deLesseps S. MORRISON, Individually and as Mayor of the City of New Orleans, Provosty A. Dayries, Individually and as Superintendent of Police of the City of New Orleans and New Orleans Public Service, Inc., Appellants,

v.

Abraham L. DAVIS, Jr. and William R. Adams, Appellees.

No. 16886.

United States Court of Appeals
Fifth Circuit.
Feb. 19, 1958.

Rehearing Denied March 28, 1958.

Writ of Certiorari Denied May 26, 1958.
See 78 S.Ct. 1008.

Action by Negro citizens against certain city officials and public transportation company for declaratory judgment as to constitutionality of Louisiana statutes requiring segregation of races on public transportation vehicles. The United States District Court for the Eastern District of Louisiana, J. Skelly Wright, J., entered summary judgment declaring statutes unconstitutional and enjoining city officials and public service corporations from enforcing such statutes, and they appealed. The Court of Appeals, held that it was unnecessary for Negro citizens to be first arrested for violation of segregation laws before being able to test their constitutional rights.

Affirmed.

1. Courts ⇐262.6(4)

Federal court may grant an injunction against application or enforcement of a state statute, violation of which carries criminal sanctions.

2. Courts ⇐490

Declaratory judgment action to have Louisiana laws requiring segregation of races on buses, street cars, etc., declared unconstitutional, is not a case requiring withholding of federal court action for reason of comity, since for protection of civil rights of the kind asserted Congress has created a separate and distinct federal cause of action. 42 U.S.C.A. § 1983.

3. Declaratory Judgment ⇐125

Negro citizens using public transportation of city of New Orleans were entitled to bring a declaratory judgment action to determine constitutionality of Louisiana statutes requiring segregation of races on buses, street cars, etc., without first being arrested for violation of such statutes.

Jack P. F. Gremillion, Atty. Gen. of La., George M. Ponder, 1st Asst. Atty. Gen., Alvin J. Liska, City Atty. of New Orleans, Gibbons Burke, New Orleans, La. (Joseph H. Hurndon, Ernest L. Salatich, Asst. City Attys., New Orleans, La., William P. Schuler, Asst. Atty. Gen., for State of Louisiana. A. J. Waechter, Jr., Floyd W. Lewis, New Orleans, La., on the brief), for New Orleans Public Service, Inc.

A. P. Tureaud, A. M. Trudeau, Jr., New Orleans, La. (Earl J. Amedee, Israel M. Augustine, Jr., Louis Berry, Robert F. Collins, Alvin Jones, Revius O. Ortique, Jr., New Orleans, La., of counsel), for appellee.

Before HUTCHESON, Chief Judge, and TUTTLE and JONES, Circuit Judges.

PER CURIAM.

This appeal from a final injunction following a summary judgment for the plaintiffs declaring unconstitutional all laws of the State of Louisiana requiring segregation of the races on buses, street cars, street railways or trolley buses, and enjoining defendant officials and public service corporations from enforcing such statutes is controlled in all respects by Browder v. Gayle (the City of Montgomery bus case), D.C., 142 F.Supp. 707, affirmed without opinion by the Supreme Court in 352 U.S. 903, 77 S.Ct. 145, 1 L. Ed.2d 114.

[1–3] That case disposes of the contention that the federal court should not grant an injunction against the application or enforcement of a state statute, the violation of which carries criminal sanctions. This is not such a case as requires the withholding of federal court action for reason of comity, since for the protection of civil rights of the kind asserted Congress has created a separate and distinct federal cause of action. 42 U.S.C.A. § 1983. Whatever may be the rule as to other threatened prosecutions, the Supreme Court in a case presenting an identical factual issue affirmed the judgment of the trial court in the Browder case in which the same contention was advanced. To the extent that this is inconsistent with Douglas v. City of Jeannette, Pa., 319 U.S. 157, 63 S.Ct. 877, 87 L.Ed. 1324, we must consider the earlier case modified. Moreover we think the trial court here properly held: "It is not the Court's view that in our civilization it is necessary to have incidents requiring arrests to have the rights of people declared." These plaintiffs are not being prosecuted; they have not violated the state law; they are seriously affected by the provision of the statute which places a criminal penalty on the street car operators who permit them to travel on a street car without complying with the unconstitutional statute. They are asking relief from such constraint. Since all transportation can be denied them under the statute unless they obey the illegal requirement, it is not even apparent that they could put themselves in position to be arrested and prosecuted even if they sought to test their constitutional rights in that manner, which we hold they do not have to do.

The only other contention raised by appellants here are either ruled by the cases affecting admission to state educational institutions, or are so plainly and fully disposed of in the Montgomery bus case as not to require further elaboration here.

The judgment is Affirmed.

David E. KNIGHT, Appellant,

v.

CAMERON JOYCE AND COMPANY, a corporation, and Jewell E. Vandiver, d/b/a J. E. Vandiver Construction Company, Appellees.

No. 15827.

United States Court of Appeals
Eighth Circuit.
Feb. 12, 1958.

Action for personal injuries sustained by plaintiff when while operating a roller on a federal highway a dump truck owned by one of the defendants, and driven by another defendant, collided with the rear end of the roller. The United States District Court for the Western District of Missouri, Richard M. Duncan, Chief Judge, entered judgment against owner and operator of truck, and in favor of two other defendants, and plaintiff appealed from portion of judgment for such defendants. The Court of Appeals, Sanborn, Circuit Judge, held that, under Missouri law, evidence was insufficient to present a question for the jury as to whether a master-servant relation existed between cement hauling contractor and defendant-driver of truck, or as to whether there was such a relationship between highway contractor who engaged services of cement hauling contractor, and defendant-truck driver who was paid by his father who owned the truck and entered into an agreement with cement hauling contractor to haul cement at a certain rate per ton mile.

Judgment affirmed.

1. Courts ⇐406.2

Conclusion of trial court that under Missouri law evidence was insufficient to present a question for the jury as to liability of two defendants, in a personal injury action, would not be overruled by the Court of Appeals unless it could be demonstrated that such conclusion was