

common carriers in general. They are companies chartered to carry passengers along a certain defined route, and between established termini. They are chartered for the accommodation of the community generally, and to this end the uses of the public highway of the city along and over which every person, without distinction of age or sex, or nationality or color, has a right to a free and unobstructed passage, is to the extent defined in the several acts of incorporation given to these companies for the construction of their roads. But these grants by the Legislature were not intended to divert the highways of the city from the purpose for which they were established; to some extent they changed the *mode* of transit over said highway; but the object of the grant was in aid of this common right of passage upon and over the streets of the city; it was to render travel more easy and convenient to those to whom the right belonged, and this right is a common right; it belongs equally to the rich and to the poor, to the black man as much as to the white man. A company claiming to exercise the power which the defendant, acting for his principals, the Lombard and South street road, sought to enforce as against the plaintiff in this action must show the most clear legislative authority as a justification. The charter of this company has been put in evidence, and it is not pretended that such an express power is therein contained. Nor can it be reasonably argued that such a power is taken by implication; for its exercise is not in aid of that which is by the letter of the charter granted to the company, but in its practical application is a restriction of its general corporate authority in violation of its public duty, and at war with the purpose for which the body was created. The rule that lies at the foundation of all corporate right is that the power shall be strictly construed, that corporations shall be permitted to do only that which they take by express grant, or that which by implication is conceded to them when necessary to the existence of the body corporate or requisite to carry into effect the letter of the charter itself. Neither branch of this proposition, which is one of the plainest axioms of the law has been established by the defence; on the contrary, the act of defendant was a clear violation of the rights of the plaintiff when he put her out of the car, because her skin was a few shades darker than his own. The letter of the charter of this company did not authorize it; and the act, so far from being justified under the reserved or implied grant of authority, was in itself a violation of the obligations and duties of the company, who as a common carrier, are bound to carry every individual who, paying the amount of fare charged to others, desires to travel on the road, and as against whom no reasonable or well-founded objection can be made on personal grounds.

The true principle is that a corporation created for the carriage of passengers has no right to exclude any class of persons, as a class, from the benefits of its mode of its transportation; it may for *cause* either by or without a regulation exclude individuals. A corporation of this description might as well undertake to make nationality or religion a ground of exclusion, as color; it would not be difficult to determine in advance

the legal force of a by-law excluding all Germans or Frenchmen or Irishmen, or Protestants or Catholics, Jews or Greeks, as such, from the passenger cars of the city; such an exclusion would not be tolerated by any intelligent tribunal; and yet in this, the day of our comparative enlightenment and freedom from a prejudice, to which we were so long in bondage, a question can be seriously made before a court and jury and practically enforced at the bar of public opinion, as to the right of an individual conductor, or a company, to turn persons out of the passenger cars of the city with force and violence because of their complexion. Than this, nothing can be more unreasonable; nothing, in my opinion, is a clearer or grosser violation of the plainest principles of the law and of the rights of individuals.

But, it is asked, are these corporations powerless to protect themselves or the passengers whom they carry? By no means; they have a perfect right to exclude any one not a fit person to ride in their cars. Intoxication, profane or indecent language, the presence of one afflicted with an offensive or contagious disease, smoking in the cars, are but illustrations of the principle, because these are a reasonable offence to the travelling public; these of themselves constitute a ground for exclusion or removal; but the mere prejudice of one class against another cannot be allowed to subvert or overthrow the cardinal doctrine of the equality of all before the law, in the maintenance of the sacred rights of person and of citizenship.

The argument which is used as a justification for the exclusion of people of color from the cars, would shut them out from and bar against them our courts of justice, forbid to them the use of public ferries, bridges and highways, and rests not upon any principle of legal or moral right, but upon bald, naked prejudice alone. It is our duty, gentlemen, in the discharge of our duties, you in your sphere and I in mine, to cast aside all prejudice, that the law may vindicate its just claim to strict and impartial justice. And if, by the action of courts and juries, wrong has been done to that class of citizens to which the plaintiff belongs, it is time that such errors should be contradicted.

The logic of events of the past four years has in many respects cleared our vision and corrected our judgment; and no proposition has been more clearly wrought out by them than that the men who have been deemed worthy to become the defenders of the country, to wear the uniforms of the soldier of the United States, should not be denied the rights common to humanity, and this not only without law, but against law and the plainest principles of right and justice. The judge further charged the jury that the instructions of a principal to a subordinate to do an illegal act, such as to commit an assault and battery upon the person of a citizen, was no justification of the subordinate for so doing; that such a plan could not shield a conductor of a car from his accountability before the law, to the person injured.

He also instructed the jury upon the question of the violence inflicted by the plaintiff upon the defendant; that if such violence was used in defence of her person when assaulted by the defendant, and was no greater in degree than