Moore Vs. People

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Appeal No. : 55 U.S. 13

Appellant : Moore

Respondent : People

Judgement :

Moore v. People - 55 U.S. 13 (1852)
U.S. Supreme Court Moore v. People, 55 U.S. 14 How. 13 13 (1852)

Moore v. People

55 U.S. (14 How.) 13

ERROR TO THE SUPREME COURT

OF THE STATE OF ILLINOIS

SYLLABUS

A state, under its general and admitted power to define and punish offenses against its own peace and policy, may repel from its borders an unacceptable population, whether paupers, criminals, fugitives, or liberated slaves, and

consequently may punish her citizens and others who thwart this policy by harboring, secreting, or in any way assisting such fugitives.

It is no objection to such legislation that the offender may be liable to punishment under the act of Congress for the same acts, when injurious to the owner of the fugitive slave.

The case of *Prigg v. Commonwealth of Pennsylvania,* 16 Pet. 539, presented the following questions, which were decided by the Court:

1. That under and in virtue of the Constitution of the United States, the owner of a slave is clothed with entire authority in every state in the Union, to seize and recapture his slave, wherever he can do it without illegal violence or a breach of the peace.

2. That the government of the United States is clothed with appropriate authority and functions to enforce the delivery, on claim of the owner, and has properly exercised it in the Act of Congress of 12th February, 1793.

3. That any state law or regulation which interrupts, impedes, limits, embarrasses, delays, or postpones the right of the owner to the immediate possession of the slave, and the immediate command of his service, is void.

This Court has not decided that state legislation in aid of the claimant, and which does not directly nor indirectly delay, impede, or frustrate the master in the exercise of his right under the Constitution, or in pursuit of his remedy given by the act of Congress, is void.

The section of the law of Illinois under which Eels was indicted in 1842, and the facts in the case are set forth in the opinion of the Court, and need not be repeated. The court before which he was tried fined him four hundred dollars, and the Supreme Court of Illinois affirmed the judgment. The case is reported in 4 Scammon 498.

MR. JUSTICE GRIER delivered the opinion of the Court.

The plaintiff in error was indicted and convicted under the criminal code of Illinois for "harboring and secreting a negro slave." The record was removed by writ of error to the supreme court of that state, and it was there contended on behalf of the plaintiff in error that the judgment and conviction should be reversed because the statute of Illinois upon which the indictment was founded is void by reason of its being in conflict with that article of the Constitution of the United States which declares

"That no person held to labor or service in one state under the laws thereof, escaping into another, shall, in consequence of any law or regulation therein, be discharged from such service or labor, but shall be delivered up on claim of the party to whom such labor may be due."

And also because said statute is in conflict with the act of Congress on the same subject.

That this record presents a case of which this Court has jurisdiction under the twenty-fifth section of the Judiciary Act is not disputed.

The statute of Illinois whose validity is called in question is contained in the 149th section of the Criminal Code, and is as follows:

"If any person shall harbor or secrete any negro, mulatto, or person of color, the same being a slave or servant owing service or labor to any other persons, whether they reside in this state or in any other state or territory or district within the limits and under the jurisdiction of the United States, or shall in any wise hinder or prevent the lawful owner or owners of such slaves or servants from retaking them in a lawful manner, every such person so offending shall be deemed guilty of a misdemeanor and fined not exceeding five hundred dollars or imprisoned not exceeding six months."

The bill of indictment, framed under this statute, contains four counts. The first charges that "Richard Eels, a certain negro slave, owing service to one C. D., of the State of Missouri, did unlawfully secrete, contrary to the form of the statute," &c.;

2. That he harbored the same.

3. For unlawfully secreting a negro owing labor in the State of Missouri to one C. D., which said negro had secretly fled from said state and from said C. D.

4. For unlawfully preventing C. D., the lawful owner of said

Page 55 U. S. 18

slave, from retaking him in a lawful manner, by secreting the said negro, contrary to the form of the statute &c.;

In view of this section of the Criminal Code of Illinois and this indictment founded on it, we are unable to discover anything which conflicts with the provisions of the Constitution of the United States or the legislation of Congress on the subject of fugitives from labor. It does not interfere in any manner with the owner or claimant in the exercise of his right to arrest and recapture his slave. It neither interrupts, delays, or impedes the right of the master to immediate possession. It gives no immunity or protection to the fugitive against the claim of his master. It acts neither on the master nor his slave; on his right or his remedy. It prescribes a rule of conduct for the citizens of Illinois. It is but the exercise of the power which every state is admitted to possess of defining offenses and punishing offenders against its laws. The power to make municipal regulations for the restraint and punishment of crime, for the preservation of the health and morals of her citizens, and of the public peace, has never been surrendered by the states or restrained by the Constitution of the United States. In the exercise of this power, which has been denominated the police power, a state has a right to make it a penal offense to introduce paupers, criminals, or fugitive slaves within their borders, and punish those who thwart this policy by harboring, concealing, or secreting such persons. Some of the states, coterminous with those who tolerate slavery, have found it

necessary to protect themselves against the influx either of liberated or fugitive slaves, and to repel from their soil a population likely to become burdensome and injurious either as paupers or criminals.

Experience has shown also that the results of such conduct as that prohibited by the statute in question are not only to demoralize their citizens who live in daily and open disregard of the duties imposed upon them by the Constitution and laws, but to destroy the harmony and kind feelings which should exist between citizens of this Union, to create border feuds and bitter animosities, and to cause breaches of the peace, violent assaults, riots, and murder. No one can deny or doubt the right of a state to defend itself against evils of such magnitude and punish those who perversely persist in conduct which promotes them.

As this statute does not impede the master in the exercise of his rights, so neither does it interfere to aid or assist him. If a state, in the exercise of its legitimate powers in promotion of its policy of excluding an unacceptable population, should thus indirectly benefit the master of a fugitive, no one has a right to

complain that it has, thus far at least, fulfilled a duty assumed or imposed by its compact as a member of the Union.

But though we are of opinion that such is the character, policy, and intention of the statute in question, and that for this reason alone the power of the state to make and enforce such a law cannot be doubted, yet we would not wish it to be inferred by the implication from what we have said that any legislation of a state to aid and assist the claimant, and which does not directly nor indirectly delay, impede, or frustrate the reclamation of a fugitive or interfere with the claimant in the prosecution of his other remedies, is necessarily void. This question has not been before the Court, and cannot be decided in anticipation of future cases.

It has been urged that this act is void, as it subjects the delinquent to a double punishment for a single offense. But we think that neither the fact assumed in this proposition nor the inference from it will be found to be correct. The offenses for

which the fourth section of the act of 12 February, 1793, subjects the delinquent to a fine of five hundred dollars are different in many respects from those defined by the statute of Illinois. The act of Congress contemplates racapture and reclamation, and punishes those who interfere with the master in the exercise of this right -- first by obstructing or hindering the claimant in his endeavors to seize and arrest the fugitive, secondly, by rescuing the fugitive when arrested, and thirdly by harboring or concealing him after notice.

But the act of Illinois, having for its object the prevention of the immigration of such persons, punishes the harboring or secreting negro slaves, whether domestic or foreign, and without regard to the master's desire either to reclaim or abandon them. The fine imposed is not given to the master, as the party injured, but to the state, as a penalty for disobedience to its laws. And if the fine inflicted by the act of Congress had been made recoverable by indictment, the offense, as stated in any one of the counts of the bill before us, would not have supported such an indictment. Even the last count, which charges the plaintiff in error with "unlawfully preventing C. D., the lawful owner, from retaking the negro slave," as it does not allege notice, does not describe an offense punishable by the act of Congress.

But admitting that the plaintiff in error may be liable to an action under the act of Congress for the same acts of harboring and preventing the owner from retaking his slave, it does not follow that he would be twice punished for the same offense. An offense, in its legal signification, means the transgression of a law. A man may be compelled to make reparation in

damages to the injured party and be liable also to punishment for a breach of the public peace in consequence of the same act, and may be said in common parlance to be twice punished for the same offense. Every citizen of the United States is also a citizen of a state or territory. He may be said to owe allegiance to two sovereigns, and may be liable to punishment for an infraction of the laws of either. The same act may be an offense or transgression of the laws of both. Thus, an assault upon the marshal of the United States and hindering him in the

execution of legal process is a high offense against the United States, for which the perpetrator is liable to punishment, and the same act may be also a gross breach of the peace of the state, a riot, assault, or a murder, and subject the same person to a punishment under the state laws for a misdemeanor or felony. That either or both may if they see fit punish such an offender cannot be doubted. Yet it cannot be truly averred that the offender has been twice punished for the same offense, but only that by one act he has committed two offenses, for each of which he is justly punishable. He could not plead the punishment by one in bar to a conviction by the other; consequently, this Court has decided, in the case of *Fox v. State of Ohio,* 5 How. 432, that a state may punish the offense of uttering or passing false coin, as a cheat or fraud practiced on its citizens, and, in the case of the *United States v. Marigold,* 9 How. 560, that Congress, in the proper exercise of its authority, may punish the same act as an offense against the United States.

It has been urged in the argument on behalf of the plaintiff in error that an affirmance of the judgment in this case will conflict with the decision of this Court in the case of *Prigg v. Commonwealth of Pennsylvania,* 16 Pet. 540. This we think is a mistake.

The questions presented and decided in that case differed entirely from those which affect the present. Prigg, with full power and authority from the owner, had arrested a fugitive slave in Pennsylvania and taken her to her master in Maryland. For this he was indicted and convicted under a statute of Pennsylvania making it a felony to take and carry away any negro or mulatto for the purpose of detaining them as slaves.

The following questions were presented by the case and decided by the court:

1. That, under and in virtue of the Constitution of the United States, the owner of a slave is clothed with entire authority, in every state in the Union, to seize and recapture his slave, wherever he can do it without illegal violence or a breach of the peace.

2. That the government is clothed with appropriate authority and functions to enforce the delivery on claim of the owner, and has properly exercised it in the Act of Congress of 12 February, 1793.

3. That any state law or regulation which interrupts, impedes, limits, embarrasses, delays, or postpones the right of the owner to the immediate possession of the slave and the immediate command of his service is void.

We have in this case assumed the correctness of these doctrines, and it will be found that the grounds on which this case is decided were fully recognized in that. "We entertain," say the Court, page 41 U. S. 625 ,

"no doubt whatsoever that the states, in virtue of their general police power, possess full jurisdiction to arrest and restrain runaway slaves and remove them from their borders and otherwise to secure themselves against their depredations and evil example, as they certainly may do in cases of idlers, vagabonds, and paupers. The rights of the owners of fugitive slaves are in no just sense interfered with or regulated by such a course, and in many cases the operations of the police power, although designed essentially for other purposes -- for the protection, safety, and peace of the state -- may essentially promote and aid the interests of the owners. But such regulations can never be permitted to interfere with or to obstruct the just rights of the owner to reclaim his slave, derived from the Constitution of the United States, or with the remedies prescribed by Congress to aid and enforce the same."

Upon these grounds, we are of opinion that the act of Illinois upon which this indictment is founded is constitutional, and therefore

Affirm the judgment.

MR. JUSTICE Mc LEAN.

In the case of *Prigg v. Commonwealth of Pennsylvania,* the police power of the states was not denied, but admitted. This Court held, in *Fox v. State of Ohio,* 5 How. 410, that a person might be punished under a law of the state for passing

counterfeit coin although the same offense was punishable under the act of Congress, and, consequently, that the conviction and punishment under the state law would be no bar to a prosecution under the law of Congress. In that case I dissented and gave at large the grounds of my dissent.

As the case now before us involves the same principle as was ruled in that case, I again dissent for the reasons then given, and I deem it unnecessary now to repeat them.

It is contrary to the nature and genius of our government to punish an individual twice for the same offense. Where the jurisdiction is clearly vested in the federal government, and

Page 55 U. S. 22

an adequate punishment has been provided by it for an offense, no state, it appears to me, can punish the same act. The assertion of such a power involves the right of a state to punish all offenses punishable under the acts of Congress. This would practically disregard, if it did not destroy, this important branch of criminal justice clearly vested in the federal government. The exercise of such a power by the states would, in effect, be a violation of the Constitution of the United States and the constitutions of the respective states. They all provide against a second punishment for the same act. It is no satisfactory answer to this to say that the states and federal government constitute different sovereignties, and consequently may each punish offenders under its own laws.

It is true the criminal laws of the federal and state governments emanate from different sovereignties, but they operate upon the same people, and should have the same end in view. In this respect, the federal government, though sovereign within the limitation of its powers, may in some sense be considered as the agent of the states to provide for the general welfare by punishing offenses under its own laws within its jurisdiction. It is believed that no government regulated by laws punishes twice criminally the same act. And I deeply regret that our government should be an exception to a great principle of action, sanctioned by humanity and

justice.

It seems to me it would be as unsatisfactory to an individual as it would be illegal to say to him that he must submit to a second punishment for the same act because it is punishable as well under the state laws as under the laws of the federal government. It is true he lives under the aegis of both laws, and though he might yield to the power, he would not be satisfied with the logic or justice of the argument.

ORDER

This cause came on to be heard on the transcript of the record from the Supreme Court of the State of Illinois, and was argued by counsel. On consideration whereof, it is now here ordered and adjudged by this Court that the judgment of the said supreme court in this cause be, and the same is hereby, affirmed, with costs.