

Mississippi Vs. Johnson

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Appeal No. : 71 U.S. 475

Appellant : Mississippi

Respondent : Johnson

Judgement :

Mississippi v. Johnson - 71 U.S. 475 (1866)

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Mississippi v. Johnson

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SYLLABUS

1. The President of the United States cannot be restrained by injunction from carrying into effect an act of Congress alleged to be unconstitutional, nor will a bill having such a purpose be allowed to be filed.

2. It makes no difference whether such incumbent of the Presidential office be described in the bill as President or simply as a citizen of a State.

This was a motion made by Messrs. Sharkey and R. J. Walker, on behalf of the State of Mississippi, for leave to file a bill in the name of the State praying this court perpetually to enjoin and restrain Andrew Johnson, a citizen of the State of Tennessee and President of the United States, and his officers and agents appointed for that purpose, and especially E. O. C. Ord, assigned as military commander of the district where the State of Mississippi is, from executing or in any manner carrying out two acts of Congress named in the bill, one "An act for the more efficient government of the rebel States," passed March 2d, 1867, notwithstanding the President's veto of it as unconstitutional, and the other an act supplementary to it, passed in the same way March 23d, 1867, acts commonly called the Reconstruction Acts.

The former of these acts, reciting that no legal State governments or adequate protection for life or property now exists in the rebel States of Virginia, North Carolina, South Carolina, Georgia, Mississippi, Alabama, Louisiana, Florida, Texas, and Arkansas, and that it was necessary that peace and good order should be enforced in them until loyal and republican State governments could be legally established, divided the States named into five military districts, and made it the duty of the President to assign to each one an officer of the army, and to detail a sufficient military force to enable him to perform his duties and enforce his authority within his district. It made it the duty of this officer to protect all persons in their rights, to suppress insurrection, disorder, violence, and to punish, or cause to be punished, all disturbers of the public peace and criminals, either through the local civil tribunals or through military

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commissions, which the act authorized. It provided further that, on the formation of new constitutions and certain conditions which the act prescribed, the States respectively should be declared entitled to representation in Congress, and the preceding part of the act become inoperative, and that, until they were so admitted, any civil governments which might exist in them should be deemed provisional only, and subject to the paramount authority of the United States at any time to abolish, modify, control, or supersede it.

The second of the two acts related chiefly to the registration of voters who were to form the new constitutions of the States in question.

The bill set out the political history of Mississippi so far as related to its having become one of the United States, and

"that forever after, it was impossible for her people, or for the State in its corporate capacity, to dissolve that connection with the other States, and that any attempt to do so by secession or otherwise was a nullity,"

and she "now solemnly asserted that her connection with the Federal government was not in anywise thereby destroyed or impaired," and she averred and charged

"that the Congress of the United States cannot constitutionally expel her from the Union, and that any attempt which practically does so is a nullity."

The bill then went on:

"The acts in question annihilate the State and its government by assuming for Congress the power to control, modify, and even abolish its government -- in short, to exert sovereign power over it -- and the utter destruction of the State must be the consequence of their execution. They also violate a well known salutary principle in governments, the observance of which can alone preserve them, by making the civil power subordinate to the military power, and thus establish a military rule over the States enumerated in the act, and make a precedent by which the government of the United States may be converted into a military despotism in which every man may be deprived of his goods, lands, liberty, and life, by the breath

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of a military commander or the sentence of the military commission or tribunal, without the benefit of trial by jury and without the observance of any of those requirements and guarantees by which the Constitution and laws so plainly protect and guard the rights of the citizen. And, the more effectually to accomplish this purpose, the said acts divide the ten Southern States into five military districts, and

make it the duty of the President to assign an officer to the command of each district, and to place a sufficient force under him whose will is to be the law and his soldiers the power that executes it. It is declared to be his duty to protect all persons in their rights of person and property, to suppress insurrections, disorder, and violence, and to punish, or cause to be punished, all disturbers of the peace and criminals, and he may organize military commissions and tribunals to try offenders when he may think proper. But by what rule or law is he to judge of the rights of person or property? By what rule or law is he to arrest, try, and punish criminals? By what rule or law is he to judge whether they have committed crimes? The answer to these questions is plain -- by his own will, for, though he may adopt the State authorities as his instruments if he will, yet he may reject them if he will. A scope of power so broad, so comprehensive, was never before vested in a military commander in any government which guards the rights of its citizens or subjects by law. It embraces necessarily all those subjects over which the States reserved the power to legislate for themselves as essential to their existence as States, including the domestic relations, all the rights of property, real and personal, the rights of personal security and personal liberty, and assumes the right to control the whole of the domestic concerns of the State. These acts also provide that the governments now existing in the Southern States are but provisional governments, subject to the paramount authority of Congress, which may at any time abolish, modify, control, or supersede them."

It then charged that, from information and belief, the said Andrew Johnson, President, in violation of the Constitution and in violation of the sacred rights of the States, would proceed, notwithstanding his vetoes, and as a *mere ministerial duty*, to the execution of said acts as though they

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were the law of the land, which the vetoes prove he would not do if he had any discretion, or that in doing so he performed anything more than a mere ministerial duty; and that with the view to the execution of said acts he had assigned General E. O. C. Ord to the command of the States of Mississippi and Arkansas.

Upon an intimation made a few days before by Mr. Sharkey, of his desire to file this bill, the Attorney General objected to it *in limine*, as containing matter not fit to be received. The Chief Justice then stated that while, as a general thing, a motion to file a bill was granted as of course, yet if it was suggested that the bill contained scandalous or impertinent matter, or was in other respects improper to be received, the court would either examine the bill or refer it to a master for examination. The only matter, therefore, which would now be considered was the question of leave to file the bill.

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The CHIEF JUSTICE delivered the opinion of the court.

A motion was made, some days since, in behalf of the State of Mississippi, for leave to file a bill in the name of the State, praying this court perpetually to enjoin and restrain Andrew Johnson, President of the United States, and E. O. C. Ord, general commanding in the District of Mississippi and Arkansas, from executing, or in any manner carrying out certain acts of Congress therein named.

The acts referred to are those of March 2d and March 23d, 1867, commonly known as the Reconstruction Acts.

The Attorney General objected to the leave asked for upon

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the ground that no bill which makes a President a defendant and seeks an injunction against him to restrain the performance of his duties as President should be allowed to be filed in this court.

This point has been fully argued, and we will now dispose of it.

We shall limit our inquiry to the question presented by the objection, without expressing any opinion on the broader issues discussed in argument whether, in any case, the President of the United States may be required, by the process of

this court, to perform a purely ministerial act under a positive law, or may be held amenable, in any case otherwise than by impeachment for crime.

The single point which requires consideration is this: can the President be restrained by injunction from carrying into effect an act of Congress alleged to be unconstitutional?

It is assumed by the counsel for the State of Mississippi that the President, in the execution of the Reconstruction Acts, is required to perform a mere ministerial duty. In this assumption there is, we think, a confounding of the terms ministerial and executive, which are by no means equivalent in import.

A ministerial duty the performance of which may, in proper cases, be required of the head of a department by judicial process is one in respect to which nothing is left to discretion. It is a simple, definite duty, arising under conditions admitted or proved to exist and imposed by law.

The case of *Marbury v. Madison, Secretary of State*, [[Footnote 1](#)] furnishes an illustration. A citizen had been nominated, confirmed, and appointed a justice of the peace for the District of Columbia, and his commission had been made out, signed, and sealed. Nothing remained to be done except delivery, and the duty of delivery was imposed by law on the Secretary of State. It was held that the performance of this duty might be enforced by mandamus issuing from a court having jurisdiction.

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So, in the case of *Kendall, Postmaster General v. Stockton & Stokes*, [[Footnote 2](#)] an act of Congress had directed the Postmaster General to credit Stockton & Stokes with such sums as the Solicitor of the Treasury should find due to them, and that officer refused to credit them with certain sums so found due. It was held that the crediting of this money was a mere ministerial duty the performance of which might be judicially enforced.

In each of these cases, nothing was left to discretion. There was no room for the exercise of judgment. The law required the performance of a single specific act, and that performance, it was held, might be required by mandamus.

Very different is the duty of the President in the exercise of the power to see that the laws are faithfully executed, and, among these laws, the acts named in the bill. By the first of these acts, he is required to assign generals to command in the several military districts, and to detail sufficient military force to enable such officers to discharge their duties under the law. By the supplementary act, other duties are imposed on the several commanding generals, and these duties must necessarily be performed under the supervision of the President as commander-in-chief. The duty thus imposed on the President is in no just sense ministerial. It is purely executive and political.

An attempt on the part of the judicial department of the government to enforce the performance of such duties by the President might be justly characterized, in the language of Chief Justice Marshall, as "an absurd and excessive extravagance."

It is true that, in the instance before us, the interposition of the court is not sought to enforce action by the Executive under constitutional legislation, but to restrain such action under legislation alleged to be unconstitutional. But we are unable to perceive that this circumstance takes the case out of the general principles which forbid judicial interference with the exercise of Executive discretion.

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It was admitted in the argument that the application now made to us is without a precedent, and this is of much weight against it.

Had it been supposed at the bar that this court would, in any case, interpose by injunction to prevent the execution of an unconstitutional act of Congress, it can hardly be doubted that applications with that object would have been heretofore addressed to it.

Occasions have not been wanting.

The constitutionality of the act for the annexation of Texas was vehemently denied. It made important and permanent changes in the relative importance of States and sections, and was by many supposed to be pregnant with disastrous results to large interests in particular States. But no one seems to have thought of an application for an injunction against the execution of the act by the President.

And yet it is difficult to perceive upon what principle the application now before us can be allowed and similar applications in that and other cases have been denied.

The fact that no such application was ever before made in any case indicates the general judgment of the profession that no such application should be entertained.

It will hardly be contended that Congress can interpose in any case to restrain the enactment of an unconstitutional law, and yet how can the right to judicial interposition to prevent such an enactment, when the purpose is evident and the execution of that purpose certain, be distinguished in principle from the right to such interposition against the execution of such a law by the President?

The Congress is the legislative department of the government; the President is the executive department. Neither can be restrained in its action by the judicial department, though the acts of both, when performed, are, in proper cases, subject to its cognizance.

The impropriety of such interference will be clearly seen upon consideration of its possible consequences.

Suppose the bill filed and the injunction prayed for allowed. If the President refuse obedience, it is needless to

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observe that the court is without power to enforce its process. If, on the other hand, the President complies with the order of the court and refuses to execute the acts of Congress, is it not clear that a collision may occur between the executive and legislative departments of the government? May not the House of Representatives impeach the President for such refusal? And in that case, could

this court interfere in behalf of the President, thus endangered by compliance with its mandate, and restrain by injunction the Senate of the United States from sitting as a court of impeachment? Would the strange spectacle be offered to the public world of an attempt by this court to arrest proceedings in that court?

These questions answer themselves.

It is true that a State may file an original bill in this court. And it may be true, in some cases, that such a bill may be filed against the United States. But we are fully satisfied that this court has no jurisdiction of a bill to enjoin the President in the performance of his official duties; and that no such bill ought to be received by us.

It has been suggested that the bill contains a prayer that, if the relief sought cannot be had against Andrew Johnson, as President, it may be granted against Andrew Johnson as a citizen of Tennessee. But it is plain that relief as against the execution of an act of Congress by Andrew Johnson is relief against its execution by the President. A bill praying an injunction against the execution of an act of Congress by the incumbent of the presidential office cannot be received, whether it describes him as President or as a citizen of a State.

The motion for leave to file the bill is, therefore,

DENIED.

[[Footnote 1](#)]

[5 U. S. 1](#) Cranch 137.

[[Footnote 2](#)]

[37 U. S. 12](#) Pet. 527.