

United States Vs. Morris

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Appellant : United States

Respondent : Morris

Judgement :

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United States v. Morris

39 U.S. (14 Pet.) 464

ON CERTIFICATE OF DIVISION FROM THE CIRCUIT COURT OF

THE UNITED STATES FOR THE SOUTHERN DISTRICT OF NEW YORK

SYLLABUS

Indictment under the second and third sections of the Act of Congress entitled "An act to prohibit the carrying on the Slave Trade from the United States to any foreign Place or Country," passed 10 May, 1800.

The schooner *Butterfly*, carrying the flag of the United States and documented as a vessel of the United States and having the usual equipments of vessels engaged in the slave trade, sailed from Havana towards the coast of Africa on 27 July, 1839. She was captured by a British brig of war and sent into Sierra Leone on suspicion of being Spanish property. At the time of the capture, Isaac Morris was in command of the vessel, and was described in the ship's papers, and described himself, as a citizen of the United States. The vessel was sent by the British authorities at Sierra Leone to be dealt with by the authorities of the United States. *Held* that to constitute the offense denounced, in the second section of the Act of 10 May, 1800, it was not necessary that there should have been an actual transportation or carrying of slaves in the vessel of the United States in which the party indicted served. 2. The voluntary service of an American citizen on board a vessel of the United States in a voyage commenced with intent that the vessel should be employed in the slave trade from one foreign place to another is an offense against the second section of the law, although no slaves had been transported in such vessel or received on board of her. 3. To constitute the offense under the third section of the act, it was not necessary that there should be an actual transportation of slaves in a foreign vessel on board of which the party indicted served. 4. The voluntary service of an American citizen on board a foreign vessel in a voyage commenced with intent that the vessel should be employed and made use of in the transportation of slaves from one foreign country to another is in itself, and where no slaves have been transported in such vessel or received on board of her, an offense under the third section of the act.

In expounding a penal statute, the Court certainly will not extend it beyond the plain meaning of its words, for it has been long and well settled that such statutes must be construed strictly. Yet the evident intention of the legislature ought not to be defeated by a forced and overstrict construction.

The defendant, Isaac Morris, was indicted under the second and third sections of the act entitled "An act in addition to an act entitled *An act to prohibit the carrying on the Slave Trade from the United States to any foreign Place or Country,*" approved on 10 May, 1800.

The first count of the indictment charges that the defendant did, on the high seas, from 15 June until 26 August in the year 1839, voluntarily serve on board of the schooner *Butterfly*, a vessel of the United States employed and made use of in the transportation of slaves from some foreign country or place to some other foreign country or place, the said defendant being a citizen of the United States.

The second count charges that the defendant did, on the high seas, from 15 June to 26 August, voluntarily serve on board of the schooner *Butterfly*, being a foreign vessel employed in the slave trade, the defendant being a citizen of the United States.

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It was proved, on the trial on the part of the prosecution that the schooner *Butterfly*, carrying the flag of the United States and documented as a vessel of the United States, her register being dated 24 May, 1839, and issued by the collector of New Orleans to Nathan Farnsworth, a citizen of the United States, as owner, was boarded and examined, on 26 August, 1839, on the high seas, in latitude 525' north, longitude 30 east, near Cape St. Paul's on the coast of Africa, by the British brig of war *Dolphin* on suspicion of being a Spanish vessel engaged in the slave trade in contravention of the treaty between Great Britain and Spain for the suppression of the slave trade. That on such examination, the vessel was found to be on her voyage from Havana, in the Island of Cuba, which port she had left on 27 July, 1839, bound to St. Thomas, in the Island of Principe, near the coast of Africa; that the vessel had on board twenty-four large leagers capable of containing each from two hundred and fifty to three hundred gallons of water; eighteen of these were in shocks -- that is, the staves were in bundle not fitted; four of them contained water, and two contained bread; there was a quantity of plank stowed away in the hold, similar to the planks used in framing slave decks, but this plank could not have been fitted as a slave deck until the vessel had discharged her cargo; and that such leagers and slave decks were commonly found to be a part of the equipments and fittings of vessels engaged in the slave trade on the coast of Africa; that she had on board a full cargo consisting of

various commodities adapted either to the traffic in negroes or to any lawful trade carried on by trading vessels upon the coast of Africa; that the prisoner was in command of the vessel; that he was described in the ship's papers and represented himself as a citizen of the United States; that the rest of the ship's company were represented in the crew list as Spaniards or Portuguese who had been shipped at Havana; that there were also on board fourteen Spaniards who had been received at Havana as passengers; that the cargo had been shipped at the same place, and according to the invoice and bill of lading was to have been delivered at St. Thomas, in the Island of Principe, aforesaid, and appeared by the documents to be owned by persons residing at Havana; that two log books, one in English and the other in Spanish, were found on board; that various documents in the Spanish language were also found on board; that under these circumstances, the vessel was captured by the *Dolphin*, suspecting the same to be Spanish property, and sent for adjudication to Sierra Leone to be proceeded against in the Mixed Commission court at that place, which court declined taking cognizance of the case on account of the vessel's being documented as an American vessel; that she was then sent to the port of New York to be dealt with by the authorities of the United States as they might think proper.

No slaves were found on board the vessel at the time of her capture, and it was testified by the witnesses for the prosecution that from the cargo and situation in which the vessel was found, no

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slaves could have been carried or transported in her at any time during the voyage on which she was then engaged; that it would have been necessary to have discharged the cargo before slaves could have been taken on board; that the vessel was short of water, having only about eleven gallons on board when she was captured, and that Cape St. Paul's is a common watering place on that coast, being about five hundred miles distant from the Island of Principe.

Upon the foregoing state of facts, the judges were divided in opinion upon the four following questions, which were presented on the facts aforesaid for their decision:

1st. Whether it is necessary, in order to constitute the offense denounced in the second section of the Act of 10 May, 1800, above referred to, that there should be an actual transportation or carrying of slaves in the vessel of the United States on board of which the party indicted is alleged to have served.

2d. Whether it is necessary, in order to constitute the offense denounced in the third section of the Act of 10 May, 1800, above referred to, that there should be an actual transportation or carrying of slaves in a foreign vessel on board of which the party indicted is alleged to have served.

3d. Whether the voluntary service of an American citizen on board a vessel of the United States on a voyage commenced with the intent that the vessel should be employed and made use of in the transporting or carrying of slaves from one foreign country or place to another is in itself, and where no slaves had been transported in such vessel or received on board her, an offense under the said second section.

4th. Whether the voluntary service of an American citizen on board a foreign vessel on a voyage commenced with the intent that the vessel should be employed and made use of in the transportation and carrying of slaves from one foreign country or place to another is in itself, and where no slaves had been transported in such vessel or received on board her, an offense under the said third section.

Which points were stated under the direction of the court, at the request of the counsel for the parties in the cause, and ordered to be certified into the Supreme Court of the United States pursuant to the act in such cases made and provided.

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MR. CHIEF JUSTICE TANEY delivered the opinion of the Court.

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The defendant, Isaac Morris, is indicted under the second and third sections of the act entitled "An act in addition to an act entitled *An act to prohibit the carrying on the slave trade from the United States to any foreign Place or Country,*" approved on 10 May, 1800.

The first count of the indictment charges that the defendant did, on the high seas, from 15 June until 26 August in the year 1839, voluntarily serve on board of the schooner *Butterfly*, a vessel of the United States employed and made use of in the transportation of slaves from some foreign country or place to some other foreign country or place, the said defendant being a citizen of the United States.

The second count charges that the defendant did on the high seas, from 15 June to 26 August, voluntarily serve on board of the schooner *Butterfly*, being a foreign vessel employed in the slave trade, the defendant being a citizen of the United States.

It was proved on the trial, on the part of the prosecution, that the schooner *Butterfly*, carrying the flag of the United States and documented as a vessel of the United States, sailed from Havana for the coasts of Africa on 27 July, 1839, having on board the usual and peculiar equipments of vessels engaged in the transportation of slaves from the coast of Africa to other places. Before she reached the African coast and before any slaves were taken on board, she was captured by the *Dolphin*, a British brig of war, and carried into Sierra Leone upon suspicion of being Spanish property, to be proceeded against in the Mixed Commission court at that place. At the time of her capture, Isaac Morris was in command of the vessel, and was described in the ship's papers and represented himself as a citizen of the United States. The court at Sierra Leone declined taking cognizance of the case because the vessel was documented as an American vessel, and she was then sent to New York, to be dealt with by the authorities of the United States as they might think proper.

Upon the foregoing state of facts, the judges were divided in opinion upon the four following questions, which were presented on the facts aforesaid for their decision:

1. Whether it is necessary in order to constitute the offense denounced in the second section of the Act of 10 May, 1800, above referred to, that there should be an actual transportation or carrying of slaves in the vessel of the United States on board of which the party indicted is alleged to have served.

2. Whether it is necessary in order to constitute the offense denounced in the third section of the Act of 10 May, 1800, above referred to, that there should be an actual transportation or carrying of slaves in a foreign vessel on board of which the party indicted is alleged to have served.

3. Whether the voluntary service of an American citizen on

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board a vessel of the United States in a voyage commenced with the intent that the vessel should be employed and made use of in the transporting or carrying of slaves from one foreign country or place to another, is in itself, and where no slaves had been transported in such vessel or received on board her, an offense under the said second section.

4. Whether the voluntary service of an American citizen on board a foreign vessel in a voyage commenced with the intent that the vessel should be employed and made use of in the transportation and carrying of slaves from one foreign country or place to another is in itself, and where no slaves have been transported in such vessel or received on board her, an offense under the said third section.

And these points having been certified of this Court, we proceed to express our opinion upon them.

The second section of the act of Congress above mentioned declares

"That it shall be unlawful for any citizen of the United States or other person residing therein to serve on board any vessel of the United States employed or made use of in the transportation or carrying of slaves from one foreign country or place to another, and any such citizen or other person voluntarily serving as aforesaid shall be liable to be indicted therefor, and on conviction thereof shall be

liable to a fine not exceeding two thousand dollars and be imprisoned not exceeding two years."

The first and third points certified from the circuit court depend on the construction of this section.

In expounding a penal statute, the Court certainly will not extend it beyond the plain meaning of its words, for it has been long and well settled that such statutes must be construed strictly. Yet the evident intention of the legislature ought not to be defeated by a forced and overstrict construction. [18 U. S. 5](#) Wheat. 95.

The question in this case is whether a vessel on her outward voyage to the coast of Africa for the purpose of taking on board a cargo of slaves is "employed or made use of" in the transportation or carrying of slaves from one foreign country or place to another before any slaves are received on board.

To be "employed" in anything means not only the act of doing it, but also to be engaged to do it; to be under contract or orders to do it. And this is not only the ordinary meaning of the word, but it has frequently been used in that sense in other acts of Congress. Thus, for example, the second section of the Act of March 3, 1825, entitled, "an act to reduce into one the several acts establishing and regulating the Post Office Department," declares

"That the Postmaster General and all other persons 'employed' in the General Post Office or in the care, custody, or conveyance of the mail, shall, previous to entering upon the duties assigned to them,"

take the oath prescribed by that section. Here the persons who have contracted to perform certain duties in the General Post Office, are described as

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"employed" in that department, before they enter upon the duties assigned them. So also, in the twenty-first section of the same law, various offenses, such as the embezzling or destroying any letter are enumerated and the punishment prescribed when committed by any person "employed in any of the departments of

the post office establishment." Yet it cannot be supposed that the party must be actually engaged in transacting his official duties when the letter was embezzled or destroyed in order to constitute the offense described in this section.

Again, the Act of July 2, 1813, sec. 8, 2 Story 1353, declares, that certain vessels "employed" in the fisheries shall not be entitled to the bounties therein granted unless the master makes an agreement in writing or in print with every fisherman employed therein before he proceeds on any fishing voyage. Here the vessel is spoken of as "employed" in the fisheries before she sails on the voyage.

So also the Act of March 3, 1831, 4 Story 2256, entitled, "an act concerning vessels employed in the whale fishery," authorizes vessels owned by any incorporated company and "employed wholly in the whale fishery" to be registered or enrolled and licensed in a particular manner, "so long as any such vessel shall be wholly employed in the whale fishery." The register or enrollment and license must be obtained before the vessel sails on her outward voyage to the whaling grounds, and consequently in that voyage she must be "employed" in the whale fishery in the sense in which these words are used in the act of Congress; otherwise she would not be entitled to the register of enrollment and license authorized by this law.

In like manner, the vessel in question was employed in the transportation of slaves within the meaning of the Act of Congress of May 10, 1800, if she was sailing on her outward voyage to the African coast in order to take them on board to be transported to another foreign country. In such a voyage, the vessel is employed in the business of transporting and carrying slaves from one foreign country to another. In other words, she is employed in the slave trade. And any citizen of the United States who shall voluntarily serve on board any vessel of the United States on such a voyage is guilty of the offense mentioned in the second section of this act of Congress. It is hardly necessary to add that "voluntarily" in this section means "with knowledge" of the business in which she is employed. And in order to constitute the offense, the party must have knowledge that the vessel was bound to the coast of Africa for the purpose of taking slaves on board to be transported to some other foreign country.

The same reasoning applies to the third section of the law, under which the second and fourth points certified to this Court have arisen. The vessel is "employed in the slave trade" when sailing to the African coast for the purpose of taking the slaves on board.

We therefore answer the first and second questions in the negative

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and the third and fourth in the affirmative, and it will be certified accordingly to the circuit court.

This cause came on to be heard on the transcript of the record from the Circuit Court of the United States for the Southern District of New York, and on the points and questions on which the judges of the said circuit court were opposed in opinion and which were certified to this Court for its opinion agreeably to the act of Congress in such case made and provided, and was argued by counsel. On consideration whereof, it is the opinion of this Court:

1. That it is not necessary, in order to constitute the offense denounced in the second section of the Act of 10 May, 1800, referred to, that there should be an actual transportation or carrying of slaves in the vessel of the United States on board of which the party indicted is alleged to have served.
2. That it is not necessary, in order to constitute the offense denounced in the third section of the act of 10 May, 1800, above referred to, that there should be an actual transportation or carrying of slaves in a foreign vessel on board of which the party indicted is alleged to have served.
3. That the voluntary service of an American citizen on board a vessel of the United States in a voyage commenced with the intent that the vessel should be employed and made use of in the transporting or carrying of slaves from one foreign country or place to another is in itself, and where no slaves had been transported in such vessel or received on board her, an offense under the said second section.

4. That the voluntary service of an American citizen on board a foreign vessel in a voyage commenced with the intent that the vessel should be employed and made use of in the transportation and carrying of slaves from one foreign country or place to another is in itself, and where no slaves had been transported in such vessel or received on board her, an offense under the said third section.

Whereupon it is now here ordered and adjudged that it be so certified to the said circuit court accordingly.

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