

**SUPREME COURT OF LOUISIANA,
NO. 3513; C.S. SAUVINET VS J. A.
WALKER: A BRIEF ON BEHALF OF
PLAINTIFF & APPELLEE**

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Supreme Court of Louisiana, No. 3513; C.S. Sauvinet Vs J. A. Walker: A Brief on Behalf of Plaintiff & Appellee by E. Filleul

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E. FILLEUL

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1872, Aug. 13.
List of
Hon. Chas. Sumner,
of Boston.
(No. 1830)

Supreme Court of Louisiana,

No. 3513.

C. S. SAUVINET vs. J. A. WALKER.

I see our safety in the extent of our confederacy, and in the probability that in proportion of that the sound parts will always be sufficient to crush local poisons.

JEFFERSON'S LETTER TO H. G. SPAFFORD
MARCH 17th 1814 vol. 6 page 335.

A Brief on behalf of Plaintiff & Appellee.

In a civil State, Law or force prevails, says Lord Bacon. If an individual citizen can compel a fellow citizen to abstain from the exercise of rights recognized by the social compact, there is an end of civil society.

Mr. Jefferson says of the Government of the United States:

"Our revolution presented us an album, on which we were free to write what we pleased. We had no occasion to search into musty records, to hunt up royal parchments, or to investigate the laws and institutions of a semi-barbarous ancestry. We appealed to those of nature and found them engraved on our hearts."

Jefferson vol. 6 p. 356. June 5th 1824. Letter to major John Cartwright.

If we appeal to the law engraved on our hearts, we find that human rights are common to all and that, what is common to all must be communicated to all. *Communia communicantur*. There is, therefore, no privileged class of american citizens,—all are equal,—and the access to places of public resort, is a right to be enjoyed in common, by all citizens. The article 13th of the Louisiana Constitution is nothing but a principle of the law of nature, and the legislation to enforce it is indispensable to uphold civil society. It simply provides a civil remedy for those wrongs which in a state of nature are redressed by the right of war. The present case is one of the utmost importance. It is brought for the purpose of asserting the right of our fellow citizens of african descent, to frequent all the places of public resort in common with their fellow citizens of caucasian descent. I therefore respectfully claim the kind attention of your honors.

STATEMENT OF THE CASE.

The petition of Charles St.-Albin Sauvinet of the city of New Orleans, respectfully shows: That on the 20th day of January 1871, your petitioner called at

the coffee-house known as the "Bank", No 6 Royal street, a place of *Public Resort*, owned by J. A. Walker who is licensed under the laws of the State of Louisiana and the ordinances of the city of New Orleans to keep the same; and of the servants and agents of the said establishment he requested to be served and supplied with refreshments, that were kept and sold in said coffee house by J. A. Walker.

Your Petitioner avers that he offered to pay the usual and customary price for the refreshments, so called for by him.

That he was respectful in his conduct, manner and behavior, while in the said establishment.

That J. A. Walker, his agents and servants then and there wrongfully and intentionally refused to furnish your Petitioner the refreshments so called for and demanded, because your Petitioner was a *colored person*, and ordered him to leave the establishment.

Your Petitioner avers that under the Constitution and laws of this State, he had the right with others of whatever class or color of access to said establishment, and to be supplied with such refreshments as said J. A. Walker had there for sale, and were there being sold by him to others.

And your Petitioner further avers that the only ground upon which the said agents and servants of the said J. A. Walker refused to furnish your Petitioner with the refreshments he called for, was that he was a *colored man*, and not to be accommodated in the said establishment.

That your Petitioner has always enjoyed the esteem and friendship of his fellow citizens, that he has been

several times chosen to fill public offices of great trust, profit and honor, that at the last general election he has been elected the Civil Sheriff of the Parish and City of Orleans. That he has been commissioned by the Governor of the State of Louisiana and is now exercising the duties of the said office.

That by reason of the acts complained of, he has been greatly outraged in his feelings, and has sustained damages to the amount of Ten Thousand Dollars.

The petition concludes with a prayer for judgment, &c. (See Record page 1 to 4.)

The answer of the Defendant is a *general denial*, coupled with the prayer for a trial by jury. (See Rec. page 9.)

The case was fixed for the 1st March 1871.

On that day, the Defendant presented a challenge to the array of the jury, upon numerous grounds. (See Record p. 12 and 13.)

The Court overruled it. (Record p. 13.)

The Defendant immediately filed another challenge and exception, which he calls "Challenge No. 2" (Rec. p. 14.) upon the ground, that the Sheriff, being a party to the suit, could not draw the panel of jurors.

The question being submitted to the Court without any argument from M. Sauvinet's counsel,—the Judge was of opinion, that it would perhaps be safer to have the jury drawn by the Coroner, and ordered accordingly. (See Rec. p. 27.)

The case was therefore postponed, and fixed again for the 16th March 1871. On that day a jury was empanelled with great difficulty, recourse being had to "talesmen," after the exhaustion of the panel. (Rec.

p. 50 and 51.)

The trial proceeded before the Jury; the Defendant, during the trial, took nine bills of exception, which are in the Record, from page 91 to page 103,—From the perusal of these bills of exception, the Court will easily see the character of the defense. It had no other object in view than to put the "light under the bushel."—The Defendant offered no evidence. After listening to the clear uncontradicted evidence offered by the Plaintiff, the jury could not agree; and under the provision of Act No. 23 approved February 27th, 1871, the Judge took the case under advisement, and gave judgment against J. A. Walker for the sum of One Thousand Dollars.

The Defendant has appealed.

The Plaintiff has answered the appeal in this Court and prayed that the judgment of the District Court be amended, and that the whole amount of damages claimed, be allowed him by the judgment of the Supreme Court.

To sustain the claim of the Plaintiff, his counsel believes that it will only be necessary to establish two propositions, to wit:

1st. That the Defendant J. A. Walker is engaged in the business of keeping "a place of public resort," for the accommodation and patronage of the public, without distinction or discrimination on account of race or color; and that the Plaintiff was refused accommodation therein on account of his race or color.

2nd. That by such refusal of accommodation in said place of public resort, by the Defendant, the Plaintiff was forced to abstain from things which the law

permits, his feelings of manhood were insulted and his rights of citizenship impaired and degraded.

FIRST PROPOSITION.

M. Sauvinet made the following statement:

I was born in the city of New Orleans. I am forty years of age; I have always resided in this city, with the exception of several years, when I was travelling abroad; I am a registered voter of the Parish of Orleans. I have been elected Sheriff of the Parish of Orleans, at the last election by the People. I am now discharging the functions of that office.

I have also been an alderman of the city of New Orleans. I have served in the United States army. I held the rank of full Captain and Assistant Quarter Master of the United States Army, commissioned by the President of the United States, and honorably discharged after the end of the war.—(Record page 32 to 35).

On the 20th January 1871, two gentlemen came into the office of the Civil Sheriff of the Parish of Orleans, and after some conversation with me, as I was about going up town, we went up together. These gentlemen were Mr. Finnegan and Mr. Conklin; Mr. Lynne, now in court was also present.

We started from the office and went up the street, Mr. Finnegan invited us to take a drink. As Mr. Lynne was going to the auditor's office, he left us at the corner of Conti and Royal streets. Mr. Finnegan, Mr. Conklin and myself proceeded up the street; when we got to the corner of Bienville and Royal streets, as Mr. Finnegan had invited me to take a drink with him, I asked him to go to a certain bar-room, where I

have been in the habit of going, at the corner of Exchange-Alley and Bienville street; he objected because as he said in the French part of the city there were not good liquors.

When we passed by the Sazerac, I asked him to go in there, but he said: "No, let us go to the *Bank*, and we will have better liquors." I had certainly no objection to going to the "Bank", more than to any other place, and as I was invited, of course I followed him, and I was refused a drink. The other two gentlemen with me, one of whom had invited me to take a drink, were not given a drink; they are Mr. W. H. Finnegau and M. H. J. Conklin. I was refused a drink. I asked the bar-keeper to serve me the same as any man going into a bar-room. When I went in with those two gentlemen I went of course, straight to the bar, and I saw or thought I saw a disposition in the bar-keeper not to attend to me. When by his act, I became convinced that he had a motive, I called upon him to serve us and give us a drink and he said he could not.—I asked him the reason and he said "never mind", It is all right.—I said :—Sir, why do you not give me a drink? he said, "never mind, it is all right."

I asked him several questions and he never would answer any one of them, but all his answers were, never mind, it is all right,—always.

One of the two gentlemen with me, Mr. Conklin, wanted to know exactly why, and as I did not wish, in my position to raise what is commonly called a fuss, in a public bar-room full of people, I said to this gentleman, very well, I know why he refuses, It is be-