

U.S. Supreme Court

PLESSY v. FERGUSON

163 U.S. 537 (1896)

- **Majority opinion by Justice Brown**
- **Dissent of Justice Harlan**

Excerpts

This was a petition for writs of prohibition and certiorari originally filed in the supreme court of the state [Louisiana] by Plessy, the plaintiff in error, against the Hon. John H. Ferguson, judge of the criminal district court for the parish of Orleans, and setting forth in substance, the following facts:

—that petitioner was a citizen of the United States and a resident of the state of Louisiana, of mixed descent, in the proportion of seven-eighths Caucasian and one-eighth African blood;

—that the mixture of colored blood was not discernible in him, and that he was entitled to every recognition, right, privilege, and immunity secured to the citizens of the United States of the white race by its constitution and laws;

—that on June 7, 1892, he engaged and paid for a first-class passage on the East Louisiana Railway, from New Orleans to Covington, in the same state, and thereupon entered a passenger train, and took possession of a vacant seat in a coach where passengers of the white race were accommodated;

—that such railroad company was incorporated by the laws of Louisiana as a common carrier, and was not authorized to distinguish between citizens according to their race, but, notwithstanding this, petitioner was required by the conductor, under penalty of ejection from said train and imprisonment, to vacate said coach, and occupy another seat, in a coach assigned by said company for persons not of the white race, and for no other reason than that petitioner was of the colored race;

—that, upon petitioner's refusal to comply with such order, he was, with the aid of a police officer, forcibly ejected from said coach, and hurried off to, and imprisoned in, the parish jail of New Orleans, and there held to answer a charge made by such officer to the effect that he was guilty of having criminally violated an act of the general assembly of the state. . . .

Mr. Justice BROWN, after stating the facts in the foregoing language, delivered the opinion of the court. . . .

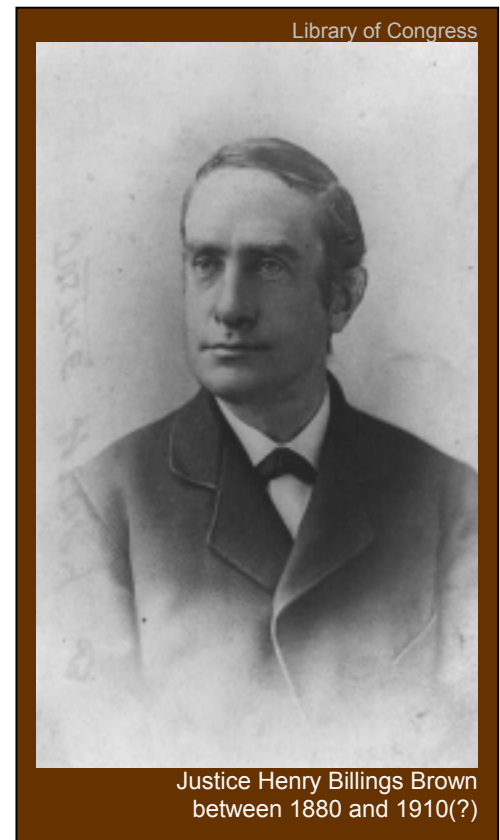
The constitutionality of this act is attacked upon the ground that it conflicts both with the thirteenth amendment of the constitution, abolishing slavery, and the fourteenth amendment, which prohibits certain restrictive legislation on the part of the states.

1. That it does not conflict with the thirteenth amendment, which abolished slavery and involuntary servitude, except a punishment for crime, is too clear for argument. Slavery implies involuntary servitude,—a state of bondage; the ownership of mankind as a chattel, or, at least, the control of the labor and services of one man for the benefit of another, and the absence of a legal right to the disposal of his own person, property, and services. . . .

2. By the fourteenth amendment, all persons born or naturalized in the United States, and subject to the jurisdiction thereof, are made citizens of the United States and of the state wherein they reside; and the states are forbidden from making or enforcing any law which shall abridge the privileges or immunities of citizens of the United States, or shall deprive any person of life, liberty, or property without due process of law, or deny to any person within their jurisdiction the equal protection of the laws. . . .

We consider the underlying fallacy of the plaintiff's argument to consist in the assumption that the enforced separation of the two races stamps the colored race with a badge of inferiority. If this be so, it is not by reason of anything found in the act, but solely because the colored race chooses to put that construction upon it. The argument necessarily assumes that if, as has been more than once the case, and is not unlikely to be so again, the colored race should become the dominant power in the state legislature, and should enact a law in precisely similar terms, it would thereby relegate the white race to an inferior position. We imagine that the white race, at least, would not acquiesce in this assumption. The argument also assumes that social prejudices may be overcome by legislation, and that equal rights cannot be secured to the negro except by an enforced commingling of the two races. We cannot accept this proposition. If the two races are to meet upon terms of social equality, it must be the result of natural affinities, a mutual appreciation of each other's merits, and a voluntary consent of individuals. . . .

The judgment of the court below is, therefore, affirmed.



Mr. Justice HARLAN dissenting.*

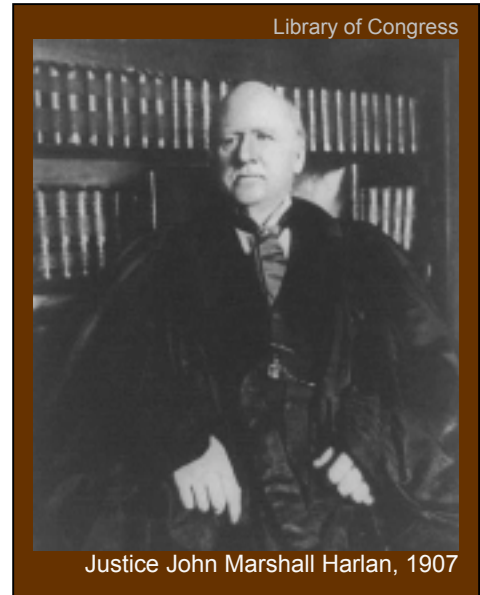
By the Louisiana statute the validity of which is here involved, all railway companies (other than street-railroad companies) carry passengers in that state are required to have separate but equal accommodations for white and colored persons . . .

. . . Every true man has pride of race, and under appropriate circumstances, when the rights of others, his equals before the law, are not to be affected, it is his privilege to express such pride and to take such action based upon it as to him seems proper. But I deny that any legislative body or judicial tribunal may have regard to the race of citizens when the civil rights of those citizens are involved. . . .

. . . Every one knows that the statute in question had its origin in the purpose, not so much to exclude white persons from railroad cars occupied by blacks, as to exclude colored people from coaches occupied by or assigned to white persons. Railroad corporations of Louisiana did not make discrimination among whites in the matter of commoation for travelers. The thing to accomplish was, under the guise of giving equal accommodation for whites and blacks, to compel the latter to keep to themselves while traveling in railroad passenger coaches. No one would be so wanting in candor as to assert the contrary. . . .

. . . If a state can prescribe, as a rule of civil conduct, that whites and blacks shall not travel as passengers in the same railroad coach, why may it not so regulate the use of the streets of its cities and towns as to compel white citizens to keep on one side of a street, and black citizens to keep on the other? Why may it not, upon like grounds, punish whites and blacks who ride together in street cars or in open vehicles on a public road or street? Why may it not require sheriffs to assign whites to one side of a court room, and blacks to the other? . . .

The white race deems itself to be the dominant race in this country. And so it is, in prestige, in achievements, in education, in wealth, and in power. So, I doubt not, it will continue to be for all time, if it remains true to its great heritage, and holds fast to the principles of constitutional liberty. But in view of the constitution, in the eye of the law, there is in this country no superior, dominant, ruling class of citizens. There is no caste here. Our constitution is color-blind, and neither knows nor tolerates classes among citizens. In respect of civil rights, all citizens are equal before the law. The humblest is the peer of the most powerful. The law regards man as man, and takes no account of his surroundings or of his color when his civil rights as guaranteed by the supreme law of the land are involved. It is therefore to be regretted that this



* Justice Harlan was the only dissenting justice in *Plessy*. In 1954, soon after the *Brown* decision overturned *Plessy*, Harlan's grandson John Marshall Harlan was appointed to the U.S. Supreme Court by President Eisenhower.

high tribunal, the final expositor of the fundamental law of the land, has reached the conclusion that it is competent for a state to regulate the enjoyment by citizens of their civil rights solely upon the basis of race.

In my opinion, the judgment this day rendered will, in time, prove to be quite as pernicious as the decision made by this tribunal in the Dred Scott Case. . . .

. . . Sixty millions of whites are in no danger from the presence here of eight millions of blacks. The destinies of the two races, in this country, are indissolubly linked together, and the interests of both require that the common government of all shall not permit the seeds of race hate to be planted under the sanction of law. What can more certainly arouse race hate, what more certainly create and perpetuate a feeling of distrust between these races, than state enactments which, in fact, proceed on the ground that colored citizens are so inferior and degraded that they cannot be allowed to sit in public coaches occupied by white citizens? That, as all will admit, is the real meaning of such legislation as was enacted in Louisiana.

The sure guaranty of the peace and security of each race is the clear, distinct, unconditional recognition by our governments, national and state, of every right that inheres in civil freedom, and of the equality before the law of all citizens of the United States, without regard to race. . . .

There is a race so different from our own that we do not permit those belonging to it to become citizens of the United States. Persons belonging to it are, with few exceptions, absolutely excluded from our country. I allude to the Chinese race. But, by the statute in question, a Chinaman can ride in the same passenger coach with white citizens of the United States, while citizens of the black race in Louisiana, many of whom, perhaps, risked their lives for the preservation of the Union, who are entitled, by law, to participate in the political control of the state and nation, who are not excluded, by law or by reason of their race, from public stations of any kind, and who have all the legal rights that belong to white citizens, are yet declared to be criminals, liable to imprisonment, if they ride in a public coach occupied by citizens of the white race. . . . The arbitrary separation of citizens, on the basis of race, while they are on a public highway, is a badge of servitude wholly inconsistent with the civil freedom and the equality before the law established by the constitution. It cannot be justified upon any legal grounds.

If evils will result from the commingling of the two races upon public highways established for the benefit of all, they will be infinitely less than those that will surely come from state legislation regulating the enjoyment of civil rights upon the basis of race. We boast of the freedom enjoyed by our people above all other peoples. But it is difficult to reconcile that boast with a state of the law which, practically, puts the brand of servitude and degradation upon a large class of our fellow citizens,—our equals before the law. The thin disguise of ‘equal’ accommodations for passengers in railroad coaches will not mislead any one, nor atone for the wrong this day done. . . .

For the reason stated, I am constrained to withhold my assent from the opinion and judgment of the majority.