CONTROLLING LEGAL PRINCIPLES

Free Exercise Clause Decision – The "Contemplation of Justice"

Bailey v. Alabama, 219 U.S. 219 (1911)

But where the conduct or fact the existence of which is made the basis of the statutory presumption itself falls within the scope of a provision of the federal Constitution, a further question arises. It is apparent that a constitutional prohibition cannot be transgressed indirectly by the creation of a statutory presumption, any more than it can be violated by direct enactment. The power to create presumptions is not a means of escape from constitutional restrictions.

The words "involuntary servitude" have a larger meaning than slavery, and the Thirteenth Amendment prohibited all control by coercion of the personal service of one man for the benefit of another.

While the Thirteenth Amendment is self-executing, Congress has power to secure its complete enforcement by appropriate legislation and the Peonage Act of March 2, 1867, and §§ 1990 and 5526, Rev.Stat., are valid exercises of this authority. *Clyatt v. United States*, 197 U. S. 207.

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is paid, and the fact that he contracted to perform the labor which is sought to be compelled does not withdraw the attempted enforcement from the condemnation of the peonage acts.

The plain intention was to abolish slavery of whatever name and form and all its badges and incidents; to render impossible any state of bondage; to make labor free, by prohibiting that control by which the personal service of one man is disposed of or coerced for another's benefit, which is the essence of involuntary servitude.

Peonage is a term descriptive of a condition which has existed in Spanish America, and especially in Mexico. The essence of the thing is compulsory service in payment of a debt. A peon is one who is compelled to work for his creditor until his debt is paid. And, in this explicit and

comprehensive enactment, Congress was not concerned with mere names or manner of description or with a particular place or section of the country. It was concerned with a fact, wherever it might exist -- with a condition, however named and wherever it might be established, maintained, or enforced.

The Court there said:

"The constitutionality and scope of §§ 1990 and 5526 present the first questions for our consideration. They prohibit peonage. What is peonage? It may be defined as a status or condition of compulsory service based upon the indebtedness of the peon to the master. The basal fact is indebtedness. As said by Judge Benedict, delivering the opinion in *Jaremillo v. Romero*, 1 N.M.

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190, 194: 'One fact existed universally: all were indebted to their masters. This was the cord by which they seemed bound to their masters' service.' Upon this is based a condition of compulsory service. Peonage is sometimes classified as voluntary or involuntary, but this implies simply a difference in the mode of origin, but none in the character of the servitude. The one exists where the debtor voluntarily contracts to enter the service of his creditor. The other is forced upon the debtor by some provision of law. But peonage, however created, is compulsory service, involuntary servitude. The peon can release himself therefrom, it is true, by the payment of the debt, but otherwise the service is enforced. A clear distinction exists between peonage and the voluntary performance of labor or rendering of services in payment of a debt. In the latter case, the debtor, though contracting to pay his indebtedness by labor or service, and subject like any other contractor to an action for damages for breach of that contract, can elect at any time to break it, and no law or force compels performance or a continuance of the service. We need not stop to consider any possible limits or exceptional cases, such as the service of a sailor (*Robertson v. Baldwin*, 165 U. S. 275), or the obligations of a child to its parents, or of an apprentice to his master, or the power of the legislature to make unlawful and punish criminally an abandonment by an employee of his post of labor in any extreme cases. That which is contemplated by the statute is compulsory service to secure the payment of a debt."

197 U.S. 197 U. S. 215-216.

The act of Congress, nullifying all state laws by which it should be attempted to enforce the "service or labor of any persons as peons, in liquidation of any debt or obligation, or otherwise," necessarily embraces all legislation which seeks to compel the service or labor by making it a crime to refuse or fail to perform it. Such laws would furnish the readiest means of compulsion. The Thirteenth

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Amendment prohibits involuntary servitude except as punishment for crime.

"In contemplation of the law, the compulsion to such service by the fear of punishment under a criminal statute is more powerful than any guard which the employer could station."

Ex parte Hollman, 79 S.C. 22.