

rights, could be set at naught. The power of congress over national elections is no longer in question. This being a national election of general character, it is well to remember that it is clearly within the scope of the national laws. The supreme court of the United States has held that congress can by law protect the act of voting for members of congress, and the persons voting at such election from violence or intimidation, and the election itself from fraud and corruption. *Ex parte Yarbrough*, 110 U. S. 651, 4 Sup. Ct. Rep. 152; *Ex parte Siabold*, 100 U. S. 371. In the latter case, the court declares "the exercise of such power can properly cause no collision of regulations or jurisdiction, because the authority of congress over the subject is paramount, and any regulations it may make necessarily supersede inconsistent regulations of the state."

It follows, therefore, that since the federal law requires uniformity in the prerequisites of the right to vote as affecting the citizen, otherwise entitled to vote, at the national election, and further requires that each citizen shall have an equal opportunity to do the act made a prerequisite to the right of voting, varying and inconsistent registration enactments making different prerequisites, and denying equal opportunities to perform them, are contrary to the federal statute, and nugatory. The power of the state of Georgia to enact a general and uniform registration law is not questioned. The power is undoubted, and its exercise might well lead to the most salutary results, to the fairness and regularity of elections. To conform, however, both to the state constitution and the national laws, it must have a uniform effect upon all electors, and we hold that such a registration law has not yet been enacted.

For the reasons above enumerated, the court feels obliged to disregard the objections presented by the representatives of the Young Men's League, and will proceed with the performance of the duties assigned, in accordance with the statutes of the United States.

LEMON v. PULLMAN PALACE CAR CO.

(Circuit Court, S. D. Mississippi. May 6, 1887.)

1. SLEEPING CAR COMPANY—NOT COMMON CARRIER.

A sleeping car company is not a common carrier. Its cars are under the control of the railroad company, except as to furnishing lodging to those who may pay for it, and the agents of the railroad company are entitled to determine who shall occupy the sleeping cars, as part of the train.

2. SAME—LIABILITY FOR REFUSING BERTH—AGENTS.

A passenger agent who was engaged in selling tickets, both for railroad fare and for sleeping car berths, refused to sell a sleeping car berth to a passenger, on the ground that the latter had not a first-class ticket. *Held* that, in determining that the ticket was not first class, the agent acted as the agent of the railroad company, and the car company was not responsible therefor; and that, having so determined, he was justified in refusing to sell a berth ticket.

3. SAME—PUNITIVE DAMAGES.

Conceding, however, that he acted as the agent of the sleeping car company, the latter would not be liable for punitive damages, unless the passenger was treated insultingly or with malice.

At Law. Action by George Lemon against the Pullman Palace Car Company to recover damages for refusal to sell him a sleeping car berth. Verdict for defendant.

E. E. Baldwin, for plaintiff.

Percy Roberts, for defendant.

HILL, District Judge, (*orally charging jury*.) This is an action for damages alleged to have been sustained by reason of the refusal of the defendant car company to sell the plaintiff a berth in their sleeping car from Chicago, Ill., to Jackson, Miss. The plaintiff also alleges that the agent of the defendant was very rough and rude to him. To these charges the defendant pleaded not guilty, which makes it incumbent upon the plaintiff to sustain the allegations contained in his declaration. Whether they have done that or not is for you to determine from the evidence. I will instruct you that the Pullman Palace Car Company is not a common carrier. The Illinois Central Railroad is a common carrier, and receives, as a part of its train, the cars belonging to the Pullman Palace Car Company, the same forming part of its train, and being under its control, except so far as providing lodging in the Pullman car for the accommodation of those who may pay for it. Its agents also have the right to determine who shall occupy the Pullman car as part of its train. It is to keep and provide cars sufficient for the accommodation of its passengers. The providing of lodging for the passengers belongs alone to the Pullman Car Company as a mere lodger.

The charge here is that the agent of the Palace Car Company was also the agent of the Illinois Central Railroad Company, and sold sleeping car tickets as well as tickets for transportation. It was the privilege of the railroad company, by its agents, to determine who should occupy seats on its trains, and that included the Pullman car, and to determine whether a party had paid the proper amount, and was entitled to travel on the train to which it was attached. Thus the agent was then in a dual capacity, as acting for the railroad and for the car company at the same time. It was not the privilege of the agent of the car company to sell a berth to any party unless he had a first-class ticket on the railroad, or a ticket which entitled him to travel in the Pullman car or in a first-class car. The agent who sold the tickets had to determine whether or not he had such a railroad ticket as would entitle him to ride in the first-class car. In deciding that question, I am of the opinion that he acted as the agent of the railroad company, because that question had to be passed upon before he could sell him a sleeping berth. It is difficult, however, to divide these two duties, but I am of opinion, under the proof, that he acted as the agent of the railroad company. When the agent decided that the plaintiff here did not have such a ticket as entitled him to ride in a first-class car, then he was justified in not selling him a sleeping car ticket. He was then the agent for the Illinois Central Railroad Company, and the defendant here is not responsible for his acts. Admitting, however, that he was the agent of the Pullman Palace Car Company, and he acted in good faith

in passing upon the question as to whether the party was entitled to it, the plaintiff would only be entitled to actual, and not to punitive, damages, unless he was rudely treated by the agent; that is, if he was treated insultingly, or with malice, or something of the kind; willful, wanton conduct on his part. If the plaintiff did not have a transferable ticket, the agent had a right to so determine. A nontransferable ticket is sold at a reduced rate, and the party to whom it is given is alone permitted to travel on it, and, if he then sell it, it would deprive the railroad company of their additional profit.

Now, I do not know that I can say much more to you. You have the case before you, and, unless you are satisfied that the defendant was the agent who passed upon the railroad ticket that was presented, —and as I have instructed you that he was not the agent in passing upon that,—then the plaintiff would not be entitled to recover, unless it was for the conduct of the conductor of the train in refusing plaintiff a berth, and I believe there is no complaint upon that score. You can retire.

Verdict returned and judgment rendered for the defendant company.

WILCOX v. RICHMOND & D. R. Co.

(Circuit Court of Appeals, Fourth Circuit. October 11, 1892.)

No. 16.

1. DAMAGES—BREACH OF CONTRACT—MENTAL SUFFERING.

In an action against a railroad company for breach of contract for special train, damages cannot be recovered merely for disappointment and mental suffering resulting from delay in departing to reach the bedside of a sick parent.

2. TENDER—COSTS—INTEREST.

The hirer of a special train, who declined to take it because of the refusal of the railroad company to guaranty arrival in time to connect with another train, cannot recover interest and costs on the sum paid for such train, where the company tendered such sum at the time of refusal, before suit and in court.

In Error to the Circuit Court of the United States for the District of South Carolina. Affirmed.

Statement by HUGHES, District Judge:

This action was commenced in 1890 by the service of a complaint and summons on the defendant in the court of common pleas for Laurens county, state of South Carolina. The complaint alleges that plaintiff in error was a physician, attending the sittings of the State Medical Association at Laurens on the 24th of April, 1890; that at 3:45 P. M. of that day he was informed by telegraph of the dangerous illness of his father at Marion Court House, S. C.; that at that hour he contracted with the defendant railroad corporation to convey him to Columbia, S. C., by 10:20 of the night of said day, for which service he then