

that purpose started up to the balcony, but the plaintiff refused to follow. As to what then occurred, the plaintiff testified: I went on down to the box office and presented the tickets to the person who sold them to me, and asked him why I could not have the seats. He seemed to be indignant and said "you can have them". He looked at me again and I suppose he discovered that drop of African blood in me and said, "It is a mistake, those seats are occupied." The person in charge of the ticket office offered to exchange the tickets for tickets in the balcony or refund the money paid by plaintiff, but the latter refused both offers, and left of his own volition. He and his companion went to another theatre where he procured seats set apart for colored persons. He had attended entertainments at the defendant's theatre on former occasions, and when in company with colored persons took a seat in the balcony, but when alone was admitted to the orchestra. He says the usher on the occasion in question used sneering language, but his further examination shows clearly that the usher did no more than say in firm but respectful language that he could not have the seats because it was against the rules of the house.

The charge made in the petition that defendant ejected plaintiff from the theatre is not supported by any evidence, and must therefore be disregarded.

The tickets for seats in the orchestra were sold to plaintiff on the supposition that they were to be used by white persons. This is evident. It is clear too that defendant had a rule to the effect that colored persons attending his place of amusement should

occupy seats in the balcony; and the only real question in this case is, whether he had a right to make and enforce such a rule. If he had, the plaintiff has no cause of action.

It is earnestly insisted on behalf of the plaintiff that such

[Back](#)