

In the Circuit Court of the United States for the Western District of Kentucky.

ERASMUS L. MOTTLEY & ANNIE E. MOTTLEY vs.

LOUISVILLE & NASHVILLE RAILROAD COMPANY.

*Bill of Complaint.*

To the Judges of the Circuit Court of the United States for the Western District of Kentucky,  
sitting in Equity:

Erasmus L. Mottley and wife, Annie E. Mottley residents and citizens of the Commonwealth of Kentucky, bring this bill of complaint against the Louisville & Nashville Railroad Company, a corporation created by, and existing under the laws of the State of Kentucky; and thereupon your orator and oratrix say, that said & Nashville Railroad Company is now, and was at the time hereinafter set forth, a common carrier of freight and passengers; that on the 2nd day of October, 1871, it was such common carrier of freight and passengers and owned and operated various lines of railroad extending through and across the state of Kentucky, and thence into the state of Tennessee, and into and through several other states of this Union; that said Louisville & Nashville Railroad Company was at that time aforesaid, and now is, engaged in both intra-state and inter-state commerce and business as a common carrier.

Your orators say that heretofore to wit, on September 7th 1871 they and each of them were injured by reason of a collision of trains then owned, operated and controlled by said Company, at Randolph, in Kentucky; that said collision of said trains so operated by the defendant Company was caused by the gross carelessness and negligence of the agents and servants of the said defendant, Louisville & Nashville Railroad Company, operating same; that at the time of said collision your orators were passengers upon one of said trains in said collision, so owned and operated by the defendant Company, and were at the time en route from Bowling Green to Louisville Kentucky, and paid said defendant Company the regular and customary charges for transportation from one of said points to the other; that your orators were dangerously, seriously and almost fatally injured by reason of said collision of said trains, were wounded, cut and torn by reason of the destruction of the car in which they were seated at the time of the collision of said trains, and suffered great pain both physically and mentally by reason of the injuries so received by them and each of them, and they each were disabled months after receiving said injuries, from attention to their ordinary business and occupation.

Your orators say that after said collision of said trains, and after they, and each of them, had received the injuries aforesaid, they entered into a contract with the said defendant, L. & N. R. R. Co. whereby it was contracted, stipulated and agreed between your orators on the one side and said Company upon the other, that in consideration of the fact that your orators each would release said defendant Railroad Company from all damages or claim for damages for said injuries so received as aforesaid, said defendant Railroad Company agreed and obligated itself to issue passes on and over the roads of said defendant Company, and branches then existing or to exist, to your orators for the remainder of the year 1871, and thereafter to renew said passes annually during the lives of said: Erasmus L. Mottley and his wife Annie E. Mottley, or either of them.

Your orators say that in pursuance to said contract and agreement and in consideration of the agreement, of your orators each to release said defendant Company—did issue to each of your orators a pass over all of its lines of railroad wheresoever extended for the year 1871 and thereafter in January, of each and every year since that time, in pursuance to said contract, it issued to your orators and each of them, passes over all its lines of road and branches operated by it, up to January 1st, 1907. Up to said date the defendant Company has fully carried out and performed its said contract with your orators, said contract of date October 2nd, 1871 was on that data reduced to writing by Russell Houston the Chief Attorney for the defendant company and the same was duly signed by the defendant company through its Vice President, Thomas J. Martin, and same was acknowledged before the Clerk of the Jefferson County Court and was recorded in the Clerk's office of said court. Said contract is in words and figures as follows, to-wit:

Louisville & Nashville Railroad Company, Office of Attorney

Louisville, Ky., Oct. 2nd, 1871.

Russell Houston, Attorney:

The Louisville & Nashville Railroad Company in consideration that E. L. Mottley and wife, Annie E. Mottley, have this day released Company from all damages or claims for damages for injuries received by them on the 7th of September, 1871, in consequence of a collision of trains on the railroad of said Company at Randolph's Station, Jefferson County, Ky., hereby agrees to issue free passes on said Railroad and branches now existing or to exist, to said E. L. & Annie E. Mottley for the remainder of the present year, and thereafter, to renew said passes annually during the lives of said Mottley and wife or either of them.

THOS. J. MARTIN,

*For Louisville ee Nashville Railroad Co:*

[SEAL] WILLIAM RAINEY, S. E. C.

A copy of said contract, is filed herewith as part hereof, marked Exhibit, No. 1.

Your orators further say that in the year 1900, the Congress of the United States passed an act entitled "An Act to Amend an Act entitled An Act to Regulate Commerce, approved Feb. 4th, 1887, and all acts amendatory thereof, and to enlarge the powers of the Interstate Commerce Commission" which was approved June 29th, 1906. That among other things, said Act provided as follows: "No common carrier subject to the divisions of this act shall, after January 1st, 1907 directly or indirectly issue or give any interstate Free Ticket, free pass, or free transportation for passengers etc." With certain exceptions, in which exceptions however, your orators are not embraced. "Any common carrier violating this provision shall be deemed guilty of a misdemeanor, and for each offense on conviction shall pay the United States a penalty of not less than One Hundred Dollars, nor more than two thousand dollars, and any other persons other than the persons excepted in this provision, who uses such Interstate, Free Ticket, Free Pass, or Free Transportation, shall be subject to a like penalty. . . ."

Shortly prior to January 1st, 1907, your orators each demanded of the Defendant Railroad Company that it issue to each of them passes over its road and branches for the year 1907, both roads located and operated in Kentucky, and extending into other states, as said defendant company had always therefore done, and as it was bound and obligated to do by virtue of its contract and agreement aforesaid. But said defendant Company refused to issue passes to either of your orators for the year 1907, or for any other time, except passes good between points on its lines within the state of Kentucky along which the defendant company offered to issue and deliver to your orators, but they declined to accept the same, and the de-

defendant company refuse and still refuses to carry out and perform its said contract with your orators so far as interstate transportation is concerned; but this refusal on its part as your orators are advised, were solely and alone based upon the ground that it was forbidden to issue your orators passes by the provisions of the aforesaid Act of Congress of the United States.

Your orators further say that said Act of Congress, if applied to your orators in the matter of their said contract with the defendant, the Louisville & Nashville Railroad Company, destroys their said contract, and impairs the defendant Company's obligation to them and deprives your orators of their property and deprives them of their rights without due process of law, and is in direct conflict with the Constitution of the United States, and especially in conflict with the 5th Amendment, of said Constitution.

Your orators further say that said contract, and agreement of the defendant Railroad Company to issue passes over its lines of road and branches, as set forth in said written contract, was, and is, based upon a good and valuable consideration, in at least the sum of Ten thousand dollars, paid by your orators in their said release, to the defendant company of all damages and claim for damages growing out of their said injuries, which injuries were occasioned your orators and each of them by the gross carelessness and negligence of the defendant company and its Agents and servants as aforesaid; that their rights under said contract to have said passes issued are worth, and are of the value of more than two thousand dollars to each of your complainants; exclusive of Interest and costs and said Act of Congress without process of law or trial or adjudication of any kind, if in force, deprives your orators of their said property of the value aforesaid—which property and the right to have said passes issued has been paid for by your orators in full as shown by said contract and as heretofore stated.

Your orators further say that said Act of Congress by its terms and upon its face, forbids all common carriers embraced in its terms from directly or indirectly issuing or giving any inter-state free ticket, free pass, or free transportation for passengers, except in certain cases, and provides a penalty for all carriers violating its provisions of not less than \$100.00 nor more than \$2,000.00 and also provides for a like penalty on all persons who accept or use such free pass, ticket, or transportation.

Your orators say that the passes to which they are entitled under their said contract with the defendant Company are not free passes, free tickets or free transportation within the meaning of said Act. But, as averred heretofore, your orators are entitled to said passes by reason of their said contract which is based, as stated upon a large and valuable consideration heretofore long since paid.

Your orators further any that said defendant, Railroad Company as they are advised is willing to issue said passes as it has done heretofore, and as it is required to do by said contract, and now refuses to issue said passes solely because of the provisions of said Act Congress. But independent of the refusal of the defendant Company to issue said passes because of the penalty provided by said Act, your orators complain and say that said Act is unconstitutional and void because it provides a penalty against any person for receiving or ruing passes.

Wherefore, and for as much, as your orators and each of thorn, are remedyless in the promises, at and by the strict rules of the Common Law, and can have no relief only in a Court of Equity where matters of this nature are properly cognizable and reviewable and to the end therefore that the said defendant Company may answer but not under oath, such oath being hereby waived according to the practice of thin court, all and singular matters heretofore stated and charged as fully and perfectly as if the same were expressed, and said defendant Company thereunto particularly interrogated.

May it please your Honors to grant unto your orators a writ of subpena directed to the said defendant Louisville & Nashville Railroad Company thereby commanding it, at a certain time, and under a certain penalty, therein named, personally to be and appear before this Honorable Court, and then and there to answer all and singular the matters aforesaid, and to stand and abide by and perform such order, direction and decree as shall be made herein as your Honors shall see meet and agreeable to equity and good conscience. And further your orators pray that said defendant Louisville & Nashville Railroad Company be required, ordered and enjoined to specifically execute said contract with your orators and each of them; that it be required, ordered and enjoined to issue to your orators, and each of them, passes over all its roads owned and operated by it, in and out of the state of Kentucky, for the year 1907 and for each and every year thereafter as long as your orators each shall live; pray that said Act of Congress as to your orators and the matters hereinbefore set forth, be held not to apply or if applied that it is in violation of the Constitution of the United States and therefore null and void; pray for their costs herein expended.

And your orators will every pray, etc.

E. L. MOTTLEY,  
ANNIE E. MOTTLEY,  
WRIGHT & McELROY

*Solicitors for Complainants.*

UNITED STATES OF AMERICA, *Western District of Kentucky:*

City of Bowling Green, Warren County, Ky., E. L. Mottley and Annie E. Mottley being duly sworn, did depose and say that said bill of complaint, and the matters therein stated and contained, true to their own knowledge, except as the matters therein stated to be alleged on information and belief, and, as to those matters they believe the same to be true.

E. L. MOTTLEY,  
ANNIE E. MOTTLEY.

Subscribed and sworn to before me this 21st day of January, 1907. My commission expires 8th January, 1908.

[SEAL]

GEO. WILLIS, N. P. W. C.