The Court Archive:
Personal Liberties and the Illinois Supreme Court

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The American Civil War was a traumatic event in our nation's young history. The principal question was legal. Did states have the right to secede from the Union? President Abraham Lincoln argued that the contractual bond among the states was inviolable. Lincoln's record on the contractual bond between the government and its citizens was less clear with the suspension of habeas corpus and imprisonment of many people suspected of harboring sympathy for the Confederacy. An Illinois Supreme Court case, *Johnson v. Jones* (44 Ill. 142 (1867)), explored that issue.

Madison Y. Johnson was a long-time attorney in Galena, Illinois. After the Civil War began, Johnson felt that Lincoln overreached his executive powers. In 1862, Johnson defended Nicholas Roth, an Army Lieutenant who just returned to Galena after his service. Roth was accused of discouraging enlistments. J. Russell Jones, the marshal for the Northern District of Illinois, arrested Johnson for disloyal activities for representing Roth.

Johnson was sent to Fort Lafayette in New York and to Fort Delaware, where he was imprisoned for three months with no charges filed against him. After he took a loyalty oath, Johnson was released from prison and returned to Galena. He became an popular speaker at Democratic rallies to denounce Lincoln's "usurpations" and provide accounts of his experience as a "prisoner of state" in the "Bastille."

He filed a lawsuit in August 1864 against Marshal Jones and two of his deputies for trespass for false imprisonment. Jones immediately responded with the federal Indemnity Act, which protected officers in the service of the government to use the president's orders as a defense in any lawsuit. Jones also claimed that Johnson had been a member of the Knights of the Golden Circle, a secret organization in the North that aided the rebellion.

In March 1866, Jo Daviess Circuit Court Judge Benjamin Sheldon (later an Illinois Supreme Court justice) ruled in favor of Jones after Johnson refused to plead further after his demurrer had been overruled. Johnson then appealed the case to the Illinois Supreme Court. Johnson represented himself, while former Illinois Supreme Court justice Corydon Beckwith represented Jones. Johnson's argument focused on the illegality of Lincoln's actions and asked "Can the

President, because he happens to be President, do an act, that would be criminal, if done by a private individual, and escape the consequences?" Beckwith stuck to the legal argument from the circuit court, claiming that Jones is not guilty because he was ordered to arrest Johnson to help suppress the rebellion.

Illinois Supreme Court Justice Charles Lawrence issued the opinion and began by asking if the arguments of Jones justify the alleged trespass? He quickly answered that they do not, and it "cannot be denied that the letter and spirit of the Constitution were plainly violated." Lawrence relied heavily on the recently decided U.S. Supreme Court case of *Ex parte Milligan*, and claimed the *Johnson* case was more decisive since martial law had not been imposed when Johnson was arrested, but it had been when Milligan was arrested. The government, Lawrence concluded, could make a legitimate argument for Milligan's detention, but not Johnson's. Lawrence also rejected the Indemnity Act defense, adding that with all of "our respect for congress, we must hold these acts beyond its constitutional authority." The Illinois Supreme Court reversed and remanded the case with instructions that Jones's pleas were not a bar to the action, but that they could be used in mitigation of damages.

Upon its return to Jo Daviess County, Johnson and Jones reached an agreement that Johnson "was innocent of doing any act inimical to the government." Madison Johnson obtained his vindication, and the precedent had been set by *Milligan* and then *Johnson*, that in calamitous times, personal liberties were sacrosanct, particularly in areas where war was not raging.