

UNITED STATES *v.* WEBSTER.<sup>1</sup>*District Court, D. Indiana.*

May Term, 1884.

1. INDICTMENT—SOLDIERS' DISCHARGE  
PAPERS—WITHHOLDING OF.

The act of May 21, 1872, (17 St. at Large, 13) "prohibiting the retention of soldiers' discharges by claim agents and attorneys," is still in force as to the retention of soldiers' discharges; and while not carried into the Revised Statutes, neither is any portion of it embraced in any section of the Revision, within the meaning of the "repeal provisions" (Rev. St. §§ 5595, 5596,) and it is not therefore affected nor changed by the Revision.

## 2. SAME—REV. ST. §§ 5485—LAND-WARRANTS.

Section 5485, Rev. St., is taken textually from section 31, act of March 3, 1873, (17 St. at Large, 585,) which act impliedly repealed that part of the act of 1872, *supra*, relating to the withholding of land-warrants; but section 5485, Rev. St., *per se*, does not in any way concern nor affect the act of 1872 in respect to discharge papers.

On Motion for Instruction to Jury.

*Baker, Hord & Hendricks*, for defendant.

*Chas. L. Holstein*, U. S. Atty., and *Chas. II. McCarer*, Asst. U. S. Atty., for the United States.

WOODS, J. The first count of the indictment is predicated upon the act of congress approved May 21, 1872, and charges the defendant with having unlawfully withheld a discharge paper from its owner. Counsel for the defendant ask an instruction to the jury to the effect that this law was repealed by the enactment of the Revised Statutes of the United States, section 5485, of which, it is claimed by counsel, embraces a portion of the act in question, namely, the portion which makes it a misdemeanor to withhold a land-warrant from the owner without his consent. In the judgment of the court the instruction must be denied. The "repeal provisions" of the Revised

Statutes (title 74, §§ 5595, 5596) are to the effect that the Revision shall be deemed to “embrace the Statutes of the United States, general and permanent in their nature, in force on the first day of December, one thousand eight hundred and seventy-three, as revised and consolidated by commissioners appointed under an act of congress,” and that “all acts of congress passed prior to said first day of December, any portion of which is embraced in any section of said Revision, are hereby repealed: provided, that all acts of congress passed prior to said last-named day, no part of which are [is] embraced in said Revision, shall not be affected or changed by its enactment.”

While the act of 1872, in the terms of its enactment, embraces *land-warrant* as well as *discharge papers*, it had been repealed in respect to land-warrants before the enactment of the Revision, and consequently it cannot be said with propriety that the provisions of section 5485 of the Revision, in respect to the withholding of land-warrants, was taken from the act in question. On the contrary, it is plain that section 5485 was taken textually from section 31 of the act of congress, approved March 3, 1873, entitled “An act to revise, consolidate, and amend the laws relating to pensions.” 17 St. 585. This section (31) declares it to be a high misdemeanor to withhold wrongfully from the owner the land-warrant issued to him, and provides for different and severer punishments than are required for the like offense by the act of 1872, and consequently, by implication, repeals that act in respect to land-warrants; but as a repeal by implication, in such a case, goes no further than the inconsistency between the later and the earlier statute, it must be held that in respect to discharge papers the law of 1872 is still in force.

<sup>1</sup> Reported by Chas. H. McCarer, Esq., Asst. U. S. Dist. Atty.

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