

Hill Vs. Porter

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Court : US Supreme Court

Decided On : 1850

Appeal No. : 50 U.S. 386

Appellant : Hill

Respondent : Porter

Judgement :

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Hill v. Porter,

50 U.S. (9 How.) 386

ON A CERTIFICATE OF DIVISION BETWEEN THE JUDGES OF THE CIRCUIT

COURT OF THE UNITED STATES FOR THE SOUTHERN DISTRICT OF MISSISSIPPI

SYLLABUS

Where the United States, as endorsees of a promissory note, recovered judgment against the makers thereof, who thereupon filed a bill upon the equity side of the

court and obtained an injunction to stay proceedings, this injunction was improvidently allowed.

The United States were made directly parties defendants; process was prayed immediately against them, and they were called upon to answer the several allegations in the bill.

This course of proceeding falls within the principle that the government is not liable to be sued, except by its own consent, given by law.

The bill must therefore be dismissed.

This was a bill filed on the equity side of the court by Hill and the other complainants against the United States, the Mississippi & Alabama Railroad Company, William M. Gwin, and William H. Shelton, to enjoin a judgment obtained against the complainants by the United States.

The circumstances were these.

In 1835, the receiver of public moneys for the Choctaw District in the State of Mississippi was found to be in debt to the government.

On the 26th of September, 1835, the Solicitor of the Treasury issued a distress warrant, under the Act of May, 1820, for the purpose of collecting the debt, and enclosed it to William M. Gwin, then Marshal of the United States for the State of Mississippi.

The history of the transaction between 1835 and 1839 need not be stated.

In 1839, the marshal, by direction of the Solicitor and Secretary of the Treasury, received from the representative of the debtor (who was then dead) the sum of \$30,000 in the notes of the Mississippi & Alabama Railroad Company as collateral security for the debt, for the collection of which he had a distress warrant. The Railroad Company, in order to avoid a suit upon its notes, transferred to the district attorney upwards of \$78,000 of bills receivable of the bank. Amongst these bills receivable was a promissory note for four thousand dollars dated on 12 April,

1838, payable six months after date to the Mississippi & Alabama Railroad Company, negotiable and payable at their banking house in Brandon, and signed by William J. Hill J. S. Rowland, D. M. Porter and W. F. Walker. The note was joint and several; Hill was the principal, and the others sureties.

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On 15 June, 1839, the district attorney brought suit upon the note in the name of the United States against all the parties, and at November term obtained judgment.

In January, 1840, a *fi. fa.* was issued, and in May, 1840, Hill Porter and Walker filed a bill on the equity side of the court against the United States, the Mississippi & Alabama Railroad Company, William M. Gwin, and William H. Shelton, setting up certain equities, which need not be here particularly stated, and praying for an injunction, which was granted.

All the parties answered, the district attorney answering on behalf of the United States.

In May, 1846, the cause was set down for hearing upon the bill, answers, and exhibits.

In November, 1846, the following proceedings took place.

The United States, by attorney, made the following motion, to-wit:

"Motion by R. M. Gaines, U.S. Attorney, to dissolve the injunction and dismiss the bill, as to the United States, for want of jurisdiction as to them, and also on the merits."

"R. M. GAINES, U.S. *Att'y* "

"And afterwards, to-wit, at the May term, A.D. 1847, of said court, to-wit, on 20 May in the year of our Lord 1847, this cause came on to be heard before the Honorable Peter V. Daniel and Samuel J. Gholson upon the motion of the United

States of America to dismiss this suit as to them, and dissolve the injunction for want of jurisdiction, and was argued by counsel. And the court having taken time to consider, and not being able to agree in opinion what decree should be made in the cause on said motion, one of the judges being of opinion that the said motion should be sustained and the said bill dismissed and injunction dissolved and the other being of opinion that the said motion should be overruled, it is therefore ordered, at the request of the counsel for both complainants and defendants, that said difference of opinion be certified to the Supreme Court of the United States for their decision whether the said motion should be sustained or overruled."

"P. V. DANIEL"

"S. J. GHOLSON"

Upon this certificate the case accordingly came up.

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MR. JUSTICE DANIEL delivered the opinion of the Court.

The United States, as the endorsees of the Mississippi & Alabama Railroad Company, instituted an action of assumpsit in the court above mentioned, on a promissory note given by William J. Hill J. S. Rowland, D. M. Porter and W. F. Walker to the said railroad company for the sum of four thousand dollars. At the November term of the court in 1839, the United States, upon a trial at law upon issues joined, first, upon the plea of nonassumpsit, and secondly, upon the plea of payment of the note before its endorsement and delivery to the plaintiffs, obtained a verdict and judgment in damages for the sum of \$4,353.32. Upon the suing out of an execution on this judgment, the defendants filed a bill on the equity side of the circuit court, and obtained from the district Judge an injunction upon grounds which perhaps might, under the pleadings in the cause, have been as regularly insisted upon at law, between the proper parties, as they could be in equity, but whether forming a well founded defense at law or not is immaterial in the inquiry now presented. In the bill filed by Hill and others, the United States are made

directly parties defendants; process is prayed immediately against them; they are called upon to answer the several allegations in the bill, and a perpetual injunction is prayed for to the judgment obtained by them. To the bill of the complainants the attorney for the United States filed in their behalf an answer *in extenso*, but afterwards moved the court to dissolve the injunction and dismiss the bill as to the United States, for want of jurisdiction as to them, upon which motion the order and certificate now before this Court were made in the following terms:

"And afterwards, to-wit, at the May term of said court, *viz.*, on 20 May, A.D. 1847, this cause came on to be heard before the Hon. Peter V. Daniel and Samuel J. Gholson upon the motion of the United States of America to dismiss this suit as to them and dissolve the injunction for want of jurisdiction, and was argued by counsel. And the court having taken time to consider, and not being able to agree in opinion what decree

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should be made in the cause on said motion, one of the judges being of opinion that the said motion should be sustained and the said bill dismissed and injunction dissolved and the other being of opinion that the said motion should be overruled, it is therefore ordered, at the request of the counsel for both complainants and defendants, that said difference of opinion be certified to the Supreme Court of the United States for their decision whether the said motion should be sustained or overruled."

The question here propounded, without any necessity for recurrence to particular examples, would seem to meet its solution in the regular and best-settled principles of public law. No maxim is thought to be better established or more universally assented to than that which ordains that a sovereign, or a government representing the sovereign, cannot *ex delicto* be amenable to its own creatures or agents employed under its own authority for the fulfillment merely of its own legitimate ends. A departure from this maxim can be sustained only upon the ground of permission on the part of the sovereign or the government expressly declared, and an attempt to overrule or to impair it on a foundation independently

of such permission must involve an inconsistency and confusion, both in theory and practice, subversive of regulated order or power. Upon the principle here stated it has been that, in cases of private grievance proceeding from the Crown, the petition of right in England has been the nearest approach to an adversary position to the government that has been tolerated, and upon the same principle it is that in our own country, in instances of imperfect land titles, special legislation has been adopted to permit the jurisdiction of the courts upon the rights of the government. Without dilating upon the propriety or necessity of the principle here stated or seeking to multiply examples of its enforcement, we content ourselves with referring to a single and recent case in this Court which appears to cover the one now before us in all its features. We allude to the case of [United States v. McLemore](#), in 4 How. 286, where it is broadly laid down as the law that a circuit court cannot entertain a bill on the equity side of the court praying that the United States may be perpetually enjoined from proceeding upon a judgment obtained by them, as the government is not liable to be sued except by its own consent given by law.

We therefore direct it to be certified to the Circuit Court for the Southern District of Mississippi that the motion on behalf of the United States in this cause should have been sustained, and that the bill as to

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the United States should be dismissed, as having been improvidently allowed.

ORDER

This cause came on to be heard on the transcript of the record from the Circuit Court of the United States for the Southern District of Mississippi, and on the point or question on which the judges of the said circuit court were opposed in opinion and which was certified to this Court for its opinion, agreeably to the act of Congress in such case made and provided, and was argued by counsel. On consideration whereof it is the opinion of this Court that the motion in behalf of the United States in this cause should have been sustained and that the bill as to the

United States should be dismissed as having been improvidently allowed. Whereupon it is now here ordered and decreed by this Court that it be so certified to the said circuit court.

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