

Norris Vs. Crocker

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Court : US Supreme Court

Decided On : 1851

Appeal No. : 54 U.S. 429

Appellant : Norris

Respondent : Crocker

Judgement :

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Norris v. Crocker

54 U.S. (13 How.) 429

*CERTIFICATE OF DIVISION IN OPINION BETWEEN THE JUDGES OF THE
CIRCUIT COURT OF THE UNITED STATES FOR THE DISTRICT OF INDIANA*

SYLLABUS

The fourth section of the Act of Congress approved 12 February, 1793, 1 Stat. 302, entitled "An act respecting fugitives escaping from justice and persons escaping from the service of their masters" is repealed, so far as relates to the

penalty, by the Act of Congress approved September 18, 1850, 9 Stat. 462, entitled "An act to amend and supplementary to the above act."

Therefore, where an action for the recovery of the penalty prescribed in the act of 1793 was pending at the time of the repeal, such repeal is a bar to the action.

The following certificate explains the question:

"UNITED STATES OF AMERICA"

" *District of Indiana* "

"At a circuit court of the United States begun and holden at Indianapolis, for the District of Indiana, on Monday, the nineteenth day of May in the year one thousand eight hundred and fifty-one and continued from day to day until Friday, the thirtieth day of May, one thousand eight hundred and fifty-one. "

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"JOHN NORRIS"

"v."

"EDWIN B. CROCKER AND ELISHA EGBERT"

"Present, honorable John McLean and the honorable Elisha M. Huntington, judges."

"This is an action of debt brought to recover the penalty of five hundred dollars upon the fourth section of the Act of Congress approved February 12, 1793, entitled 'An act respecting fugitives from justice, and persons escaping from the service of their masters,' declaration in the usual form, and demurrer and joinder thereto."

"The case coming on to be argued on demurrer, it occurred as a question whether the aforesaid section of the aforesaid Act of February 12, 1793, is repealed, so far as relates to the penalty given by said section, by the Act of Congress of

September 18, 1850, entitled 'An act to amend and supplementary to the act entitled 'An act respecting fugitives from justice, and persons escaping from the service of their masters,' approved February 12, 1793, and whether, if repealed, the same can affect this action, which was pending before the passage of the last-named act, on which questions the opinions of the judges were opposed."

"Whereupon, on motion of the plaintiff by his counsel that the points on which the disagreements hath happened may during the term be stated under the direction of the judges and certified under the seal of the court to the Supreme Court to be finally decided."

"It is ordered that the foregoing statement of the pleadings and the following questions involved, which are made under the direction of the judges, be certified according to the request of the plaintiff by his counsel, and the law in that case made and provided, to-wit: "

"I. Is the fourth section of the Act of Congress approved 12 February, A.D. 1793, entitled "An act respecting fugitives from justice, and persons escaping from the service of their masters," repealed, so far as relates to the penalty, by the Act of Congress, approved September 18th, 1850, entitled "An act to amend, and supplementary to the act entitled *An act respecting fugitives from justice, and persons escaping from the service of their masters,*" approved February 12, 1793."

"II. Whether, if the fourth section of the last-named Act of February 12, 1793, is repealed so far as relates to the penalty by the act to amend and supplementary to the same, that repeal will in law bar the present action that was pending at the time of the repeal. "

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MR. JUSTICE CATRON delivered the opinion of the Court.

The following questions are certified to us on a division of opinion from the Circuit Court for the District of Indiana

"1. Whether the 4th section of the act of 1793 respecting persons escaping from service of their masters is repealed, so far as relates to the penalty, by the act of 1850 on the same subject."

"2. Whether, if the act of 1793 is repealed as to the penalty, the repeal will bar an action that was pending at the time of the repeal."

The fugitive slave law of 1850 does not repeal the 4th section of the act of 1793 in terms, and if it is repealed, it must be by implication. As a general rule, it is not open to controversy that where a new statute covers the whole subject matter of an old one, adds offenses, and prescribes different penalties for those enumerated in the old law, that then the former statute is repealed by implication, as the provisions of both cannot stand together.

To ascertain whether there be repugnance, the two enactments must be compared.

The 4th section of the act of 1793 provides 1st, that any person who shall, knowingly and willingly, obstruct or hinder a claimant, his agent or attorney, in arresting a fugitive from labor, or 2d, shall rescue the fugitive from the claimant, his agent or attorney, after he has been arrested, or 3d, shall knowingly and willingly harbor, or conceal the fugitive, knowing he is such, that for committing either of said offenses, such person shall forfeit and pay the sum of five hundred dollars, which penalty may be recovered by the claimant for his own benefit, and reserving also to the claimant his right of action in damages for the actual injuries he may have sustained, be they more or less.

The act of 1850, section 7, declares 1st, that any person who shall knowingly and willingly obstruct, hinder or prevent such claimant, his agent or attorney *or any person or persons lawfully assisting him, her or them* from arresting such fugitive, *either with or without process*, or 2d, shall rescue *or attempt to rescue* such fugitive, when arrested, from the custody of the claimant, his agent or attorney

or from the custody of any other person or persons lawfully assisting, or 3d, shall aid, abet, or assist the person owing service, directly, or indirectly, to escape from such claimant, his agent or attorney, *or other person or persons legally assisting,* or 4th, shall harbor or conceal such fugitive *so as to prevent his discovery and arrest* after notice or knowledge of the fact that such person was a fugitive, the person so offending in either of the cases specified shall be subject to a fine not exceeding one thousand dollars and imprisonment not exceeding six months, on conviction by indictment. Secondly, That the person thus offending, shall forfeit and pay, by way of civil damages, to the party injured by such illegal conduct, the sum of one thousand dollars for each fugitive lost, by reason of such conduct, to be recovered by action of debt.

And the question is whether the foregoing provisions of the act of 1850 are repugnant to those contained in the act of 1793, so far as the penalty of five hundred dollars is concerned.

The former statute gives this penalty to the owner in three cases: for obstructing an arrest; for a rescue; and for harboring the fugitive. It was given, regardless of the fact, whether the owner had or had not recovered his slave, and in addition, by the act of 1793 he might sue for, and recover, the value, if the slave was lost by the illegal conduct of the defendant, or he might recover inferior damages, if the slave was obtained.

By the act of 1850, a penalty is inflicted, by way of fine, on conviction; and imprisonment is added. The prosecution is at the instance of the United States, with which the owner of the slave is not necessarily connected, the government taking the penalty recovered; nor is it of any consequence under this mode of proceeding whether the owner has or has not recovered his slave, the offender being equally liable to prosecution for committing any one of the offenses enumerated in the statute, including the old ones, found in the act of 1793, and the additional ones, superadded in that of 1850 and which are indicated by the words in italics. The recent statute covers every offense found in the former act, which subjects the offender to a penalty of 500 dollars and prescribes a new and different penalty, recoverable by indictment, and is plainly repugnant to the act of

1793.

A seeming difficulty exists in the concluding part of the seventh section of the new act, which awards civil compensation to the owner for the loss of each slave if that loss was occasioned by any one of the illegal acts that are made indictable, but no recovery under and by force of the statute can be had unless the owner has lost the slave. The policy of the law is

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obvious. On trials, illegal conduct and loss might be fully established, but then the wide range of proof as to value could still in effect defeat the suit by a verdict for low damages, and therefore Congress fixed the value alike in every case of loss, and took the assessment of damages from the jury. This provision is new and inconsistent with the 4th section of the act of 1793 in this -- the former act imposes a penalty of five hundred dollars in the enumerated cases, regardless of any actual loss on the part of the owner, whereas for the same offenses the act of 1850 allows civil damages of one thousand dollars for each slave lost, but nothing when he is regained -- loss being the ground of action; nevertheless the party injured is left to his common law remedy for any damage he may have sustained short of actual loss of the slave by the illegal conduct of the offending party, and for actual loss also if he prefers and elects that remedy to an action for civil damages under the statute, but both modes cannot be pursued.

We therefore answer to the first question certified that the act of 1850 has repealed, so far as relates to the penalty, the fourth section of the act of 1793.

The next question referred to us for decision presents no difficulty.

The suit was pending below when the Act of September 18, 1850, was passed, and was for the penalty of 500 dollars, secured by the 4th section of the act of 1793. As the plaintiff's right to recover depended entirely on the statute, its repeal deprived the court of jurisdiction over the subject matter. And in the next place, as the plaintiff had no vested right in the penalty, the legislature might discharge the defendant by repealing the law. We therefore answer to the second question

certified that the repeal of the 4th section of the act of 1793 does bar this action, although pending at the time of the repeal.

ORDER

This cause came on to be heard on the transcript of the record from the Circuit Court of the United States for the District of Indiana and on the points or 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:

1st. That the fourth section of the Act of Congress approved on 2 February, A.D. 1793, entitled "An act respecting fugitives from justice and persons escaping from the

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service of their masters" is repealed, so far as relates to the penalty, by the Act of Congress approved September 18, 1850, entitled, "An act to amend and supplementary to the act entitled *An act respecting fugitives from justice and persons escaping from the service of their masters,;*" approved February 12, 1793.

2d. That the repeal of the said fourth section will in law bar the present action, that was pending at the time of the repeal. Whereupon it is now here ordered and adjudged by this Court that it be so certified to the said circuit court.