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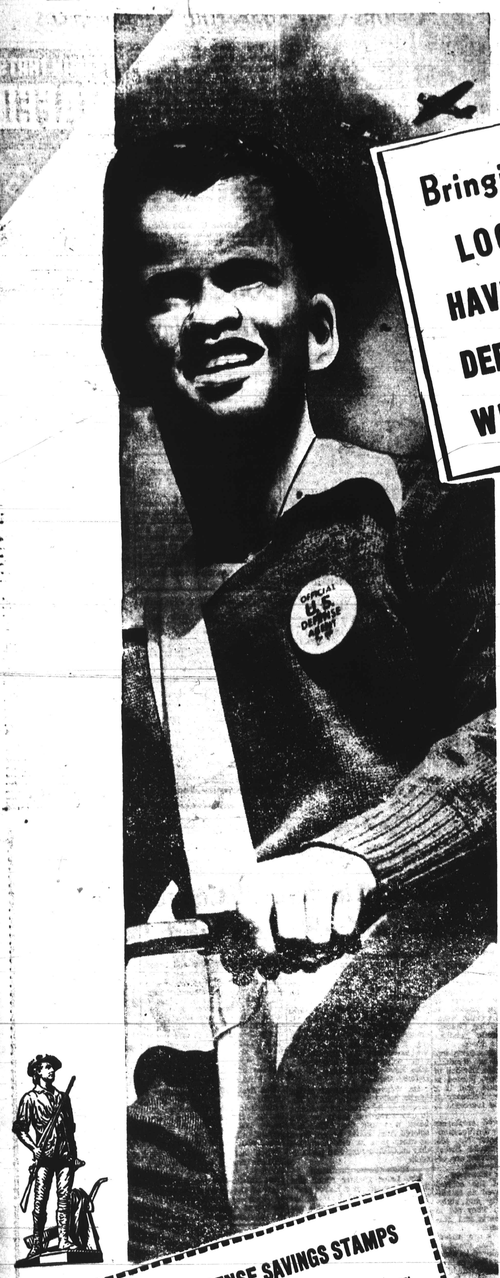

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Full Text of U.S. Supreme Court's Decision on Georgia State Debt Law

WASHINGTON

The 40 - year - old Georgia debt law was held unconstitutional by an unanimous decision of the Supreme Court last Monday on the ground that it violates the Anti-Slavery Amendment to the Constitution and the federal law forbidding peonage.

The text of the opinion follows:

SUPREME COURT OF THE UNITED STATES

No. 70—OCTOBER TERM, 1941.

Ira Taylor, Appellant,
vs.
The State of Georgia.

Appeal from the Supreme Court of the State of Georgia.

[January 12, 1942.]

Mr. Justice Byrnes delivered the opinion of the Court.

Appellant was indicted in the Superior Court of Wilkinson County, Georgia, for violation of §§ 7408 and 7409, of Title 26 of the Georgia Code. Section 7408 provides:

"Any person who shall contract with another to perform for him services of any kind with the intent to procure money, or other thing of value thereby, and not to perform the service contracted for, to the loss and damage of the hirer; or after having so contracted, shall procure from the hirer money, or other thing of value, with intent not to perform such service, to the loss and damage of the hirer; he shall be deemed a common cheat and swindler, and upon conviction shall be punished as prescribed in section 1030 [now section 1065] of the Code."[1]

And Section 7409 declares:

"Satisfactory proof of the contract, the procuring thereon of money or other thing of value, the failure to perform the services so contracted for, or failure to return the money so advanced with interest thereon at the time said labor was to be performed, without good and sufficient cause and loss or damage to the hirer, shall be deemed presumptive evidence of the intent referred to in the preceding section."[2]

The indictment alleged that appellant had entered into a contract with R. L. Hardie to perform manual labor for $1.25 a day until he had earned $19.50 at that rate, that he had done so with the intent not to perform the services, that he had thus obtained the $19.50 as an advance, that he had failed without good and sufficient cause to do the work, that he had failed and refused to repay the $19.50, and that loss and damage to Hardie had resulted.

Appellant demurred to the indictment, asserting that §§ 7408 and 7409, upon which it was based, were repugnant both to the Thirteenth Amendment and the Act of Congress passed pursuant to it,[3] and to the due process clause of the Fourteenth Amendment. The demurrer was overruled, exception was taken, and the case went to trial.

Hardie was the only witness for the State. He testified that the agreement had been made, that he had advanced the $19.50, that appellant had neither done the work nor returned the money, and that although appellant had said something about being sick, he had given no visible sign of it and had not been confined to bed.

Under the statutes of Georgia[4] appellant could not testify under oath, but he was permitted to make an unsworn statement in which he generally denied that he and Hardie had made the agreement or that Hardie had paid him the $19.50. The trial judge charged the jury in the language of §§ 7408 and 7409. He refused to instruct the jury that these sections are repugnant to the Thirteenth and Fourteenth Amendments of the Constitution of the United States.

The jury returned a verdict of guilty and judgment of conviction was entered. Appellant moved for a new trial on the ground that §§ 7408 and 7409 violated provisions of both the federal and State Constitutions, and the motion was denied. On appeal, the conviction was affirmed by the Supreme Court of Georgia.

We think the conviction must be reversed. There is no material distinction between the Georgia statutes challenged here and the Alabama statute which was held to violate the Thirteenth Amendment in *Bailey* v. *Alabama*, 219 U. S. 219.[5]

It is urged here, just as it was in the *Bailey* case, that the the purpose of § 7408 is nothing more than the punishment of a species of fraud, namely, the obtaining of money by a promise to perform services with intent never to perform them. And the presumption created by § 7409 is said to be merely a rule of evidence for the trial of cases arising under § 7408.

Actually, however, § 7409 embodies a substantive prohibition which squarely contravenes the Thirteenth Amendment and the Act of Congress of March 2, 1867.[6] Its effect is to authorize the jury to convict upon proof that an agreement has been reached, that money has been advanced on the strength of it, that the money has not been returned, that the appellant has failed or refused to perform the services "without good and sufficient cause," and nothing more. The necessary consequence is that one who has received an advance on a contract for services which he is unable to repay is bound by the threat of penal sanction to remain at his employment until the debt has been discharged. Such coerced labor is peonage.

And it is no less so because a presumed initial fraud rather than a subsequent breach of the employment contract is the asserted target of the statute. It is of course clear that peonage is a form of involuntary servitude within the meaning of the Thirteenth Amendment and that the Act of 1867 is an "appropriate" implementation of that Amendment. *Clyatt* v. *United States*, 197 U. S. 207.

We are told that the manner in which these sections have been interpreted by the courts of Georgia rescues them from invalidity. It is urged that the phrase "without good and sufficient cause," which appears in § 7409, in effect requires proof of fraudulent intent at the time of making the contract and obtaining the money.

But this argument is wide of the mark. The words "without good and sufficient cause" plainly refer to the failure to perform the services or to return the money advanced. Since the subsequent breach of the contract by the defendant, however, capricious or reprehensible, does not establish a fraudulent intent at the initial stage of the transaction, the content which has been assigned to the phrase "without good and sufficient cause" by the Georgia courts is immaterial. See *Bailey* v. *Alabama*, 219 U. S. at 233-234.

Moreover, as the Court observed in the *Bailey* case, "the controlling construction of the statute is the affirmance of this judgment of conviction." 219 U. S. at 235. The most that the jury could have found in the evidence here was proof that the contract had been made, that $19.50 had been advanced, that the appellant had failed to do the work or to return the money, and perhaps that this failure had been "without good and sufficient cause." The presumption created by § 7409 was thus essential to the conviction.

It is true that it appears from the record that the Supreme Court of Georgia regarded it as unnecessary to determine the sufficiency of the evidence to support the verdict because "the defendant relies solely on constitutional grounds." And it is also true that it appears from the record that in his brief in that court the appellant stated: "Inasmuch as the defendant in seeking to set aside his conviction relies solely on constitutional grounds, the evidence set out in the record is material only in so far as it relates to these grounds."

However, the only possible construction of this statement, in the light of appellant's consistent attack upon the presumption created by § 7409, is that appellant agreed to waive any contention that the evidence was insufficient to establish the factors declared by that section to warrant the presumption of an initial intent to defraud. He cannot fairly be said to have conceded more.

Consequently, the Georgia Supreme Court could not escape the necessity of passing upon the validity of the presumption raised by § 7409 in order to sustain the conviction.

We are aware that in Wilson v. *State* 138 Ga. 489, the Supreme Court of Georgia held that *Bailey* v. *Alabama* does not require the invalidation of these sections. Its error in so doing arose from a misconception of the scope of the *Bailey* decision.

To be sure, a judicially created rule in Alabama denied to a defendant the opportunity to make any kind of statement as to his uncommunicated motives, and this circumstance drew the notice of the Court. 219 U. S. at 228, 236.

In Georgia, on the other hand, a defendant is permitted to make an unsworn statement if he chooses. But the opinion in the *Bailey* case leaves no doubt that this factor was far from controlling and that its effect was simply to accentuate the harshness of an otherwise invalid statute.

We think that the sections of the Georgia Code upon which this conviction rests are repugnant to the Thirteenth Amendment and to the Act of 1867, and that the conviction must therefore be reversed.

Reversed.

Mr. Justice Roberts took no part in the decision of this case.

1. Section 1098 (now section 1065) of the Georgia Penal Code (Ga. Code (1933), Title 27, § 2506) provides: "Except where otherwise provided, every crime declared to be a misdemeanor shall be punishable by a fine not to exceed $1,000 imprisonment not to exceed six months to work in the chain gang on the public roads or other work, as the sentence may be, the county or State authorities may employ the chain gang not to exceed 12 months, any one or more of these punishments in the discretion of the Judge."

2. Sections 7408 and 7409 (Ga. Code (1933), Title 26, §§ 3306 and 3307) provide: "Section 7408. Contract—Money or other thing of value, procuring thereon, fraud, intent, proof, presumption, etc. Satisfactory proof of the contract, the procuring thereon of money or other thing of value, the failure to perform the services so contracted for, or failure to return the money so advanced with interest thereon at the time said labor was to be performed, without good and sufficient cause and loss or damage to the hirer, shall be deemed presumptive evidence of the intent referred to in the preceding section."

"Section 7409. Intent not to perform—Money or other thing of value—Fraud—Cheat and swindler—Punishment. Any person who shall contract with another to perform for him services of any kind with the intent to procure money, or other thing of value thereby, and not to perform the service contracted for, to the loss and damage of the hirer; or after having so contracted, shall procure from the hirer money, or other thing of value, with intent not to perform such service, to the loss and damage of the hirer; he shall be deemed a common cheat and swindler, and upon conviction shall be punished as prescribed in section 1065 of the Code."

3. Section 1 Thirteenth Amendment reads: "Section 1. Neither slavery nor involuntary servitude, except as a punishment for crime whereof the party shall have been duly convicted, shall exist within the United States, or any place subject to their jurisdiction.

"Section 2. Congress shall have power to enforce this Article by appropriate legislation."

U. S. C., Title 8, Section 58 reads: "The holding of any person to service or labor under the system known as peonage is abolished and forever prohibited in any Territory or State of the United States; and all laws, ordinances, or regulations, or customs or usages of any Territory or State which have heretofore established, maintained, or enforced, or by virtue of which any attempt shall hereafter be made to establish, maintain, or enforce, directly or indirectly, the voluntary or involuntary service or labor of any person, in payment or in liquidation of any debt or obligation, or otherwise, are declared null and void."

U. S. C., Title 18, Section 444, reads: "Whoever holds, arrests, returns, or causes to be held, arrested, or returned, or in any manner aids in the holding, arresting, or returning under the condition of peonage, shall be fined not more than $5,000, or imprisoned not more than five years, or both."

4. Georgia Code (1933), Title 38, § 415, 416.

5. And cf. *State* v. *Clive*, 144 La. 81; 22 L. R. A. (N. S.) 1, 6.

6. See note 3 supra.

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DR. W. H. SKIPWITH, who will conduct a revival and spiritual feast at New Metropolitan Baptist Church, McCulloh and Mosher Streets, Sunday through January 30, according to the pastor, the Rev. W. J. Winston, featuring special sermons on Sunday mornings and evenings and on weekdays at 8:30 p.m.

Dairy Wins 1st Round in $5,000 Glass Milk Suit

The contention of the Cloverland Farms Dairy, Inc., that it is not the responsible party for damages sought by Mrs. Mildred Carter in a $5,000 suit was upheld by Judge Eugene O'Dunne in City Court Thursday.

Mrs. Carter's suit, filed several weeks ago, charged that she was injured by particles of glass found in a pint bottle of milk sold by the dairy through a retail grocer.

The dairy also contended that Mrs. Carter's suit did not contain sufficient allegations of any negligence on its part to justify its paying damages, a point which Judge O'Dunne also upheld.

Cites Medical Expense

Mr. Carter charged that in September she drank a bottle of milk which her husband, John Carter, had purchased from J. Ochs, white grocer at 723 W. Franklin Street, and that the particles of glass found in the bottle caused her great pain and necessitated expensive medical treatment.

In sustaining the dairy's demurrer, Judge O'Dunne gave Mrs. Carter's attorney, George McMechen, leave to amend the damage suit within a ten-day period.

Conduct Classes for Domestic Workers

Open classes, including demonstrations and discussions on domestic work of all kinds, are now being conducted by the Colored Domestic Association of America at 566 Mosher Street.

The classes are held on Thursday evenings at which time household hints and domestic problems are discussed. The latest subject for discussion was "How Domestic Workers Can Help to Win the War."

During January and February, the organization will sponsor a series of contests in order to establish a domestic school. Mrs. Beatrice Turner is president of the association; Mrs. Mildred Garrett, secretary, and Edward Bunch, chairman.

Theft Counts Send 1 to Jail, 2 to Jury

Arrested on larceny charges, two persons were placed under bail to await grand jury action, while the third was given sixty days in jail following hearing in Northwestern police court this week before Magistrate Walter J. Dewees.

Alfred Burnham, 18, of 1206 Division Street, received the jail term for the alleged theft of three shirts and a pair of pants from a house at 1524 Gorsuch Avenue.

James O. Crawford, 22, of 1032 N. Gilmor Street, was charged with the theft of $135 worth of clothing and jewelry from the home of Lykes Robinson of 558 Biddle Street, and Francis McQueen, 23, of 2033 Pennsylvania Avenue, with the theft of $133 worth of clothing and jewelry from the home of Mary Sayner, white, of 2607 Talbot Road.

Snatch Try Charge Cost Youth 3 Years

Leslie Gilmor, 18-year-old laborer of 1805 E. Madison Street, was sentenced by Judge W. Conwell Smith in Criminal Court Tuesday to three years in the house of correction for attempting to snatch a white woman's pocketbook.

The woman, Mrs. Alma Robinson of 1237 Broadway, testified that Gilmor grabbed at her purse January 3 while she was walking on Broadway near Monument and struck her in the face when she held on to it. Gilmor denied the charge.

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Woman Seeks Reversal of Murder Verdict

Contends Chinese's Deathbed Statement Misinterpreted

Another attempt to gain a reversal in the first-degree murder verdict given Mrs. Julia S. Harshaw, 28, of 917 School Street, convicted in the hammer-slaying of a Laurens Street Chinese restaurateur, was begun here Thursday with the opening of proceeding in the Maryland Court of Appeals.

The basis of the appeal through J. Howard Payne, attorney for Mrs. Harshaw, is that she was not present at the time the Chinese was struck and that the slain man's deathbed statement allegedly naming her and Howard, King, 27, also of 917 School Street, as his assailants had been misinterpreted.

Say Language Confused

Mr. Payne further contends that when the aged Chinese was asked by a fellow-countryman who had struck him, the question was put and answered in Chinese and that the answer, "Sadie and her boyfriend," was probably not correct, since neither of the Chinese knew King's name but knew him as Mrs. Harshaw's friend. Mr. Payne contends that the reply was in all probability, "Sadie's boyfriend."

While the Supreme Bench overruled Mrs. Harshaw's motion for a new trial a few days before she and King were each sentenced on January 8 to life imprisonment in the penitentiary, some dissension arose among the eleven judges over these points.

Shortly after his arrest, King, who is represented by W. A. C. Hughes, Jr., NAACP attorney, in a written statement to police said that during his fight at the restaurant, Mrs. Harshaw was not with him. This was in support of her contention that she was in a tavern at Laurens and Whatcoat Streets. However, at his Criminal Court trial, King changed his story.

Woman, 38, Burned as Stove Overturns

Mrs. Susie Jones, 38, received burns of the face and right hand, Wednesday, when an oil stove was overturned in her third-floor apartment at 1107 Pennsylvania Avenue.

The fire, which swept through the front room of the apartment before being brought under control, was said to have resulted when Miss Julia Jones, young daughter of Mrs. Jones, accidentally knocked the stove over while putting on her coat. Miss Jones was not burned.

Want to Be a Cop? Sign Up Now!

Applications for probationary patrolmen may be obtained at Room 506, Police Headquarters Building, Fayette and Fallsway, between January 19 and 31, members of the examining board announced this week.

Applications may be obtained between the hours of 11 a.m. and 1 p.m. and must be returned correctly and completely filled out by February 10. Examinations will be given on February 28. The present list, it was noted, will remain good until April 23.

Applicants must be registered voters of Maryland, over 23 and under 35 years of age on April 23, 1942; at least 5 feet 9½ inches tall and weigh at least 150 pounds.

Social Security Worker and Man Who Claims Only 1 of 4 Kids Get Divorces

Mrs. Mary Mack, social security worker of 313 Hoffman Street, won a divorce from her husband, George Mack of New York this week when she testified that he was abusive, failed to support her and finally deserted her.

The Macks were married on September 14, 1921, in Jersey City, N.J., and lived together until May, 1933. They are parents of one daughter, Rosalie Mack, 11, who was given into the custody of the mother.

Mrs. Mack was represented by W. A. C. Hughes, attorney.

3 Kids Not His

Robert Hendrickson of 1600 E. Biddle Street, was granted a divorce on the grounds of adultery from Mrs. Edna Hendrickson of 1028 N. Dallas Street.

The husband was charged with the support of one of the children of the household, Willard, upon his protest that he was not the father of three others. According to Mr. Hendrickson, he and Mrs. Hendrickson were married on March 10, 1931, but lived together only six weeks.

Six File Petitions

In papers filed by William T. Buckner, attorney, James C. Simmons charged that he was deserted by Mrs. Mozel Simmons of Cleveland, Ohio, on March 16, 1933, after their marriage on December 2, 1932.

Mrs. Addie Dixon asked that she be divorced from James Dixon of 1355 Whatcoat Street, upon the grounds that he deserted her on February 15, 1924, seven months after their marriage. The papers, filed by Roy S. Bond, attorney, requested restoration of her maiden name.

Vernon M. Hall charged that he was abandoned by Mrs. Anna Hall of Berlin, Md., on June 15, 1936, after their marriage on August 4, 1925. He was also represented by Mr. Bond.

Married Two Months

Mrs. Betty Nicholas Gwathney of 1816 Madison Avenue has filed a petition stating that her husband, Woodrow Gwathney of Washington, abandoned her two months following their marriage on April 12, 1940.

In a petition filed by Mrs. Gladys Rollins against Roy W. Rollins of 1018 N. Dallas Street, the wife says that her husband not only deserted her, but that he disposed of the furniture and other household goods and has committed adultery.

He, she charges, has also failed to abide by the ruling of the court to support their three children, Walter, Carl and Roy.

New Yorker Sued

A petition filed by George Evans, attorney, seeks a divorce for Mrs. Eva Angelo of 1910 Druid Hill Avenue, from Thomas Angelo of New York City.

Miss Angelo asks restoration of her maiden name, Jones.

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