Louisiana, 1873, pp. 156–157]. Out of this latter provision arose the great case of Hall v. Decuir [*post*]. In 1874, Arkansas prohibited any public carrier from making any rules for the government or control

of his business "which shall not affect all persons alike, without regard to race or color" [Code of Arkansas, 1874, sec. 764, p. 259].

In the mean time, some of the States outside of the South were taking steps to adjust the privileges of persons of color. In 1866, Massachusetts made it unlawful "to exclude persons from or restrict them in . . . any public conveyance . . . except for good cause" [Massachusetts Acts and Resolves, 1866–67, p. 242]. The following year, Pennsylvania enacted a statute prohibiting railroads from excluding persons from their cars or requiring them to ride in different parts of the cars on account of color or race, also prohibiting the conductor or other agent of the railroad from throwing the car off the track to prevent such persons from riding [Laws of Pennsylvania, 1867, pp. 38–39]. This law was passed just a few days before the famous case of West Chester and Philadelphia Railway Company versus Mills was decided [*post*].

The following joint resolution adopted by the legislature of Delaware on April 11, 1873, is interesting as showing the feeling at this time in a State outside of the South:

"That the members of this general assembly, for the people they represent, and for themselves, jointly and individually, do hereby declare uncompromising opposition to a proposed act of congress, introduced by Hon. Charles Sumner at the last session, and now on file in the senate of the United States, known as the supplemental civil rights bill, and all other measures intended or calculated to equalize or amalgamate the negro race with the white race, politically or socially, and especially do they proclaim unceasing opposition to making negroes eligible to public offices, to sit on juries, and to their admission into public schools where white children attend, to their admission on terms of equality with white people in churches, public conveyances, places of amusement, or hotels, and to any and every measure designed or having the effect to promote the equality of the negro with the white man in any of the relations of life, or which may by possibility conduce to such result.

"That our senators in congress be instructed, and our representatives requested to vote against and use all honorable means to defeat the passage by congress of the bill referred to in the foregoing resolution, known as the supplemental civil rights bill; and all other

measures of a kindred nature, and any and every attempt to make the negro the peer of the white man" [Laws of Delaware, 1871–73, pp. 686–687].

THE FEDERAL CIVIL RIGHTS BILL OF 1875

The federal civil rights bill of 1875 was the highwater mark of legislation to protect persons of color in the enjoyment of the rights of citizenship. In 1868, the fourteenth amendment to the Federal Constitution was proclaimed to be in force, the first section of which reads: "All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States, nor shall any State deprive any person of life, liberty, or property without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws."

Presuming that such action was authorized by this first section of the fourteenth amendment, congress, on March 1, 1875, passed the civil rights bill, the interesting sections of which are:

Section 1. "That all persons within the jurisdiction of the United States shall be entitled to the full and equal enjoyment of the accommodations, advantages, facilities, and privileges of inns, public conveyances on land or water, theaters, and other places of public amusement; subject only to the conditions established by law, and applicable alike to citizens of every race and color, regardless of any previous condition of servitude.

Section 2. "That any person who shall violate the foregoing section . . . shall, for every such offense, forfeit and pay the sum of $500 to the person aggrieved thereby . . . and shall also . . . be deemed guilty of a misdemeanor" [18 Stat. at Large, 335–336].

The constitutionality of this statute was not questioned until eight years after its passage. In the meantime, the States seem not to have taken much action, except that, in 1881, New York enacted a statute virtually copying the federal law [New York Laws, 1881, vol. i, p. 541].

In 1883, there came before the supreme court of the United States five cases, all of which tested the constitutionality of the civil rights bill, and which were grouped and called the civil rights cases [109 U. S., 3]. Two of them concerned the rights of colored persons in inns and hotels; two of them their rights in theaters; and one, Robinson and wife v. Memphis and Charleston Railroad Company, regarded the rights of persons of color in public conveyances. Mr. Justice Bradley, delivering the opinion of the court, took the ground that the first and second sections [*ante*] of the civil rights bill were unconstitutional for these reasons: Firstly, they were not authorized by the thirteenth amendment, abolishing and prohibiting slavery, because the separation of the races in public places and conveyances is not a badge of servitude. He says, "It would be running the slavery argument into the ground to make it apply to every act of discrimination which a person may see fit to make as to the guests he will entertain, or as to the people he will take into his coach or cab or car, or admit to his concert or theatre, or deal with the other matters of intercourse or business." Secondly, they are not authorized by the fourteenth amendment because that refers to State action, while the civil rights bill refers to individuals. It is State action of a particular character that is prohibited. "Individual invasion of individual rights is not the subject matter of the amendment . . . It does not authorize congress to create a code of municipal law for the regulation of private rights; but to provide methods of redress against the operation of State laws . . . until some State law has been passed, or some State action through its officers or agents has been taken, adverse to the rights of citizens sought to be protected by the fourteenth amendment, no legislation of the United States under said amendment nor any proceeding under such legislation can be called into activity; for the prohibitions of the amendment are against State laws and acts done under State authority." Thus, the power of congress to interfere with individuals in this matter was denied, and they were left free to make such regulations for the transportation of passengers as they saw fit, so long as they did not violate the State laws and so long as the State laws did not violate the federal laws.

STATE LEGISLATION GROWING OUT OF THE CIVIL RIGHTS CASES

The impotence of the federal government under the decisions in the civil rights cases encouraged the States to take the matter into their own hands. Those States which opposed all racial distinctions virtually copied the civil rights bill. Those which believed that the races should be separated in public places and conveyances proceeded to pass laws to that effect, always taking care to keep within the pale of the Federal Constitution (especially the fourteenth amendment) by providing that the accommodations for both races be equal.

On February 7, 1884, Ohio enacted a statute copying the civil rights bill, except that the fine was reduced from $500 to $100 [Laws of Ohio, 1884, pp. 15–16]. On March 4, 1885, Nebraska enacted a civil rights bill, but it did not contain the words "race" or "color" [Laws of Nebraska, 1885, p. 393]. Indiana enacted a similar law on March 9, 1885, specifying restaurants, eating-houses, and barber-shops in addition to those mentioned in the federal statute [Acts of Indiana, 1885, p. 76]. Rhode Island adopted the essential provisions on April 24 of that year [Rhode Island Acts and Resolves, 1884–5, p. 171]. Michigan followed suit on May 28 [Acts of Michigan, 1885, p. 131]. Pennsylvania enumerated restaurants, hotels, railroads, street railways, omnibus lines, theaters, concerts, halls or places of amusement [Laws of Pennsylvania, 1887, pp. 130–131]. New York, in 1893, added cemeteries as places in which there should be no racial distinctions [Laws of New York, 1893, pp. 1720–1721]. Massachusetts made the laws more stringent than those of the other States by prohibiting not only discriminations and restrictions but also distinctions in the privileges of colored passengers [Laws of Massachusetts, 1885, p. 174; 1895, p. 519]. Connecticut was the last of these States to provide against restrictions of the rights of passengers in public conveyances [Connecticut Public Acts, 1905, p. 323].

Before considering the Jim Crow laws of the Southern States, it will be interesting to look into some of the court decisions between 1865 and 1881, the latter being the date of adoption of the first Jim Crow law of the second period, to see what steps the railroad, street car, and steamboat companies had taken to separate the races, in the absence of State legislation upon the subject.

In 1865, a colored woman ejected from a street car in Philadelphia brought action against the conductor, who pleaded that there was a rule established by the road superintendent that negroes were to be excluded from the cars. The court held that the conductor had no right to eject a passenger on account of color or race, and that a regulation of the company would not protect him from liability in damages [Derry v. Lowry, 6 Phila. Rep., 30].

Just a few days after the Pennsylvania legislature passed the act prohibiting discriminations against persons of color in public conveyances [*ante*], the supreme court of the State ruled that it was not an unreasonable regulation of the railroad company to separate the passengers so as to promote personal comfort and convenience [West Chester and Phila. Railroad Co. v. Mills, 55 Pa. State Rep., 209]. This is interesting because it is the earliest case found supporting the separation of the races in public conveyances. Since the case arose before the civil rights act of the State was adopted, it does not purport to rule upon the constitutionality of that act.

In San Francisco, in 1868, a street car conductor refused to stop for a colored woman, saying, "We don't take colored people in the cars," whereupon she brought an action and recovered $500 in damages [Pleasant v. N. B. & M. R. R. Co., 34 Calif., 586]. Here there is an implication that the railroad company had a regulation excluding persons of color from street cars.

In 1870, the Chicago and Northwestern Railway Company refused to admit a colored woman to the car set apart for ladies and gentlemen accompanying them. Whereupon she brought action and recovered $200 in damages [Chic. & N. W. Ry. Co. v. Williams, 55 Ill., 185]. It does not appear from the case that the railroad had set apart any car or part of car for the exclusive accommodation of colored persons.

A steamboat company in Iowa, in 1873, had a regulation that the colored passengers should not eat at the regular tables but at a table on the guards of the boat. The supreme court held that this rule was unreasonable and could not be enforced [Coger v. N. W. Union Packet Co., 37 Ia., 145].

The first case involving the separation of white and colored passengers on cars to reach the United States supreme court was brought

against the Washington, Alexandria, and Georgetown Railroad Company, in 1873 [W. A. &. G. Railroad Co. v. Brown, 17 Wall., 445]. This road was chartered by congress in 1863 with the provision that "no person shall be excluded from the cars on account of color." A negro woman, with a first-class ticket, was made to ride in a separate coach precisely equal to that used by the white passengers. The court ruled that the act of 1863 meant that persons of color should travel in the same cars as white persons along with them in such cars; that the law was not satisfied by the company providing cars assigned exclusively to persons of color, though they were as good as those assigned to white passengers.

In 1873, in a charge to the grand jury in the circuit court of the western district of North Carolina, Judge Dick appears to have been the first federal judge to question the constitutionality of the federal civil rights bill, though he does not argue the point. He says, "Railroad companies may have first-class coaches for colored men, and first-class coaches for white men." [Charge to grand jury, Fed. Cases, No. 18, 258.]

In 1869, the Louisiana legislature passed a law prohibiting railroad, street car, and steamboat companies from making any discrimination on account of race or color [Acts of Louisiana, 1869, p. 37]. A test case arose upon this act in 1875, and in the often cited case of Hall v. Decuir [95 U. S., 485] the supreme court ruled that the Louisiana act was unconstitutional because it was an interference with interstate commerce. Chief Justice Waite said: "If each State was at liberty to regulate the conduct of carriers while within its jurisdiction, the confusion likely to follow could not but be productive of great inconvenience and unnecessary hardship." This case has stood as a warning to the Southern States that they must be careful to mention in their Jim Crow laws that they apply only to intrastate passengers. But, as will be seen later, if this case has not been actually overruled, it has certainly been avoided.

In a case arising in the district court of Texas in 1877, it was held that for a railroad employee to deny to a passenger the right to ride in the only car appropriated for the use of ladies because she was a colored woman, was a violation of the civil rights act [U. S. v. Dodge, 1 Tex. Law J., 47]. But the judge, in charging the jury, said that, if

there were two cars equally fit and appropriate, then the white and colored passengers might be separated.

These are only a few of the many cases which arose between 1865 and 1881, involving the separation of white and colored passengers; they are cited to show that, in the absence of legislative authority, many of the public conveyance companies had regulations separating the races. In other words, the Jim Crow laws, when they came, did scarcely more than to legalize an existing and widespread custom.

As already suggested, the Jim Crow laws apply to three classes of vehicles—namely, the steamboat, the railroad car, and the street car. Those concerning steamboats will be treated first because they are the least general.

THE SEPARATION OF WHITE AND COLORED PASSENGERS ON STEAMBOATS

There is comparatively little legislation about white and colored passengers on steamboats. North Carolina is the only State to include steamboats in the regular Jim Crow law [Public Laws of North Carolina, 1899, pp. 539–540]. All steamboat companies engaged as common carriers in the transportation of passengers for hire shall provide separate but equal accommodations for the white and colored races on all steamboats carrying passengers. The violation of this law is punishable by a fine of $100. Each day is considered a separate offense.

On February 9, 1900, the Virginia legislature enacted a statute requiring the separation of white and colored passengers on all steamboats carrying passengers and plying in the waters within the jurisdiction of the State in the sitting, sleeping, and eating apartments, so far as the "construction of the boat and due consideration for comfort of passengers" would permit. There should be no difference in the quality of the accommodations. The law made exception of nurses and attendants traveling with their employers and officers in charge of prisoners. For disobeying the law, the boat officer was guilty of a misdemeanor to be punished by a fine of not less than $25 nor more than $100. The passenger disobeying the law was guilty of a misdemeanor to be punished by a fine of not less than $5 nor more than $50 or imprisonment not less than thirty days, or both. The

boat officer might eject an offending passenger at any landing place, and neither he nor the steamboat company would be liable [Acts of Virginia, 1899–1900, pp. 340–41]. In 1901, the law was made more stringent by omitting the provision about the construction of the boat and consideration for the comfort of the passengers [Acts of Virginia, extra session, 1901, pp. 329–330].

In 1904, South Carolina required all ferries to have separate cabins for white and colored passengers [Acts of South Carolina, 1904, pp. 438–439].

Up to 1907, this was the only legislation as to steamboats; but it does not measure the separation of the races on steamboats, inasmuch as the companies in the different States have adopted regulations requiring separate accommodations for the races. This custom applies to interstate as well as intrastate travel. For instance, the steamers plying between Boston and the ports of the South provide separate dining tables, separate toilet rooms, and separate smoking rooms for the white and colored passengers. This regulation of interstate travel is upheld by two cases, one in Georgia in 1879 [Green v. *City of Bridgeton*, Fed. Cases, No. 5,754] and the other in Maryland in 1885 [*The Sue*, Fed. Rep., 22: 843], which held substantially that, inasmuch as congress has enacted no law which forbids interstate common carriers from separating white and colored passengers so long as the accommodations are equal, during congressional inaction and State inability to regulate interstate commerce, the companies may make their own regulations.

THE SEPARATION OF WHITE AND COLORED PASSENGERS IN RAILROAD CARS

Omitting the transient Jim Crow laws of Mississippi, Florida, and Texas in 1865–1867 [*ante*], the first State to adopt a comprehensive law to separate the white and colored passengers on railroad cars was Tennessee in 1881 [Laws of Tennessee, 1881, pp. 211–212]. That State stood alone until 1887, when there was a series of Jim Crow laws: Florida, 1887 [Laws of Florida, 1887, p. 116]; Mississippi, 1888 [Laws of Mississippi, 1888, pp. 45 and 48]; Texas, 1889 [Laws of Texas, 1889, pp. 132–133; 1891, pp. 44–45 and 165]; Louisiana, 1890

[Laws of Louisiana, 1890, pp. 152–154; 1894, pp. 133–134]; Alabama, 1891 [Laws of Alabama, 1891, p. 412]; Kentucky, 1891 [Laws of Kentucky, 1891, pp. 63–64]; Arkansas, 1891 [Laws of Arkansas, 1891, pp. 15–17]; and Georgia, 1891 [Laws of Georgia, 1891, I., 157–158; 1899, pp. 66–67]. For some years there was a period of inactivity, save an amending statute now and then; but in 1898–1899, the other Southern States began to fall into line: South Carolina, 1898 [Laws of South Carolina, 1898, pp. 778–779; 1903, p. 84; 1906, p. 76]; North Carolina, 1899 [Laws of North Carolina, 1899, pp. 539–540]; Virginia, 1899 [Laws of Virginia, 1899–1900, pp. 236–237; 1902–3–4, p. 968; 1904, pp. 183–184]; and Maryland, 1904 [Laws of Maryland, 1904, pp. 187–188]. It appears that Missouri is the only Southern State which has not separated the races in railroad cars.

The requirements of the Jim Crow laws as to railroads are very nearly the same in all the thirteen Southern States. Only two States have seen fit to define persons of color as applied in these laws. Arkansas says that "persons in whom there is a visible and distinct admixture of African blood shall, for the purposes of this act, be deemed to belong to the African race; all others shall be deemed to belong to the white race." Texas makes its law apply to those who are "commonly known as . . . colored people of African descent."

The first great question is the extent of application of the laws. They apply to all railroads doing business in the State. But just what does this mean? It has been generally understood and is confirmed by court decisions [Plessy v. U. S., 163 U. S. 537; O. Val. Ry. Rec. v. Sander, 47 S. W., 344; C. & O. Ry. Co. v. Com. of Ky., 51 S. W., 160; L. N. O. & T. Ry. Co., v. State, 6 S., 203.] that States may pass laws separating passengers going from one point to another in the same State. But what about passengers coming from or going to points outside the State? For instance, suppose a colored passenger were to leave Philadelphia for Evansville, Indiana, and go through Maryland, West Virginia, and Kentucky. Pennsylvania and West Virginia have no Jim Crow laws; Maryland and Kentucky have them. When the colored passenger reached the Maryland line, would he have to enter a car set apart for colored people; when he reached the West Virginia line, might he go back into the coach with white passengers; when he reached the Kentucky line, would he be forced to return to a

car set apart for his race; and, finally, when he came to Indiana, might he return to the car for white passengers? Or suppose a railroad from Ohio to Indiana has only a few miles of its track in Kentucky and only two depots in that State. Would the railroad have to furnish separate accommodations for the white and colored passengers going between those two points in Kentucky? If these questions had been asked thirty years ago or at the time of the Hall v. Decuir case [*ante*], there is no doubt but that the federal courts would have held that it was an unwarranted interference with interstate commerce or would lead to too much confusion. When Alabama adopted its law in 1891, it had the provision that "this act shall not apply to cases where white or colored passengers enter this State upon such railroads under contract for their transportation made in other States where like laws to this do not prevail." However, since these laws have become so prevalent throughout the South, the courts seem to have swung over to the side of public opinion. In 1889, the supreme court of Mississippi held that the Jim Crow law of that State applied only to intrastate travel, and that it was not an unwarranted burden upon railroads to require them to furnish separate accommodations for the races as soon as they came across the State line [L. N. N. & T. Ry. Co. v. State, 6 S., 203].

In 1894, the Jim Crow law of Kentucky was declared unconstitutional because the language of the act was so comprehensive as to embrace all passengers, whether their passage commenced or ended within the State or otherwise and thus interfere with interstate commerce [Anderson v. L. & N. Ry. Co., 62 Fed., 46]. However, four years later, the court of appeals of Kentucky ruled that the law of that State was not in violation of the fourteenth amendment of the interstate commerce clause of the Federal Constitution; that, if it did apply to interstate passengers, which was not conceded, it should be construed to apply only to transportation within the State [O. Val. Ry. Rec. v. Lander, 47 S. W., 344]. Apparently under this ruling the colored passenger going from West Virginia to Indiana through Kentucky would have to ride in the car provided for his race in that State.

The same year, 1898, the supreme court of Tennessee did hold that it was proper exercise of the police power to require even inter-

state passengers to occupy separate accommodations while in that State [Smith v. State, 46 S. W., 566].

The last case upon this point, decided April 16, 1907, held that a railroad company may, independent of statute, adopt and enforce rules requiring colored passengers, although they are interstate passengers, to occupy separate coaches or compartments [Chiles v. C. & O. Ry., 101 S. W., 386].

Thus the matter stands. In the absence of a United States supreme court decision upon the point, it would be unsafe to make a generalization. But it is clear that there has been a reaction from Hall vs. Decuir [*ante*]. All the lower courts, both State and federal, are inclined to make the laws apply to all passengers, both intrastate and interstate, so long as they are within the borders of the State.

In a number of the Jim Crow laws, there are special provisions about Pullman cars. Arkansas and Texas say that carriers may haul sleeping or chair cars for the exclusive use of either race separately, but not jointly. Georgia goes farthest in legislation on this point [Laws of Georgia, 1899, p. 67]. In 1899, the legislature provided that, in assigning seats and berths on sleeping cars, white and colored passengers must be separated. " . . . nothing in this act shall be construed to compel sleeping-car companies . . . to carry persons of color in sleeping or parlor cars." The act does not apply to nurses and servants with their employers, and they may enter and ride in the car with their employers. The conductors have police power to enforce the law, and the failure or refusal to do so is punishable as a misdemeanor. In Maryland, North Carolina, and Virginia, the Jim Crow law does not apply to Pullman cars or to through express trains; and in South Carolina, to through vestibule trains.

In a somewhat bewildering case, the court of appeals of Texas, in 1897, held that a colored passenger in a Pullman car, going from a point outside of Texas into that State might be compelled, upon reaching the Texas line, to enter a Pullman car set apart for passengers of his own race, provided the accommodations are equal [Pullman-Palace Car Co. v. Cain, 40 S. W., 220]. This decision is in harmony with those already considered with reference to day coaches.

Two of the States, Arkansas and Louisiana, require separate waiting rooms at railroad depots. In Mississippi, the railroad commis-

sion was given power in 1888 to designate separate waiting rooms, if it deemed such proper. In most, if not all, of the other Southern States separate waiting rooms are provided by the railroad companies, and this was held constitutional in South Carolina in 1893 [Smith v. Chamberlain, 17 S. E., 371].

The most recent legislation along this line was an act of South Carolina, February 23, 1906, requiring a separation of the races in all station restaurants and eating-houses, imposing a heavy fine upon its violation [Acts of South Carolina, 1906, p. 76]. It is probable that the necessity or propriety of this law was suggested by the disturbance which arose at Hamlet, N. C., near the South Carolina line, when the proprietor of the Seaboard Air Line Railway eating-house at that place allowed a party of negroes, one of whom was Booker T. Washington, to eat in the main dining room, while the white guests were fed in a side room.

There are certain classes of trains to which the Jim Crow laws do not apply. In Arkansas, Kentucky, Maryland, Texas, and Virginia, they do not apply to freight trains carrying passengers in the caboose cars. North and South Carolina exempt narrow-gauge roads from the requirements of the law. North Carolina extends the exemption to branch lines, and South Carolina provides that, where a railroad is under forty miles in length and operates both a daily freight and a passenger train, the law applies only to the passenger train. These two States also except relief trains in case of accident. Whether there is statutory exemption or not, the railway company cannot be held responsible for not separating the passengers in case of an accident [C. & C. Ry. Co. v. Com. of Ky., 84 S. W., 566]. Texas provides that the "provisions of this act shall not apply to any excursion train run strictly as such for the benefit of either race."

Certain classes of passengers do not have to regard the separation of the races on railroad cars. There is an exemption in favor of nurses attending the children or sick of the other race in Florida, Georgia, Kentucky, Louisiana, Maryland, North Carolina, South Carolina, Texas, Virginia. The Florida provision is: " . . . nothing in this act shall be construed to prevent female colored nurses having the care of children or sick persons from riding in such car" (car for white passengers). North Carolina excepts "negro servants in

attendance on their employers." These two qualifications sound innocent enough, but probably upon a test case they would be declared unconstitutional.[1] It might be considered class legislation in that *colored* nurses and *negro* servants are specifically mentioned instead of exempting nurses and servants in general. In fact, the point has been decided in the case of street-car provisions with similar wording [*post*].

Arkansas, Kentucky, Maryland, Texas, and Virginia exempt the employees of the railroad in the discharge of their duty from the requirements of the Jim Crow laws. Where such exemption is not made in the statute, it must be taken for granted, because it would be manifestly unreasonable to prohibit the white conductor from going into the colored coach to collect tickets or the colored porter from going into the coach for white passengers to regulate the ventilation. However, it may be noted that, in the States where these laws apply, the white conductor assists the white passengers in entering and leaving the cars, while the colored porter attends to the colored passengers.

Most of the States provide that the laws do not apply to officers in charge of prisoners. Arkansas says that "officers accompanying prisoners may be assigned to the coach or room to which said prisoners belong by reason of race." Louisiana whips around and exempts prisoners in "charge of officers" from the Jim Crow laws. The South Carolina law exempts lunatics as well.

The Kentucky law exempts "officers in charge of prisoners." When a sheriff went to take a negro lunatic over the road, the conductor required the lunatic to stay in the colored coach and he gave the sheriff the choice of staying with the lunatic in the colored coach or leaving him and riding in the car for white passengers. The court upheld the conductor, ruling that the exemption applied only to the officers, not to the prisoners also. The law has the same effect as if it said that the officer should ride in the car set apart for the race of the prisoner or lunatic, because it is his duty to guard his charge and, if the prisoner or lunatic must stay in the car for his race, the

[1] The law of Florida was declared unconstitutional in the circuit court, but the contesting parties did not carry it to the supreme court—Letter from the secretary of state of Florida, November 1, 1906.

officer must stay there with him [L. & N. Ry. Co. v. Catron, 43 S. W., 443].

As to the nature of the accommodations, each of the laws provides in substance that the accommodations for white and colored passengers must be equal. Florida says that the coaches for colored passengers (with first-class ticket) must be equally good and provided with the same facilities for comfort as those for white passengers with first-class tickets. Kentucky, Maryland, and Virginia prohibit any "difference in quality, convenience or accommodation." Tennessee provides that the first-class coaches for colored passengers must "be kept in good repair, and with the same convenience and subject to the same rules governing other first-class cars, preventing smoking and obscene language."

There is no one point upon which the court are more in accord than that there can be no action for damages so long as the accommodations are substantially equal [W. Ches. & Phila. Ry. Co. v. Mills, 52 Pa. S., 209; U. S. v. Dodge, Fed. Cases No. 14, 976; Murphy v. W. & A. Ry. Co., 23 Fed., 637; Logwood v. Mem. & C. Ry. Co., 23 Fed., 318; Houck v. S. Pac. Ry. Co., 38 Fed., 226; Plessy v. Ferguson, 163 U. S., 537; Chilton v. St. L. & I. Mt. Ry. Co., 21 S. W., 457]. The great working principle was enunciated in 1885 in the circuit court of Tennessee: Equality of accommodation does not mean identity of accommodation [Logwood v. Mem. & C. Ry. Co., 23 Fed., 318]. The railroad company is not liable for damages for inequality of accommodation unless it is proved that the plaintiff actually sustained damages by such inequalities [Norwood v. Gal. H. & S. A. Ry. Co., 34 S. W., 180].

The actual separation of the races is accomplished by requiring the railroads to furnish on each passenger train either separate cars or a car divided by a partition. Each State gives the choice. In case of the division of the car into compartments, the partition must, in Arkansas and Kentucky, be made of wood; in Kentucky, Maryland, and Texas, it must be substantial; and in Maryland and Texas, it must have a door in it. Arkansas requires only a partitioned car on roads less than thirty miles long, but separate cars on longer roads, though each train may carry one partitioned car.

Maryland, North Carolina, and Tennessee provide that, in case

the car or compartment for either race become completely filled and no extra cars can be obtained and the increased number of passengers could not have been foreseen, the conductor may assign a portion of the car or compartment for one race to the passengers of the other race.

Several of the States provide how the public shall be notified of the existence of the Jim Crow requirements. Arkansas requires the law to be posted in each coach and waiting room; Louisiana, in each coach and ticket office; Texas, in each coach and depot. In Kentucky, Maryland, and Texas, each coach or compartment must bear in some conspicuous place appropriate words, in plain letters, to indicate the race for which it was set apart.

There are certain liabilities for the violation of the Jim Crow laws. The three parties concerned are the passenger, the conductor or manager of the train, and railroad company.

If a passenger refuses to occupy the coach or compartment to which he, by his race, belongs, the conductor may refuse to carry him and may eject him if he is already on the train; and for this neither the conductor nor the railroad company is liable for damages. In Georgia and Texas, the conductors are given express power to enforce the law, and in the other States the power must be inferred. Some of the States punish passengers for willfully riding in the wrong car by a fine ranging from a minimum of $5 in Maryland and Texas to a maximum of $1000 in Georgia, or imprisonment from twenty days in Louisiana to six months in Georgia.

The conductor is liable for two kinds of offenses:—(1) for assigning a passenger to a car or compartment to which he does not, by race, belong, and (2) for failing to separate passengers. Most of the States consider the two violations as one. Only Arkansas and Louisiana prescribe separate punishment for assigning passenger to wrong car—a fine of $25 in Arkansas and a fine of $25 or twenty days' imprisonment in Louisiana. Upon this point, a novel case arose in Nansemond county, Virginia, in September, 1907. The conductor compelled a white woman, with tanned skin, to ride in a car set apart for colored passengers. She rode a few miles, left the train at the first station, and brought suit to recover $1000 in damages. It has not yet been settled [*News and Observer*, Raleigh, N. C., September 6, 1907].

The punishment for refusing to enforce the law is a fine varying from a minimum of $5 in Texas to a maximum of $1000 in Georgia, or, in a few States, imprisonment. In Texas, the fines collected go into the common school fund of the State.

The fine upon railroad companies for failing or refusing to furnish separate accommodations varies between $25 and $1000 for each offense. Each trip that the train makes is a separate offense. However, if the railroad company provides the required separate cars or compartments and the conductor fails to enforce the law or violates its provisions, it is the conductor, not the company, who is liable [L. & N. Ry. Co. v. Com. of Ky., 37 S. W., 79; L. & N. Ry. Co. v. Com. of Ky., 78 S. W., 167].

The Jim Crow laws in the South, so far as railroads are concerned, are very nearly complete. Missouri is the only one of the older Southern States which has not separated the races. In the late constitutional convention of Oklahoma, a Jim Crow provision was suggested but was killed because it was intimated that the president would not approve the constitution if it contained such a clause [*News and Observer*, Raleigh, N. C., March 1, 1907]. Mr. Frederick Upham Adams, speaking of the new constitution of Oklahoma says ". . . the first legislature will certainly submit an amendment, which the people will ratify, compelling transportation corporations to provide separate accommodations for persons of negro blood" [*Saturday Evening Post*, November 16, 1907, p. 4, col. 3]. This prophecy was fulfilled by the last session of legislature.

A special question has been raised by the federal postal cars on which are employed both white and colored clerks. At present, they are obliged to sleep in the same cars, and at the terminals of long runs dormitories are provided for them but without any race separation. The postoffice department has said that such regulation is beyond its control [*News and Observer*, Raleigh, N. C., March 12, 1907]. Thus the matter stands, with a growing discontent on the part of the white postal clerks to be so intimately associated with the colored clerks.

THE SEPARATION OF WHITE AND COLORED PASSENGERS IN STREET CARS

The third great division of the subject is the separation of the races in street cars. Here is a field of much more active legislation in which much has been done recently and in which much more is likely to be done.

Of the thirteen separate coach laws just considered, six of them—those of Alabama, Arkansas, Louisiana, Mississippi, South Carolina, and Texas—excepted street railroads from their application. It is safe to infer that the laws of the other States referred only to steam cars. Georgia alone made its law all-inclusive, embracing dummy, electric, and street cars.

Excepting the early law of Georgia, 1891, the Jim Crow street-car laws came in with the new century. So far, eight of the Southern States have passed general statutes to separate the races on street cars, in the following order: Georgia, 1891 [*post*], Louisiana, 1902 [Laws of Louisiana, 1902, p. 89]; Arkansas, 1903 [Kirby's *Digest of the Statutes of Arkansas*, 1904, pp. 1211–1212]; Mississippi, 1904 [Laws of Mississippi, 1904, pp. 140–141]; Tennessee, 1905 [Laws of Tennessee, 1905, pp. 321–322]; Florida, 1905 [Laws of Florida, 1905, pp. 99–100]; Virginia, 1906 [Laws of Virginia, 1905–1906, pp. 92–94]; and North Carolina, 1906 [Laws of 1906 not yet published. See *News and Observer*, Raleigh, N. C., March 24, 1907]. Several of the States passed local laws before they made them general. In 1902, the legislature of Virginia separated the white and colored passengers on street cars going between Alexandria and points in Fairfax and Alexandria counties; and in 1901, between Richmond and Seven Pines [Laws of Virginia, 1901–1902, pp. 639–640; 1901, pp. 212–213]. Tennessee, in 1903, made the regular separate coach law apply on street cars in counties having 150,000 inhabitants or over as shown by the census of 1900 or any subsequent federal census [Laws of Tennessee, 1903, p. 75]. This regulation applied only to Memphis. In 1905, South Carolina required the separation of the races on "electric railways outside of the corporate limits of cities and towns" [Laws of South Carolina, 1905, p. 954]. This State has not yet made the law general.

Of the States which have passed laws requiring separate railroad accommodations, South Carolina, Alabama, Kentucky, Maryland,

and Texas have not extended them to street cars. This does not mean that the races are not separated on street cars. In order to find out the extent of the actual separation, the writer has made inquiry of the mayors of every city of 10,000 or more inhabitants in the Southern States, and West Virginia and Kansas besides. Replies from nearly all of them warrant some generalizations. Not considering the eight States which have general laws, it appears that the white and colored passengers are *not* separated on the street cars of any of the cities of Kansas, Kentucky, Maryland, Missouri, and West Virginia. In the absence of State laws, either the municipal authorities or the street railway companies themselves provide for and require separation in the cities of Alabama and South Carolina. This is the extent of the Jim Crow street-car legislation up to the present.

In their requirements, the ordinances and regulations are practically the same as the statutes for all cities. All of them require that the accommodations for passengers of both races shall be equal. The three methods of separation are (1) separate cars, (2) partitioned cars, and (3) seats assigned to each race. The only city that unqualifiedly requires separate cars is Montgomery, Alabama. The ordinance was passed October 15, 1906, over the mayor's veto, he vetoing it because he believed it would be impracticable. When the law went into effect, November 23, the service was materially reduced because of the scarcity of cars [*News and Observer*, Raleigh, N. C., November 23, 1906]. The State laws of Arkansas, Florida, Louisiana, and Mississippi give the choice of using two or more cars or partitioned cars. A number of the ordinances require that the cars be divided either by movable screens or partitions. They are movable so as to proportion the seating capacity to the requirements of each race. But in by far the greatest number of cases, the separation is accomplished by the conductor assigning white and colored passengers to different seats. Practically without exception, the colored passengers are required to seat from the rear to the front of the car; the white, from the front to the rear. On railroad cars, the colored passengers are almost invariably assigned to the front compartments. The colored passengers on street cars are seated in the rear, to give the reason as stated by the mayor of Birmingham, Alabama, to do "away with the disagreeable odors that would necessarily follow the breezes."

However, in the closed cars of that city, the colored passengers are seated in front so as to give the white passengers the rear for smoking. In other cities, the two rear seats are reserved for smoking, so the colored passengers begin to sit on the third seat from the rear. As the car fills, the races get nearer and nearer to each other. North Carolina provides that white and colored passengers shall not use contiguous seats on the same bench. Virginia prohibits white and colored passengers from sitting side by side on the same bench unless all the other seats are filled. The conductor has the power to require passengers to change their seats as often as is needful to secure actual separation of the races. The laws do not prohibit the running of special cars exclusively for either race, provided the regular cars are run also.

The cars or compartments are to be clearly designated to show to which race they belong. Several require that the placard "WHITE" or "COLORED," "in plain letters, not less than two inches high," shall be upon each end of the car or compartment or upon the sides of the open cars. A recent case in Mississippi held that the sign must be large enough to be seen in all parts of the car [Walden v. Vicksburg Ry. and Light Co., 40 S., 751]. The laws of Mississippi and Louisiana require that the law be posted in the car; in Virginia, the substance of the law is posted in the car. In Houston, Texas, the race to which the seat belongs is posted on the back of the seat. In several of the cities, it is punishable by a heavy fine to tamper with such a sign.

The law of North Carolina leaves a probably fatal loop-hole in that it requires separation "as far as practicable." Of course, this would allow the conductors to make numberless exceptions. However, as a matter of fact, most of the North Carolina cities had been contemplating such a separation, and, when the law went into effect the first of April, 1907, were ready to regard and enforce it.

In practically all of the cities, the street-car conductors and motormen have police power to enforce the law. For the ejectment of a willfully disobedient passenger, they incur no penalty either upon themselves or the company. North Carolina provides that the conductor shall not be liable if he makes the mistake of assigning a passenger to the wrong seat. In several of the cities, it is the duty of the police officers to arrest passengers whom they see riding in the wrong cars.

The penalty upon the conductor for failing or refusing to enforce the law varies all the way from a minimum fine of $1 in Montgomery, Alabama, to $500 in Jacksonville, Fla., or imprisonment from one to ninety days.

The liability of the company is equally heavy in proportion. Each trip made without providing for the requirements of the law is considered a separate offense. In Pensacola, Fla., the fine upon the company is $50 a day for not furnishing separate accommodations.

When a passenger consciously disobeys the law, he may be fined; and if he insists upon occupying the wrong seat, the conductor ejects him from the car. In that case, according to the Virginia law, "in case such passenger ejected shall have paid his fare upon said car, he shall not be entitled to any part of said fare."

The only phase of these Jim Crow street-car laws which has given rise to any appreciable discussion is the exemptions from application. Most of the States and cities simply except nurses in attendance upon the children or sick of the other race, the nurse going into the car to which the child or sick person belongs. Of course, the street-car employees are excepted, and Virginia excepts officers in charge of prisoners and lunatics. But Florida and North Carolina say that the law shall not apply to *colored* nurses in attendance upon *white* children or *white* sick people [the italics are the writer's]; and Augusta, Ga., has the same in its ordinance. The constitutionality of the Florida law was tested two years ago in the supreme court of that State, and was declared to violate the fourteenth amendment [State v. Patterson, 39 S., p. 398]. The court said: "It gives to the Caucasian mistress the right to have her child attended in the Caucasian department of the car by its African nurse, and withholds from the African mistress the equal right to have her child attended in the African department by the Caucasian nurse." There is the same discrimination as to the invalid adult Caucasian attended by a colored nurse. As soon as the Florida State law was declared unconstitutional, the cities passed ordinances making the provision apply to nurses of either race. The North Carolina law has not yet been tested; but it has the same defect as the Florida law had.

CONCLUSION

Such are the Jim Crow laws of the Southern States. It is not the purpose of this paper to discuss how they work in practice, but to analyze the legal distinctions in public conveyances, based on race, leaving the practical discriminations in favor of or against one or the other race for a later study. Perhaps this phase of the subject could not more appropriately be summed up than in a quotation from the decision of the leading case in Philadelphia, 1867 [W. Ches. and Phila. Ry. Co. vs. Mills, 55 Pa. S., 209], because it gives so clearly and concisely the reasoning that those have adopted who believe that such racial distinctions are justifiable.

"The question is one of difference, not of superiority or inferiority. Why the Creator made one black and the other white, we know not, but the fact is apparent, and the races distinct, each producing its own kind, and following the peculiar law of its constitution. Conceding equality, with natures as perfect and rights as sacred, yet God has made them dissimilar, with those natural instincts and feelings which He always imparts to His creatures when He intends that they shall not overstep the natural boundaries He has assigned to them. The natural law forbids their intermarriage, and that social amalgamation which leads to corruption of races is as clearly divine as that which imparts to them different natures. The tendency to intimate social intermixture is to amalgamate, contrary to the law of races. The separation of the white and black races upon the surface of the globe is a fact equally apparent. Why this is so it is not necessary to speculate; but the fact of a distribution of men by race and color is as visible in the providential arrangement of the earth as that of heat and cold. The natural separation of races is therefore an undeniable fact, and all social organizations which lead to their amalgamation is repugnant to the laws of nature. From social amalgamation it is but a step to illicit intercourse, and but another step to intermarriage. But to assert separation is not to declare inferiority in either; it is not to declare one a slave and the other a freeman—that would be to draw illogical sequence of inferiority from difference only. It is sufficient to say that following the order of Divine Providence, human authority ought not to compel those

widely separated races to intermingle. The right of such to be free from social contact is as clear as to be free from intermarriage. The former may be [a *or* the] less repulsive condition, but not less entitled to protection at a court. When, therefore, we declare a right to maintain separate relations as far as is reasonable [and] practicable, but in a spirit of kindness and charity, and with due regard to equality of rights, it is not prejudice, nor caste, or injustice of any kind, but simply to suffer men to follow the law of races, established by the Creator himself, not to compel them to intermix contrary to their instincts."

NOTES ON CURRENT LEGISLATION

MARGARET A. SCHAFFNER

Uniform Public Accounting and State Supervision of Accounts. The Indiana legislature in its recent session provided for a state-wide system of uniform public accounting and State supervision of accounts. The law was enacted without serious opposition after an effective campaign by the Merchants' Association of Indianapolis and other commercial and civic bodies.

Uniform accounting has been the subject of considerable theoretical discussion, but as applied to public offices has had little practical application. The literature of the National Municipal League as well as of many other civic and scientific bodies abounds in valuable discussions of the principles involved and advantages to be had in uniform accounts. Economists and publicists are agreed substantially on this subject, but legislatures have been slow to conceive the possibilities of reform involved in its application to public offices.

Many municipalities have installed a uniform system for all offices and accounts of the municipality. The interstate commerce commission prescribes a system of accounts for interstate railroads; the Wisconsin public utility law requires a uniform system of accounts for public utilities whether operated by private companies or by municipalities; and the New York public utility commission is given a similar power to require uniform accounts. These are examples of the application of the system, which is the same in principle whether applied to public utilities or to public offices. Examples of state-wide applications of the system are few, though there are many cases of its practical application in particular classes of offices. Thus several States require uniformity in county or municipal accounts and reports; others extend or limit the system as their needs demand. Wyoming was the first State to apply uniform accounts to all offices and institutions, State and local, and to certain corporations. The office was created by the constitution. It has been highly successful under its able examiner, who has been in office for seventeen years, and the powers of the office have been extended from time to time especially in the matter of investigation. The State of Montana enacted a similar law in 1895 applying to county and State offices and to