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PEONAGE

—BY—

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[Pg 5]

BY LAFAYETTE M. HERSHAW

THE Negro was kidnapped from the shores of Africa and brought into the Western Hemisphere at the beginning of the sixteenth century in order to meet the conditions growing out of an acute labor problem. The greedy and adventurous Spaniard had come to these shores in quest of gold, and after years of experiment he discovered that the Indian who lived in the islands and on the coast of the New World, either would not or was not physically able to perform the heavy labor of extracting gold from the mines. To meet his greedy quest, it was then necessary to look elsewhere to find the man who was feeble enough in will and strong enough in body to meet the conditions which then presented themselves. The African was that man. It is not the purpose of these reflections to deal with the institution of slavery other than to point out that what slavery is appears altogether from the point of view of the one who discusses it. It is common nowadays to refer to it as a practical institution by means of which the savage African was brought under the beneficent

influences of Christianity, taught the English language, and the joy of intelligently directed labor. But before the beginning of the institution as a means of meeting the needs of work, the moralist considered it as the sum of all villanies, the reformer termed it the negation of all right. But the economist looks at it as a system of labor, and the historian and philosopher, as a step in the progress of the human race from the time when savages were put to death when taken in battle to the time when men realized that they could eat bread by the sweat of other men's faces.

It is a remarkable concurrence of historical facts that the opening of the Panama Canal will be precisely the four hundredth anniversary of the introduction of Negro slavery into the Western Hemisphere. Most of those centuries were passed without any alleviation of the condition of the chattel slave. The Liberal and Revolutionary movements of the eighteenth and nineteenth centuries brought about the downfall of chattel slavery as a system of labor in the civilized world. Immediately succeeding the emancipation of the slave from chattelism, slavery reappeared in a new form. The former slave-holding states enacted a series of so-called "Labor Laws" intended to apply exclusively to the recently emancipated slaves, which at that time so outraged public sentiment that the American nation just emerged from the great war, intending to destroy every vestige of slavery and its incidents, conferred upon the Negro the common and universal legal rights which pertained to white [Pg 6] men throughout the English speaking world. It was evidently the thought and purpose of the men of that day to cure in the light of the formulas and promises of their fundamental charters the curse that had been a sore to civilization for years. And for a time it looked as though they had done so, but of late years there has grown up a series of laws and court decisions giving distinct recognition to the fact of Race, and in spite of the constitutional guaranties, differentiating at least in the matter of the enjoyment of rights as between white men and black men. This paper is concerned merely with those distinctive laws which relate to labor.

In all English speaking countries the freedom of labor has been a fundamental principle of the law, and the freedom of contract has been absolutely unlimited and unhampered, as was also the right to abrogate or to disregard the contract of labor on the part of the laborer, there being no remedy of specific performance against him. The failure to observe the contract of employment was never, until recently, regarded as a criminal offense, and the only remedy that the employer had against the employee who willfully or who for good reason or for no reason refused to live up to his contract was an action for damages sustained. Of late years there has grown up in the former slave-holding states of the South a series of laws which abrogate all this well-known and time-honored common law principle.

Does peonage exist in any part of the United States to-day? The question is answered both in the affirmative and in the negative. Those who deny the existence of peonage assert that merely the voluntary or involuntary service or labor of a person in payment of a debt or obligation is not peonage; that it is not the system of peonage as practiced in Spanish-American countries and in Mexico; that there is in this country nothing resembling the Spanish or Mexican peonage system. It is probably true that there are no laws on statute books which resemble the laws under which peonage is practiced in Mexico, and under which it was practiced in New Mexico and Arizona before they became parts of the United States. The thirteenth amendment to the Constitution of the United States forbids such laws, and certain acts of Congress have been passed which render that amendment effective. It is therefore to be presumed that no State which desired to establish a system of forced labor would pass a law which, on its face, would be in violation of the thirteenth amendment, or of the laws of Congress passed in pursuance of it. The counterfeiter has before him the task of making false money to look as much like genuine money as possible. The maker of laws violative of fundamental rights has before him the task of doing the forbidden thing in a way which will as nearly as possible conceal the fact that it has been done. What peonage is, has been defined by the United States Supreme Court.

Justice Brewer said: "It may be defined as a status or condition of compulsory service based [Pg 7] upon the indebtedness of the peon to the master. The basal fact is indebtedness. One fact exists universally, all were indebted to their masters. This was the cord by which they seemed bound to their masters' service." Therefore, wherever we have compulsory service for debt, we have peonage, it matters not by what method the result is attained. There are to-day in certainly six states, and probably in ten, in which the institution of slavery formerly existed, laws which make it possible to compel men to render service against their will, and that too when they have committed no act which, outside of those States would be held to be a crime in any English-speaking community.

For convenience, these laws may be classed under at least five heads: Contracts of employment, enticement of laborers to quit their employers, violation of a contract with a surety by one convicted of a misdemeanor, the laws of vagrancy, and the laws relating to immigrant agents.

The laws relating to contracts of employment are to be found on the statute books of six States—Alabama, Florida, Georgia, Mississippi, North Carolina, and South Carolina. These laws are very similar in their phraseology and in the penalties attached to their violation in all of these States. The Alabama law, which has recently been declared unconstitutional by the Supreme Court of the United States, may serve as an example. It provides, in short, that any person who enters into a contract in writing to perform any service for another and

thereby obtains money or other personal property from such person with intent to defraud the person, and who leaves his service without performing the act or refunding the money or goods, shall be guilty of a misdemeanor; or, that any person who in writing makes a contract for the rent of land and obtains money or personal property from the landlord with intent to deceive him and leaves without performing the service, refunding the money, or paying for the property, shall be guilty of a misdemeanor. The penalty for each of these offenses is a fine not exceeding $300, and in default of payment, imprisonment for a period of not exceeding one year. This Alabama statute was later amended, because it was found that there was difficulty in proving the intent. The statute as amended was to the effect that the failure of any person who enters into such contracts to perform the service, or to cultivate the land, or refund the money, or pay for the goods, shall be prima facie evidence of the intent to injure his employer or landlord, or to defraud him. These contracts are usually entered into under conditions which render it impossible for the employee to overcome what the statute says shall be prima facie evidence. The Supreme Court of Alabama has decided that an accused person shall not be allowed to testify as to his uncommunicated motives, purposes, or intentions, to rebut a statutory presumption. Taking counsel of this decision [Pg 8] employers who make contracts with laborers are cautious that there shall be present at the time of making the contract only the employer and the employee. When the contract is made, the employer advances the laborer a sum of money, or goods, or supplies, which become the consideration for the contract, and the laborer agrees to work for such person for a fixed period at a certain sum per month or per year. In a case which went through all the courts, State and Federal, the laborer agreed to work for a year at twelve dollars per month. At the time of entering into the contract he received fifteen dollars in money, and the employer agreed to pay him the sum of ten dollars and seventy-five cents per month, thus deducting a dollar and a quarter each month in payment of the fifteen dollars advanced at the making of the contract. The employee, after having rendered service for more than a month, left his employer. He was afterwards indicted and convicted of failing to perform his contract and was sentenced by the court to pay a fine of thirty dollars and the costs, and in default thereof to hard labor “for twenty days in lieu of said fine and one hundred and sixteen days on account of said costs.” It can be readily seen that if the laborer in this case had worked eleven months, he would have owed the employer a dollar and a quarter, and if he had left him might be arrested, indicted, and convicted and be made to serve at hard labor for at least one hundred and sixteen days, the cost of prosecuting a case involving the failure to pay one dollar and a quarter being the same as the cost of a prosecution involving any larger sum. The decision of the Supreme Court of the United States, rendered January 3, 1911, declares in effect legislation of this kind to be in violation of the thirteenth amendment to the Constitution. It should be observed, however, in this connection that when the decision was rendered there were two vacancies in the court, and that two of the seven members then sitting dissented from the opinion of the court, Mr. Justice Holmes and Mr. Justice Lurton, Mr. Justice Holmes rendering the dissenting opinion. In summing up, he said: “That a false representation expressed or implied at the time of making a contract of labor that one intends to perform it, and thereby obtaining an advance may be declared a case of fraudulently obtaining money, as well as any other, that if made a crime it may be punished like any other crime, and that an unjustified departure from the promised service without repayment may be declared a sufficient cause to go to the jury for their judgment, all without in any way infringing the thirteenth amendment or the statutes of the United States.” The importance of this dissenting opinion is enhanced by the reflection that if all the vacancies in the court had been filled at the time there might have been four concurring in the dissenting opinion rather than two, and even as it is, the opinion being that of a divided court is a basis for the fear that at some future when the same question may be presented to [Pg 9] the court, constituted differently from what it now is, the constitutionality of these statutes may be upheld.

Another form in which peonage is practiced is by the passage of acts making it unlawful to entice laborers to leave their employers or landlords, or to employ persons who have left their employers without fulfilling their contracts. Such laws are found in Alabama, Arkansas, Florida, Georgia, Kentucky, Louisiana, Mississippi, North Carolina, South Carolina, and Tennessee. It will be observed that all of these States are former slave-holding States.

A third law under which peonage is practiced, and which probably is the most fruitful legal source is to be found in Alabama alone. It provides that when any person who has been convicted of a misdemeanor, signs a written contract in open court approved by the judge of the court in consideration of another person becoming his surety on a confession of judgment for the fine and costs, agrees to perform any service for such person and afterwards fails or refuses to perform the service, on conviction will be fined not less than the amount of damages which the party contracting with him has suffered, and not more than five hundred dollars. The statute provides that these contracts with sureties may be filed for record in the office of the judge of probate in the county in which the confession of judgment was had. There is an additional section which provides for similar punishment in the cases of persons convicted of a misdemeanor or violation of a city ordinance, who makes similar contracts before a recorder or mayor.

The laws of vagrancy are also used as a means of reducing persons to a condition of peonage. In many of the Southern States the vagrancy laws are exceedingly drastic, and under their enforcement by the courts almost any person may be convicted as a vagrant, and being unable to pay his fine or to give surety for his future good conduct may enter into a

contract, with one who does pay his fine or become his surety, to work for him, and if he does not perform the labor may be prosecuted for violating this contract, and for the second offense may enter into a contract for additional service for an extended period, and thus the restraint of his liberty may be almost interminable.

The law relating to immigrant agents makes it necessary to obtain a license in each county of the State in which the calling is carried on. This license is made so high as to be practically prohibitive. Carrying on the occupation of immigrant agent without a license is a misdemeanor, the penalty for which is a fine from five hundred to five thousand dollars, and imprisonment for a period of not exceeding one year. Laws relating to immigrant agents are found in Alabama, Florida, Georgia, North Carolina, and South Carolina.

In addition to these, other laws, perfectly proper on their face, are perverted to reduce [Pg 10] persons to a condition of peonage, among which are false pretense or false promise laws, absconding debtor laws, board-bill laws, and in fact every ordinance, regulation, or statute defining a misdemeanor or crime. It can readily be seen that if the States may by legislative enactment define any act to be a crime the thirteenth amendment may become in time a mere nullity.

In a report by Hon. Charles W. Russell, Assistant Attorney General, to the Attorney General, in 1908, appears this language:

“I have no doubt from my investigations and experiences that the chief support of peonage is the peculiar system of State laws prevailing in the South, intended evidently to compel services on the part of the workingman. From the usual condition of the great mass of laboring men where these laws are enforced, to peonage is but a step at most. In fact, it is difficult to draw a distinction between the condition of a man who remains in service against his will, because the State has passed a certain law under which he can be arrested and returned to work, and the condition of a man on a nearby farm who is actually made to stay at work by arrest and actual threats of force under the same law. The actual spoken threat of an individual employer who makes his laborer stay at work against his will by fear of the chain gang, and the threat of the State to send him to the chain gang whenever his employer chooses to have him arrested, are the same in result and do not seem to me very different in any other way.”

While the principal sources of the practice of peonage are the laws just referred to, yet it has existed and does exist without law. The condition of the colored man in this country is practically that of an outlaw. He is scarcely thought of as having rights. He is distinctly told not to insist upon his rights, but to do his duty; that rights will come as the result of duty well performed. This is in effect to say the laws, the customs, the institutions, which protect and defend other men are not to be invoked by the Negro when in his opinion he needs them. A large group of men who are looked upon after this fashion is at the mercy of any group of men who enjoy in full vigor all that the institutions and government of their country stand for. Therefore, it is not unusual to find that, without any law at all, large numbers of laborers are restrained of their liberty in quarters and in stockades, guarded by men who carry guns and deadly weapons, and though having been convicted of no wrongdoing, are kept in the condition of ordinary criminals. The report of the Attorney General for the year 1907 contains a list of eighty-three complaints of peonage pending in the Department of Justice. These complaints come from every one of the former slave-holding States, with the exception of Missouri, and since the publication of this report cases of peonage have been found in that State. In view of the testimony afforded by the laws on the statute books of the [Pg 11] States, the decisions of the courts, the reports of the Department of Justice, and the testimony of persons whose character is a warrant of its truthfulness, the practice of peonage is exactly coterminous with that portion of the territory of the United States in which the institution of chattel slavery formerly existed. When we consider the historic fact that the public opinion of the States embraced in this territory has never considered Negroes as having rights which any one is bound to respect, and that this public opinion has been active in opposing the conferring of all legal rights upon Negroes, and has never ceased to exert itself to divest them of such rights as have been given them, it can not be wondered at that, while slavery no longer exists in this country as a legal institution, it does exist in the opinion, the sentiment, and the practices of the people. It is difficult to determine how extensive the practice of peonage may be or how many victims may be held in its prison house. On this point, Assistant Attorney General Russell says “We have discovered cases of peonage and others have been brought to our attention, we have examined into many and obtained indictments and convictions, but how many cases are in existence is the same kind of a question as though the crime were pension fraud, or counterfeiting, or public land fraud, or fraud on the revenue. Where we have found several cases we may conclude that there are, or have been, or are likely to be others, but this is speculation. Sometimes we feel confident that our pounding away for nearly two years has frightened into inactivity those who were practicing peonage in the same State with the persons convicted and sentenced. We hear now and then of workmen being turned loose to the right and to the left of us when prosecutions are going on, but while it would be discouraging to think that we have not thus reduced the evil to much smaller dimensions, I regret to say that cases are still being discovered or reported in various directions.”

The real foundation of peonage, after all, as it relates to the Negro is the refusal to regard him as a man having rights as other men have them. So far has wrong, and injustice, and

oppression gone that not only is the Negro outside of the consideration of the law of the land, but practically outside of the humane and kindly regard of a majority of the white race in the United States. Not only are laws perverted and given a special twist and interpretation in cases where the Negro is a party to litigation, but even words in ordinary use lose their accepted meaning when applied to him. The word “duty,” for instance, has not a scintilla of moral significance in it when used about or spoken to a Negro. It has purely an industrial and economic meaning, which may be expressed in the injunction, “Servants, obey your masters.” The word “kindness,” which implies one of the noblest traits of human nature, when applied to a Negro means simply that his treatment shall not be so harsh as to [Pg 12] cause people who are yet included in the category of decent, to wince and protest. The denial of right to the Negro has been progressive in the past forty years. First, he was denied the right to vote, and we were told if he would only hold that right in abeyance that he might enjoy other rights in fuller measure. Many, under a misconception of the facts, accepted this view, but since the denial of the right to vote other rights have been impaired. The right to education in its broadest and most comprehensive sense is now practically denied him everywhere, and if not denied the wisdom of his receiving it is seriously questioned. The right to hold property and live in it wherever he may purchase it is denied and restricted. The right to work at whatever occupation he may be fitted is denied, and his opportunities for earning a living are confined to narrower and narrower limits each year. Even the fundamental right of a slave to petition when the yoke is galling is denied him, and when he would assemble to formulate just complaints in a way protected by the law of the land, he is accused of whining and of stirring up bad feeling between the races, and so the list might be extended indefinitely. The contest for the future must be a constant effort to educate public opinion to the point where it will concede to the Negro inalienable rights: The right to vote, the right to an education in all that the term implies, the right to employment in all occupations, the right to make of himself and of his people and of his neighbors all that they may become under the most favored conditions. In short, to use the phrase of Kipling, the ideal sought is, “Leave to live, by no man’s leave, underneath the law.”

The effect of the decision of the Supreme Court of the United States in the Bailey case is to render null and of no effect all of these labor laws which either directly or indirectly resulted in compulsory slavery. In the Bailey case the Supreme Court held that although the State statute in terms appeared to punish fraud, the inevitable purpose is to punish for failure to perform contracts for labor, thus compelling such performances and it violates the thirteenth amendment to the constitution and is unconstitutional. And again the further principle was announced that a constitutional prohibition can not be transgressed indirectly by court or statutory presumption any more than by direct enactment. The Court said: “The Thirteenth Amendment prohibits the control by coercion of the personal services of one man for the benefit of another and that the Federal Penal Act is violated by any State resolution which seeks to compel the services of labor by making it a crime to fail and refuse to perform contract employment!” This decision rendered by Mr. Justice Hughes and dissented from by Mr. Justice Holmes, an ex-Union soldier, and Mr. Justice Lurton, an ex-Confederate soldier, goes as far as any decision in upholding the spirit and intent of the Thirteenth Amendment as any decision ever rendered by this, the highest Court of the nation. However, [Pg 13] this interpretation goes no further than the moral and physical fact of compelling the service of labor. Slavery and involuntary servitude according to the construction of the Court consist only in compelling one to work against his will and does not relate to the thousand and one facts of the human life by which one man might, though free in theory, be made subservient to another man. For instance, this same Court decided, in a case brought up from Arkansas where a Negro had, through the conspiracy of a number of white men been prevented from pursuing his occupation as a lumberman in a lumber district of that State, that it had no jurisdiction in the premises; that the act involved did not raise a Federal question; that the Negro was not the ward of the nation but an equal citizen, one who had accepted the garb of citizenship and discarded the robe of wardship and thereby restricted himself to pursue the remedies for wrongs inflicted by individuals in State courts although it was argued to the court that to prevent a man either directly or indirectly from pursuing a calling or profession was as thoroughly to enslave him as to force him to labor against his will.

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