In Supreme Court,
State of Florida
June Term, 1905.

State of Florida,
Plaintiff in Error,
— vs —
Andrew Patterson,
Defendant in Error.

Brief of
Defendant in Error.

In the Supreme Court, State of Florida, June Term, A. D. 1905.

State of Florida,

Plaintiff in Error,

--vs--

Andrew Patterson,

Defendant in Error.

INTRODUCTORY STATEMENT OF NATURE AND RESUKT OF SUIT.

On the 20th day of July, A. D. 1905, Andrew Patterson, Defendant in Error, was committed to the Duval County jail upon commitment of Justice of the Peace for violation of Section Five (5), Chapter 5420, Acts of 1905; petition for Writ of Habeas Corpus for the discharge of the said Patterson from jail, under said commitment, was filed before R. M. Call, Judge of the Circuit Court of the Fourth Judicial Circuit of Duval County, Florida, and writ issued on said date, directed to the Sheriff of Duval County, Florida, upon which said writ the Sheriff made his return the 24th day of July; thereupon on July 25th, 1905, the Judge of said Court entered an order discharging said petitioner, and for a Writ of Error to the Supreme Court, returnable to Friday, July 28th, 1905. The assignment of error is that the Judge of said Court erred in entering an order discharging said Andrew Patterson from the custody of the Sheriff of Duval County, Florida; upon said assignment the case is here brought.

Without setting out the statute upon which Patterson, Plaintiff in Error, was arrested under, we will proceed to the arguement of the case.

ARGUEMENT.

2nd. Section Two (2) of the Act is vague and uncertain, in that it does not set out the nature or manner of what the separation of the races shall consist in, and is misleading to the patrons of the cars. and to the public generally; and it is impossible to say what that division or separation shall consist in.

We contend that the proposition of law as contained in the Southern Light and Traction Company vs. Compton, cited by the Attorney General, is not on all fours with the case at bar, in that the Mississippi statute upon which the Court passed, has this to say: "Car, compartment, or movable screen," while our statute provides as follows: "That every street car company, or persons operating street car lines, shall make provisions, rules and regulations for the separation of white passengers from Negro passengers by separate cars, or fixed divisions, or movable screens, or other method of division in the cars of such lines. The latter provision of our statute, "or other method of division in the cars of such lines," is not contained in the Mississippi law. In that law (the Mississippi law) street car companies are not given the large latitude for making arraggement for the separation of the races as are given in our statute; therefore the case above referred to cannot apply to this cause.

Now before discussing the other grounds as set out in defendant's petition, we shall discuss whether the law under consideration is a general or special law.

(a) This law is special, and not general, in that it attempts to deprive a certain class of colored people, citizens and residents of the State of Florida, of rights and immunities, while granting to

same rights and immunities to another portion of colored people, to-wit: nurses having the care of white children or sick white persons. This law tends to encourage the servant class of colored people, and discourage the more progressive and intellignet class, in that it excepts colored nurses and servants from the operation of the law, thus creating of colored servants a special class not authorized by the Constitution of the State of Florida. (See Section 20, Article 3, Constitution of the State of Florida.)

(b) What are special laws?

The statute which relates to persons or things as a class is a general law, while a statute which relates to particular persons or things of a class is special; (See State vs, Walsh (Missouri), 35 L. R. A., 231, (See page 232); 21 L. R. A., 789; 14 L. R. A., 846.

Where a statute does not relate to persons or things as a class, but to particular persons or things of a class, it is special, as contra-distinguished from a general law. State vs. Jullow, 29 L. R. A., 259, and authorities there cited; 10 L. R. A., 135.

A statute which relates to persons and things as a class is a general law, while a statute which relates to particular persons or things of a class is special, and comes within the constitutional prohibition. Bloxham vs. F. C. & P. R. R. Co., 17 So. Rep., 902, (See 924) (Florida.)

A general law relates to all things of a class,- a special law to a portion. 23 A. & E., 149, and authorities cited; also note on page 150.

A statute that affects all persons or things of a class is a gen-

eral law. 27 So. Rep., 221, (See 223); State vs. Jacksonville Terminal Company,(Florida).

The law cannot discriminate in favor of one citizen to the detriment of another. The principal of equality pervades the entire Constitution, etc. 5 L. R. A., 709, State of New Hampshire vs. Pennoy.

A statute making it unlawful for person or corporation, etc. See 16 L. R. A., 492, Frank Forrer, et al vs. People, State of Illinois.

All class legislation is void. State of West Virginia vs. Fire Creek and Coke Company, 6 L. R. A., 359.

A law which so particularizes, and by such means is restricted in its operation to persons or places, which do not comprize all the objects which naturally belong to the class, is special or local. 6 L. R. A., 57, State of New Jersey ex rel Stockton vs. Sommors Point.

A law that does not relate to persons or things as a class is special. State vs. Jullow, 29 L. R. A., 257, (See 259.)

A statute requiring weekly payment of wages "by every manufacturing, mining, lumbering, mercantile, street, electric and elevated railway, steamboat, etc., and every incorporated express company and water company, makes an unconstitutional discrimination between those corporations and others which are organized for pecuniary profit, and employ labor. 22 L. R. A., 340; 17 L. R. A., 853.

But a graver objection inheres in the claim that the Act imposes unequal burdens upon the same class. 41 L. R. A., 689; 14 L. R. A., 587.

Now applying the definition of a special law as defined by the above authorities, is the Act in question a special or general law, while Section 7, of the Act provides as follows? "That the provisions of this Act shall not apply to colored nurses having the care of white children or sick white persons."

Now we most respectfully contend that this Section of the Act is clearly class legislation of the most vicious character.

If we consider the Act as being special, then it is in violation of the Fourteenth Amendment of the Constitution of the United States of America, in that it denies to all colored citizens other than nurses in charge of white children or sick white persons legal protection of the law.

It may be claimed that Section 7, of the Act, is a proper classification for the purpose of legislation. Let us see.

It is true that classification can be made, and that a law is not unconstitutional if it affects all of a class,- while this is true, yet the classification must be founded upon difference either defined by the constitution, or natural. Arbitrary selection or classification can never be justified. Johnson vs. Goodyear Mining Company, 47 L. R. A., 343, (California.)

We contend that while classification is permissible, it must be a natural classifcation,- not the separation of one class into two classes and enact laws which discriminate #gin favor of one of the divided portions, and against the other; being one natural class they are entitled to be governed by the same rule of action.

The said Act is a denial to Defendant in Error of due process of law as guaranteed by the Fourteenth Amendment of the Constitution of the United States. By due process of law is meant, the law of the land. By the law of the land is meant, the law that is universal,- law that applies to all classes as a class,- a general law, not a special one.

The law is unconstitutional, in that it gives to one class of citizens, to-wit: white citizens, certain rights, privileges and immunities not granted to colored citizens.

It may be claimed that even if Section 7 is void, it does not vitiate the entire Act, and that petitioner can be tried upon the remaining Sections of the Act. We contend, however, that this is not the law. In

State vs. Walsh, 35 L. R. A., 231, (See 233), where the Court, in passing on a similar proviso, says, "Nor will it do to say that the proviso aforesaid may be disregarded, and the defendant still be punished." And in Edmunds vs. Herbandson, 14 L. R. A., 725, (N. Dakota), the Court says, "Can the proviso be stricken out and the Act sustained without it? If, in striking out the proviso, the effect is to extend the provision of the law, etc., the legislative will is disregarded. If, on the other hand, it is said the law will reach no further after the proviso is eliminated than with the provido undisturbed, then the Act is special legislation. Now we contend that if the proviso in this Act is stricken, then the legislative intent cannot be carried out; that the Act would never have passed the Legislature if it had not contained Section 7, because we may take all similar enactments by the Legislature and we find a similar proviso proviso; for instance, the law separating the races on railroad cars have the same proviso; in other words, if it were attempted by the Legislature to separate a white mother from her child on street cars, it would be impossible to pass such an Act.

We admit that an Act may be void in part without affecting the other parts of it, if that which remains is capable of being executed in accordance with the legislative intent wholly independent of that which is rejected. See State ex rel H. W. Arpon, Relator, vs. Moses J. Brown, etc. (See 19 Florida, 563.) Hence we contend that if Section 7, of the Act, were stricken it would entirely destroy the legislative intent, as it would subject to prosecution colored nurses in the care of white children or sick white persons; and the Court would undertake to make the act criminal, which the Legislature, in express terms, has declared should not be a crime or misdemeanor, in that with Section 7. stricken colored nurses would be amenable to the law.

Said law is unconstitutional because it creates officers not known to the Constitution of the State of Florida, and allows the street railway companies to make the appointment of the same, and not requiring said officers to take an oath for the faithful performance of the duties of office. These officers, or street car conductors, are not provided for by the Constitution of the State of Florida, and Section 27, of Article 3, of the Constitution of the State of Florida, says: "The Legislature shall provide for the election by the people, or appointment by the Governor, all State and County officers not otherwise provided for by this Constitution, and fix by law their duties and compensation. Article I6, Section, of the Constitution, provides that "each and every officer of this State, etc., before entering upon the discharge of his official duties, shall take the following oath of office: - - - - -

We most respectfully contend that conductors on street railways by this act are made special peace officers, and should be required to be appointed, and take the oath of office as required by the Constitution.

We desire to call your Honors' attention to Homer Adolph Plessy, Plaintiff in Error, vs. John A. Ferguson, Defendant in Error, I63 U. S., 337. Plaintiff in Error places great stress upon this case, but we desire to call your Honors' attention to the fact that in this case the statute referred to nurses without any discrimination as to race, this being a reference to an entire class of persons, and includes white, black, and nurses of any and all nationalities, while the statute in the case at bar refers only to colored nurses in charge of white children or sick white persons. In one case there is no discrimination, while in our statute the discrimination is apparent on its face, in that it provides privileges and immunities for colored nurses as a portion of a class, and does not provide for all

~~persons~~

nurses, regardless of race, color, or previous condition of servitude.

We do not contend that the Legislature has no authority to separate the races on cars, but our contention is, that whenever the State undertakes to take a natural class of persons or things and sub-divide that class, and enact laws granting to one portion of the dissevered class rights and privileges not granted to the other portion, it is a denial to that portion of the class discriminated against of the equal protection of the law, and brands the law as being class legislation of the most vicious nature.

Respectfully submitted.

Peters and Purcell

Attorneys for Defendant in Error.