

In the Supreme Court of Missouri.

April Term, 1892. Division No. 1.

Simpson C. Younger, Appellant.

vs

A. Judah, Respondent.

Opinion of the court.

The questions presented for our consideration in this case arise out of the action of the court in sustaining a demurrer to the plaintiff's evidence. The substantial averments of the petition are, that the defendant was the lessee of the Ninth Street Theatre in Kansas City, that plaintiff purchased ^{two} ~~a~~ ticket^s calling for seats in the orchestra, and that defendant and his employes unlawfully and maliciously refused to seat him in the seats so purchased. There is the further allegation that defendant and his agents unlawfully, maliciously and insultingly ejected plaintiff from the theatre.

The evidence discloses these facts. After the plaintiff had ~~purchase~~ purchased the tickets as alleged, he and his companion, ^{a colored woman,} ~~passed up a flight of stairs.~~ passed up a flight of stairs. An employe, stationed at the upper landing, received the tickets, detached portions of them, and handed the seat coupons back to the plaintiff. He and the ^{colored} woman passed to the orchestra floor, where he gave the seat coupons to an usher, and they all three started toward the seats. On their way, this usher was met by another one, and the two had a conversation. Plaintiff in his evidence says they held a "whispered confab for a few minutes", that during this conversation he overheard the word "nigger", that one of the ushers informed him he could not have the seats, that there had been some mistake. After

a further conversation the usher said "you cannot stay here, it is against the rules". The usher then proposed to exchange the tickets for others and seat him in a different part of the house, and for

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