WASHINGTON

Proceedings in the Supreme Court in the Great Injunction Case.

The Argument to be Made by the Petitioners on Friday Next.

Opinions as to the Value of the Russian America Purchase.

List of Nominations Confirmed and Rejected.

&c. &c. &c.

WASHINGTON, April 5, 1867.

The President and the Mississippi Injunction Case.

The statement, so persistently circulated, that the President is a prime mover in the effort now being made to obtain the decision of the Supreme Court on the constitutionality of the Reconstruction act, is emphatically denied by the author of the petition and the originators of the movement. A few days ago Hon. W. L. Sharkey called upon the President, and formally notified him that he was about to proceed against him. To this the President did not reply in a dozen words, and they expressed neither approval nor disapproval of the movement. Judge Sharkey has been heard to say that he does not know what the opinions of Mr. Johnson are on the subject, and that the President has had nothing whatever to do with the matter, either directly or indirectly.

Deliberation of the Foreign Relations Committee on the Russo-American Treaty.

The Committee on Foreign Relations have not yet concluded their deliberations on the Russo-American treaty, but will have another meeting before making a report. Several scientific gentlemen have been before the committee to furnish information relative to the resources and probable value of the country as a territorial acquisition. The character of their statements and opinions is not known. There is a strong feeling among the Northwestern Senators in favor of the ratification of the treaty on the theory of its being so extremely far North—such an American *ultima thule*—as to make our now Western States seem more nearly the civilized centre. There is also associated with this view an expectation of the early absorption of the intervening and contiguous British possessions. The objections to the cost of the territory and of its government, and of it affording only a distant prospect of being valuable for revenue, are met by the statement that these considerations are trifling in view of the advantage to be gained from its acceptance in connection with our national relations. It is not improbable that the committee may deem it wise to defer their report until next December, in order that they may obtain further statistical information relative to the country.

Anent the proposed Russo-American treaty, I ought to add that Senators are in search of information, and in their effort to get at reliable information are reading up back numbers of the HERALD. Two of them visited this evening the HERALD bureau in this city, and bore off in triumph to their hotel a bound volume of the HERALD to peruse and study an article on the resources of Russian America, contained in the number of June 12, 1865. The article is headed, "The Nation's Wealth," and gives a graphic account of the gold producing area of North America, its coal beds, oil fields, &c.

Important Opinions As to the Value of the Russian America Purchase.

The following telegram was received here yesterday:—

SAN FRANCISCO, Cal., April 4, 1867.

Hon. EDWIN M. STANTON, Secretary of War:—

I learn from a gentleman who has recently visited many parts of Russian America that its value is greater than has been supposed. The rejection of the treaty would cause great dissatisfaction on this coast, especially in California. H. W. HALLECK, Major General.

The following are Quartermaster General Meigs' views on the subject:—

QUARTERMASTER GENERAL'S OFFICE, PHILADELPHIA, April 4, 1867.

MY DEAR SIR:—I am surprised to find it stated that objections are made to the acquisition of Russian America. I can conceive of no greater boon to our Pacific States, and I cannot suppose that Atlantic Senators will deny to the people of those States the fisheries depending upon Russian America, now within their grasp. We need such a nursery of seamen, such a commerce as these fisheries will produce. They will feed the coasts and islands of the Pacific, and the vigorous climate will breed a race of hardy adventurers to repeat on the Pacific, softened by Christian civilization, the deeds of the old Norse sea kings on the Atlantic.

As a lover of my country, anxious for the growth and prosperity and strength and virtue of the nation, I should value Russian America, its fisheries and mines beyond the hot plains of Mexico or the fertile plantations of Cuba. I trust that no effort needed to secure this great acquisition will be omitted. The execution of the treaty will crown our generation with the praises and thanks of future ages. I am truly and respectfully your friend and servant, M. C. MEIGS, Q. M. G.

To Hon. WM. H. SEWARD, Secretary of State.

Extract of a letter dated April 3, received at the Department of State from Commodore John Rodgers, commandant of the Navy Yard, Boston:—

I think the Russian American acquisition would be valuable, and if worth anything the price would be a bagatelle. A few houses in Broadway would amount to as much. I see in the papers that the value of the ground in New York proposed for the Post Office is estimated by some parties at $5,000,000. The stretch of coast to the southward of Mount Elias (left out in the HERALD's map), is the important part of the Russian possessions in America, in latitude 55—the same latitude as the northern portion of England. We should have a strip of shore much like Norway which supplied Europe with enormous quantities of timber. The shore, being an eastern coast as regards the ocean, is much warmer than the western one. The furs are a minor consideration; fisheries and timber may be very valuable, the timber particularly so to a coast so barren as that of the Pacific.

Charles Fredick Fletcher, Esq., of Philadelphia, in a letter to the Secretary of State, dated the 3d instant, says:—

I beg leave respectfully, as one of the nation, to return you my thanks for the great benefit you have conferred upon the whole Union by your recent treaty with Russia, obtaining thereby the vast fishery grounds existing in those Northern seas.

The Nominations Before the Senate.

The nominations and their confirmation continue to occupy the politicians, and the still numerous lobby, both male and female, are busy in negotiating exchanges between candidates and the high appointing and confirming parties. Both the Executive and the Senate seem to be proceeding on the ground that "half a loaf is better than no bread," and arrangements are constantly being perfected that result in a "slate." The services of ladies in this diplomacy are of such value and general use that this element threatens to develop into a dangerous petticoat government that will clothe it practically with unconstitutional privileges. The influence of ladies is more potent in many instances than that of lords, enjoying, as they do, the advantage of being called upon and dictating from boudoirs what appear to them to be desirable arrangements. The appointing or confirming intermediary having entirely confidential interviews with a perfect lady, fears not an *exposé*, nor does he have before his eyes the dreaded prospect of an enforcement of the stringent bribery laws. It is all *sub rosa*—"hunky dory"—"mum's the word"—for ladies can keep political secrets.

General Rousseau's Appointment as Brigadier General Confirmed.

The contest for the vacant brigadier generalship in the regular army, vice Rosecrans, has been decided. General Rousseau was this morning confirmed by the Senate, and is, therefore, the lucky contestant. It is rumored that considerable trading took place in connection with the confirmation, and that Rousseau had to "go it" strong. Has the Senate of the United States lowered itself to the depth of a New York Board of Aldermen? A "Smelling Committee" might perhaps answer the query to the public satisfaction.

The New York Appointments.

As regards the New York appointments, the latest development is to the effect that the President desires the confirmation of Major General William H. Ludlow as Naval Officer.

Appointments Confirmed by the Senate.

The Senate to-day confirmed the following nominations:—

Minister Resident—Alexander Asboth, of Mississippi, to the republic of Uruguay.

Consuls—Francis P. Knight, Wen-Chang, China; E. Stoppenfels, of New York, at Maracaibo; Julius Morrin, of Michigan, at Coblentz, Prussia; Thomas K. King, of Rhode Island, at Belfast; J. A. Johnson, of Rhode Island, now Consul at Beirut, to be Consul General at Beirut; Thomas Kirby Smith, of Ohio, at Panama.

Naval Storekeeper—James D. Brady, Norfolk, Virginia.

Postmasters—J. K. L. Maynard, Waverley, Ia.; Henry C. Smith, Pomeroy, O.; Joseph Howell, Shreveport, La.; Edwin M. Hoovey, Fentonville, Mich.; O. P. Hodden, Lowville, N. Y.; Wm. S. Cameron, White Plains, N. Y.; Wilson Greer, Adams, N. Y.; Charles Harris, Howard, N. Y.; Ephraim Lindsley, Dover, N. J.; Henry H. Townsend, Warren, O.; Rachel McKibben, Middletown, Pa.; Mrs. Caroline F. Cowan, Biddeford, Me.; John Bradshaw, Kent, O.; Henry L. Robinson, Washington, O.; Chas. L. Madison, Cambridge, O.; John Kohl, Shelby, O.; Oliver C. Powlson, New Philadelphia, Ohio; Mahala J. Crane, Wellsville, Ohio; David W. McGee, Peoria, Ill.; Samuel Rexinger, Clarksville, Tenn.; Richard Barnett, Vicksburg, Miss.; Jacob A. Kanster, Jackson, Miss.; Stanley G. Trott, Charleston, S. C.; Leroy S. Brown, Natchez, Miss.; Julius M. Carter, St. John's, Michigan; William H. Taylor, Saginaw, Mich.; Noble W. Wood, De Witt, Iowa; Robert F. Steele, Genesso, Ill.; George H. Bigelow, Burlington, Vt.; E. G. Barker, Mount Vernon, Iowa; Edward J. Morrill, Farmington, Me.; Richard M. Greene, Phelps, N. Y.; John K. Rankin, Lawrence, Kansas; Dennis McKay, Macon City, Mo.

Collectors of Internal Revenue—William B. Tatum, First district of New Jersey; Charles W. Ashcom, Sixteenth district of Pennsylvania; Frederick W. Curtenius, Second district of Michigan.

Assessors of Internal Revenue.—William McSheny, Sixteenth district of Pennsylvania; Henry Raymond, Sixth district of Michigan.

Nominations Rejected by the Senate.

The Senate rejected the following nominations:—

Postmasters—H. W. Anderson, Washington, Iowa; Hiram W. Fuller, Cohoes, N. Y.; Wm. F. Barnes, Wellsville, N. Y.; Wm. K. Tillotson, Owasso, Mich.; James E. Cassidy, Elliott's Mills, Md.; James A. Brennan, Carbondale, Pa.; Jason D. Barber, Susquehanna Depot, Pa.; C. H. Wells, Hyde Park, Pa.; James Wilbur, Towanda, Pa.; Waldo P. Davis, Van Wert, Pa.; Abner P. Darlin, Lyons, Iowa; George E. Goodrich, Fitchburg, Mass.; Moses H. Kirby, Upper Sandusky, Ohio; John W. Fuller, Toledo, Ohio; John H. McCormick, Seymour, Ind.; Wm. Himer, Milton, Pa.; Wm. Foulke, Williamsport, Pa.; John W. Miles, Danville, Pa.

Consul at Ravenna—George G. Barclay, of Pennsylvania.

Naval Storekeeper—T. J. Walles, at Washington.

Assessors of Internal Revenue—Addison P. Mapes, Fourth district, Wisconsin; N. B. Beers, Ninth district, Illinois.

Collectors of Internal Revenue—Adolph Forrenson, Fifth district, Wisconsin; John M. Glover, Third district, Wisconsin; James Clements, Third district, Michigan.

United States Marshal—Samuel A. Jones, Western district, Tennessee.

Pension Agent—Frank S. Curtis, at Macon City, Missouri.

The Vacant Offices in the Interior Department.

The interval of anxiety and suspense for seekers after vacant offices in the Department of the Interior is at length over. Not that all who felt an inclination to occupy the empty desks in that department have been satisfied, by any means; but it is understood that all the vacancies among examiners and clerks of the Patent and Pension Offices have been disposed of. The appointments in the Pension Office have all been made, and those in the Patent Office have been determined upon.

Rumors Regarding Nesmith's and Rousseau's Appointments.

It is rumored about the hotels to-night that Nesmith has been rejected for the Austrian mission, and that Rousseau's confirmation has been reconsidered by the Senate. Inquiry results in disproving both rumors. A motion was made to reconsider Rousseau's case, but failed; and action on Nesmith's confirmation was deferred.

General Meredith's Misfortunes.

That misfortunes do not come singly was illustrated to-day in the experience of General Meredith, of Indiana. He had just heard of his rejection by the Senate as Surveyor General of Montana, when a telegram reached him of the death of his son and the sudden and dangerous illness of his wife.

Effect of Collector Smythe's Letter to the President.

I have reason to believe that Collector Smythe's late letter to the President, answering Mr. Hulburd's resolution asking for Mr. Smythe's removal from office for unfitness, has had a telling effect at the White House. No notion is entertained of complying with the modest Hulburdian request, and Mr. Smythe may, therefore, rest easy in his shoes until next December at least.

Board of Registration in Virginia.

General Schofield to-day issued an order appointing a board, whose duty shall be to recommend persons to form boards of registration. A registering officer will be required for each district of a county or ward of a city. An officer of the army or Freedmen's Bureau will be a member of each board, and the others will be selected from the following classes:—First, officers of the United States army who have been honorably discharged; second, loyal citizens of the county or city for which they are selected; third, any other loyal citizens having the proper qualifications. The boards are to be composed of men who are not only loyal now, but have always been to the government of the United States, and who have the confidence of the citizens. The board will make regular reports of their selections.

Senator Wilson's Visit to Richmond.

Advices from Richmond to-night represent that Senator Wilson's visit there was one long contemplated to General Brown, of the Freedmen's Bureau, with whom he went to Petersburg on Thursday afternoon to take a look at places of interest there. The news of his visit having preceded him, he was met by General Stoneman, the Mayor, and a large delegation of citizens, who requested him to address them that evening. This he consented to do, though unprepared. He was listened to by an immense assemblage, and with as much respect as if it had been in Boston, in a most remarkable speech, which has inclined the people here to look more favorably on Congress, and will operate for the good of the country. Since it has been discovered that Mr. Wilson is not a blood and thunder confiscation man he has become decidedly more popular in Virginia, and will be listened to with much interest in the city of Petersburg. Mr. Wilson openly avowed himself a radical republican. He said he had for a long time wished to visit them, but the locality was not healthy for him heretofore. He thanked them for so kind a reception, which was altogether unexpected.

Ex-Minister Bigelow in Richmond.

J. Bigelow, late Minister to France, and lady, arrived in Richmond yesterday, and are staying at the Ballard House. They visited points of interest to-day, and will probably return to this city to-morrow. The band of the Eleventh United States infantry serenaded them to-night.

Dinner at Mr. Seward's Residence.

A dinner party, composed of Cabinet ministers and several of the Senators, came off this evening at the residence of Secretary Seward, where it is supposed the principal subject to be discussed, besides the dinner, was the Russo-Seward treaty, as there appeared to be indications of a rejection by the Senate. Terrapin and Chateau Margaux will doubtless assist in the elucidation of this already knotty subject.

The Army Medical Museum.

Surgeon General Barnes to-day issued a circular to medical officers and others interested in the progress of medical science, calling upon them to forward contributions to the Army Medical Museum, which is now prepared for their reception. Besides interesting medical and surgical specimens, which will be forwarded as heretofore, the General requests such articles as follows to be collected:—Rare pathological specimens from animals, including monstrosities; typical crania of Indian tribes; specimens of their arms, dress, implements, rare articles of their diet, medicines, &c.; specimens of poisonous insects and reptiles, and of their effects on animals. In furtherance of this object, Acting Quartermaster General Rucker directs officers of the department in charge of government trains returning from the frontier or other remote points, upon the requisition of medical officers, to furnish transportation by such trains for collections of specimens intended for the Army Medical museum.

Receipts from Customs in March.

The following statement of receipts for customs from March 23 to 30 has been received at the office of the Commissioner:—

New York	$2,500,988 23
Philadelphia	74,976 44
Baltimore	119,767 91
New Orleans, March 16 to 23	98,537 78
San Francisco, February 22 to 28	113,418 74
Total	$2,907,689 10

The receipts from Boston have not yet been received. By comparing this statement with the one which immediately preceded it it is found that in New York there has been an increase of more than half a million dollars.

Army Transportation Contract.

The resolution offered in the Senate to-day by Senator Ramsay, calling on the Secretary of War for all bids for transportation of army stores on Route No. 1, which was awarded to James Nix, of Chicago, by the Quartermaster General, will be refered to the Military Committee. It is claimed that the award is not made to the lowest bidder, and the Military Committee will overhaul the whole subject.

Deep Creek Indian Reservation.

Commissioner Wilson, of the General Land Office, is in receipt of the returns of survey of the Deep Creek Indian reservation, situated west of the Goshoot Mountains, in Toole county, Utah Territory. The survey covers an area of about thirty-two thousand acres. Deep creek runs through the centre of the reservation from north to south. The bottom land on both sides of the creek is very rich, and well adapted for either grazing or agricultural purposes. The upland is broken, and covered with sage bush, greasewood and cedar, and the soil is second and third rate. There are indications of silver ledges on the western slope of the Goshoot Mountains on the east, and of copper in two of the lots in the northern part of the reservation. This is the fourth reservation which has been surveyed under the act of Congress entitled "An act to vacate and sell the present Indian reservations in Utah," approved May 5, 1864.

Notice to Mariners.

Official information has been received at the office of the Light House Board that since the 1st day of February, 1867, a light has been established from a lighthouse at the mouth of river San Francisco, near Maceo, Brazil. The light is a fixed white light, elevated sixty-nine feet above the level of the sea, and in clear weather should be seen from a distance of eleven miles. Also that since the 27th of September, 1866, a light has been exhibited from a lighthouse erected at the entrance of river Pekalonganon, north coast of Java.

Supreme Court of the United States.

The argument of No. 157, Steamer Bogaley and cargo vs. the United States, was concluded; and argument was commenced in the equity case of Watson vs. Southerland, No. 158.

Court of Claims.

The argument in the case of John L. Jackson et al. vs. the United States was concluded.

FORTIETH CONGRESS.

Extraordinary Session of the Senate.

WASHINGTON, April 5, 1867.

THE VETERAN CORPS OF CALIFORNIA.

Mr. COLE, (rep.) of Cal., presented a petition of the Veteran Corps of California. He said they served two or three years, and during that time they were successful in their contest with the various Indian tribes, subduing the Narvajoes, Apaches and Comanches in New Mexico. They were discharged nearly two thousand miles from home, and received a mere pittance to reach California, and now ask to be allowed the same rate of transportation which has been given to other discharged soldiers, to cover their expenses. The petition was referred to the Committee on Military Affairs.

IS MR. BOGY IN THE EMPLOY OF THE GOVERNMENT.

On motion of Mr. ROSS, (rep.) of Kansas, it was resolved that the Secretary of the Interior inform the Senate whether Lewis V. Bogy is now in the employment of that Department; if so, in what capacity, his duties and compensation, when appointed, by whom, and what instructions, if any, have been given to him, and by whom.

PROPOSED EXPULSION OF SENATOR SAULSBURY.

Mr. SUMNER, (rep.) of Mass., offered a resolution, which he said he would call up to-morrow:—

That Willard Saulsbury, a Senator from Delaware, having appeared repeatedly on the floor of the Senate in a condition of intoxication, be and he is hereby expelled from the Senate.

On motion of Mr. SHERMAN the Senate went into executive session.

UNITED STATES SUPREME COURT.

THE MISSISSIPPI PETITION TO STAY THE EXECUTION OF THE RECONSTRUCTION LAW.

Argument of the Petitioners.

APRIL 5, 1867.—Mr. W. L. SHARKEY, of Mississippi, with whom was associated Mr. Robert J. Walker, addressed the court as follows:—

If the Court please, if it be in order I desire to make an application to the Court this morning for an injunction on behalf of the State of Mississippi against Andrew Johnson and others. I desire at this time to file the bill, and ask the Court to assign a day for its hearing; and I venture to express the hope that the day may be as early as possible, inasmuch as it is a bill to prevent irreparable mischief, and I believe belongs to a class of cases which in all courts has precedence. If the Court desires it I will read the bill, or file it without.

The CHIEF JUSTICE—If it is to be filed, you may file it without reading.

Attorney General STANBERY—This is an original case, and I believe the practice is to obtain leave of the Court to file the bill. It is a bill, in my judgment, so far as one of the parties is concerned, against the United States, and I wish to appear at the first moment such an application is presented and object to the Court entertaining jurisdiction of it, even *in limine*. I have suggested to my learned friend, Judge Sharkey, that, perhaps, if he would make a motion for leave to file the bill, he would in the most regular way allow me to make the objection I have against the Court entertaining this bill for a moment as far as the United States is concerned.

Mr. SHARKEY—That is all the motion I make if the objection is persisted in. The question which the gentleman presents is one which will come up as a matter of course. We expect to discuss it, and are prepared to discuss it, now or at any time the court may assign for it. I have already remarked that it is a bill intended to prevent irreparable mischief, and belongs to a class of cases which in all courts have preference, and the earlier it is settled the better. I am aware, too, of the importance and magnitude of this case. It involves one of those delicate questions, which are always unpleasant for a court to determine, between the constitution and the legislative department of the government; but, however delicate it may be, I have the consolation of knowing that this court is able to meet it. It is a very important case, destined to test the constitutionality of a recent act of Congress, and as the mischief that must result from delay will be progressing in the meantime, we desire to have as early a hearing as possible. I am willing to file the bill, and I proposed, if the court desired, to read it.

The CHIEF JUSTICE—We understand you only move for leave to file the bill. That motion may be made, and on the next motion day it may be called up.

Mr. SHARKEY—I supposed, inasmuch as it is an application of somewhat pressing importance, that the court would give permission to file the bill, and then assign a day for the hearing of the cause.

The CHIEF JUSTICE—You are not in a position to file the bill as yet. There is only a motion for leave to file the bill.

The ATTORNEY GENERAL—On that question, if the Court please, I am quite ready, and I believe the gentlemen are. I am ready now to resist the granting of the motion for leave to file that bill.

The CHIEF JUSTICE—We do not propose to hear the motion out of its regular order. The rules require that such a motion shall be filed. Let it be filed, and it will be taken up when reached in its order.

Mr. SHARKEY—I will file the application.

The application was then filed and will be argued next Friday.

THE ARGUMENT IN SUPPORT OF THE PETITION.

The following is the argument that will be made in support of the petition in the Supreme Court on Friday next:—

This bill is filed to enjoin the execution of an act of Congress entitled "An act to provide for the more efficient government of the rebel States," and also an act supplemental thereto. Although the questions arising in the case are of great magnitude, exceeding in importance any ever presented to this court, yet they are few in number. This application is in behalf of one of the States of the Union to restrain the President of the United States, or any of his officers acting *colore officii*, from destroying a State, or exercising power over a State, or its people, forbidden by the federal constitution. The constitution of the United States is declared therein to be "the supreme law," and all laws of Congress or of a State repugnant thereto, when brought under judicial cognizance, must be declared void. Such is the settled doctrine of this Court, and of all our judicial tribunals, State and national.

The first question is, do the acts of Congress before referred to violate the federal constitution? Such was the opinion of the President of the United States, as expressed in his veto messages, and we shall but state the supposed points of conflict, without extended argument. The acts in question violate the compact with Georgia of 1802, the ordinance of 1787, made under the compact with Virginia, both of which compacts were extended to Mississippi, and made "unalterable" and "final and conclusive" by Congress, and so accepted by the State. These acts annihilate a State, they destroy the State constitution of Mississippi of 1817, accepted by Congress, as well as the amended State constitution of 1865, established by the people. If there was any fatal irregularity in the State constitution of 1865, which is denied, that would not territorialize the State or abolish the State constitution of 1817. These acts deprive the State of that representation in the two houses of Congress constantly and forever secured by the constitution. They substitute military rule for that of the civil law; they repeal the right of habeas corpus in time of peace; they deprive men of life, liberty and property, without due process of law; they subject them to arrest without warrant founded on affidavit; they deprive them of the safeguard of a grand and petit jury. If all this may be rightfully done then these acts may be constitutional.

Second. The next question is, are there proper parties to this suit as complainant and defendants? The constitution declares that "the judicial power shall extend to all cases in law and equity arising under this constitution, the laws of the United States and treaties made or which shall be made under their authority." And it also declares that "in all cases affecting ambassadors, other public ministers, and those in which a State is a party, the Supreme Court shall have original jurisdiction." This is a case in equity, and proper for the cognizance of a court of equity, as will be shown hereafter. It arises under the constitution, and a State is party complainant. That a State may sue by original bill in the Supreme Court of the United States has been settled by this court.

It is important, however, to consider whether the President of the United States can be made a party defendant to this bill, inasmuch as there is no precedent directly to the point. Yet it is believed the question has been virtually settled by very high authority. It is important, in this connection, to mark the distinction between what are called political powers and such as are ministerial. In the exercise of discretionary or political powers, courts will not undertake to control the action of officers; but not so with regard to ministerial duties, in the exercise of which no one is above the law, however exalted his position. Fortunately we have neither a king nor an emperor nor a parliament who are omnipotent or above the constitution.

Our constitution declares that "the judicial power shall extend to all cases in law and equity arising under this constitution," &c. And thus the judiciary are made the guardians and protectors of the constitution.

The President is but the creature of the constitution, one of the agencies created by it to carry it into practical operation; and it would be strange indeed if he should be permitted to exert his agency in violating that instrument, and then claim exemption from the process of the court whose duty it is to guard it against abuses, because he is the chief executive officer of the government, and especially when he is exerting a mere ministerial duty, for that is all he does exert in executing an act of Congress. He has no discretion in the matter. The constitution makes no distinction as to parties. The case is the criterion, no matter who is plaintiff or who defendant; and if the President be exempt from the process of the law he is above the law. On this point it would, perhaps, be sufficient to refer to the very elaborate and able decision of Chief Justice Marshall, delivered on the trial of Aaron Burr. An application was made for a subpœna *duces tecum*, to be directed to the President of the United States, and the application was resisted on the ground that the President was not amenable to the process of the Court, and could not be drawn from the discharge of his duties at the seat of government, and made to attend the court sitting at Richmond. The Chief Justice drew the distinction between the President and the King of England, and held that all officers in this country were subordinate to the law and must obey its mandate, and therefore sustained the application. The subpœna *duces tecum* was only a command to the President to do a particular thing; the injunction is but a command to him not to do a particular thing under a void authority. The principle is the same in the two cases, as well as the means of coercing obedience, and the reasoning of Chief Justice Marshall completely reaches and settles the question now before this court. The constitution provides that all officers may be impeached; but this does not exonerate them from personal liability for acts done under color of office, the President as well as other officers. The whole question lies within a narrow compass. The constitution is supreme, all officers are subordinate to the supreme law, and consequently subordinate to the command of that department whose duty it is to enforce subordination by declaring the meaning, the extent and the limitations of the constitution.

If the President be exempt, why not all his Cabinet officers? They all constitute but parts of the executive department of the government. Yet in the case of Mabry vs. Madison, 1 Cranch, it was decided that the acts of the Secretary of State were the acts of the President, and that the Secretary might be subjected to the process of mandamus. Why would it not just as well lie against the President? It would be strange, indeed, to hold that the subordinate is liable and may be sued for acts which are the acts of his principal, and yet that the principal is not liable and cannot be subjected to the process of law. Even more recently this Court has decided that officers of the executive department are liable to the process of the Court. (See Kendall vs. Stockton, 12 Peters, 524; United States vs. Guthrie, 17 Howard, 284.) The case of Ellis vs. Earl Grey, 6 Simons, 214, is a leading case in England and has been approved in this court. In that case it was decided that the Lords of the Treasury, constituting the prominent department of the executive government, might be enjoined by the judicial department. In that country the King is supposed to be above the law and is the fountain of justice, yet his immediate subordinate departments are not above it. In this country the President is not above the law; it is above him, and hence he must be subject to its restraints.

The attention of the court is also invited to the decision of Chief Justice Bartley in the case of the State of Ohio *ex rel.* of Whiteman vs. Salmon P. Chase, Governor, 5 Ohio S. Rep., 529. The objection was raised that a mandamus would not lie against the Governor. In delivering the opinion the Chief Justice said:—"Under our system of government no officer is placed above the restraining authority of the law, which is truly said to be universal in its behests, all paying it homage, the least as feeling its care, and the greatest as not being exempt from its power." If the chief executive officer of a State is liable to be controlled by the courts of the State in the discharge of ministerial duties, for much stronger reasons is the chief executive officer of the United States liable to be controlled by this court under the provisions of the federal constitution. (See also Hilliard on Injunction, 374, and authorities cited.) In the case of Greene vs. Mumford, 5 R. I., the court said in regard to officers:—If they are departing from the power which the law has vested in them, if they are assuming to themselves a power over property which the law does not give them, this court no longer considers them as acting under their commission, but treats them as individuals." By the same principle the President, when acting in opposition to the federal constitution, may be treated as an individual.

Third—Does the bill present a case proper for the interposition of this court? The constitution gives to the federal judiciary equity jurisdiction, and it is a familiar principle that wherever jurisdiction is given over a particular subject or a particular branch of jurisprudence, it is ample for all purposes connected with the subject or the branch of jurisprudence. Therefore the jurisdiction of this court is ample to take cognizance to the full extent, over all subjects of equity jurisdiction. We have then but to present such a case as equity would take cognizance of, and the relief will be granted to the utmost extent of the powers of a court of equity. The great distinction between remedies at law and in equity is this: a court of law gives redress or damages for injuries, and a court of equity will prevent their occurrence. The one can do nothing more than give compensation in damages, while the other will save the party from a resort to the remedy for damages, by preventing the mischief. And even if there be a remedy at law which is inadequate, a court of equity will take jurisdiction. But in this case there is no remedy at law. It is a case in which equity alone can give relief. If there be no remedy then the federal constitution is not, as declared, the supreme law of the land, since a mere majority in Congress may exclude States, as it has done in this instance; it may blot out States and State constitutions and State governments, or it may assume and exercise the absolute power to govern them. If this may be done in the Southern States, it may just as well be done in other States, and the will of a majority in Congress is the supreme law in all cases whatsoever. The people of the States which framed the federal government surely did not think it possible that they were creating a power that could destroy their existence as States; and yet this has been done with four of the original States that created the government.

This bill presents several grounds, on either of which a court of equity may rightfully take jurisdiction and give the relief sought.

In the first place, the acts under consideration violate the constitution of the United States in so many particulars that it is not necessary further to attempt to enumerate them. It does more; it annuls and abrogates the State government and State constitutions, and substitutes a mere military power. The constitution is, of course, the chief object of protection with all courts. When it is about to be violated, the federal judiciary will interpose for its protection. Thus, in the case of Osborn vs. the Bank of the United States, 9 Wheaton, 758, the federal court took jurisdiction for the sole purpose of protecting a constitutional right. A State law violated the constitution, and a State officer was about to execute the law, but was restrained by injunction by the federal courts, which would not have had jurisdiction over the subject matter or the officer but from the fact that the execution of the law would have violated the constitution. The question, then, is settled, that wherever the constitution is about to be violated, and a proper case is presented, the federal judiciary will protect it; and wherever this court has original jurisdiction it will certainly act upon the same principle. (Story's Equity, 34, 48, 110; Hilliard on Injunctions, 380; State of Pennsylvania vs. Wheeling Bridge, Howard Reports; Martin vs. Hunter, 1 Wheaton; Carrol vs. Safford, 3 How, 441; Cohen vs. Georgia, 6 Wheaton).

A court of equity will always protect a franchise by restraining a threatened abuse. (2 Story's Equity, 766. Hilliard on Injunctions, 311.) Surely the constitution and the rights of a State, and of its people under it, stand upon much higher ground and have a stronger claim to protection than a mere franchise; to protect the one and not the other would be to protect the lesser and not the greater. This protection is always given in advance of the threatened injury. We ask the application of this principle in the present case. The bill makes a case in which the constitution must be violated not only to the great prejudice of a State, but of individuals. Will the court prevent this state of things, or will it leave the complainant without redress, and thus admit that the constitution furnishes no means for its own protection? Pecuniary compensation never can be made, even if there were any persons against whom redress could be sought in a court of law. And the grievances resulting may never be redressed, for these bills leave it discretionary with Congress when the State government ordered to be established shall be recognized.

In the next place, the bill presents the case of a breach of agreement made with the State of Georgia, under the compact of 1802, and of Virginia under the ordinance of 1787, as well as with the State of Mississippi on its admission into the Union. These compacts, which are made "unalterable" and "irrevocable," are public documents, and we merely refer to them. Courts of equity will always interpose, not only to enforce agreements or compacts when that can be done on a proper case made, but also to prevent their violation. (Casey vs. Holmes, 10 Ala., 776.)

Again, the bill presents a patent case of irreparable mischief, and in such cases it is needless to say to this Court, equity will always interpose to prevent the mischief. On this point the bill states all the facts, and from that statement it is manifest the mischief must ensue. Mississippi was admitted into the Union in 1817 under the compact made with Georgia. Her constitution was then declared to be republican by Congress, though in reality it was far less so, according to the present standard, than her present constitution. Under that government she continued until 1832, when the constitution was modified, without the consent of Congress, and without producing any change in her relations with the federal government. In 1861 a portion of her people undertook to break up these relations by an attempt to secede. The State was not annihilated or removed from her place in the Union by this attempt at secession, and the ordinance of secession was merely a nullity, as has always been maintained by all the departments of the federal government.

When the attempt at secession proved abortive, the people of the State, through their representatives, assembled in convention and remodelled their constitution by erasing from it all those provisions which had been illegally interpolated upon it to suit the Confederate government. They did not form a new constitution; they did not act as a new State without a constitution; they did not recognize the attempt at secession as changing in any way their former State government. On the contrary, one of the first acts of the convention was to declare the ordinance of secession a nullity; and the constitution was so amended as to suit the changed condition of things, and the government was put in operation under it in October, 1865. Every department and office was filled by appropriate functionaries, and senators and representatives to Congress were elected. No matter how or by whose order that convention was convened, since, when assembled, it represented the sovereign power of the people, and the right of a State to change or modify its constitution has never been questioned. The proclamation of the President imparted no power to the people which they did not already possess, nor can any plan of Congress do so, nor restrain their inherent right of sovereignty, except so far as it has been restrained by the constitution of the United States.

With a government thus organized, perfectly republican in form, it must be manifest that all those mischiefs enumerated in the bill, and more, must ensue by superseding and annulling that government, and placing in its stead military rule over the State. In effect, these bills declare that the State has been without a government for years past, and they confer full authority on the military officer to protect all persons in their rights of person and property, to suppress insurrection and violence, to punish crimes, and to establish military tribunals; in short, the whole internal policy and the entire domestic concerns of the State are placed under his control; this, too, without any law to guide him but his own will, with a strong armed force to carry out his will. The legislation of the State and its judicial system are to be annulled, and the rights of property unsettled even arbitrarily destroyed. If this state of things does not lead to a train of evils that defy enumeration, then the history of unbridled military power in all ages of the world will be belied. Wherever it has prevailed it has been the irresistible instruments of wrongs and outrages, and the power by which governments have been subverted. Are men better now than they have been? They are in passions, in faculties and in temper the same. At one time the kingdom of England was divided into military districts, with a general in command of each; and the historian informs us the people became sick and tired of government by the sword, and pined for a government of laws. And this is to be the fate of the Southern people; perhaps, at no distant day, the fate of the whole people of the United States, if this system becomes a precedent in the government. Already Maryland, a State that did not secede, has been threatened and forewarned that she, too, may soon be a victim; the sword hangs over her by a slender thread. And can it be that for such impending injuries there is no remedy? What an idle ceremony it was to declare that "the powers not delegated to the United States by the constitution, nor prohibited by it to the States, are reserved to the States respectively, or to the people." If Congress may convert the regular government of a State into a mere provisional government, why may it not just as well prescribe a permanent government for it? And does it not do so in this case, by regulating the right of suffrage, and by claiming the right to determine when the State shall be restored? What secession failed to accomplish, what the war was inaugurated to prevent, has been brought about by a very plain and simple process.

An additional source of probable mischief should not be overlooked. Suppose the officers appointed should proceed to carry out these acts to the full extent of their powers by removing all the officers of the State, by adjudicating on the rights of property according to their own crude ideas of right, by trying and punishing individuals, by calling conventions and establishing governments, and by doing whatever military officers may think proper to do, and then these acts should be declared void, as they surely will be, sooner or later then all that may have been done under them must fall. It will follow that a state of anarchy must have intervened from the time the government was displaced. And what may have been done can derive no validity from the real or supposed assent of the people; these measures are put upon them by force or under duress. No one can foresee the evils, the utter confusion, that must prevail. This consideration should present a persuasive reason for a speedy settlement of this question, so that the harmony and good order of society may not be broken up and this humiliating spectacle presented to the world, to the reproach of American institutions.

May we be permitted to add another idea? These acts are harsh, oppressive in the extreme. They are acts of pains and penalties for past offences; they are bills of attainder, *ex post facto* laws. This government must have its strong foundation in public opinion, in the attachment of the people for it, in the protection it affords them in the enjoyment of civil and religious liberty. Is it wise, is it politic further to oppress, to punish a helpless people who have already drank of the cup of bitterness to its very dregs for their errors? Is it expected thus to win back their affections for the government of their fathers? Is it expected that an oppressed people will love the government that oppresses them, that condemns them unheard, unrepresented? Does Ireland love England, or will she ever do so, after having been so long enslaved by military rule and parliamentary oppression? We, too, may be laying the foundation for similar resentments between the South and the North, to culminate in future revolutions, and possibly in the utter overthrow of our government.

Fourth—As this legislation must have proceeded on the idea that the Southern States are not members of the Union, let us, in the last place, inquire whether they were in the Union during the rebellion, have been in ever since and are so now. If they have continued to be and are so now, then, surely, these acts have no constitutional basis.

The union of the States under the Articles of Confederation of 1778, as well as under the constitution, was "a perpetual Union," and could not be dissolved by act of Congress or the attempted withdrawal of any portion of the people of a State. If Congress cannot dissolve the Union, it cannot exclude any State from the Union, for if it may exclude one State, it may exclude any number of States, and thus accomplish a result forbidden by the constitution. The secession ordinances, so far as their legal effect was concerned, were mere nullities. These ordinances were nullities when enacted, and they acquired no legal or constitutional force [illegible]

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