

that absence of legislation by Congress on the subject is indicative of its will that such commerce shall be free and untrammelled." And again: "But how does the statute interfere with inter-state commerce, if it be true that it has no application save to those traveling wholly within the State? It is manifest from the plea that the statute is resisted because it imposed a burden upon the carrier and not upon commerce."

With this view of the facts of the case and upon the idea that this burden on the carrier within the State could not be regarded as a burden upon inter-state commerce, the Supreme Court of the State affirmed the judgment of the lower court.

It is evident that the court could not be held to have decided more than that either the provision as to separate coaches only applied to domestic travel, and was, therefore, constitutional or that in so far as it did apply to such travel it was not unconstitutional, and that the placing this burden of providing separate coaches on the carrier for this purpose was not an interference with interstate commerce.

If it be claimed in the case at bar that our statute is similar to the Mississippi statute and should be construed as the Supreme Court of Mississippi decided their statute, then certainly the first count of our petition is not affected in any way by the statute of Kentucky, as it does not apply to such a case.

The Supreme Court of the United States, in considering this case upon writ of error, 133 U. S., p. —, was itself careful to anticipate any misconstruction of its opinion, and in the first place said that "it will be observed that this indictment was against the company for the violation of Sec. 1, in not providing separate coaches, and not against a conductor for failing to assign each passenger to his separate compartment. * * * The question is limited to the power of the State to compel railroad companies to provide within the State separate accommodations for the two races. Whether such accommodation is to be a matter of choice or compulsion does not enter into the case."

In the second place it said: "In this case the Supreme Court of Mississippi held that the statute applied solely to commerce within the State, and that construction being the construction of the statute of the State, by its highest Court, must be accepted as conclusive here."