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SLAVERY (EAST INDIES)

RETURN to an ORDER of the Honourable The House of Commons,
dated 5 October 1841 ;—for,

A COPY of the LETTER from the GOVERNOR-GENERAL of *India* in Council, in the Legislative Department, dated the 10th of May 1841, No. 8, and of the MINUTE of the GOVERNOR-GENERAL enclosed therein, on the Subject of SLAVERY IN THE EAST INDIES.

Ordered, by The House of Commons, to be Printed, 5 October 1841.

LEGISLATIVE DEPARTMENT.

No. 8, of 1841.

To the Honourable the COURT of DIRECTORS of the *East India Company*.

Honourable Sirs,

WITH our letter in this department, dated the 8th of February (No. 3 of 1841), we transmitted two printed copies of the Reports and Appendix furnished by the Indian Law Commissioners on the question of slavery in India.

2. As your Honourable Court will naturally be anxious to obtain early information of the opinions entertained by the members of your Government on the actual state of the law, and on the recommendation of the Law Commissioners regarding this important subject, we have the honour to forward herewith copy of a Minute recorded by the Right honourable the Governor-general, dated the 6th inst. Your Honourable Court will, however, be pleased to consider the subject as still under discussion by the Government, and the sentiments of the remaining members of the Council will be communicated with the least possible delay.

We have, &c.

(signed) *Auckland,*
J. Nicolls,
W. W. Bird,
W. Casement,
T. H. Prinsep,
A. Amos.

Fort William, 10 May 1841.

Legislative Department.
10 May 1841.

Letter from
Governor-general
in Council,
10 May 1841.

MINUTE by the Right Honourable the GOVERNOR-GENERAL,
dated 6 May 1841.

SLAVERY IN INDIA.

THIS subject, so fully treated in the present Report of the Law Commissioners, is undoubtedly a most difficult and extensive one. But the evidence and information which they have collected may, I trust, enable us to form some clear conclusions, such as shall suffice to determine the immediate practical course of the Government.

I will not enter into much detail in pointing out the generally mild character of what is termed slavery in this country, or in marking how low the agrestic servitude, which exists in several of its districts, is connected chiefly with distinctions of caste, and will be upheld, notwithstanding any measures of the public authorities,

Minute by the
Governor-general,
6 May 1841.

Malabar, Jamul,
Districts of Madras,
Behar Province,

2 LETTER FROM GOVERNOR-GENERAL IN COUNCIL

Minute by the
Governor-general,
6 May 1841.

ties, by the force which natural habit and opinion have imparted to those distinctions. The facts relating to the various descriptions and modifications of bondage as prevailing in different provinces are set forth by the Commissioners with distinctness and precision. On the effect of caste in maintaining agricultural servitude, even under circumstances in many respects favourable to freedom, instructive particulars will be found in the evidence respecting the districts of Coorg and Malabar. In Coorg many of the slaves emancipated by Government on its own estates have, from various causes, been led to destroy their certificates of freedom, and to place themselves again in servitude under their former masters. In Malabar, all the influence of the English proprietor of an estate cannot obtain for any of his labourers a greater degree of respect or privilege than the strict local usages of caste allow them; they remain, whatever the liberty of action which he accords to them, as degraded as before, for they cannot raise themselves above the low class to which they belong, and must mix only on the terms to which they have been accustomed with their caste brethren the Churmur slaves of the province.

It is enough to say that there is obviously little in common between the voluntary subservience to their employers of particular individuals, or races, in India, and the former oppressive and compulsory slavery of our West Indian settlements.

We must deeply pity and lament whatever there may be of degradation, poverty, and helplessness among the lower classes of our Indian subjects, and their undue subjection, under any form or designation, to those of better birth, to the powerful and the wealthy. It behoves us to watch their condition with a vigilant eye, and to do what may be in the power of the Government for its amelioration. But we ought not, through a misuse of names, to form an erroneous idea of things, or seek violently to disturb relations to which, in many cases, all who share in them are attached, regarding them, as may so often be observed in respect both to those who render and to those who receive service, as a source of mutual advantage, or even of honour and distinction.

In effect, that which constitutes the essence of slavery may be said to have been already abolished nearly everywhere throughout India. I mean by that essence, an entire subjection, sanctioned and upheld by the law, of an individual and his family to the will of a master, and the absolute claim of property, with the right also, and the means of enforcing that claim, of one man over another. It will be found, however, that almost, if not at this time quite universally, no compulsion by a master over his dependent is admitted by our criminal courts; that any force used by him towards his so-called slave is punished, just as it would be if used towards a free man; and that, nearly as generally, the magistrates do not interfere for the restoration of a runaway slave to his employer.

Under such an administration of the law, what but the tie of general good treatment, and a supposed self-interest, will prevent a slave from leaving his master and living in freedom?

I may cite a few statements, some from districts in which the name of slavery is yet most prevalent, as showing how important is this practice of the magistrates.

P. 335 of Appendix.

Captain Jenkins says, of Assam, "I consider that the Government, by withholding a regulation making it legal to have recourse to the criminal courts for the apprehension and restitution of slaves, have virtually abolished slavery; the means of escape from their owners being so easy, and the difficulty and expense of recovery through the civil court being so great, that no slaves above the age of childhood need be detained in bondage except with their own free will."

Pp. 199 and 200
of Report.

The principal collector and magistrate of Tanjore to the like effect:—"So long as a slave chooses to remain with his master, he does so, and leaves him for a better at pleasure. Nothing but a civil suit, which would cost more than 10 years of his labour, can recover him, and being recovered, there is nothing to prevent his walking about his own business as soon as he has left the court which has pronounced him to be the property of another. The magistrates, it seems, decline to assist the master to recover a runaway slave, and leave him to his own resources, which the slave defies. Under these circumstances, mutual interest appears to be really the bond between them."

P. 222 of Report.

The magistrate of Malabar, of the practice of his court in 1836, says, that "the relation of master and slave has never been recognized as justifying acts which would otherwise be punishable, or as constituting a ground for mitigation

of

of the punishment;" and the criminal judge adds, that "no distinction is recognized in the criminal courts between a free man and a slave," which statement is repeated by the Court of Circuit.

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P. 269.

And of the usage in the Bombay Presidency, it is observed in the Report, "An examination of the returns in the Appendix will show how rare, indeed almost unheard of, is a suit in the civil courts against a slave, or a third party, for the recovery of services, property, or damage by abduction or desertion. Yet almost all the reporting functionaries agree that a slave-owner has a good cause of action in the cases supposed, and possesses rights which cannot be questioned in the abstract, though so difficult of enforcement as not to be worth the attempt in these times."

The criminal law on the subject is, I apprehend, correctly stated in a futwa, given 10th February 1841, by the Mahomedan law officer of the Madras Foujdaree Adawlut, in the case of a female Dher slave, charged with having eloped from the prosecutor, her master, and not coming again to work at his house. It is to the effect, that "the prisoner, above referred to, is not punishable under the Mahomedan law for her elopement, because the legislator has not propounded any punishment to the slaves of the country in the same manner as he denounced Tazeer and Tadeeb to a true slave. She who may have been acquired by way of booty in a Mussulman war, is called a true slave, who can be sold and purchased. If such slave shall go away from the house of her master, without his permission, she is liable to punishment in proportion to her guilt."

"As regards the slaves of this country (whether they are of Dher or Paria caste, or of any other caste), the people receive them from their parents, either during famine or at other times. Such slaves are not, under the Mahomedan law, fit to be sold and purchased. If they go away from the houses of their masters, without their permission, they are at liberty to live wherever they please, and they are not liable to any trial under the law in question." Upon this futwa it is declared by the judges of the Foujdarry Adawlut, in a letter addressed by them to the Government, 22d March 1841, that this opinion of the Mahomedan law officers "applies to males as well as females, and to the prædial slaves in Malabar, Tanjore, and elsewhere." It is pointed out in a separate minute by Mr. Campbell, one of the judges, that the Hindoo civil law is, in respect to slavery, remarkably contrasted to the Mahomedan or criminal law, and can derive no support from it.

The Mahomedan criminal law being that which, with specified limitations and exceptions, is administered by our courts, there is no reason why any benefit which it gives to persons in a condition of servitude, not of the strict kind that alone it recognizes and sanctions, should be in any degree denied or abridged. This exemption from criminal or magisterial process, which alone is summary and effective, leads directly and certainly, as it appears to me, to the distinction of all that is legally coercive in the maintenance of the status of slavery; and we need therefore the less dwell on what might be the decrees of our civil courts, on questions concerning that status being brought before them.

I believe, however, that, for the reasons stated in the futwa above cited, no Mahomedan master could prove a legal title to the possession of a slave at this day, the only legal slaves under the Mahomedan law being captives taken in battle, or their heirs. This doctrine has been long ago asserted by the highest authority, and seems to have been affirmed by the Calcutta Sudder Court, in the case reported in pages 249 to 251 of the Appendix to the Report before us. And as respects the Hindoo law, which admits of the acquisition of slaves in a number of ways, the cases reported in the following pages of the Appendix will show that, whenever as yet cases have been litigated before the Sudder Court, grounds have existed for rejecting the claim of servitude against the parties sued as slaves.

I would only at present observe, on the point of civil jurisdiction, that my attention has been drawn to the statement of the judge of Sylhet, that should a person decreed by the civil court of that district to be a slave, refuse to serve or to comply with the award, he is imprisoned so long as the master desires to pay the subsistence money, in the same manner as other prisoners are confined in the civil gaol under a decree in a regular suit. And I have caused a reference to be made from the Government of Bengal to the Sudder Court, in order that it may be ascertained whether such is a proper and justifiable manner of executing a decree, of which the purport is only to declare that an individual belongs to the servile condition.

P. 136 of Appendix.

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It is true that the question of civil law is not to be regarded as a mere question of curiosity and legal nicety, and as of no serious practical importance. It is, no doubt, easy to escape out of the reach of a civil process, yet the possibility that such a process may issue is not without objection, and might occasionally lead to considerable vexation and inconvenience. But I cannot view this condition of the civil law as a pressing and general evil, and I apprehend that it certainly does not admit of any easy and immediate remedy. Such a remedy may form part of a more general measure of jurisprudence. Its principle is, I am informed, involved in intricate questions of law, and time and caution seem to me obviously required for its due investigation and discussion. I would ask, too, for more time for legislation upon the manner in which the state of bondsmen, or articted labourers, is to be regulated; it unhappily borders nearly upon slavery in some parts of the country, and yet the mode in which its evils are to be limited and corrected would open to us a wide field of controversy. We may, perhaps, be satisfied for the present if these men, though subject to the pecuniary penalties of their bonds, are protected, as far as the law can protect them, from all personal infliction or violent coercion on the part of their masters.

Even on the graver branch of this great subject, namely, the operation of our criminal and police laws, I have been greatly inclined to the opinion that legislation for the more clear announcement of the protective character of those laws is not necessary, and that the mere lapse of time is, in the best possible manner, because surely and quietly, working the complete practical abolition of slavery. But many are not of this opinion; and it may, in truth, be not otherwise than just and useful, that the principle, in this respect, of the English magistrate and of the Mahomedan futwa should have strength and publicity given to them by an express enactment of the British Indian Legislature.

I am prepared upon these grounds, and on the evidence and opinions we have now before us, to pass a law declaring that any act which would be an offence if done to a free man, shall be equally an offence if done to a slave, or as I would rather say, to any one in any condition of dependence on a master, and I would add to such an Act, that (to the effect of the proposal of two of the Law Commissioners) "no right claimed as arising out of an alleged state of slavery shall be enforced by a magistrate." Such an enactment would be entirely in consonance with the dictum of the Mahomedan lawyers, which I have above quoted, as applied to the actual state of those classed as slaves in India. I may briefly say, on the contrary opinion of others of the Commissioners, as respects the concession of an authority of moderate correction, that I am satisfied, that with our very imperfect police and remotely scattered magistrates, it would not be safe to commit any power of punishment to masters, and that, in fact, we can have no security against their occasional bad character or excited passions, other than that of withholding from them all power of personal coercion whatever. Compensation for such a formal withdrawal of authority seems to me out of the question, both because compensation could not be given on a ground so little capable of exact estimation, and because the authority, whenever it is exercised, rests upon no valid ground, and has actually ceased to exist in by far the greater number of our districts. I would not, independently of any reference to the Mahomedan law, allow our magistrates to enforce any rights arising out of slavery, because the state of slavery is one not to be presumed against any person summarily, and would require, were it to be brought for inquiry before a court, the most grave and discriminating consideration.

To the extent here proposed we might, I think, at once pass a law without reference to England, for the Honourable Court have, more than two years ago, urged it on us to take that step. But so much more legislation has been proposed in the reports of the Commissioners, that it may be best to refer all the papers for further directions from the home authorities.

I confess that it is my decided impression that the adoption of all the minute and detailed provisions recommended by the Law Commissioners would much rather impede than advance the object we all have in view. That object is the earliest possible extinction, first practically, and in the end, even avowedly, of slavery, in so far as such results can be attained by acts of the Government. But if, as is the intention of one of the recommendations, we connect the public officers with the registry of the sales of persons as slaves, how shall we be able at any future time to treat those transactions as otherwise than perfectly valid, or to deal with claims of consideration and compensation which may be preferred by purchasers?

chasers? It is undoubtedly most desirable to put an immediate and entire stop to such practices, wherever they may yet partially prevail, as those of the sale of slaves without their own consent, of their sale under any circumstances separately from their families, or of the sale of agrestic slaves separately from the land to which they are attached.

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But in prohibiting every kind of coercion by the master over the person, and all summary interference of authority for the return of a person claimed as a slave to his assuming owner, we shall in truth do away with all such practices, for no one will be found to purchase that, of the continued possession of which he can have no assurance.

I would for the present be content with legislation to the effect which I have above stated. Compulsory contracts or transfers, with a view to prostitution, would, I apprehend, be void and punishable under the existing law. We shall have a better guarantee for good treatment, and easy emancipation at the wish of the slave, in the protection from any personal restraint which the law to which I have assented will confer upon him, than in express rules of the kind proposed by the Commissioners. In a word, I would legislate as little as possible now, and that only so as directly to advance the great end of practical freedom, while I would look forward with anxiety to a period when the Government may be enabled to fulfil the design of the British Legislature by a declaration of the entire extinction of slavery as a state in any manner recognized by our laws.

I would, however, be disposed by a separate law (guarding the national custom of adoption) wholly to prohibit the sales of children, excepting possibly (after the example of the Bombay regulation of 1827) in seasons of distress, such as follow upon inundation or famine, and under checks which might be then imposed by the executive Government. Frightful abuses grow out of such sales, and if a stern necessity should seem for any time to require their sufferance, it would, I think, be very necessary to place them under the supervision of the public authorities.

I consider the recommendations of the Commissioners, for the better enforcement of the objects of the statute 5 Geo. 4, c. 113, as very proper and necessary.

It might perhaps be well, as a part of our measures for the amelioration of the condition of servitude in India, to obtain periodical reports of the state of slaves or bondmen, and of legal transactions affecting them, in the districts in which such classes are most numerous. And I would particularly ask the Government of Madras to consider whether, by any addition to the magisterial force or to the general strength of the police in Malabar, a proper degree of protection, which may now possibly be in some quarters wanting, would be given to the servile labourers and the scattered agricultural bondsmen of that province.

6 May 1841.

(signed) *Auckland.*

India Board, }
5 October 1841. }

W. B. BARING.

SLAVERY (EAST INDIES).

A COPY of the LETTER from the GOVERNOR-GENERAL of *India* in Council, in the Legislative Department, dated the 10th of May 1841, No. 8, and of the MINUTE of the Governor-General enclosed therein, on the subject of SLAVERY IN THE EAST INDIES.

(*Mr. W. B. Baring.*)

Ordered, by The House of Commons, to be Printed,
5 October 1841.

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