



STEWART vs. THE SUE



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"STEWART vs. THE SUE"

INTRODUCTION

One of the final Reconstruction measures which Congress passed was the Civil Rights Act of 1875. It supposedly, entitled full and equal usage of public accommodations, in trains, ships, hotels, theaters, and businesses generally open to the public. To ensure enforcement of the statute, Congress gave the federal courts exclusive jurisdiction in cases which arose regarding it.

Nevertheless, this act was a sham from its day of passage because the political climate of the north had changed by the 1870's. The new leaders of Congress no longer had any interest in any crusades to save African Americans, and were concentrating on the problems of industrial expansion and business prosperity. Thus the argument frequently heard was that the south should be left to resolve its own problems.

The Supreme Court, in 1883 declared the Civil Rights Act of 1875 to be unconstitutional. Declaring that the Fourteenth Amendment applied only to the states; therefore, segregation by private individuals or companies was constitutionally legal. In this instance, the Supreme Court was following a pattern of decisions which it had previously set precedent.

The result was that nearly all public accommodations for African Americans became dirty or unkempt. In 1885, Washington Cable said, "The Negro compartment on a train in every instance and without recourse, is the most uncomfortable, uncleanness, and un safest place and the uncleanness, unsafely, and discomfort of most of these places are a shame to any community pretending to practice public justice."

During the 1880's Lucy, Mary, Winnie, and Martha Stewart came to Baltimore, Md. to reside and work. There they became members of the Union Baptist Church, which was under the leadership the Reverend Harvey Johnson. During their early years of travel aboard the steamship "Sue," the Stewart sisters purchased second class tickets, but found the condition of the segregated sleeping cabin to be filthy and offensive. They then purchased first class tickets, which permitted the use of the saloon (a large room or lounge area for the common use of passengers) but still limited sleeping to the second class cabin. This arrangement they still found unsatisfactory, the second class cabin being offensively dirty with defaced mattresses, soiled sheets, no blankets, and no conveniences for washing. The Stewart sisters in 1883 staged a "sleep in" aboard the steamer "Sue" by occupying the white women's cabin which in contrast to the cabin assigned to them was "clean pleasant and inviting." Lucy, Mary, Winnie and their aunt Pauline "Polly" Braxton who was traveling with them occupied the white women's cabin and were undressed and in bed when the ship's officer ordered "all colored passengers to vacate the white women's cabin." Being undressed, Lucy, Mary and their aunt Polly refused to leave the cabin, Martha and Winnie were forced to leave and spent the night in chairs in the saloon.

The following year while traveling home on August 15, 1884, the Stewart sisters purchased first class round trip tickets to Kinsale, VA aboard the "Sue," placed their baggage in the white women's cabin, and went to the upper deck. Later the chambermaid arrived with their baggage and placed it in front of them, stating that the captain had ordered the bags removed, the door to the white women's cabin locked and "directed that no colored passengers were to be allowed to sleep there." The Stewart sisters were told to use the colored passenger's cabin to which both first and second class colored passengers were assigned, which the Stewart sisters refused to do and instead spent the night in the saloon sitting in chairs.

On September 18, 1884, at the District Court of the United States in and for the Maryland District the Stewart sisters filed Libel charges against the owners of the steamer "Sue" charging that:

(The following taken from the actual court records)

- First. That the said steamer was on August 15, 1884, and for a long time before and thereafter and now and during the time hereinafter stated engaged in the business of carrying freight and passengers as a common carrier for hire between Baltimore City and Washington and landings on the Potomac river.
- Second. That on August 15 "84, said Steamer being about to make one of her regular trips between said places leaving Baltimore at 5 M on said day said libelant Mary M. Johnson went on board said Steamer at Baltimore to take passage to Kinsail [*sic*] on the Potomac River and bought from the clerk of said Steamer who was the proper officer thereof in that behalf a first class passenger ticket to said landing and return and paid therefor the sum of three dollars: That the sleeping accommodations of said Steamer for first class tickets consisted of state rooms for which extra charge was made and a lower cabin provided with bunks and bed clothes for which no extra charge was made.
- Third. That said libelant desired to occupy one of said bunks for the night but although many of them were unoccupied said libelant was prevented from doing so by the chambermaid of the Steamer who by direction of the master thereof informed said libelant that she could not occupy said cabin or a bunk therein and said libelant was forced to submit to this and to pass the night in the upper saloon which was provided only with seats.
- Fourth. That said libelant was by character, deportment, dress, and cleanliness fit to be entitled and was entitled to all the privileges of said first class ticket and that the only reason assigned for excluding her from the sleeping provision made for all 1st class passengers was as stated by those managing said Steamer that said libelant was a person of color and therefor could not be allowed to occupy or use said cabin nor to sleep in any bunk therein.
- Fifth. That by said exclusion from said sleeping apartment said libelant was injured and damaged in body by loss of rest and wounded in feeling and made sick.
- Sixth. That on September 2 "84 said libelant took passage on said steamer at said landing to return to Baltimore on said ticket as by the terms thereof she was entitled to do and was again compelled by those managing the Steamer to pass the night in upper saloon and was by them excluded from the sleeping accommodations of said vessel allotted to 1st class passengers whereby libelant was injured in body by cold and loss of rest and was made sick and otherwise damaged and this altho [*sic*] libelant was fit as in the fourth article stated to enjoy said accommodations and said exclusion was wholly because said libelant was a person of color.
- Seventh. All which acts in so excluding said libelant were contrary to the duty of those managing the Steamer as a common carrier of passengers by water and intended to defraud and injure said libelant in the sum of five hundred dollars.
- Eighth. That all said acts were within the admiralty and maritime jurisdiction of this Court. Therefor libelant prays process in Rem against said Steamer her tackle, apparel and furniture and monition against all persons interested therein and that the Court will pronounce for said claim with costs and that said Steamer be sold to pay the same and for further relief.

A. Sterling Jr.
Proctor.

On September 18, 1884 the Steamer "Sue" was served with an attachment and padlocked to her dock. She was not permitted to sail until her owners posted a \$1000.00 bond.

THE UNITED STATES OF AMERICA,

DISTRICT OF MARYLAND, TO WIT:

The President of the United States of America to the Marshal for the Maryland District, Greeting—

We command you that you attach, seize, take and safely keep *the Steamer*
"Lew" her tackle apparel & furniture

if *she* be found in your district, to appear before the Judge of the District Court of the
United States of America for the District of Maryland, at the United States Court Room in the
City of Baltimore, on the *4th* day of *October* —

next, to answer unto *the libel of Mary M. Johnson*
and James St. Johnson her husband
in a cause of tort and damage
give and maritimes

and how you shall execute this precept you make known to us in our District Court for the District
aforesaid, and have you then and there this writ.

WITNESS the Honorable THOMAS J. MORRIS, Judge of our said District Court, this
18 day of *Sept.* in the year of our Lord one
thousand eight hundred and eighty *four*.

Issued *18* day of *Sept* 188 *4*

James W. Chew Clerk.

Copy of the Attachment

THE COURT CASE

On February 2, 1885 Testimony in open court was heard. Among others testifying were:

Martha Stewart
Mary Stewart Johnson
Lucy Stewart Jones
Winnie Stewart
Pauline Braxton-----Aunt
Dennis Johnson-----Brother in law of Mary Stewart Johnson
Mary E Johnson-----Sister in law of Mary Stewart Johnson
Dennis Gaskins-----Relationship not known
Louisa Robinson
Jennie Williams
Robert Rich
Mary Crowner

TESTIMONY OF FAMILY MEMBERS

(From the actual Court records)

(Chief Judge: C. J. Morris)

(Attorneys:

For Libelants: Archiebald Sterling & Alexander Hobbs

For Respondent: John H. Thomas)

IN THE U.S. DISTRICT COURT.

MARTHA STEWART, et al :
 Vs. :
THE STEAMER SUE. :

Before MORRIS, J.

Baltimore, M'd. January 29th, 1885

MARTHA STEWART (colored)

sworn and examined

By Mr. STIRLING :

Q. Are you married or single? **A.** Single.

Q. Where do you live? **A.** 254 Townsend street.

Q. In Baltimore city? **A.** Yes, sir.

Q. What do you do for a living? **A.** I am assistant cook at a boarding house.

Q. You are a cook? **A.** Yes, sir

Q. On the 15th of August, 1884, did you go as a passenger on the steamer Sue? **A.** I did. I taken a first class ticket.

Q. Did you go on board by yourself, or were there others with you? A. I went with my three sisters and my aunt.

Q. Give their names? A. Lucy Jones, Mary M. Johnson, Winnie Stewart and Pauline Braxton.

Q. Who is Pauline Braxton? A. She is my aunt.

Q. The others are the other three libelants here, are they? A. Yes sir they are my sisters.

Q. Where were you going on that steamer? A. Down to Virginia.

Q. To what landing? A. Kinsale.

Q. On what river? A. The Potomac.

Q. For what purpose were you going to Kinsale landing? A. I was going down there to visit my mother.

Q. Where did your mother live? A. In Westmoreland County, Va.

Q. Just state fully what happened when you went on board the steamer at Baltimore; what tickets you bought, and what took place afterwards, if anything, in regard to your desire for sleeping accommodations.

A. We bought first class tickets and paid three dollars for the round trip. After we settled the fare, I taken the wraps down in the cabin, and taken four bunks; and a short while after I went in the saloon the chambermaid comes up with the wraps and puts them in my lap. I asks her what was that for; we had the first class ticket? She said it was the captains orders; it was his orders for her to go down and bring them wraps up, and not a colored person should stay in the saloon. I says to the chambermaid, "The captain must know very well he cant prevent us from going in that cabin. We got the first class ticket." She says "I cant help it; it's the captains orders, and I'm going to obey the captain's orders." I says "Well, I'll go down and see if that door is locked, and if it isn't locked I'll carry the wraps down again." She says "I've locked the door;" and I went down and rapped three times, and it was locked. And I couldn't get in any more.

Q. About what time in the afternoon or evening was this? A. Near about six o'clock.

Q. What time did the boat leave Baltimore? A. At five o'clock sharp.

Q. Where did you pass the night, in point of fact? A. In the upper saloon.

Q. What was that saloon used for? A. For the ladies to sit in.

Q. For the passengers to sit in? A. Yes, sir.

Q. What part of the vessel was the saloon in as near as you can tell, was it aft or forward?

A. It was the whole deck, up above.

Q. Where are the staterooms on the steamer? A. On each side, up in the saloon.

Q. In the upper saloon? A. Yes sir

Q. Where was the sleeping saloon that you say you went down into? A. You pass right through the dinning-room, in the aft cabin.

Q. You go down where? A. Into the cabin.

By the COURT:

Q. It is on the same deck with the dining saloon? A. No sir; it is down under the dining saloon.

By Mr. STIRLING:

Q. It is directly under the dining saloon, is it? A. Directly under the dining saloon; yes sir.

Q. Describe to the court generally how that sleeping apartment that you went down into, and where the chambermaid said you could not sleep, was furnished with sleeping accommodations, as far as you saw?

A. Very nice bunks; bunks with white sheets; blankets, white spreads, wash-bowl and pitcher, chairs, and everything very nice and clean; glass, water, towels, and nicely carpeted.

Q. How were the bunks arranged? A. There were three above each other.

Q. Had you ever been on this steamer before? A. Yes sir; I travel on it every summer.

Q. On the same trip? A. Yes sir; to Kinsale Landing.

Q. You say you bought a return ticket. Did you return on the same ticket, and if so when?

A. We bought the first class round trip ticket.

Q. You did come back on it, did you? A. Yes sir.

Q. When? A. The 1st of September.

Q. Tell the court what took place then? A. We was all sitting in the saloon up above, and the chambermaid, Lizzie, she walks up and she says it was no use for us to go down in the aft cabin, because it was locked; it was the captains orders for that cabin to be locked, and not to let any colored passengers go down there; and she was there to obey the captains orders and she would obey his orders if God spared her. We didn't take any wraps down then, because we thought it was no use

Q. Where did you spend the night on that trip? A. Up in the same saloon; up above.

Q. Do you know of any other place on that steamer with sleeping accommodations for passengers? A. There is a second class cabin on there.

Q. Have you been in it and seen it? A. Yes sir; I have.

Q. When? A. Summer before last.

Q. The summer before this trip? A. Yes sir.

Q. Tell the court were that is on the steamer, and what accommodations you saw there? A. That is in the forward end of the boat.

Q. Where? A. Underneath where all the cattle and horses is tied; right over the cabin. It isn't hardly respectable; it isn't nice enough for a respectable person to go in. One half the time there is no sheets on the bunks. I haven't seen nary blanket down there; I haven't seen any glass, and I haven't seen any wash-bowl and pitcher down there; never no water; and it is kept very dirty, as much as I have seen of it.

Q. Was that place underneath the forward part of the boat, where the cattle were, appropriated to women alone? A. Women and men went down the same flight of steps, and there is only a little partition in between that divides the men's part and the women's. They both goes down the same flight of steps, and there is no key to the door. The door between is thrown open all the time. They talk right out of the window, or the door, into the women's part.

Q. Coming back to the sleeping place that the chambermaid would not let you stay in, will you tell the court how that was fixed as far as men and women are concerned? A. There is no men goes in that part at all; nothing but ladies.

Q. Do the men have to go down the same steps to get into their first class cabin? A. No sir; they does not.

Q. But to get into the cabin in the fore part of the boat the men and women have to go down the same steps? A. Yes sir.

Q. And there is only a partition between the place where the bunks are? A. Yes sir.

Q. What is the partition made of? A. Wood.

Q. Where is the door that goes into that place that you say was very often open---are there two doors, one into the men's part and one into the women's part? A. You go down the flight of steps and turn and go into the women's part, and the other part is the men's part, with the partition right between.

Q. Where is the door? A. On the women's part.

Q. Do the men go through the same door? A. They have got another door that leads right into their room.

Q. How near are the two doors together? A. About as far as from here to you.

Q. Why were the doors kept open when you saw them? A. There was no fastening to it.

Q. Do you know that? A. Yes sir; I know that there was no fastening to the door. There was no key to the door

Q. In order to get down to that cabin, where did the steps come from? A. Off the deck.

Q. Do you have to pass by where the horses and cattle are on the forward deck to get down there? A. Yes sir; we does.

Q. Did you go into this place that you call the second class cabin on this round trip as to which you are sueing; or are you speaking of the summer before? A. The summer before. I didn't go into it at all this summer, because we had the first-class ticket, and they wouldn't allow us in there.

By the COURT:

Q. What reason have you for calling this a second class cabin? **A.** It is \$2.50 for the round trip, and the first class is \$3.00.

By Mr. STIRLING:

Q. Did you ever stay in that cabin at any time; at the time you went down and looked at it?

The WITNESS. The second class cabin?

Mr. STIRLING. Yes.

A. I didn't spend the night in there.

Q. How much did you pay at that time? **A.** I was on a first class ticket then.

Q. You went down there and you wouldn't stay there? **A.** Well I went down there to see. The chambermaid then ordered me out of the cabin, and the clerk came down and said all the colored people should go out of the cabin. We were in the aft cabin then, and the clerk came in the dining room and said all the colored people should come out of there. My sister was very sick with the neuralgia and after they got Winnie and I out of there I went down into the second class place to see how it was, and to see if Winnie could have a bed down there rather than sit up all night; and it was in such a bad condition I wouldn't let Winnie stay in there; and we went up and sat in the upper saloon all night.

Q. Do you know whether at that time they were issuing second class tickets on the boat?

A. Yes sir; second class tickets and first class tickets the same as before.

Q. What was the price of the second class tickets? **A.** \$2.50.

Q. Did you know of any colored persons on that boat at that time that paid second class fare for that trip?

A. Yes sir.

Q. Where did they go? **A.** Down in the second class cabin.

Q. In the same cabin you have spoken of in the fore part of the boat? **A.** Yes sir.

Q. That was the summer before this? **A.** Yes sir.

Q. The females on that trip that paid second class fare were put down in that cabin?

A. Yes sir; they were.

Q. Is there any other sleeping apartment on that steamer that you were told about and that you saw except the one you were turned out of and that they said you could not stay in. **A.** No sir; there is no other except the staterooms, and they wouldn't sell a colored person a stateroom for no amount of money.

Q. You did not ask for a stateroom? **A.** No sir; we didn't ask for no stateroom, because we knowed they wouldn't allow us to have that.

CROSS-EXAMINATION

By Mr. THOMAS:

Q. From whom did you buy your ticket? **A.** Mr. Casineau the clerk.

Q. What conversation occurred between you and him when you bought it? **A.** No more than I just paid for the first class ticket. We called for the first class ticket and paid \$3.00.

Q. Did he not tell you that that first class ticket would not entitle you to occupy a place in the after cabin?

A. No sir; he did not tell us.

Q. Are you sure of that? **A.** Yes sir; I am sure of that. He did not tell us.

Q. Was it Lizzie who removed your baggage from the bunk in which you had placed it?

A. Lizzie didn't remove the baggage. Lizzie is the first chambermaid on there. The other chambermaid removed the baggage.

Q. The assistant chambermaid? **A.** Yes sir.

Q. Is she living or dead? **A.** I don't know.

Q. What was her name? **A.** Mollie Towin, she said was her name.

Q. As I understand, she told you that you could not occupy a bunk in that cabin. She did not tell you could

not occupy a bunk in any cabin; did she? **A.** She said it was the captains orders for her to go down and bring the wraps up; that no colored person should go in that cabin; it was his orders to her; and she was there to obey the captains orders.

Q. Did she tell you there was another cabin in which there were bunks. **A.** No sir; she did not.

Q. You knew that? **A.** I knew there was none but the two cabins.

Q. I understand you to say it was the assistant chambermaid, Mollie, who removed your baggage from the bunk? **A.** Yes sir.

Q. She simply told you could not occupy a bunk in that cabin? **A.** We should not stay down in that cabin.

Q. When you went up, you saw Lizzie the stewardess. What did she say to you?

A. My aunt went to her and asked her what was it for; we had the first class ticket, and why did the captain have the wraps removed. Lizzie says "It was the captains orders, and we must obey his orders and have that cabin locked up, and not let a colored person go in there."

Q. What did she say to you about the other cabin? **A.** Not a word about that.

Q. She simply told you you could not occupy the after cabin from which your baggage had been removed?

A. She told us we could not go down there; it was the captains orders.

Q. She did not tell you you could not go to the other one? **A.** She did not say anything about any of them; but we had the first class ticket--

Q. No matter about that. You said before that you had first class tickets. Did you not see the watchman on the boat later that night? **A.** One of my sisters was right sick, and had just had the malarial fever, and my two sisters and I went down near about bedtime to the clerk who sold us the tickets, to see about it.

By the COURT:

Q. This was after your baggage had been brought up? **A.** Yes sir.

Q. You say about bedtime you went to see the clerk? **A.** Yes sir; and the office was shut up, and there was another gentleman steps up and says "what do you want?" Says I "we want to see the clerk who sold us the ticket. We have a first class ticket and has no place to sleep." He says "I am in the clerks place." We says "we have the first class ticket, and we went down in the after cabin and selected bunks and the chambermaid brought our wraps up to us. Won't you please, sir, give us some place to sleep?" He says "you can't go down in that cabin. It is the captains orders. You can go down in the forward cabin."

By Mr. THOMAS:

Q. What kind of accommodations were there in this saloon in which you say you spent the balance of the night? **A.** There was cushioned chairs; cane-seat chairs; very nicely carpeted; but there wasn't no place there to sleep.

Q. Were there any sofas? **A.** No sir; there was cushioned chairs.

Q. No lounges? **A.** No sir; no lounges; just cushioned chairs and cane-seat chairs.

Q. How many bunks were there in the cabin from which your baggage was removed?

A. I couldn't exactly say how many there was down there; but there was only three in the cabin taken when we went down.

Q. Do you know how many there are in the other cabin? **A.** No sir; I never counted them.

Q. Do you know whether any of them had been taken or not?

The WITNESS. In which cabin?

Mr. THOMAS. The forward cabin?

A. No sir; because I didn't go down there.

Q. You had repeatedly traveled on this steamer on first class tickets before, had you not?

A. Yes sir; I had traveled on first class tickets three years.

Q. Where had you slept before? **A.** I slept in the ladies cabin; in the aft cabin, once before.

- Q. How many times? A. Once before.
- Q. Where at other times? A. They drove us out, and we sat up in the saloon all night; the upper saloon.
- Q. You had been previously prohibited from occupying the after cabin, had you? They drove you out?
- A. Yes sir.

By the COURT:

- Q. You had been told the year before that you could not occupy that cabin? A. Yes sir.
- Q. And then you went and looked at the other cabin? A. Yes sir; I did.
- Q. And refused to take a berth there, and spent the night in the saloon? A. Yes sir.
- Q. That was the year before? A. Yes sir; I went down in the forward cabin the year before.

By Mr. STIRLING:

- Q. Tell the court whether that upper saloon, where you passed the night, was open or shut during the night. If anybody wanted to stay there all night, is there anything to keep the passengers out and to stop them from walking through? A. We never had the door thrown open on us all night before last summer. We were sitting there all night and the doors were thrown open last summer.
- Q. In point of fact, was there access during the night to passengers to walk through that upper saloon?
- A. I don't understand you.
- Q. Could passengers walk through there at night? A. Yes sir; the doors was thrown open all night.
- Q. Did they or not walk through? A. Yes sir.
- Q. Who were they; male or female passengers? A. Male passengers, passing through there all night.

EXCERPTS OF OTHER TESTIMONY

WINNIE STEWART (Colored)

Q. You say the forward cabin was second class. Tell the court why you say so, and what you know about it?

A. The second class cabin isn't fit for no decent person to stay in. I have traveled on the first class ticket in the steamer Sue. I have traveled on the second class ticket. About three years ago I paid \$1.50 for a second class ticket to Baltimore from Kinsale, and I went down into this here forward cabin to sleep. When I goes down there it was not fitten for a dog to stay in. I goes right to the bunks and I hushed up the sheets to see the condition the mattress was in, and it was just as black as could be, and I didn't undress to get in there. I just got two chairs and put together, and borrowed the cooks overcoat and spread over my head and passed the night that way, and I said then at that time "if money will ever prevent me from staying in that hole I will never go in there again." When I went home the next summer I paid \$3.00 for a first class ticket and goes down in the white ladies cabin. It was doubly superior to this place. There was white spreads, white blankets, white sheets, wash-bowl, pitcher, comb and brush, looking-glass, towels; nice carpet on the floor, nice chairs and everything down there. I was just getting ready to undress to go to the bed and the clerk himself came down and drove me out, and then I had to go up into the upper saloon and pass the night sitting there.

MARY M. STEWART JOHNSON (Colored)

Q. Did you ever know of colored persons being permitted to occupy the after cabin?

The WITNESS. On a first class ticket?

Mr. THOMAS. On any ticket.

A. Yes sir; once before I had gone down in that cabin, and then it was the captain's orders for us all to come out that night; but we were undressed and wouldn't come out.

LUCY STEWART JONES (Colored)

Q. Were had you slept before? **A.** I went down into the ladies cabin, the aft cabin, and I had undressed and gone to bed, when some of them came and ordered us to come out, and I sent the captain word I wasn't coming out, because I had undressed and gone to bed.

PAULINE BRAXTON (Colored)

Q. When you bought first class tickets where did you stay?

A. In the upper saloon until last summer. Last summer I had selected my bed down there, but I wasn't permitted to stay down there. Summer before last when I went down there I had undressed and gone to bed, and Lizzie came down and said the clerk said every colored person must come out of there. I told her I had undressed and gone to bed, and wasn't coming out by any means.

THE OPINION

"The Sue"

(District Court, D. Maryland. February 2, 1885.)

1. CARRIERS OF PASSENGERS-SEPARATION OF PASSENGERS ON ACCOUNT OF RACE OR COLOR.

On a night steam-boat, plying on the Chesapeake Bay, colored female passengers may be assigned a different sleeping cabin from white female passengers.

2. SAME-ACCOMMODATIONS MUST BE EQUAL.

The right to make such separation can be upheld when the carrier, in good faith, furnishes accommodations equal in quality and convenience to both alike.

In the District Court of the United States, for Maryland

In Admiralty Libel in rem. Martha Stewart and others against the Steamboat Sue.
A. Sterling, Jr., and Alexander Hobbs, for libelants.
John H. Thomas, for respondent.

Opinion filed 2d February, 1885

Morris, C. J. This suit, (with three others of like character, by other female libelants), has been instituted to recover damages on the allegation that the libelant, who is a colored woman of unobjectionable character and conduct, and who had purchased a first class ticket for a passage on the steamboat, Sue, in August 1884, from Baltimore to a landing in Virginia, on the Potomac river, was refused first class sleeping accommodations on board, and in consequence compelled to sit up all night in the saloon, and experience great discomfort.

The answer of the claimants of the steamboat alleges in defense that there was provided on board a sleeping cabin for white female passengers in the after part of the boat, and that a sleeping cabin equally good in every respect was provided forward on the same deck for female colored passengers, and that these libelants were told, and well knew before they came on board, that the regulations of the boat did not allow either class to intrude into the cabin of the other, that the libelants all refused to sleep in the cabin provided for the colored passengers, and preferred to remain sitting in the saloon all night rather than go into it, claiming as a matter of right to be allowed to go into the white women's cabin.

There are two issues raised: The first one of law, the libelants denying the legal right of the owners of the steamboat to separate passengers for any purpose because of race or color. The second is an issue of fact, the libelants denying that the forward cabin assigned to them was in fact equal in comfort and convenience to the after cabin assigned to white women.

In determining this important question of law, it is to be observed that the steamer Sue is employed on public navigable waters, and plies between the port of Baltimore and ports in the State of Virginia, and that the regulation made by her owners and enforced on board of her, by which colored passengers are assigned to a different cabin from white passengers, is a

matter affecting inter-state commerce. It is, therefore, a matter which cannot be regulated by state law; and congress having refrained from legislation on the subject, the owners of the boat are left at liberty to adopt in reference thereto such reasonable regulations as the common law allows. *Hall v. De Cuir*, 95 U.S., 490. One of the restrictions which the common law imposes is, that such regulations must be reasonable and tend to the comfort and safety of the passengers generally, and that accommodations equal in comfort and safety must be affordable to all alike who pay the same price. The law of carriers of passengers, in this respect, is well stated in *Hutch. Carr. §542* [*i.e.*, *Hutchinson on Carriers, Section 972 (§542)*]. He states the results of the decisions to be that if the conveyance employed be adopted to the carriage of passengers separated into different classes, according to the fare which may be charged, the character of the accommodations afforded, or of the persons to be carried, the carrier may so divide them, and any regulation confining those of one class to one part of the conveyance will not be regarded as unreasonable if made in good faith, for the better accommodation and convenience of the passengers.

The precise question raised in this case, viz., whether a separation of passengers as to their sleeping cabins on board a steamboat, made solely on the ground of race or color shall be held as a reasonable regulation, has not, to my knowledge, been decided in any court. There have been cases arising from separation made in respect to day travel, as to which there has been some conflict of views, and one or two cases have been cited in which such separations have been held unreasonable.

U.S. v. Binton, 10 Fed. Rep. 789 (note);

Gray v Cincinnati. S. R. Co. 11 Fed. Rep. 683 (note).

These differences of opinion, I think, may be explained, in part at least, by the differences in the circumstances existing in different communities. It is in my judgement a mixed question of law and fact; and whenever it appears that facts do not exist, which give reason for the separation, the reasonableness of the regulation cannot be sustained. But the great weight of authority, it seems to me, supports the doctrine that to some extent at least, and under some circumstances, such a separation is allowable at common law, and I think it is not going too far to say that such is the decided leaning of the Supreme Court of the United States, as expressed in the opinion pronounced in *Hall v. De Cuir*. The Supreme Court appears to treat the question as one with regard to which reasonable usages which now exist can only be controlled by legislation, and holds that if public policy requires such legislation, it must come from Congress. It is the duty of all courts to declare the law as they find it to be, not as individual judges may think they would like it to be

It has been urged by respondents' counsel that the evidence shows that explicit notice was given to the libelants when they bought their tickets before going on board that they would not be allowed to use the white women's sleeping cabins, As to this there is conflict of testimony, but the conflict is immaterial, for it is admitted by libelants that they well knew of the regulations from having on previous trips on the same steamboat been denied access to the after cabin, and of course knowledge was equivalent to notice. But I think the whole issue is immaterial. The libelants paid full first class-price, and did not consent to any such regulations; and if the regulation was unlawful they could not be held bound by it even if specially endorsed on their tickets and read to them. As to the reasonableness of this regulation, I must decide upon the evidence in this case.

The steam-boat men called as witnesses, testify that it is a regulation which has always existed on all the numerous night lines of steamers on the Chesapeake and all adjacent

waters. They give various facts to justify it, and declare that, they are obliged to make it in compliance with the demand of the great majority of their passengers. It must be admitted that a regulation which a carrier may lawfully make, if reasonable, has strong argument in favor of its reasonableness, it is demanded by a great majority of the traveling public who use this conveyance. There was a time when any man on a railroad train who wanted to smoke assumed the right to do so in every car, except what was known as the "ladies car," But the demand of the majority of male passengers gradually compelled the enforcement of a regulation that there should be no smoking unless there was a car set apart for it. It has been argued that the constitutional amendments which assured to colored people all the political rights of citizens of the United States and of the states, and were intended to forever obliterate color as a distinction with regard to political rights, or necessity, made such a color distinction unlawful in carriers as against the declared public policy of the nation.

In view of the authoritative interpretations of those amendments, I cannot so hold. It is a question which citizenship has but little to do. If it was found that naturalized citizens of English and of Irish birth or the French and German nationality interfered with each others comfort, or with the discipline of the boat, when occupying the same sleeping cabins, the court might well find that a regulation which enforced separation between them was reasonable, and therefor lawful. But to say that differences of race or color may be lawful is not to say that every such regulation can be upheld. The regulation must not only be reasonable in that it conduces to the general comfort of passengers, but it must not deny equal conveniences and opportunities to all who pay the same fare.

This discrimination, on account of race or color, is one which it must be conceded goes to the very limit of right of a carrier to regulate the privileges of his passengers, and can only be exercised when the carrier has it in his power to provide for the passenger who is excluded from a place to which another paying the same fare is admitted, accommodations equally safe, convenient and pleasant.

This proposition of law, I am informed, was implied by my learned predecessor, judge Giles, in a suit brought by a colored man who had been excluded from a street car. The street car company had arranged that every third or fourth car, and none other should be exclusively for colored people, but judge Giles held that this did not afford equal convenience to this class of citizens. And this leads to the important question of fact in the present case.

The libelants testify that the forward cabin which was assigned for their use was offensively dirty; that mattresses in the berths were defaced; That sheets were wanting or soiled, and that there were hardly any berths which had pillows. That there were no blankets and no conveniences for washing. They testify that from their own knowledge the white women's cabin was clean, pleasant and inviting, and had none of those defects. They declare that on former trips they had found the former cabin so intolerable that they sat up all night; and finding it in the same condition this trip, they refused to remain in it, and being refused admission into the after-cabin again, sat up all night. In these assertions they are supported by five other persons, all colored persons, to be sure, but respectable, and all having similar opportunities of experience. They claim also that the approach to the stairway to the cabin assigned for their use was obstructed by cattle, and that there was no key with which their door could be secured, and that its location did not compare in comfort with the women's cabin aft.

While allowing a good deal for the inflamed feelings for these libelants and witnesses, who all testify under feelings of resentment, I still am far from thinking that they have, in a reckless spirit of vindictiveness, made up this story from the whole cloth. Some things they complain of have been explained away. To a woman accustomed to a comfortable bed on shore, a night aboard ship is generally one of discomfort, and if the sufferer thinks that some one also has better quarters on board, from which she is unjustly excluded, there is no disposition to make the best of what has been provided. With regard however, to the degree of comfort and conveniences in the furnishings and cleanliness of the forward cabin, as compared with the after one, provided for the white female passengers, notwithstanding the general denials of the officers of the boat, and perhaps their intention that there should not be any material difference, there is testimony which I cannot disregard.

Whatever the general orders of the agents and officers of the boat may have been in this respect, and however fair their general intentions as declared by them may have been, I am quite convinced that no disinterested person would have gone into the forward cabin in its actual condition in August, 1884, who had the option of the other one, irrespective of all questions of color or race. I think it was considered by the persons who actually attended to the forward cabin, that less attention to it would suffice. It appears, too that there was a stewardess to attend to the after cabin, and that she did not attend the forward one. The evidence of the ships officers admit that there was a different system in respect to this cabin in giving out bed coverings.

The reasons given by the officers for this different system they justify by showing that the greater number of second-class colored passengers who used this cabin as compared with the smaller and more self respecting second-class white persons who used the after cabin, made a different system necessary, and also made it much more expensive and difficult to keep the forward cabin clean. I have no doubt of the truth of this, but it is no legal justification for not giving as clean and convenient a sleeping-place to a colored passenger as is given on the same ship to a first-class white passenger. If a different system was necessary for any reason, the first-class colored passenger should not be made to experience any difference in comfort on account of that system.

It seems to be only reasonable that some proper attendant should offer to supply the things that were not in the cabin, and which were always placed ready for use in the after cabin, and not that the passenger on discovering the differences should be obliged to hunt for, and with difficulty supply, those things which the others had furnished to them without asking.

The separation of the colored from the white passengers, solely on the ground of race or color, goes to the verge of the carriers legal right, and such a regulation cannot be upheld, unless bona fide, and diligently the officers of the ship see to it that the separation is free from any actual discrimination in comfort, attention or appearance of inferiority.

The right to the first-class colored passenger was to have first-class accommodation, according to the standard of the after cabin on the same boat, and this, no matter what might be the difficulties arising from the greater number of second-class colored passengers. If it is beyond the power of the owners of the boat to afford this, then they have no right to make the separation. On many vehicles for passenger transportation, the separation cannot be lawfully made, and the right of steamboat owners to make depends on their ability to make it without discrimination as to comfort, convenience, or safety.

I pronounce in favor of the libelants, and sign a decree for one hundred dollars in each case.¹

Additional NOTES:

The steamboat company took an appeal from the decision.
On July 9, 1885 the appeal was denied.

¹ Vol. 22, Federal Reporter, The Sue, pp 843 - 848

Summary

In researching this landmark case, it becomes quite apparent that "Stewart vs. The Sue" was a deliberate attack on racial discrimination in public accommodations and the recently declared unconstitutional "Civil Rights Act Of 1875." The Reverend Harvey Johnson, who was one of the leaders in numerous struggles for racial advancement in Maryland, assisted the Stewart sisters in their successful attack on the "Sue" and discrimination in interstate commerce. In all probability, from this success came the idea to form the "Mutual United Brotherhood of Liberty", which on a local level compared to the "NAACP" of a later period. The Brotherhood set goals, "to use all legal means within our power to procure and maintain our rights as citizens of this common country." As the Brotherhood's president, Reverend Harvey Johnson is believed to have written it's constitution which opened with the following statement, "Since it is a scriptural truth that God has made of one blood all nations of men, and since it is equally true by the Declaration of Independence that all men are endowed with the inalienable rights of life, liberty, and the pursuit of happiness; therefore it is the solemn duty of every man to seek to maintain these rights."

The Mutual United Brotherhood of Liberty (MUBL) immediately attacked legislation which was deterring the progress of African Americans." These "Black Laws" were statutes held over since slavery that discriminated against African Americans. The Brotherhood took court action to remove the word white from the Maryland State Code and helped to repeal those obsolete laws which created racial inequality. It also opened the bar to African Americans in 1888, thereby permitting two African Americans to practice law in 1889.

To attract public attention and interest for this case, Frederick Douglass spoke at a meeting arranged by Rev. Johnson (It is possible that the Stewart sisters personally met Frederick Douglass). Ten Years later, in 1896, "Stewart vs. The Sue" became one of the cases used in the Supreme court decision "Plessy v. Ferguson."

"Plessy vs. Ferguson"

In 1890, Louisiana enacted a statute providing "that all companies carrying passengers in their coaches in this state shall provide equal but separate accommodations for the white and colored races..." Homer Plessy was a member of a Creole group, who in 1892 successfully challenged a Louisiana law which mandated segregation on interstate transportation. On June 7, 1892, Plessy, in what was probably a deliberately pre-arranged action took a train from New Orleans to Covington, Louisiana, sat in a railroad car assigned to white persons and was arrested. Challenging his arrest on grounds that it violated the Thirteenth and Fourteenth Amendments to the Constitution, resulted in a 1896 Supreme Court decision which ruled that the Fourteenth Amendment, which guarantees equality of the two races before the law, did not prohibit racial segregation. The impact of the Plessy decision was that it set the precedent that "separate" facilities for African Americans and whites were constitutional as long as they were "equal."

"Separate but Equal" became law, because "If opponents of Jim Crow laws wanted a Supreme Court decision that would settle the issue of constitutionality of state imposed racial segregation, they chose the worst possible test case."² To begin with, six of the Supreme Court Justices who decided the case was had served as lawyers with railroads. Justice Stephen Field had been associated with the Southern Pacific Railroad and justice

² Loren Miller. *The Petitioners*. Pantheon Books, 1966. p.166

John M. Harlan and Justice David Brewer were also previous railroad lawyers. The seven justices who had previous ties with railroads were all honorable men, but it is no surprise that they would have some sympathy with public carriers. They had experienced enough troubles with state regulations, even without trying to champion the cause of African Americans who were neither large shippers or lucrative passengers.

One of the case's most damaging facets was the very practical consideration that railroads could furnish equal accommodations. As a matter of fact they could provide identical facilities for whites and African Americans. Coupled with this was fact, the court had come dangerously close to approving Jim Crow laws for railroads in prior decisions. Public carriers had been one of early targets for Jim Crow because they could actually provided two classes of service for passengers, and universally assigned African Americans to second-class facilities. It became easy to graft segregation laws onto both the first and second-class accommodations which they offered.

Justice John Marshall Harlan of Kentucky, who had formerly been a slave holder, wrote what many consider the most famous dissent in the Supreme Court's history. It was clear to him the direction in which the justices were trying to steer the court. He stated, "Further, if this statute of Louisiana is considered with the personal liberty of citizens, why may not the State require the separation in railroad coaches of native and naturalized citizens of the United States, or of Protestants and Roman Catholics?"

In other words:

"The Negro under the Court's guardianship, was reduced to a despairing second-class citizenship: voteless in the south; helpless in the face of constant and brutal aggression; indicted by all white grand juries... denied access to places of public accommodations; represented in public office by those whose very elections were dependent on their promise to white voters to double and redouble his disabilities; forced to scrounge and cadge for an education; segregated in every phase of his life; condemned to separate and unequal schools and public facilities of every kind; and with no place for redress of his grievances except to the court that had approved the devices used to reduce him to his helpless and almost hopeless degradation."³

The Supreme Court, like Congress in the words of Senator Salmon P. Chase of Ohio, who speaking during an earlier period declared, "Congress has no more power to make a slave than to make a king." [Ref. *DIASPORA, A GLOBAL BLACK MAGAZINE*, Sept 1996]

The lone dissenter, Justice Harlan's words proved to be prophetic when he said, "Our constitution is color blind, and neither knows nor tolerates classes among citizens. In respect to civil rights, all citizens are equal before the law... In my opinion, the judgement this day rendered will, in time, prove to be quite as pernicious as the decision made by this tribunal in the Dred Scott case... The present decision, it may well be apprehended, will not only stimulate aggressions, more or less brutal and irritating, upon the admitted rights of colored citizens, but will encourage the belief that it is possible, by means of state enactments, to defeat the beneficent purposed which the people of the United States had in view when they adopted the recent amendments of the Constitution."

The "separate but equal" doctrine was extended to cover other areas of public life such as restaurants, theaters, restrooms, and public schools. Not until sixty-four years later, in 1954, in the *Brown v. Board of Education of Topeka* Supreme Court decision would the "separate but equal" doctrine be struck down.

³ *Ibid*; p. 180

**The following article appeared in the Baltimore American
And Commercial Advertiser on Tuesday, February 3, 1885**

COLORED PEOPLES RIGHTS

The decision of Judge Morris in the case of Martha Stewart and others against the Steamer Sue will doubtless lead to an improvement in the accommodations of Colored passengers who pay first - class fares. The decision to the extent of requiring that all first class passengers, regardless of color, shall be accommodated in the same cabin or saloon. It recognizes that a regulation demanded by the great majority of passengers may be a reasonable one, and as such maintainable in law. But the decision does require that the accommodations given to Colored holders of first class tickets shall be as good as those accorded to white first - class passengers. This is so obviously just that it must appeal to the good sense of all.

There was conflict of testimony as to the comfort of the cabins allotted to Colored first class passengers, according to the statements on one side, the discomfort was very great. This is contradicted on the other side. But it is hardly claimed that the accommodations of the Colored passengers were as good as those given to the white passengers. This however, is what all Colored holders of first class tickets are entitled to and now that their rights appear to be enforceable at law, the companies will doubtless find it to their interest to fix up the cabins for this class of fares with the comforts and conveniences furnished to the most favored class.

**The following articles appeared in the Northern Neck News
(A Virginia Newspaper) on Friday, February 6 1885**

Decision Against the owners of the Steamer Sue

Baltimore, February 2. - Judge Morris, in the U. S. District Court today, rendered his decision in the case of Martha Stewart and three others, colored, against the Baltimore, Chesapeake, and Richmond Steamboat Co. The litigants purchased first class passage tickets on the steamboat Sue, after having been told they would not be admitted to the sleeping apartment occupied by white females. This suit was brought to recover \$500 damages each for exclusion from that apartment. Judge Morris said it was the right of the common carrier of passengers to make a regulation for a separation of different classes of passengers. But they have no right to make any difference in the comfort and convenience to those who pay equal fare. The forward cabin assigned to the colored females was not in as comfortable condition as that assigned to white females and he therefore awarded a decree of \$100, to each of the libelants. Notice of appeal was given.

And in another article from the same edition of the Northern Neck News

The decision of Judge Morris, elsewhere noted in our columns, in the case of Martha Stewart and others, against the steamer Sue, awarding damages to the plaintiffs, is a most important one, and if sustained by the Supreme Court, to which counsel for the steamboat company have given notice that they would file an appeal, must necessarily result in one of two things, either a promiscuous intermingling upon a perfect equality in all respects of both white and colored upon the different lines of travel, or such a rearrangement in the structure of steamers as to afford accommodations equally safe, pleasant, convenient and comfortable in all respects to both races. While the first of these will never be tolerated, or at least quietly submitted to by the white people, the latter seems to us to be utterly impracticable. We regard this and all other questions growing out of the relations which are to permanently subsist between the white and colored races of this country as problems of difficult solution, and of far more vital importance to both races and to the permanent peace and happiness and prosperity of the nation than it seems to be commonly considered, or might appear upon the surface. But it is useless to attempt to disguise the fact that they must be met, and the statesman who can solve them so as to

result in the interests and welfare, and at the same time to the entire satisfaction of both races, will be entitled to the lasting gratitude of the American people.

While we are not of that number who regard the Negro merely a connecting link between a man and a monkey, devoid of soul and utterly unaccountable for his actions to an all wise being, we do regard him as so entirely different from, and inferior to the Caucasian race, socially, morally and intellectually as forever to forbid him being placed in any sense of the word upon an equal footing with a race universally acknowledged to be the highest type of humanity.