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A SLAVE TRADE LAW IN A CONTEMPORARY SETTING*

FRED G. FOLSOM, JR.

One of the tasks assigned to the Civil Rights Section of the Justice Department's Criminal Division has been to revitalize a handful of seldom used criminal statutes.¹ Thus far the efforts to that end have resulted in a line of decisions clearing the way for vigorous application of the surviving criminal sections of the Civil Rights Act of May 31, 1870.² It is the purpose of this article to record the study made of still another little known statute best described as the "Slave Kidnapping" Statute.

Resort to this old slavery statute has become necessary because of certain gaps in the applicability of the Civil Rights Statutes and the Peonage Statute. No small part of the work of the Civil Rights Section is that concerned with the enforcement of the right secured by the Thirteenth Amendment, the right of persons to be free of involuntary servitude. The usual complaint alleges that a victim has been held in a condition of peonage, that is, that he has been compelled, or carried away, or brought back to be compelled to perform work and labor in payment of a debt.³ But upon investigation of such peonage complaints it is often found that although the supposed peon has been forced to remain at work or has been returned or carried away forcibly to be compelled to labor, this was not done upon the excuse that the unwilling servant was indebted to his master. The element of debt necessary to spell out a violation of the Peonage Statute is missing. If such an investigation discloses a conspiracy to hold citizens in involuntary servitude, the Department can invoke Section 51 of Title 18, United States Code, which punishes persons conspiring to injure and oppress citizens in the exercise of federally secured civil rights. But in the event the facts appear to indicate that a plantation owner acting "on his own hook" or through innocent agents has been holding field hands to a forced service by threats and violence, or by causing his hands to be arrested should they

*The expressions of opinion herein contained are the personal opinions of the writer, and may not, therefore, be represented as official Department of Justice opinions.

¹The Civil Rights Section was established by Attorney General Frank Murphy on Feb. 3, 1939. See Schweinhaut, *The Civil Rights Section of the Department of Justice*, 1 BILL OF RIGHTS REVIEW 206; Rotnem, *Clarification of the Civil Rights Statutes*, 2 BILL OF RIGHTS REVIEW 252.

²18 U. S. C. §§ 51, 52 (1940); *United States v. Classic*, 313 U. S. 299, 61 Sup. Ct. 1031 (1941); *Catlette v. United States*, 132 F. (2d) 902 (C. C. A. 4th, 1943); *Culp v. United States*, 131 F. (2d) 93 (C. C. A. 8th, 1942); *United States v. Sutherland*, 37 F. Supp. 344 (N. D. Ga., 1940).

³See the PEONAGE ABOLITION ACT, 18 U. S. C. § 444 (1940).

attempt to leave his employ, there is no appropriate criminal statute to punish such an offense unless it be the Slave Kidnapping Act. Two such cases will be brought to trial this year, one in Florida and one in Texas. Of the 24 or 25 involuntary servitude complaints currently under investigation, another handful of indictments charging this crime will probably be forthcoming. Hence, an examination of the Kidnapping Statute⁴ has been made and is embodied in the following discussion:

I. HISTORY AND ORIGIN OF THE ACT⁵

On January 9, 1866, Senator Sumner called the attention of the Senate to reports indicating that a slave-running trade had sprung up in the southern states; that many likely freedmen were being rounded up and shipped to Cuba and Brazil to be sold into slavery. He offered a resolution to the effect that the Judiciary Committee be directed to inquire whether any further legislation was needed to prevent this kidnapping and revival of the slave trade.⁶

A bill⁷ was reported out of the Judiciary Committee February 7, 1866. There is no record of a printed committee report nor of any hearing held by the Judiciary Committee of the Senate. However, Senator Clark of New Hampshire, a member of the Committee, orally reported to the Senate that there was a necessity for legislation to prevent kidnapping, that the slave traffic was found to be in existence and that existing laws did not offer sufficient protection.⁸ The bill was passed by the Senate without further significant discussion and referred to the House. There appears to have been no discussion of the bill in the House; it was reported out of committee on May 18 and passed the same day. The measure was approved by the President May 21, 1866.

Of possible significance in connection with the purpose of the statute is a resolution of the Senate of March 5, 1866, by which the President was requested to communicate to the Senate information concerning alleged kidnapping of colored persons in the southern states for the purpose of selling them as slaves in Cuba.⁹ This Senate inquiry came after the Senate had passed the kidnapping bill, seemingly indicating the Senate's continued interest in the particular problem which their bill attempted to solve. The

⁴18 U. S. C. § 443 (1940).

⁵Section 443 is derived from the Act of May 21, 1866, c. 86, § 51, 14 STAT. 50 (1866).

⁶CONG. GLOBE, 39th Cong., 1st Sess. (1866) 146-147.

⁷S. 132, 39th Cong., 1st Sess. (1866).

⁸CONG. GLOBE, 39th Cong., 1st Sess. (1866) 852.

⁹*Id.* at 1178.

President apparently had little to offer; in response, on March 16, 1866, he submitted a report from the Secretary of State concerning one isolated sale of a slave girl and her two children by a resident of Louisiana, for disposal in Havana, Cuba, in 1862.¹⁰ Also of possible significance in connection with the interpretation of the kidnapping statute is the second section of the Act of May 21, 1866,¹¹ which punished persons knowingly receiving Negroes on board a vessel to be carried away from any place in the United States to be held or sold as a slave.¹²

The statute, as originally enacted, read:

That if any person shall kidnap or carry away any other person, whether negro, mulatto, or otherwise, with the intent that such other person shall be sold or carried into involuntary servitude, or held as a slave; or if any person shall entice, persuade, or knowingly induce any other person to go on board any vessel or to any other place, with the intent that he or she shall be made or held as a slave, or sent out of the country to be so made or held, or shall in any way knowingly aid in causing any other person to be held, sold, or carried away, to be held or sold as a slave, he or she shall be punished, on conviction thereof, by a fine of not less than five hundred nor more than five thousand dollars, or by imprisonment not exceeding five years, or by both of said punishments.

It was incorporated in the Revised Statutes as Section 5525. The following changes were made: The words "every person who kidnaps" were substituted for the words "that if any person shall kidnap," and the subsequent language identifying the subject of the statute was changed to conform. The phrase "whether negro, mulatto, or otherwise" was omitted. The words "or carried" just preceding the words "into involuntary servitude" were omitted. In the second clause defining the requisite intent, the language was changed to read "with the intent that he may be made or held as a slave. . . ." The word "knowingly" in that clause was omitted. In the last clause defining the punishment, the words "he or she" were omitted and the words "not exceeding five years" were supplanted by the words "not more than five years."

In the Revised Statutes of 1873, the kidnapping statute was included under the Civil Rights and Elective Franchise chapter and not under the Slave Trade Laws, though it is clear from the statements of the sponsors of the bill that it was intended to supplement the latter group of laws.¹³

¹⁰SEN. EXEC. DOC. NO. 30, 39th Cong., 1st Sess. (1866) Vol. 2.

¹¹14 STAT. 50 (1866).

¹²See 18 U. S. C. § 428 (1940).

¹³*Infra*, p. 216.

On March 4, 1909, the criminal laws of the United States were codified. The kidnapping section of the Revised Statutes was specifically repealed by Section 341 of the Criminal Code and was reenacted as Section 268, Act of March 4, 1909.¹⁴ Section 268 was placed in the chapter of the Criminal Code entitled Slave Trade Laws. The following changes in wording were made:

The description of the persons subject to the statute's penalties was changed from "every person" to "whoever." In the last sentence defining the punishment, the lower limitation on the fine was removed and the clause now reads "shall be fined not more than \$5,000, or imprisoned not more than five years, or both."

Section 268 of the Criminal Code now appears as Section 443, Title 18, United States Code, without change, as follows:

Whoever kidnaps or carries away any other person, with the intent that such other person be sold into involuntary servitude, or held as a slave; or who entices, persuades, or induces any other person to go on board any vessel or to any other place with the intent that he may be made or held as a slave, or sent out of the country to be so made or held; or who in any way knowingly aids in causing any other person to be held, sold, or carried away to be held or sold as a slave, shall be fined not more than \$5,000, or imprisoned not more than five years, or both.

II. THE "SLAVE KIDNAPPING" STATUTE

A. *Analysis of Section 443.*

There is no question as to the constitutionality of Section 443. It clearly comes within the power of Congress to enact appropriate legislation to enforce the Thirteenth Amendment.¹⁵ The doubt arises with regard to the extent to which the section may be made applicable. And this doubt stems from the term "slave." May "slave" be construed to mean a person so far subjected to the will of another that he is held to labor or service against his will, or must it mean only a person held as legal property? Before considering these alternatives, the statute's make-up should be briefly considered.

Section 443 defines several offenses:

1. The kidnapping or carrying away of another person with the intent that such other person be sold into voluntary servitude or held as a slave.
2. The offense of enticing of another person to go on board a vessel or

¹⁴35 STAT. 1141 (1909).

¹⁵United States v. Wheeler, 254 Fed. 611' (D. Ariz. 1918), *aff'd* 254 U. S. 281, 41 Sup. Ct. 133 (1920); United States v. McClellan *et al.*, 127 Fed. 971 (S. D. Ga. 1904).

to any other place with the intent that he be made or held as a slave or sent out of the country to be so made or held.

3. The offense of in any way knowingly aiding in causing another to be held or sold, or carried away to be held or sold as a slave.

The criminal acts are variously described by the words "kidnaps," "carries away," "entices, persuades, or induces . . . to go on board any vessel or to any other place," and "aids."

Kidnapping was a common-law offense defined as the forcible stealing away of a man, woman or child from his own country and sending him into another.¹⁶ In the United States, the several states were considered to be countries foreign to each other within the sense of this definition.¹⁷ Accordingly, even if the word "kidnaps" in the present statute were given its narrowest construction, a person forcibly removed from any state to be sold or held in violation of the Thirteenth Amendment would be kidnapped within the meaning of Section 443.

There is, moreover, respectable common law authority that an actual removal beyond the limits of a state was unnecessary if the person was seized with the intention of effecting his removal; that a seizing and transportation with the intent to remove the victim from the state completes the offense.¹⁸ Whether or not this is true under Section 443 is immaterial, since the section explicitly prescribes that carrying away the victim with the intent to sell him into involuntary servitude or hold him as a slave suffices to establish the offense.

The words "carries away" clearly do not imply that the victim must be carried outside the state. The applicable analogy is that of common law larceny, where the requisite asportation is accomplished without any particular motion so long as there is a removal, however slight, of the chattel from the place which it occupies.¹⁹ Such carrying away may be by the thief himself or by an innocent agent.²⁰ The words "carries away" in Section 443 appear to warrant the same interpretation.

¹⁶Gooch v. United States, 82 F. (2d) 534, 537 (C. C. A. 10th, 1936); Collier v. Vaccaro, 51 F. (2d) 17, 19 (C. C. A. 4th, 1931) 4 BL. COMM. 219.

¹⁷Gooch v. United States, 82 F. (2d) 534 (C. C. A. 10th, 1936).

¹⁸State v. Harrison, 145 N. C. 408, 59 S. E. 867 (1907) and State v. Rollins, 8 N. H. 550 (1837), cited in Gooch v. United States, *supra* note 17; 1 EAST, PLEAS OF THE CROWN 429.

¹⁹2 BRILL, CYC. CRIM. LAW (1923) § 780; 2 BISHOP, CRIM. LAW (9th ed. 1923) § 794. An examination of state kidnapping statutes using phraseology similar to that in Section 443 discloses that such removal has been construed by the state courts as fulfilling the requirement of a carrying off or carrying away. Cox v. State, 203 Ind. 544, 177 N. E. 898 (1931); Samson v. State, 37 Ohio App. 79, 174 N. E. 162 (1930); People v. Raucho, 8 Cal. App. (2d) 655, 47 P. (2d) 1108 (1935); cf. Keith v. State, 120 Fla. 847, 163 So. 136 (1935); State v. Autheman, 47 Idaho 328, 274 P. 805 (1929).

²⁰2 BRILL, CYC. CRIM. LAW (1923) §§ 755, 780 and cases cited.

The words "entices," "persuades," and "induces" are familiar to criminal statutes, and here indicate a non-forcible and voluntary removal of an intended slave.

The word "aid" connotes concerted action with one or more other persons, the aider being either the prime mover in the crime or merely a knowing tool of the principal.²¹

The third offense, in which the word "aids" is used, is the only specific federal sanction against the outright holding of another as a slave, and it is subject to the limitation that two or more must assist in the holding as above noted.

B. The Meaning of "Slave"

The scope of all three offenses turns upon the meaning of the word "slave," which has received judicial construction in only one case, *United States v. Francesco Sabbia*.²² A successful prosecution was also had in *United States v. Peacher*,²³ though in the latter case no demurrer was interposed. The Government's contention that "slave," as used in Section 443, meant one who is in a state of involuntary servitude in the post-Civil War sense, was not contested; the defendant was convicted in that case and no appeal was taken.

In the *Sabbia* case, District Judge Hough handed down a written decision which discusses the use of the term "slave" as follows:

The meaning to be given the word "slave" in the quoted extract from the statute, is more difficult to assign than it seems to be to dispose of the "place" question.

The arguments on both sides are very technical, on the one hand it is impossible to refrain from thinking that any Congress of the time when the Act was passed had in mind when using the word "slave," that human chattel from which the United States had just been freed; and in such manner as to render slavery a legal non-existent and impossible thing within its borders. From this it follows if the quoted words be sought to be applied to transactions wholly within the United States;

²¹It is believed that the word "aids" is used in the same sense in which it was used in the Act of March 22, 1794, 1 STAT. 349 (1794), considered in *United States v. Gooding*, 12 Wheat. 460 (U. S. 1827). Under the statute considered in the *Gooding* case, the defendant was charged with "aiding" in fitting out for himself, as owner, a ship intended for use in the slave trade. He contended that the counts charging aiding and abetting could not stand, because no offense was charged to a principal whom he could aid. The court ruled that since the offense defined was not a common-law felony, Congress had used the word "aiding" in a non-technical sense, not as indicating a common-law accessory, but rather as defining a substantive offense, and as synonymous with assist, cooperate, etc.

²²C. C. S. D. N. Y. 1907, unreported.

²³E. D. Ark. 1937, unreported.

they were from their enactment futile, and expressive only of a legal impossibility. Such mental action should not be imputed to a legislature.

On the other hand, if to the word be given the only meaning rendering it useful under modern conditions, and consonant with modern American law, the Congress used it in a sense scarcely appropriate to common usage in the years immediately following the Rebellion,—and in a way almost if not quite synonymous with “involuntary servitude” which phrase is also used in the same sentence of the Act; and this mental act is, from a legal standpoint, about as inexcusable as the other process stated above.

In the absence of controlling authority I prefer to consider the act as framed for post bellum conditions, in the light of the war amendments, and as using the word slave as meaning a person in a state of enforced or extorted servitude to another.

It is the contention here that the conclusion of Judge Hough is manifestly correct. If the word “slave” is not given the broad meaning of the words “involuntary servitude,” Congress has, by this statute not punished the following conduct:

- (a) It has not punished a person who kidnaps or carries away another with intent that he be held in involuntary servitude.
- (b) It does not punish a person who “entices . . . any other person to go . . . to any other place with the intent”
 - (1) That he shall be held in involuntary servitude;
 - (2) That he shall be sent out of the country to be held in involuntary servitude.
- (c) It does not punish a person who knowingly aids in causing any other person
 - (1) To be held in involuntary servitude
 - (2) To be sold into involuntary servitude
 - (3) To be carried away to be held in involuntary servitude
 - (4) To be carried away to be sold into involuntary servitude.

The strict construction of Section 443 which would give an entirely different meaning to the word “slave” as distinguished from “involuntary servitude” makes the statute, when analyzed as above, ridiculous on its face, and contrary to what must have been the intention of Congress. If the section is given the strict construction, Congress has punished, in the first section of the statute, the person who carries away another with the intent that he be sold into involuntary servitude, but it does not punish, in the third section, one who aids in causing another to be sold or held in involuntary servitude. Nor does it punish the equally reprehensible conduct of enticing a person on board a vessel with the intent that he shall be held in involuntary servitude, and yet it was exactly this last named conduct, together

with that of kidnapping, which is punished in the first section of the statute, which Congress was anxious to prohibit.

It is felt, moreover, that the use of the word "slave" was not as inept as Judge Hough suggested in the portion of the *Sabbia* opinion above noted. It would be difficult to find a more exact noun to define a person held in a condition of involuntary servitude. "Slave" was recognized even in pre-Civil War days as including persons held in varying degrees of involuntary servitude, ranging from an absolute dominion with the power of life or death to partial dominion extending only to the power to compel the services of the servant.²⁴

Note how the word "slave" is employed in this section in contradistinction to the words "involuntary servitude." The most natural construction to be given those words is that "involuntary servitude" defines the prohibited condition or plight, "slave" the persons reduced to that condition. The one defines a status and the other a class of individuals. Had the words used been "involuntary servitude" and "slavery," then there might have been reason to argue that Congress intended to describe two distinct conditions. Since legal slavery is practically non-existent in the civilized world, it would follow that the kidnapping act is a dead letter beyond the second comma, and even the remaining vital clause would be comparatively useless because the incidents of a sale rarely attend the recruiting of unwilling labor today. The Department's files do reveal a few instances in which it appears that one master has permitted another to secure a servant, usually a peon, by paying what is claimed as the debt due from the servant and for which he is compelled to labor.

In determining the intent of Congress, the use of the term "involuntary servitude" is highly significant. It is taken directly from the Thirteenth Amendment—"Neither slavery nor involuntary servitude, . . . shall exist within the United States or any place subject to their jurisdiction"—and of the phrase as used in the Amendment, the Supreme Court has said:

The word servitude is of larger meaning than slavery, as the latter is popularly understood in this country and the obvious purpose was to forbid all shades and conditions of African slavery.²⁵

Continuing, the Court remarked that "Undoubtedly, while Negro slavery alone was in the mind of the Congress which proposed the Thirteenth Amendment, it forbids any other kind of slavery," and might "safely be

²⁴COBB, *THE LAW OF SLAVERY* (1858) 3, 4.

²⁵*Slaughterhouse Cases*, 16 Wall. 36 (U. S. 1872).

trusted" to make Mexican peonage or the Chinese coolie system void.²⁶

This all-inclusive term as used in Section 443 should receive a construction as broad as that which the Court has applied to the phrase in the Thirteenth Amendment, which Section 443 was intended to enforce. Then, assuming the correctness of the construction of "slave" as describing a person subjected to involuntary servitude, the word is not limited to the pre-Civil War chattel concept.

Then again the kidnapping statute reads:

Whoever kidnaps or carries away any other person with the intent that such other person be *sold* into involuntary servitude, or *held* as a slave. . . .²⁷

If "slave" is to be held to mean only a "human chattel" in the pre-Civil War sense, how is the legal title to a freedman to be acquired simply by seizing and holding him? The pre-Civil War history of the United States will furnish no precedent for the acquisition of property in its free inhabitants simply through seizure and imprisonment to labor. An emancipated Negro could not again be enslaved in the slave-holding states.²⁸ International law recognized that a freedman could not again be forced into the legal status of a chattel in a country foreign to that in which he was freed.²⁹

Personal rights or disabilities obtained or communicated by the laws of any particular place are of a nature which accompany the person wherever he goes.³⁰

This principle was recognized in the "international" law as between the several slave and free states.³¹ Hence, the use of the word "slave" in the chattel sense appears to be entirely improper.

In this connection it should be noted that, when the Act of May 21, 1866,

²⁶*Ibid.*

²⁷Italics added.

²⁸Rhodes v. Bell, 2 How. 397 (U. S. 1844); Rankin v. Lydia, 2 A. K. Marsh, 467 (Ky. 1820); Thomas v. Generis, 16 La. 483 (1840); Smith v. Smith, 13 La. 441 (1839); Marie Louise v. Marot *et al.*, 9 La. 475 (1836); Josephine v. Poultney, 1 La. Ann. 329 (1846); Spencer v. Negro Dennis, 8 Gill 314, 321 (Md. 1849); Harry *et al.* v. Decker and Hopkins, 1 Miss. 36 (1838); Casey v. Robards, 2 Winst. 38 (N. C. 1864); Brookfield v. Stanton, 51 N. C. 156 (1858); Anderson v. Poindexter, 6 Ohio St. 622 (1856); Commonwealth v. Pleasant, 10 Leigh 697 (Va. 1840); Betty v. Horton, 5 Leigh 615 (Va. 1833); Hunter v. Fulcher, 1 Leigh 172 (Va. 1829); Griffith v. Fanny, Gilmer 143 (Va. 1820).

²⁹See Mr. Justice McLéan dissenting in *Dred Scott v. Sandford*, 19 How. 393, 529 (U. S. 1856); Marie Louise v. Marot *et al.*, 9 La. 475 (1836); Winny v. Whitesides, 1 Mo. 472 (1824).

³⁰See Mr. Justice McLéan dissenting in *Dred Scott v. Sandford*, 19 How. 393, 554 (U. S. 1856).

³¹Winny v. Whitesides, 1 Mo. 472 (1824).

was adopted, Congress had already drafted and submitted for ratification the Fourteenth Amendment, by the terms of which all persons born in the United States were to become citizens. This is persuasive evidence that Congress, having the Fourteenth Amendment in mind and being reasonably certain of its ratification, did not suppose that citizens could ever be made slaves in the chattel sense.

For internal evidence of the intention of Congress, reference is made to the words above discussed which are descriptive of the prohibited action. In the first offense, it is noted that the word "kidnaps," with its somewhat limited meaning, is followed by the words "carries away" which connote any removal. If the word "slave" be given its narrow interpretation, then "carries away" must be held almost synonymous with "kidnaps" since the carrying away would have to be with the intent to take the victim beyond the confines of the United States, legal slavery being impossible in the United States.

In the second offense, that of "enticing," it will be noted that Congress used the following language: "to go on board any vessel, or to any other place [to be made a slave] or sent out of the country" [to be so made]. By thus explicitly providing for the offense of enticing a person to be sent out of the country to be made a slave, Congress has indicated that the preceding alternative phraseology, "to go . . . to any other place," was to be definitive of an offense which was possible within the United States, that is, that a person might be enticed from one place to another within the United States to be held as a slave in the sense of being subjected to involuntary servitude. In this connection, in the *Sabbia* case mentioned above Judge Hough ruled that the word "place" as used in the statute meant nothing more than that the victim be made to change his geographical location.

Federal district judges have on two occasions referred to the kidnapping statute in connection with peonage complaints. In the *Peonage Cases*³² Judge Jones instructed the grand jury as follows:

Any person who falsely accuses another of crime and carries him before a magistrate in order that he may be convicted and put to hard labor, in consequence of which such person is convicted and put to hard labor, the false accuser at the time having the purpose or design to hire such person, or to enable some other person to hire him, is guilty, under Section 5525 of the Revised Statutes of the United States [U. S. Comp. St. 1901, p. 3715], "of carrying away any person, with the intent that such other person be sold into involuntary servitude."

³²123 Fed. 671, 682 (M. D. Ala. 1903).

If two or more persons conspire or combine to do this, they are guilty of a conspiracy to deprive the person, if he is a citizen of the United States, of the free exercise or enjoyment of a right or privilege secured to him by the Constitution of the United States, and are indictable accordingly.

It is obvious that he did not consider the word "slave" to be limited to its pre-Civil War connotation.

In *United States v. McClellan*³³ Judge Speer, overruling a demurrer to a peonage indictment, made the following remarks intimating that the scope of the kidnapping statute was not to be limited to the kidnapping and sale of southern Negroes to foreign slaveholding countries:

We refer to the Act of May 21, 1866 . . . [quoting the citation and setting out the statute].

This legislation was also enacted before the proclamation of the Fourteenth Amendment, and its author was the Honorable Charles Sumner, Senator from Massachusetts. Primarily designed, as appears from the preceding section—5524—and the debate in Congress, to prevent kidnapping and sale of southern Negroes to Cuba and other slaveholding countries, it was so framed as to make penal the act of any person "who kidnaps or carries away any other person, with the intent that such other person be sold into involuntary servitude." This is another instance of the exercise by Congress of the power granted by the Thirteenth Amendment to prevent involuntary servitude by a penal statute acting directly on the individual offender.

It has been suggested that the Peonage Statute, Section 444, Title 18, was unnecessary if the term "slave" is given the broad construction which the Department supports and which would cover peonage conditions. This useless duplication is thought to militate against such broad construction.³⁴

Senator Sumner, who had instituted the action of the Senate resulting in the kidnapping act, was also the moving spirit behind the peonage abolition bill. He stated that he felt that existing law covered the system of peonage, but that because the authorities of New Mexico considered peonage a legal institution, an investigation by the Senate was necessary.³⁵ Inasmuch

³³127 Fed. 971, 977 (S. D. Ga. 1904).

³⁴Peonage is the status or condition whereby one person is compelled by force or threat of force to work for another in payment of a debt, real or pretended. A system of peonage obtained until about 1867 in New Mexico where it had been introduced under the Spanish and Mexican governments. Persons seeking servants advanced money to the prospective servant and the latter became bound both by law and custom to work for the creditor in payment of the debt. Should he attempt to leave such service, the debtor could be returned by the master or by the Alcaides or magistrate. *Jaramillo v. Romero*, 1 N. M. 190 (1857).

³⁵CONG. GLOBE, 39th Cong., 2d Sess. (1866) 239-241.

as the practice of peonage was considered by the Senate to be covered by existing law, a resolution directing an investigation was referred to the Military Affairs Committee and not to the Judiciary Committee. Senator Wilson, reporting the peonage bill from the Military Affairs Committee, referred to peonage as a system of modified slavery and explained that residents of New Mexico considered it to be a legal institution in spite of the Thirteenth Amendment.³⁶ Senator Buckalew advocated the passage of the bill for the reason that the immediate publication of such a statute in New Mexico would be the most effective means of putting an end to peonage.³⁷

It would, therefore, appear that though Congress knew that existing law forbade the practice of peonage, it nevertheless felt it expedient to enact additional legislation aimed at this specialized form of slavery. It is worthy of note that the kidnapping statute, as it was originally enacted, was aimed primarily at Negro slavery and used the phrase "kidnap or carry away any other person, whether Negro, mulatto, or otherwise. . . ." Peonage, on the other hand, was a system of enslavement of white persons, and hence it was not at all unusual that members of Congress thought of the kidnapping statute only in terms of the Negro and his enslavement, and felt that other legislation would be necessary to include enslavement of whites.

Finally, Congress actually used "slave" only in an illustrative and comparative sense. Observe that the language throughout the statute is "held as a slave," "made or held as a slave," and "held, sold, or carried away to be held or sold as a slave." The use of the adverb "as" is the key to the construction of these phrases, and they should be considered as synonymous with "like a slave" or "in virtual slavery."³⁸

It would seem, therefore, that if an individual were held in involuntary servitude, and enough incidents of chattel slavery were imposed upon his condition, Section 443 would apply to persons reducing him to that condition. The phrase "as a slave" would be applicable, for example, if a Negro were compelled to remain as a servant, the master treating the labor of the servant as his rightful property, doing as he wished with the person of the servant by way of physical discipline, pursuing the servant if he escaped, invoking penalties against persons harboring the escaping servant, dealing

³⁶*Id.* at 1571, 1572.

³⁷*Ibid.*

³⁸WEBSTER'S NEW INTERNATIONAL DICTIONARY (2d ed. 1942) defines "as" thus: Adv. 1. To that or the same extent; in equal degree; equally; . . . 2. For instance; by way of example;—used to introduce illustrative phrases, sentences, or citations. . . .

ROGET'S THESAURUS (Rev. Am. Ed. 1941) 7, lists "as" as an adverb indicating "partial relation."

with the acquisitions of the servant as his own, and even, as often happens, mating the servant to whomever he pleased. In short, such a servant is a *de facto* slave and the language of Section 443 is literally suited to make it a crime to cause him to be carried or to come to any place to exert such dominion over him.

What has been said in support of a broad construction of the word "slave" is here applicable in support of the proposition that all the incidents of chattel slavery need not be required, but only those which realistically bring about the subjugation of a victim's person, property, and services.

Finally, Congress itself has in the Criminal Code of 1909 re-enacted the entire chapter on the Slave Trade Laws on the theory that the word "slave" means a person held in a condition of involuntary servitude. The point was made by senators opposing the inclusion of Chapter 10 in the Criminal Code that the kidnapping in that chapter were obsolete. Senator Heyburn, manager of the bill for the revision of the Criminal Code, stated that the chapter had been retained by the Senate Committee on Revision of the Laws because persons were being brought into the United States under contracts whereby their labor in the United States was being compelled. "Whether the designation of 'slave' is applied to them in the contract is immaterial. If the effect of their contract is to enslave these people, then it is proper and right that there should continue always to be upon our statute books such prohibitive legislation as will enable the laws to reach such people."³⁹ Then Senator Hale stated as follows: "Now, I do not think, unless better advised, that the purposes for which these other classes are brought—immoral, undesirable as they are—come under any designation that would make them what has been interpreted as covered by the word 'slave'." Senator Heyburn responded that "If it is a service enforced upon those parties against their will or without their consent or pursuant to a contract to which they are not a party, all of those conditions would be slavery within the provisions of these first five sections."⁴⁰ It is submitted that the view of the Committee on Revision of the Laws must be considered as having prevailed.

C. *Five Year Statute of Limitations*

It is felt that Section 443 is a slave trade law within the terms of Section 584, Title 18, United States Code, creating a five year period of limitations on offenses created by the Slave Trade Laws. Section 584 applies generally

³⁹42 CONG. REC. 1114 (1908).

⁴⁰*Id.* at 1114, 1115. Only the first five sections of the chapter on slave trade laws of the proposed Criminal Code had been read before this debate on the question of the scope of the word "slave" was undertaken.

to all such laws and, like other general statutes of limitations, should apply as well to offenses created after its enactment as to those created before.⁴¹

There is evidence within the kidnapping statute in the use of the terms "involuntary servitude," "slave," and words such as "carries away" and "sold," which signify its application to a "slave trade." The thing which prompted the enactment of the kidnapping statute was a fear of a "new slave traffic" along the southern coast.⁴² The need for such legislation was stated by the spokesman for the Judiciary Committee of the Senate to be a want of any appropriate sanction against the new slave traffic in any existing slave trade laws.⁴³

The placing of the kidnapping statute in the chapter of the Revised Statutes headed Civil Rights and Elective Franchise is entitled to no weight in determining whether the act was a slave trade law, because of the rule that arrangement of acts in a revision or codification of laws does not change the nature of a particular act.⁴⁴ Any doubts that may have arisen by reason of the location of the section in the Revised Statutes must be considered resolved by its express repeal and re-enactment in the Criminal Code, where the kidnapping section was properly placed under the heading Slave Trade Laws and Peonage. Thereafter, it did not stand on any prior enactment, but rather derived its existence from the enacting clause of the Act of March 4, 1909, *i.e.*, the Criminal Code.⁴⁵

III. CONCLUSION

A real test of the present day applicability of the Slave Kidnapping Statute has yet to be made. The foregoing discussion is felt to indicate that it can be enforced against masters who forcibly recruit and compel the services of persons whose economic and social status renders them subject to such abuses. Admittedly what has been said is in great measure an example of jousting with a straw man. The writer believes that even stronger support can be rallied to defend the interpretation advanced above when a real adversary enters the contest.

⁴¹United States v. White, 28 Fed. Cas. 562, No. 16,676 (C. C. D. C. 1836).

⁴²CONG. GLOBE, 39th Cong., 1st Sess. (1866) 146-147, 852.

⁴³*Ibid.*

⁴⁴See REV. STAT. § 5600 (1875) and Buck Stove Co. v. Vickers, 226 U. S. 205, 213, 33 Sup. Ct. 41, 42 (1912); General Inv. Co. v. Lake Shore Ry., 260 U. S. 261, 278, 43 Sup. Ct. 106, 113 (1922).

⁴⁵Crabb v. Zerbst, 99 F. (2d) 562 (C. C. A. 5th, 1938).