Georgia Vs. Stanton

Georgia Vs. Stanton

SooperKanoon Citation : sooperkanoon.com/81489

Court : US Supreme Court

Decided On : 1867

Appeal No. : 73 U.S. 50

Appellant : Georgia

Respondent : Stanton

Judgement :

Georgia v. Stanton - 73 U.S. 50 (1867)
U.S. Supreme Court Georgia v. Stanton, 73 U.S. 6 Wall. 50 50 (1867)

Georgia v. Stanton

73 U.S. (6 Wall.) 50

ORIGINAL

SYLLABUS

1. A bill in equity filed by one of the United States to enjoin the Secretary of War and other officers who represent the Executive authority of the United States from carrying into execution certain acts of Congress on the ground that such execution would annul and totally abolish the existing state government of the state and establish another and different one in its place -- in other words, would overthrow

and destroy the corporate existence of the state by depriving it of all the means and instrumentalities whereby its existence might and otherwise would be maintained -- calls for a judgment upon a political question, and will therefore not be entertained by this Court.

2. This character of the bill is not changed by the fact that in setting forth the political rights sought to be protected, the bill avers that the state has real and personal property (as for example, the public buildings &c;), of the enjoyment of which, by the destruction of its corporate existence, the state will be deprived, such averment not being the substantive ground of the relief sought.

This was a bill filed April 15, 1867, in this Court, invoking the exercise of its original jurisdiction, against Stanton, Secretary of War; Grant, General of the Army, and Pope, Major General, assigned to the command of the Third Military District, consisting of the States of Georgia, Florida, and Alabama (a district organized under the Acts of Congress of the 2d March, 1867, entitled "An act to provide for the more efficient government of the rebel states," and an act of the 23d of the same month supplementary thereto), for the purpose of restraining the defendants from carrying into execution the several provisions of these acts, acts known in common parlance as the "Reconstruction Acts." Both these acts had been passed over the President's veto.

The former of the acts, reciting that no legal state governments or adequate protection for life or property now existed in the rebel States of Virginia and 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

Page 73 U. S. 51

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 commissions,* which the act authorized. It provided further that when the people of any one of these states had formed a constitution in conformity with that of the United States, framed by a convention of delegates elected by male citizens &c.;, of twenty-one years old and upwards, "of whatever race, color, or previous condition," who had been residents in it for one year, "except such as may be disfranchised for participation in the rebellion," &c.;, and when such constitution should provide &c.;, and should be ratified by a majority of the persons voting on the question of ratification, who were qualified for electors as delegates, and when such constitution should have been submitted to Congress for examination and approval, and Congress should have approved the same, and when the state by a vote of its legislature elected under such constitution should have adopted a certain article of amendment named to the Constitution of the United States, and ordaining among other things that

"all persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States, and of the state where they reside,"

and when such article should have become a part of the Constitution of the United States, then that 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 them.

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

Page 73 U. S. 52

states in question, and which registration by the act, could include only those persons who took and subscribed a certain oath set forth in such second act, as that they had "not been disfranchised for participation in any rebellion or civil war

against the United States," &c.;

The bill set forth the existence of the State of Georgia, the complainant, as one of the states of this Union under the Constitution; the civil war of 1861-1865 in which she was involved; the surrender of the Confederate armies in the latter year and submission to the Constitution and laws of the Union; the withdrawal of the military government from Georgia by the President, commander-in-chief of the army; and the revival and reorganization of the civil government of the state with his permission; and that the government thus reorganized was in the possession and enjoyment of all the rights and privileges in her several departments -- executive, legislative, and judicial -- belonging to a state in the Union under the Constitution, with the exception of a representation in the Senate and House of Representatives of the United States.

It set forth further that the intent and design of the acts of Congress, as was apparent on their face and by their terms, was to overthrow and to annul this existing state government and to erect another and different government in its place, unauthorized by the Constitution and in defiance of its guarantees, and that, in furtherance of this intent and design, the defendants (the Secretary of War, the General of the Army, and Major General Pope), acting under orders of the President, were about setting in motion a portion of the army to take military possession of the state, and threatened to subvert her government and to subject her people to military rule; that the state was wholly inadequate to resist the power and force of the Executive Department of the United States. She therefore insisted that such protection could and ought to be afforded by a decree, or order, of this Court in the premises.

The bill then prayed that the defendants might be restrained:

Page 73 U. S. 53

1. From issuing any order or doing or permitting any act or thing within or concerning the State of Georgia which was or might be directed or required of them or any of them by or under the two acts of Congress.

2. From causing to be made any registration within the state as specified and prescribed in the last of the aforesaid acts.

3. From administering or causing to be administered within the state the oath or affirmation prescribed in said act.

4. From holding or causing to be held within the state any such election or elections or causing to be made any return of any such elections for the purpose of ascertaining the result of the same according to said act.

5. From holding or causing to be held within the state any such convention as is prescribed therein.

The bill, in setting forth the political rights of the State of Georgia, and of its people sought to be protected, averred among other things that the state was owner of certain real estate and buildings therein (the state capitol, at Milledgeville, and Executive mansion), and of other real and personal property, exceeding in value $5,000,000, and that putting the acts of Congress into execution and destroying the state would deprive it of the possession and enjoyment of its property. This reference and statement were not set up, however, as a specific or independent ground of relief, but apparently only by way of showing one of the grievances resulting from the threatened destruction of the state, and in aggravation of it. And the matter of property was not noticed in the prayers for relief.

Page 73 U. S. 71

The bill having been dismissed at the last term, MR. JUSTICE NELSON now delivered the opinion of the Court.

A motion has been made by the counsel for the defendants to dismiss the bill for want of jurisdiction, for which a precedent is found in the case of *Rhode Island v. Massachusetts.* [Footnote 1] It is claimed that the Court has no jurisdiction either over the subject matter set forth in the bill or over the parties defendants. And in support of the first ground, it is urged that the matters involved, and presented for adjudication, are political and not judicial, and therefore not the

subject of judicial cognizance.

This distinction results from the organization of the government into the three great departments -- executive, legislative, and judicial -- and from the assignment and limitation of the powers of each by the Constitution.

The judicial power is vested in one Supreme Court and in such inferior courts as Congress may ordain and establish, the political power of the government in the other two departments.

The distinction between judicial and political power is so generally acknowledged in the jurisprudence both of England and of this country that we need do no more than refer to some of the authorities on the subject. They are all in one direction. [Footnote 2]

Page 73 U. S. 72

It has been supposed that the case of *Rhode Island v. Massachusetts* [Footnote 3] is an exception, and affords an authority for hearing and adjudicating upon political questions in the usual course of judicial proceedings on a bill in equity. But it will be seen on a close examination of the case that this is a mistake. It involved a question of boundary between the two states. Mr. Justice Baldwin, who delivered the opinion of the Court, states the objection, and proceeds to answer it. He observes, [Footnote 4]

"It is said that this is a political, not civil, controversy between the parties, and so not within the Constitution or thirteenth section of the Judiciary Act. As it is viewed by the Court on the bill alone, had it been demurred to, a controversy as to the locality of a point three miles south of the southernmost point of Charles River is the only question that can arise under the charter. Taking the case on the bill and plea, the question is whether the stake set up on Wrentham Plain by Woodward and Saffrey in 1842 is the true point from which to run an east and west line as the compact boundary between the states. In the first aspect of the case it depends on a fact; in the second, on the law of equity, whether the agreement is void or valid,

neither of which present a political controversy, but one of an ordinary judicial nature of frequent occurrence in suits between individuals."

In another part of the opinion, speaking of the submission by sovereigns or states of a controversy between them, he observes,

"From the time of such submission the question ceases to be a political one, to be decided by the *sic volo, sic jubeo* of political power. It comes to the Court to be decided by its judgment, legal discretion, and solemn consideration of the rules of law appropriate to its nature as a judicial question, depending on the exercise of judicial powers, as it is bound to act by known and settled principles of national or municipal jurisprudence, as the case requires.

Page 73 U. S. 73

And he might have added what indeed is probably implied in the opinion, that the question thus submitted by the sovereign or state to a judicial determination must be one appropriate for the exercise of judicial power, such as a question of boundary or, as in the case of *Penn v. Lord Baltimore,* a contract between the parties in respect to their boundary. Lord Hardwicke places his right in that case to entertain jurisdiction upon this ground."

The objections to the jurisdiction of the Court in the case of Rhode Island against Massachusetts were that the subject matter of the bill involved sovereignty and jurisdiction, which were not matters of property, but of political rights over the territory in question. They are forcibly stated by the Chief Justice, who dissented from the opinion. [Footnote 5] The very elaborate examination of the case by Mr. Justice Baldwin was devoted to an answer and refutation of these objections. He endeavored to show, and we think did show, that the question was one of boundary, which of itself was not a political question, but one of property, appropriate for judicial cognizance, and that sovereignty and jurisdiction were but incidental and dependent upon the main issue in the case. The right of property was undoubtedly involved, as in this country, where feudal tenures are abolished, in cases of escheat, the state takes the place of the feudal lord by virtue of its

sovereignty as the original and ultimate proprietor of all the lands within its jurisdiction.

In the case of *Florida v. Georgia,* [Footnote 6] the United States were allowed to intervene, being the proprietors of a large part of the land situated within the disputed boundary, ceded by Spain as a part of Florida. The State of Florida was also deeply interested as a proprietor.

The case bearing most directly on the one before us is *Cherokee Nation v. Georgia.* [Footnote 7] A bill was filed in that case and an injunction prayed for to prevent the execution of certain acts of the Legislature of Georgia within the territory of the Cherokee Nation of Indians, they claiming

Page 73 U. S. 74

a right to file it in this Court, in the exercise of its original jurisdiction, as a foreign nation. The acts of the legislature, if permitted to be carried into execution, would have subverted the tribal government of the Indians and subjected them to the jurisdiction of the state. The injunction was denied on the ground that the Cherokee Nation could not be regarded as a foreign nation within the Judiciary Act, and that therefore they had no standing in court. But Chief Justice Marshall, who delivered the opinion of the majority, very strongly intimated that the bill was untenable on another ground -- namely that it involved simply a political question. He observed

"that the part of the bill which respects the land occupied by the Indians, and prays the aid of the Court to protect their possessions may be more doubtful. The mere question of right might perhaps be decided by this Court in a proper case with proper parties. But the Court is asked to do more than decide on the title. The bill requires us to control the Legislature of Georgia and to restrain the exertion of its physical force. The propriety of such an interposition by the Court may be well questioned. It savors too much of the exercise of political power to be within the province of the judicial department."

Several opinions were delivered in the case, a very elaborate one, by Mr. Justice Thompson, in which Judge Story concurred. They maintained that the Cherokee Nation was a foreign nation within the Judiciary Act, and competent to bring the suit, but agreed with the Chief Justice that all the matters set up in the bill involved political questions with the exception of the right and title of the Indians to the possession of the land which they occupied. Mr. Justice Thompson, referring to this branch of the case, observed:

"For the purpose of guarding against any erroneous conclusions, it is proper I should state that I do not claim for this Court the exercise of jurisdiction upon any matter properly falling under the denomination of political power. Relief to the full extent prayed for by the bill may be beyond the reach of this Court. Much of the matters therein contained by way of complaint would seem to depend for relief upon

Page 73 U. S. 75

the exercise of political power, and as such appropriately devolving upon the executive, and not the judicial, department of the government. This Court can grant relief so far only as the rights of persons or property are drawn in question and have been infringed."

And in another part of the opinion he returns again to this question, and is still more emphatic in disclaiming jurisdiction. He observes:

"I certainly do not claim as belonging to the judiciary the exercise of political power. That belongs to another branch of the government. The protection and enforcement of many rights secured by treaties most certainly do not belong to the judiciary. It is only where the rights of persons or property are involved and when such rights can be presented under some judicial form of proceedings that courts of justice can interpose relief. This Court can have no right to pronounce an abstract opinion upon the constitutionality of a state law. Such law must be brought into actual or threatened operation upon rights properly falling under judicial cognizance, or a remedy is not to be had here."

We have said Mr. Justice Story concurred in this opinion, and Mr. Justice Johnson, who also delivered one, recognized the same distinctions. [Footnote 8]

By the second section of the third article of the Constitution, "the judicial power extends to all cases, in law and equity, arising under the Constitution, the laws of the United States," &c.;, and as applicable to the case in hand, "to controversies between a state and citizens of another state," which controversies, under the Judiciary Act, may be brought, in the first instance, before this Court in the exercise of its original jurisdiction, and we agree, that the bill filed presents a case which, if it be the subject of judicial cognizance, would in form come under a familiar head of equity jurisdiction -- that is, jurisdiction to grant an injunction to restrain a party from a wrong or injury to the rights of another where the danger, actual or threatened, is irreparable or the remedy at law inadequate. But, according to the course of

Page 73 U. S. 76

proceeding under this head in equity, in order to entitle the party to the remedy, a case must be presented appropriate for the exercise of judicial power; the rights in danger, as we have seen, must be rights of persons or property, not merely political rights, which do not belong to the jurisdiction of a court, either in law or equity.

The remaining question on this branch of our inquiry is whether, in view of the principles above stated and which we have endeavored to explain, a case is made out in the bill of which this Court can take judicial cognizance. In looking into it, it will be seen that we are called upon to restrain the defendants, who represent the executive authority of the government, from carrying into execution certain acts of Congress, inasmuch as such execution would annul and totally abolish the existing state government of Georgia and establish another and different one in its place -- in other words, would overthrow and destroy the corporate existence of the state by depriving it of all the means and instrumentalities whereby its existence might and otherwise would be maintained.

This is the substance of the complaint and of the relief prayed for. The bill, it is true, sets out in detail the different and substantial changes in the structure and organization of the existing government as contemplated in these acts of Congress, which, it is charged, if carried into effect by the defendants, will work this destruction. But they are grievances, because they necessarily and inevitably tend to the overthrow of the state as an organized political body. They are stated in detail as laying a foundation for the interposition of the court to prevent the specific execution of them, and the resulting threatened mischief. So in respect to the prayers of the bill. The first is that the defendants may be enjoined against doing or permitting any act or thing within or concerning the state which is or may be directed or required of them by or under the two acts of Congress complained of, and the remaining four prayers are of the same character, except more specific as to the particular acts threatened to be committed.

Page 73 U. S. 77

That these matters, both as stated in the body of the bill and in the prayers for relief, call for the judgment of the court upon political questions and upon rights not of persons or property but of a political character will hardly be denied. For the rights for the protection of which our authority is invoked are the rights of sovereignty, of political jurisdiction, of government, of corporate existence as a state, with all its constitutional powers and privileges. No case of private rights or private property infringed or in danger of actual or threatened infringement is presented by the bill in a judicial form for the judgment of the Court.

It is true, the bill, in setting forth the political rights of the state and of its people to be protected, among other matters, avers, that Georgia owns certain real estate and buildings therein, state capitol, and executive mansion, and other real and personal property, and that putting the acts of Congress into execution and destroying the state would deprive it of the possession and enjoyment of its property. But it is apparent that this reference to property and statement concerning it are only by way of showing one of the grievances resulting from the threatened destruction of the state and in aggravation of it, not as a specific

ground of relief. This matter of property is neither stated as an independent ground nor is it noticed at all in the prayers for relief. Indeed, the case as made in the bill would have stopped far short of the relief sought by the state, and its main purpose and design given up, by restraining its remedial effect simply to the protection of the title and possession of its property. Such relief would have called for a very different bill from the one before us.

Having arrived at the conclusion that this Court, for the reasons above stated, possesses no jurisdiction over the subject matter presented in the bill for relief, it is unimportant to examine the question as it respects jurisdiction over the parties defendants.

Bill dismissed for want of jurisdiction.

[Footnote 1]

37 U. S. 12 Pet. 669.

[Footnote 2]

Nabob of Carnatic v. East India Co., 1 Vesey Jr. 375-393, *S.C.,* 2 *id.* 56-60; *Penn v. Lord Baltimore,* 1 Vesey 446-447; *New York v. Connecticut,* 4 Dall. 1; *Cherokee Nation v. Georgia,* 5 Pet. 1, 30 U. S. 20 , 30 U. S. 29 -30, 30 U. S. 51 , 30 U. S. 75 ; *Rhode Island v. Massachusetts,* 12 Pet. 657, 37 U. S. 733 -734, 37 U. S. 737 -738.

[Footnote 3]

37 U. S. 12 Pet. 657.

[Footnote 4]

Page 37 U. S. 736 .

[Footnote 5]

37 U. S. 12 Pet. 752, 37 U. S. 754 .

[Footnote 6]

58 U. S. 17 How. 478.

[Footnote 7]

30 U. S. 5 Pet. 1.

[Footnote 8]

5 Pet. 30 U. S. 29 -30.

THE CHIEF JUSTICE:

Without being able to yield my assent to the grounds stated in the opinion just read for the

Page 73 U. S. 78

dismissal of the complainant's bill, I concur fully in the conclusion that the case made by the bill is one of which this Court has no jurisdiction.