

In Supreme Court,
State of Florida,

State

VS.

Patterson

Prize

FILED JUL 28 1905

M. H. Mabry
CLERK SUPREME COURT.

~~BRYAN & BRYAN~~

W. H. Ellis

W. J. [Signature]

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IN THE SUPREME COURT OF THE STATE OF FLORIDA,
JUNE TERM, A. D. 1905.

The State of Florida,

Plaintiff in Error,

-vs-

Andrew Patterson,

Defendant in Error.

INTRODUCTORY STATEMENT OF NATURE AND RESULT 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 (4) for violation of Section 5, Chapter 5420 Acts of 1905; petition for writ of habeas corpus for the discharge of 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, (1) and writ issued on said date directed to the Sheriff of Duval County, upon which said writ the Sheriff made his return (7) the 24th day of July; thereupon on July 25th, 1905, the Judge of said Court entered an order (10) discharging the said petitioner and for writ of error to the Supreme Court returnable to Friday, July 28th, 1905.

The Assignment of Error is, (6) that the Judge of said Court erred in entering an order discharging the said Andrew Patterson from the custody of the Sheriff of Duval County, Florida. Upon such assignment the case is here brought.

The following is a copy of the provisions of Chapter
5420, Acts of 1905:

CHAPTER 5420.

AN ACT to Require Street Car Companies in this State to furnish separate cars or divisions in cars or other provisions for the separation of white and colored passengers; to require said companies to keep separate white and colored passengers; to give conductors and employees of said companies police powers, and to provide penalties for the violation of this Act.

Be it Enacted by the Legislature of the State of Florida:

Section 1. That all street car companies, persons, associations of persons, firms or corporations operating street car lines in this State shall furnish separate accommodations for white and colored passengers.

Section 2. That every street car company or person operating street car lines in this state 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. A failure or refusal by such company ~~xxxx~~ or person to make such provision, rules and regulations shall be a misdemeanor, and upon conviction thereof it or he shall be punished by a fine not to exceed fifty (\$50.00) Dollars for each offense. Each day of such failure or refusal after July 1st, 1905, shall constitute a separate offense.

Section 3. That when any street car is divided into divisions the divisions set apart or provided for white and colored passengers respectively, may be in space proportioned according to usual and ordinary volume of travel by white and colored passengers on the line on which the car is used.

Section 4. That conductors or other employees in charge of such cars shall assign passengers to their respective car or

division provided by said companies under the provisions of this act, and such persons in charge of such cars are hereby invested with police powers to carry the provisions of this act into effect.

Section 5. That any passengers wilfully occupying any car or division of car other than that to which he has been assigned, shall be guilty of a misdemeanor, and be punished by a fine not to exceed twenty-five (\$25.00) Dollars, or by imprisonment not to exceed thirty days. Conductors and all other employees in charge of such cars or divisions of cars are hereby clothed with the power to eject from the car or cars any passengers who refuses to occupy such car or divisions to which he may be assigned.

Section 6. If any employee having charge of any such car shall permit white and colored passengers to occupy the same car, in case separate cars be provided, or division in case separate cars be not provided, he shall be guilty of a misdemeanor and punishable by a fine not exceeding fifty dollars or imprisonment of not exceeding thirty days, or both in the discretion of the Court.

Section 7. That the provisions of this act shall not apply to colored nurses having the care of white children or sick white persons.

Section 8. That nothing in this act shall be construed to prevent the running of extra, or special cars for the exclusive accommodation of either white or colored passengers, if the regular cars are operated, ^{as usual} as required by this act.

Sec. 9. That all laws or parts of laws in conflict with this act are hereby repealed.

Sec. 10. That this act shall take effect on the first day of July, 1905.

Approved May 19, 1905.

Grounds of Attack upon said Act.

Said act was attacked as to its constitutionality on seven grounds () as shown by petition herein filed.

ARGUMENT.

2. Section two of said act is not vague nor uncertain. It designates three distinct ways in which street car companies may at their option separate white and colored passengers, followed by the general words "other method of division." These general words by common rule of construction are restricted to things of like nature. Where particular words of a statute are followed by those of general character the latter are to be restricted to objects of the same kind as those particularly mentioned. United States vs. Devans, 3rd Wheaton, 390; Barbour vs. City of Louisville, 83 Ky., 95.

3. Said act is not in violation of Section 20 of Article 3 of the Constitution of Florida, which only forbids the Legislature to pass special laws in certain enumerated cases of which this is not one. (See Section 20 of Article 3)

The Legislature has power in the exercise of police power to pass any reasonable law for the protection of health, morals, peace and the general welfare of citizens. (Cooley's Constitutional Limitations, Seventh Edition, pages 564 et seq. and cases there cited.)

4. Section seven is not in violation of the Fourteenth Amendment to the Constitution of the United States. It is a valid exercise of police power to suit conditions in this State. No denial of any civil rights. Accommodations provided must be equal and are equal in this act. No citizen has a civil right to sit

in any particular place in a car. No discrimination. The fact that nurses as a class are allowed in either compartment does not bring section seven within the constitutional prohibition against special laws in certain cases. The Court may take notice of conditions in this State and of the fact that though negro nurses are mentioned this in reality applies to all nurses because no such thing as white nurses of negro children in this State.

Plessy vs. Ferguson, 163 U. S. 537. at 542, 550 and 551; Waters-Pierce Oil Co. vs. Matthews, 44 SW. 936, at pages 940, 941, 943, 944 and 945.

Railway Co vs. Matthews, 174 U. S. 96, at page 104. Compare Revised Statutes, Section 2268.

Statutes for the separation of races upheld in United State Courts and all State Courts. In addition to above authorities see Anderson vs. L. & N. Ry. Co, 62 Fed. 46; L. N. O & T. vs Mississippi, 133 U. S. 587, Civil Rights cases 109 U. S. 3.

5. Does not deprive of liberty or property without due process of law.

6. Does not unlawfully create officers out of employees of street railway companies. Employees of Street cars given no police power except that which every citizen has, that is, to regulate his business according to law and eject passengers who refuse to obey the laws of the State, which are made laws of street railroad companies. The following cases which have like provisions have been upheld:

Anderson vs. L. & N. Ry., Plessy vs. Ferguson, L. N. O & T. Ry vs. Mississippi, cited supra.

Police power mentioned in Section 4 is simply the power to assign seats and eject those who refuse to obey

7. Granting the unconstitutionality of Section seven, then that section is severable from the other sections of the act. The unconstitutionality of part of a statute does not render the whole void, and if any part of an act be unconstitutional that part may be disregarded and full effect given to the rest where the invalid portions are severable from the valid portions.

To sustain this statement I cite the following cases; State Ex Rel Arpen vs. Brown, 19 Fla., 3rd headnote on page 563 and body of the opinion page 596.

Donald vs. State 31 Fla., 255; Second headnote and body of the opinion and authorities cited page 261.

English vs. State 31 Fla., 340, 5th headnote and body of the opinion from the middle of page 350 to the end of the paragraph on page 351.

This ~~propi~~ proposition of law is further and fully laid down and sustained in the following U. S. Supreme Court cases:

Ogden vs. Saunders, 6 L. Ed, 406; Bank of Hamilton vs. Dudley's Lessee 3 L. Ed. 496; Eilenbecker vs. Plymouth County, 33 L. Ed. 801, 34 L. Ed, 377; 26 L. Ed. 318, 327, 602, 1044, 1056; 29 L. Ed. 135, 615; 30 L. Ed. 538, 756; 36 L. Ed. 294; 38 L. Ed. 1014; 39 L. Ed. 1108.

This last case is the case of Pollock vs. Farmers' Loan and Trust Company, in which the income tax was held unconstitutional by the Supreme Court of the United States, they holding sections 27 to 37, inclusive, unconstitutional and the balance constitutional. On page 1125 of the body of the opinion in the

case Chief Justice Fuller, for the Court, in the second and the last paragraphs on the left hand column of page 1125, lays down the rule very clearly citing several cases. The Court's attention is particularly called to the language of the decision as there quoted.

Cooley on Constitutional Limitations, pages 246--250.
and

See title of the act all other sections of the act and legislative journals as evidencing legislative motive, intent and purpose.

Our contention is that this act is a valid police regulation within the legislative competency of the Legislature of the State of Florida; that section seven, the section chiefly assailed, is constitutional, does not discriminate against anyone and that section seven is clearly and indubitably severable from all other provisions of the act.

Respectfully submitted,

W. H. E. E. E.

Atty General

M. J. Boyer
