

ETHEL NEW v. ATLANTIC GREYHOUND CORPORATION AND W. N. SMITH, 186 Va. 726 (1947), Record No. 3224, Supreme Court of Virginia

PETITION FOR WRIT OF ERROR.

To the Honorable Judges of the Supreme Court of Appeals of Virginia:

Your petitioner, Ethel New, respectfully represents that she is aggrieved by a final judgment of the Law and Equity Court of the City of Richmond, Virginia, entered on the 8th day of October, 1946, denying her motion for a new trial and entering final judgment for respondents. A transcript of the record is herewith presented.

Your petitioner is advised and believes that numerous errors of law were made and committed during her trial in the Court below and prays that a writ of error may be issued in her behalf to the judgment aforesaid and a supersedeas thereto awarded; and that said judgment of the Law and Equity Court of the City of Richmond may be reviewed and reversed.

STATEMENT OF FACTS.

On June 11, 1944, Ethel New, whose home is in Cumberland, Kentucky, was in Camp Pickett at Blackstone, Virginia, visiting her husband who was stationed there in the United States Army. About 10:45 on the night of June 11, 1944, she purchased a ticket in Blackstone to Appalachia, Virginia, after notifying the ticket agent that she was going to Cumberland Kentucky, and after unsuccessfully attempting to purchase a ticket therefor (Tr., pp.27, 28 and 29). She boarded the bus, but was unable to secure a seat on this bus and stood up from Blackstone to Lynchburg, Virginia, a distance of approximately 81 miles (Tr., p.30). Upon arriving at Lynchburg she obtained a seat in the rear of the bus just in front of the long seat in the back (Tr., p.31). The bus driver ordered her to move to the long seat in the back. She told him that she would not do so because she was sick (Tr., pp.32 and 33). It is uncontradicted that the long seat in the back had no adjustable back (Tr., pp.87,88); the windows are not adjustable; there is a ventilator just over the seat which draws the hot air, fumes, odors, etc., from the front of the bus (Tr., p.86); and the six cylinder, 170 horsepower motor is just under the rear seat (Tr., p.102).

Upon her refusal to move, the bus driver called a police officer, the defendant, W.N. Smith, and another officer who ejected her from the bus. There is a conflict as to the amount of force used in her ejection. Mrs. New testified that they caught her by the arms and legs and pulled her off the bus, dragging her down the aisle. Defendant Smith and other witnesses, called on behalf of the defendants, testified that they "politely" escorted her off the bus (Tr., pp.16, 111, 130), all of whom, however, admitted that she was screaming and crying when taken off the bus (Tr., pp.20, 25, 93) and was not permitted to reboard it; that she waited some two hours for another bus to take her home. She suffered some bruises and injuries sustained as a result of her ejection from the bus, during her entire ride to Kentucky. Upon her arrival there she consulted her physician, Dr. D.M. Fields, who testified that she stated to him the above incidents resulted in her injuries and he prescribed treatments therefor and informed her that she would probably have a miscarriage.

At the time of the aforesaid incidents in Lynchburg, Mrs. New was three months pregnant with child, and at that time told the bus driver that the reason she would not move to the rear seat was because she was sick although she did not inform him that she was pregnant.

Mrs. New suffered from the injuries sustained until June 18, 1944, at which time she had a miscarriage or abortion. On May 31, 1945, she filed her Notice of Motion for Judgment against the Atlantic Greyhound Corporation and W.N. Smith in the Law and Equity Court of the City of

Richmond, Virginia, for \$10,000.00 as damages by reason of the above-mentioned facts. Upon the trial, the Court, over the objection of plaintiff, instructed the jury that she was required to move to the rear seat of the bus, provided it was as comfortable as the other seats, and provided that the bus company had a rule or regulation to that effect. The Court further instructed the jury that the agents of the bus company and the police officer had a right, under the circumstances, to eject her from the bus if they used no more force than was necessary, if she unreasonably refused to move when she was requested to do so.

Plaintiff objected and excepted to both of the above-mentioned instructions on the ground that they were without evidence to support them; that the uncontradicted evidence showed that the rear seat of the bus was of less quality, comfort and convenience than the other seats; and that there was no valid segregation law in Virginia at the present time affecting persons traveling in either intrastate or interstate commerce. These exceptions were overruled and plaintiff's motion for a new trial denied and, on October 8, 1946, the Court entered final judgment for the defendants. The certificate of exception was signed on November 19, 1946.

Following the opening statements of counsel to the jury, the taking of evidence is begun, as follows:

W.N. Smith, called for the purpose of cross examination by Mr. Martin, first being duly sworn, testified as follows:

DIRECT EXAMINATION

By Mr. Martin:

Q. Mr. Smith, your name is W.N. Smith?

A. Yes, sir.

Q. You live in Lynchburg?

Q. That is right.

Q. What is your address?

A. 314 Yeardley Avenue

Q. You are a Lieutenant on the Police Force in Lynchburg?

A. I am.

Q. How long have you had that position?

A. I have had it regularly since 1939, I believe.

Q. You were a Lieutenant of Police on June 11, 1944?

A. I was.

Q. And I understand somewhere around twelve o'clock of that night you were called on to come to the bus station in Lynchburg on Fifth Street?

A. Around one-fifteen to one-thirty.

Q. Are there any other persons by the name of Smith who are lieutenants on the Police Force in Lynchburg?

A. There are not.

Q. You saw the plaintiff in this case in the bus there in Lynchburg?

A. I did.

Q. Where was she sitting at that time?

A. She was sitting on the right side of the bus as you enter, would be the left side of the bus facing the driver on the last seat next to the long seat reaching all the way across the back of the bus.

Q. Was anybody sitting beside her?

A. No one was sitting beside her. She was sitting on the outside, near the middle of the bus.

Q. She was sitting next to the aisle?

A. Yes, sir.

Q. Anybody on the long seat in the back of the bus?

A. Two colored people.

Q. When you went back there did you ask her to move?

A. Yes.

Q. Just what did you say to her?

A. I talked to Mr. Lee, at first, the driver.

Q. What did you say to Mrs. New when you went back there?

A. I held the bus and went back, she was sitting down, and she was the only colored woman on the bus, I couldn't miss her. I walked on back and spoke to her politely and told her I had a complaint from the driver that he had talked to her and asked her to move back, and she refused, and he asked me to come on and ask her to move back.

I in turn told her that the law, as best I knew it, I told her that the driver had the power and authority to seat the passengers anywhere he saw fit on the bus as long as they had comfortable seats, and I asked her to move back.

She in turn told me that she had boarded this bus at Blackstone, Virginia, had been to Camp Pickett visiting her husband, and that he was a soldier wearing the uniform of the United States, a representative of our country, and she had as much right to ride there as anybody else, and she refused to move.

I told her, I said "Your husband is a soldier, and I now a good one, isn't he?" She said "He is." I said "Now you be a good soldier, a good a soldier as your husband, and come on and get back in the back seat."

She apparently got offended at it, and she began to cry. Tears came out of her eyes, and ran down her cheeks. She had on a low neck dress. I told her, I said "There is no use in your getting mad, there is nothing to get mad at. Nobody is going to hurt you. Just move on back and let the white soldiers and sailors sit down."

The bus was very crowded, and all the seats had been taken up, and there were mostly soldiers and sailors on the bus. She said that she would not do it.

She stated that she had been living in Chicago, and in Chicago where she had been that the white and colored folks got along very nicely, and down here we appeared that we didn't want to cooperate together. I told her that it wasn't a question of cooperating, it didn't make any difference to me, I wasn't going to ride in the bus that I was a Police Officer, and if she would just move back that would be all that was necessary. She quoted the Bible to me. She said that is says in the Bible that you must love your neighbor as yourself. I told her the Bible did say that, but that had nothing to do with this situation, and for her to go ahead and move on back there. She then said she was not.

I then immediately walked to the front of the bus where Mr. Lee was standing who was the driver of the bus, and I told him—

Q. Just one minute. You said she was sitting in the rear of the bus, and Mr. Lee was standing in the front of the bus?

A. Yes.

Q. He never did come back with you, did he?

Q. Not at that time.

Q. The aisle was crowded?

A. Yes.

Q. Then you cannot tell what conversation you had with Mr. Lee if it was not in her presence. I want to know what you said to her and what happened. You went to see Mr. Lee and had some conversation with him?

A. That is correct.

Q. Then you came back to her again?

A. That is correct.

Q. Did Mr. Lee come back that time?

A. Yes.

Q. What was said and done at that time?

A. I came back, Mr. Lee wasn't with me when I came back. I came back by myself to where Ethel New was sitting. I told her, I said "Mr. Lee, the bus driver, has gone in the office to refund your ticket and we are going to put you off this bus if you don't move back." She said she was not going to move back, and was not going to be removed from the bus. I said, "Now for your own safety, soldiers and sailors are getting very noisy", -- they were saying to put her off put her off. She had held up the bus probably twenty minutes, and they were saying put her out. I said "Now for your own safety I cannot leave you on here, come on and get back where you belong and where there is a comfortable seat." I don't know that I said "Where you belong", but that is substantially what I told her, that there was a comfortable seat and for her to get back there and go where she was going. She said "I will not."

In the meantime Officer Bagby and Mr. Lee, who was the driver of the bus, came on the bus, came to where I was talking to Ethel New. The driver of the bus, Lee, his name was Charlie Lee, gave this woman her ticket, and told her she would have to get off the bus. She said she wouldn't. I am sure I said "Take her off." Officer Bagby caught her by the right hand, she was sitting like that, he caught her by the right hand; Mr. Lee who was the driver caught her by the left hand, and she had a long pocketbook like woman carry in her lap. As well as I recall it was black, patent leather. Mr. Bagby and Lee began to pull, or pulled her up out of the seat, and when she stood up she dropped this long pocketbook. The pocketbook came open, and I would say around one dollar fifty cents or maybe two dollars in change, there were some tokens, at that time red tokens, ration tickets. They fell out on the floor together with around one dollar fifty cents in small change, silver.

So they then took her out of the bus, and I began to pick up this small change and tokens and the pocketbook and ticket, and other personal papers which I did not look at. They came out of her pocketbook.

Some men on the bus, I couldn't say who he was then, but of course this past Sunday I learned who he was, he helped pick this money up and these ration tickets, these tokens. I placed them back in the pocketbook, and when I got off the bus Ethel New was sitting on a truck that is used to push back and forth around the bus terminal. She was still crying. I went over and gave her her purse, and told her she had not been hurt in any way, and that she could have gone on if she had accepted that seat, but she wouldn't do it. I told her she hadn't been hurt in any way, and if she wanted she could go to the bus station. She did not move. She sat right where she was.

I would say in five minutes or so, maybe longer, the bus pulled out, and when I got back in the police car she was still there.

Q. You didn't get any warrant for her arrest, did you?

A. No, sir.

Q. You never swore out any warrant?

A. Did not.

Q. So far as you know nobody ever swore out any warrant charging her with any crime?

A. No.

Q. As a matter of fact you said that Lee, the bus driver and Mr. Bagby, had her by each arm pulling her off the bus?

A. Yes, sir.

Q. And you had her by the feet?

A. Never put my hands on her.

Q. As a matter of fact, did you and Mr. Lee drag this woman all the way through the aisle of that bus and off that bus?

A. I wouldn't have needed any help to carry her out. I could have carried her by myself.

Q. You didn't help pull her off the bus?

A. I told her she was going to be taken off if she didn't move back.

Q. Did you tell her who was going to take her off the bus?

A. I told her she was going to be taken off if she didn't move back.

Q. Did you tell her who was going to take her off the bus?

A. I told her that the driver and the Police Officer, my intention was to take her off the bus.

Q. You did it too, I believe.

A. I would have if Officer Bagby hadn't been there.

....Q. Did the bus driver say anything to Mrs. New in your presence on the bus that night?

A. Not until he came back for the ticket.

Q. What did he say then?

A. He just told her he was going to take her off because she refused to move back.

Q. That is all he said as far as you recall?

A. Yes.

Q. And you don't know what conversation the bus driver had with her before that time, except what he told you?

A. I do not.

CROSS EXAMINATION

By Mr. May:

Q. Lieutenant Smith, did anyone strike the woman in taking her off?

A. No sir.

Q. Did she hold back much, or what was the extent that she held back, or that she was pulled forward?

A. They pulled her up off of the seat, had her by the hand, and I wouldn't say positively but I am sure Officer Bagby was in front and as the aisle was narrow all three of those people couldn't get out together, and Ethel New was in the middle between Officer Bagby and the driver, and they just took her right on off the bus. She was pulling back, she was pulling back and they pulled her right on off....

RE-DIRECT EXAMINATION

By Mr. Martin:

Q. I believe you said she was crying. She started crying when you told her to move back on the back seat.

A. That is correct.

Q. Didn't she tell you the reason she didn't want to sit on the back seat was because she was sick?

A. She never mentioned being sick.
A. You stated that people were standing in the aisle of the bus.
A. At the front of the bus, yes.
Q. About how many?
A. I would say probably a dozen or more
Q. If a dozen people were standing up in the aisle of the bus, how did Mr. Lee and Mr. Bagby drag her through all those people out of the bus?
A. She walked through....

ETHEL NEW, the plaintiff, first being duly sworn, testified as follows:

DIRECT EXAMINATION.

By Mr. Martin:

Q. Your name is Ethel New?

A. Yes.

Q. Are you married, Mrs. New?

A. I am.

Q. What is your husband's name?

A. Alvin B. New.

Q. Where do you live?

A. Cumberland, Kentucky. I get my mail in Lynch, Kentucky.

Q. You live in Cumberland, Kentucky?

A. I do.

Q. Are you living with your husband now?

A. I am.

Q. What kind of work does your husband do?

A. he is a miner.

Q. Have you previously been married?

A. I have.

Q. Do you have any children?

A. I have three.

Q. How old are they?

A. One sixteen, one eighteen and the other one is twenty.

Q. On June 10 of 1944 I believe you were in Blackstone, Virginia, is that correct?

A. I was.

Q. How long had you been there?

A. About two months, maybe three.

Q. What were you doing in Blackstone?

A. I went to visit my husband as he was fixing to go overseas.

Q. He was in the Army?

A. Yes.

Q. He was stationed at Blackstone?

A. He was.

Q. You left Blackstone that day?

A. That night about ten something. I disremember exactly, ten-forty, I believe, or ten-forty-five.

Q. That was the tenth of June, 1944?

A. Yes, it was.

Q. Did you catch a bus?

A. Yes, at Blackstone.

Q. And then the bus that you caught in Blackstone, did you ride that bus all the way to Lynchburg?

A. No, that bus stopped. I don't know what it was, I think it was the next stop, and wasn't but three passengers going on to Roanoke, and they put us in the crowded bus with the rest of them.

Q. That was the next stop after you left Blackstone going towards Lynchburg?

A. I think so....

Q. Were you going home?

A. Yes. They couldn't sell me a ticket to Cumberland, that is why I didn't have a ticket, but I asked for a ticket at Blackstone to Cumberland, Kentucky, and they only would give me a ticket from Blackstone to Appalachia, Virginia. That is why I didn't have a ticket to Cumberland, Kentucky.

Q. As I understand it at Appalachia, Virginia, there is a tall mountain between Appalachia and Lynch, Kentucky?

A. That is right.

Q. Do you know whether that Greyhound Bus goes over that mountain or not?

A. No, it does not. Mr. Wilton I think owns it, from Bristol into Cumberland.

Q. But this Greyhound Bus that you caught, as a matter of fact, did not go over and you changed buses a number of times before you got to Appalachia?

A. Yes, sir.

Q. But this bus company, so far as you knew, only went as far as Appalachia?

A. That is where I had my ticket to, Appalachia.

Q. You had to then take another bus and go over the mountain to your home in Kentucky?

A. Yes.

Q. Did you ride this bus all the way to Lynchburg, the bus you got on first when you started out of Blackstone?

A. Yes.

Q. Were you sitting or standing?

A. I was standing coming out of Lynchburg.

Q. About how many other people were standing, if any?

A. The aisle was full.

Q. All the way?

A. All the way through.

Q. You stood up all the way to Lynchburg?

A. I did.

Q. Then what happened when you arrived at Lynchburg?

A. The bus unloaded after I got in Lynchburg. While standing I was standing by the side of two white ladies, so one of the white ladies was getting off, one was going to Detroit, one of the ladies was, and she told me to hold her seat until she got back. I told her no that I couldn't sit there, because they wouldn't allow colored people to sit in the front, and so while sitting there waiting for the bus to unload the bus driver came up there and said to me "Nigger, you get up out of that seat and get to the back". I said "I am going to get to the back, I am just waiting for the bus to unload."

So after the bus unloaded I went on back to the back. So the girl came on back and said "Oh you don't have to go." I said, "Yes, I am back here."

Mr. May: If Your Honor please, we object to that as being hearsay.

The Court: Objection sustained.

Q. Do not tell what was said between you and these other people on the bus. But you did get up after that?

Q. Yes, sir.

Q. You got up and got back toward the back of the bus?

A. Yes, sir.

Q. You got up and got back toward the back of the bus?

A. Got next to the long seat in the rear.

Q. That was the first short seat from the rear of the bus?

A. That is right.

Q. And had some of the people gotten off of the bus at that time?

A. Yes. There was no one in the aisle at all.

Q. Were other people sitting in all the other seats?

A. Yes. People were sitting in all the rest of the seats after the bus got ready to pull off.

Q. Was anybody sitting in the seat besides you?

A. No, it was not.

Q. Did the bus driver come back and ask you to get on the long seat in the back?

A. He came back and told me, he said "Nigger, I told you to get in that long seat, or else I am going to have the Police come and throw you off."

Q. What did you say?

A. I told him I was sick and I was going to sit there where I could get some air, I was not going to move back.

Q. Did you tell him anything about your physical condition?

A. I just told him I was sick.

Q. What was your physical condition at that time?

A. Well, I was pregnant and me standing up made me sick with that hot heat.

Q. You were pregnant at that time?

A. Yes.

Q. About how many months pregnant?

A. Three months.

Q. And then what did the bus driver after you told him you wanted to sit in that sat where you could get some air, what did he say or what happened then?

A. He went back and came back, he was taking up everybody's ticket. I was about asleep. He came and shook me and said "I want your ticket." I taken my ticket and gave it to him and he goes on off, so finally then the Police came in. So when the Police came in I was just about asleep, just about dozed off, after I had gotten some air in the window and was feeling a little better. He shook me and said "Wake up here". Says "Wake up here nigger. Get in the back. Didn't the bus driver tell you to get in the back?"

Q. Who said that?

A. Lieutenant Smith?

Q. The officer who just testified?

A. That is right. So when he shook me and told me to wake up, he was going to – the bus driver told him I couldn't ride the bus, I said "I haven't done anything. What have I done?" I said "What have I done you all won't let me ride the bus?" He said "The bus driver said you talked smart to him, or something, and he don't want you on this bus". I said "I am not violating any

laws". I said "I am going to ride this bus". He said, "No, you are not, you are going to the back seat or else you are going off this bus, we are going to throw you off."

I said "No, you are not going to throw me off. If you put your hands on me you better carry me to a hospital, because I told you all before I was sick". And I said "If you take me off you just as well carry me to a hospital, if you don't you might be sorry."

And so, well, the bus driver brought my ticket back and handed it to me.

So he stood there, looked at me and said "You are not going to move?" I said "I am not going to move". So the Lieutenant said to me "You be a good soldier now and move on back to the back."

I said "I am not going to move. I told you both that I am sick and not going to move."

Lieutenant Smith grabbed me by the shoulders, and the bus driver grabbed me by my feet, and I kicked loose from the bus driver, and when I kicked loose from the bus driver Lieutenant Smith dragged me on that aisle down through that, and my clothes were just as dirty as they could be when I got off that bus.

Q. What did the bus driver do?

A. The bus driver he didn't do anything, and Lieutenant Smith went back up in that bus, he went back in the bus and got my bag and brought it back down there and handed it to me, he laid it on my head and hit me with his hand and told me, he said "Now you are not in Chicago and you are not in New York". That is what he told me.

Q. Did you say anything to him about being in Chicago or New York?

A. I did not.

Q. You say they dragged you off the bus? How many of them had their hands on you?

A. Lieutenant Smith was the only one had a hold of me, and I kicked loose from the bus driver, and he dragged me right through that aisle on the floor...

Q. You heard Lieutenant Smith testify something about a Mr. Bagby, another police?

A. It wasn't. The bus driver called him Lieutenant Smith. A white lady came out of the bus and said "Lieutenant Smith, I didn't believe you would do a thing like that."

...Q. How long did you wait for the next Greyhound Bus?

A. About two hours.

...By Mr. Martin:

Q. What was your physical condition from the time you got on this bus in Lynchburg to the time you got to your home in Cumberland, Kentucky? Were you suffering from any pain?

A. I was. I was very sick.

Q. What was hurting you?

A. Well, my back, and my leg was hurting me, and my stomach was hurting me, and some people had helped me on the bus at Lynchburg. A colored man helped me on the bus, and two colored women helped me off of the bus when I got off in Bristol.

Q. What was the cause of those pains?

A. From being dragged through that bus.

Q. Did you suffer from those pains, from those injuries, until you got to your home in Cumberland?

A. I did.

Q. Then what did you do after you arrived home?

A. Well, wasn't getting no better, was getting worse all the time, couldn't hardly walk, and so then I went to the doctor, Dr. Fields, in Cumberland, and so Dr. Fields told us I would have to go back--...

Q. Did he give you treatments for your injuries?

A. He did.
Q. What did he do, give you a prescription?
A. He gave me one or two...
Q. Were you in bed?
A. I stayed in bed about three weeks.
Q. Stayed in bed three weeks about?
A. Yes, sir.
...Q. About how often did you see the doctor?
A. Well, when I got up and was able to go I would go about once or twice a month when I got to going around.
Q. Did he tell you what would probably happen to you as a result of the injuries?
A. He did.
Q. What did subsequently happen?
A. Well, he said I would have a miscarriage....
Q. Did you subsequently have a miscarriage?
A. I did.
Q. When was that?
A. On the 18th of June.
A Juror: What year?
Q. What year?
A. 1944
Q. That was the same month in which this injury happened?
A. Same year and same month...

CHARLES H. LEE, a witness introduced in behalf of the defendants, first being duly sworn, testified as follows:

DIRECT EXAMINATION.

By Mr. May:

Q. Would you please state your full name?
A. Charles Houston Lee.
Q. How old are you?
A. Thirty-four.
Q. What is your occupation?
A. Driving a bus.
Q. For whom?
A. Atlantic Greyhound.
Q. Are you driving for them now?
A. Yes, sir.
Q. How long have you been driving for them?
A. About five years, a little over five.
Q. What run are you on, or were you on on the night of June 10, 1944?
...Q. Coming immediately to this event with the plaintiff in this case and going immediately to Lynchburg: What happened with reference to the plaintiff in this case?
A. From the time we left Blackstone, you mean?
Q. No, I mean when you go to Lynchburg.
A. This passenger had been standing up, she said.

Q. Were you conscious of her individual presence in the bus before that, had anything happened to make you know she was there, or such a person?

A. No.

Q. The first time you were conscious of her specific presence was when you got to Lynchburg?

A. That is right. A passenger called my attention to her sitting on the front seat.

Q. Where was the bus at that time?

A. Parked in the terminal in Lynchburg.

Q. Is that a rest place?

A. Yes. That is a regular rest stop.

Q. Do you know what percentage of the people got out of your bus there?

A. Well, not offhand, no.

Q. Do you know how some one called your attention to her presence at Lynchburg?

A. Some white passenger getting off asked me if I knew—

Mr. Martin: If Your Honor please, I object to what any white passenger said to him, unless it was in the presence--...Q. Attention was called to her presence by a passenger?

A. By a passenger getting off.

Q. Did you look to see where she was then?

A. Yes. She was sitting on the front seat, right-hand side of the bus, on the right-hand side across from the driver's seat.

Q. Did you have any conversation with her?

A. I told her it was the rules that the colored passengers sit behind the white passengers, and went on in the terminal and checked in. A number of passengers I had on there.

Q. What did she do when you told her that?

A. She moved.

Q. Where did she move to?

A. Near the back of the bus.

Q. What seat did she take?

A. Taken a seat next to the back, across from the white passenger, leaving two white passengers standing up without a seat.

Q. Who were they?

A. Two service men, soldiers.

Q. Did you have any further conversation with her when you got back on the bus?

A. I asked her if she would mind moving and sitting back. Had three other colored passengers on the five passenger seat, and I asked her if she would mind sitting with those, so these white soldiers would have this seat. She refused. I told her it was rules of the company that the colored passengers would sit down behind the white.

Q. I see, sir.

A. I told her if she didn't want to do it, it was also a statute law in Virginia, and if she didn't move I would have to call the police. Then she said she didn't give a damn who I called.

Q. Did you ever in your conversation with her at any time refer to her as a nigger?

A. No.

Q. Or as a Negro?

A. No.

Q. When she told you she didn't give a damn whom you called, what did you do?

A. I asked the ticket agent to call the police.

Q. Before we get there: How many passengers were on your bus, or first how many would your bus seat?

A. Thirty-seven.

Q. How many were seated?

A. Thirty-six.

Q. What seats were not filled?

A. Well, it would have been thirty-six if the soldiers were sitting down. Let's see, that would leave the seat beside her and two seats in the rear of her, that would have been thirty-four seats taken.

Q. Three empty seats.

A. Three empty seats, two in the back and one by her.

Q. Did you call the police?

A. Miss Torrence, the ticket agent.

Q. You had her call the police?

A. Yes.

Q. Did the police come?

A. Yes. They were there in just a very few minutes.

Q. How many police were on the bus, do you know?

A. Two police came up there.

Q. What did those two police do?

A. They first asked me the trouble. I explained to them what the trouble was, and they talked to her.

Q. They talked to her?

A. They came on the bus, and I was in the front of the bus when he asked her why she didn't go on and move instead of holding me up. She was wasting my time and causing herself a lot of trouble, they said. She wouldn't move. She still wouldn't move. He asked her to move and she wouldn't. I went back in the office, I am not sure but I believe to reissue a ticket or answer a phone. I am not sure which.

Q. Where were the officers when you went to the office?

A. They were in the bus.

...Q. Had any of those conversations, or at any time that she was on the bus did you personally yourself put your hand on her?

A. No.

Q. For any purpose?

A. No.

Q. In fact, why did you call the police?

A. Because it is talked to us in our training school never to put our hands on a passenger. That is against the company rules.

Q. If there are –

A. If anything happened we can't manage for us to call the police. We do not even tell them we will do it, we will have it done.

Q. What say?

A. We don't even tell them we will do it, we tell them we will have it done.

Q. During your entire time she was on the bus, or afterwards, for that matter, did she ever tell you she was sick?

A. No.

Q. Did you hear her tell anybody else she was sick?

A. No.

OPINION

SPRATLEY, J., delivered the opinion of the court.

Mrs. Ethel New, a colored woman, instituted this proceeding by notice of motion to recover damages for wrongs and personal injuries, which she alleged were occasioned by reason of an assault and battery committed by the Atlantic Greyhound Corporation and W. N. Smith, in forcibly evicting her from a passenger motor vehicle of the defendant corporation, a common carrier, upon her refusal to occupy a seat assigned to her by the driver of the vehicle. The defendants pleaded not guilty.

The case was tried before a jury, which rendered a verdict in favor of the defendants. A motion for a new trial was overruled. From the judgment entered in accordance with the verdict of the jury, this appeal was taken.

Two questions are presented for our consideration, one, of law, -- that is, the validity of a statute, -- and, the other, of fact, -- that is, the sufficiency of the evidence to sustain the verdict.

The pertinent and material facts, stated in the light of the jury's verdict, are these:

On the night of June 11, 1944, Mrs. New, sometimes hereinafter referred to as the plaintiff, was travelling as an intrastate passenger on one of the motor busses of the Atlantic Greyhound Corporation, having purchased a ticket from Blackstone, Virginia, to Appalachia, Virginia. The Atlantic Greyhound bus line did not extend to Appalachia, and it was necessary for the plaintiff to travel from Bristol, Virginia, to Appalachia on the bus of another company. When she boarded the bus it was crowded, with passengers standing in the aisle, and she stood up from Blackstone to Lynchburg, Virginia. When the bus stopped at its terminal in Lynchburg to discharge and take on passengers, the bus driver's attention was called to the fact that the plaintiff was sitting on the front seat of the bus. The driver explained to her that there was a rule under which colored passengers were required to sit behind the white passengers, and asked her to move back of the white passengers. She moved to the last aisle seat, being the seat next to a long seat across the whole of the rear of the bus. The driver went into the terminal to check in. On returning to the bus, he again spoke to the plaintiff, asking her to move farther back and sit with three other colored passengers on the five-passenger rear seat, in order that two white passengers standing in the aisle might sit in the seat occupied by her. He explained to her the rule of the company requiring the seating of colored passengers behind white passengers, adding that there was a statute in Virginia to the same effect, and that if she did not exchange seats, he would have to call the police.

She refused to move, and told the driver that she had no intention of moving. The driver then called the police, and W. N. Smith, a lieutenant of police of the city of Lynchburg, and Officer Bagby of the same police force responded and came to the bus. Smith talked to Mrs. New on two separate occasions, endeavoring to persuade her to move to the rear seat and make the seat next to the rear available for the two standing passengers. Smith, in a polite and patient manner, explained to her both the law and the rule of the company. One witness said he "explained the situation very gentlemanly." Unable to get her to exchange seats, she was forcibly led from the bus by Officer Bagby.

The incident occupied a period estimated at from thirty minutes to an hour. Mrs. New said she was roughly pulled off the bus by Smith, assisted in part by the driver; but the great weight of the testimony sustained the statement of Smith and others that it was Officer Bagby alone who took

her by the arm and led her off the bus, using little force and no more than was necessary under the circumstances of her passive resistance. The testimony of the plaintiff that she told the bus driver and officers that she was sick was contradicted by the police officers, the bus driver, and several of the passengers on the bus.

The quality and convenience of the long back seat to which the plaintiff was asked to move were stated to be equal to those of the seat she occupied. While the back of the long seat was not adjustable, it had the same springs and covering as the other seat. Its windows were not adjustable; but there was a ventilator over its top for the removal of hot air and odors, a device lacking over the other seats.

Mrs. New testified that she suffered some bruises and injuries as a result of her ejection from the bus. She said she was, at that time, three months pregnant. Upon her subsequent arrival at her home in Kentucky, she consulted her physician. On June 18, 1944, she had a miscarriage or abortion. Her physician said that in his opinion, there was a causal connection between the injuries of Mrs. New, as related to him by her, and her subsequent abortion.

...In the present case, the issue is wholly related to persons travelling intrastate. It is not here claimed, nor was it contended at any stage in the *Morgan Case*, that a state is without power to regulate public transportation wholly within its borders.

The plaintiff urges that the decision of the Supreme Court of the United States rendered the Virginia statute invalid in its entirety. She contends that the general language of the act makes its provisions so dependent upon each other as to show that the legislature intended it to take effect in its entirety; and that its objectionable part is not severable from the rest in such a way that the legislature could be presumed to have enacted the valid portion without the invalid. On the other hand, the defendants contend that the act is severable as to its subject matter and in its legal operation and application.

... Segregation statutes must be enforced equally and without discrimination in the quality and convenience of accommodations provided for white and colored passengers. This is in section 2 of the Acts of 1930, page 343, specifically provided. The colored passenger is entitled to every substantial accommodation offered a white passenger. There must be "substantial equality of treatment" as well as "substantial equality of facilities" furnished.

There must be no discrimination in terms or enforcement...

The requirement of the bus driver that the plaintiff change her seat was not only in accordance with the rule of the company but it was in compliance with the law and the public policy of this State, provided there was no inequality of facilities furnished. The two white passengers standing in the aisle were precluded from sitting on the long rear seat, and an exchange of seats was necessary for their comfort and convenience.

It is impossible for the accommodations on a bus to be absolutely identical in all respects.

Detailed information was given to the jury as to the construction of the several seats, the windows, and the ventilation of the bus upon which Mrs. New was travelling. It was shown that the long seat in the rear to which she was asked to remove, while lacking an adjustable back, had the same kind of springs, padding, and covering as the aisle seat she occupied. It had ventilation overhead rather than immediately at its side. As to location in the bus, there was little difference between the seats, one seat being directly behind the other. There must be some seats in the front of a vehicle and some in the rear, as well as in the middle. Some must be over the wheels, or, perhaps, over the engine, if the engine is under the body. All window arrangements are not the same. A minor or trifling inconvenience or difference in seating is inevitable under the most favorable conditions, and minor disadvantages in travel do not necessarily indicate

discrimination...

The evidence was amply sufficient to support the verdict of the jury on all of the issues of fact. Their findings in that respect are final and conclusive, and, under settled principles, their verdict cannot be disturbed by this court.

For the foregoing reasons, we are of opinion to affirm the judgment of the trial court.

Affirmed.