

# Modernising the Slave Acts 1824, 1843 and 1873

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## 1. Introduction

One would have thought that the institution of slavery would be obsolete in the 21<sup>st</sup> century. However, it is very much alive - in the form of the traffic of human beings and their being held in captive conditions. This, even in such an advanced democracy as the United Kingdom ('UK'). Although modern legislation has been enacted to deal with slavery and forced labour in the UK,<sup>1</sup> there is older legislation which remains extant. The Slave Acts 1824, 1843 and 1873 - along with other legislation now repealed - were designed to prohibit the slave trade in which large numbers of African were trans-shipped, in specially designed ships (slave ships), to Europe and to the New World - including what is now the Caribbean and Latin America.

The purpose of this article is to review the Slave Trade Acts 1824, 1843 and 1873 and to propose their modernisation. From the outset, it may be noted that there is little caselaw in respect of these Acts. Further, legal texts - both modern<sup>2</sup> and older<sup>3</sup> ones - make scant reference to them. Finally, although there are a number of general works on the slave trade, such as it relates to the UK and colonies,<sup>4</sup> there are few legal monographs touching on the subject.<sup>5</sup>

To understand the purport of the Slave Acts 1824, 1843 and 1873, which are construed as one, it is useful to briefly discuss the history of the slave trade *vis-à-vis* the UK and the steps taken towards its abolition. Much of

<sup>1</sup> Coroners and Justice Act 2009, s 71. See 11. See also Asylum and Immigration (Treatment of Claimants *etc*) Act 2004, ss 4 & 12.

<sup>2</sup> See, for example: (a) C McAlhone & R Huxley-Binns, *Criminal Law. The Fundamentals* (3rd ed, 2013); (b) MJ Allen, *Textbook on Criminal Law* (12<sup>th</sup> ed, 2013); (c) A Ashworth & J Horder, *Principles of Criminal Law* (7<sup>th</sup> ed, 2013); (d) Blackstone, *Criminal Practice* (23<sup>rd</sup> ed, 2013); (e) R Card *et al*, *Criminal Law* (20<sup>th</sup> ed, 2012); (f) CMV Clarkson & HM Keating, *Criminal Law, Text and Materials* (7<sup>th</sup> ed, 2010); (g) C Elliott & F Quinn, *Criminal Law* (8<sup>th</sup> ed, 2010); (h) R Heaton, *Criminal Law* (2<sup>nd</sup> ed, 2006); (i) J Herring, *Criminal Law* (8<sup>th</sup> ed, 2013); (j) M Jefferson, *Criminal Law* (9<sup>th</sup> ed, 2009); (k) Lacey, Wells & Quick, *Reconstructing Criminal Law. Text and Materials* (4<sup>th</sup> ed, 2010); (l) J Loveless, *Complete Criminal Law. Text. Cases and Materials* (3<sup>rd</sup> ed, 2012); (m) N Padfield, *Criminal Law* (7<sup>th</sup> ed, 2010); (n) A Reed & B Fitzpatrick, *Criminal Law* (4<sup>th</sup> ed, 2009); (o) AP Simester, Simester & Sullivan's *Criminal Law: Theory and Doctrine* (5<sup>th</sup> ed, 2013); (p) D Ormerod, Smith & Hogan's *Criminal Law* (13<sup>th</sup> ed, 2011); (q) DJ Baker, *Glanville Williams Textbook of Criminal Law* (3<sup>rd</sup> ed, 2012); (r) MJ Allen & S Cooper, *Elliott & Woods' Cases and Materials on Criminal Law* (11<sup>th</sup> ed, 2013); (s) M Molan, *Cases and Materials on Criminal Law* (4<sup>th</sup> ed, 2008); (t) J Martin & T Storey, *Unlocking Criminal Law* (3<sup>rd</sup> ed, 2010); (u) P Hungerford-Welch & A Taylor, *Sourcebook on Criminal Law* (1997); (v) M Molan *et al*, Bloy & Parry's *Principles of Criminal Law* (4<sup>th</sup> ed, 2000); (w) W Wilson, *Criminal Law* (4<sup>th</sup> ed, 2011).

<sup>3</sup> JF Archbold, *A Summary of the law relative to Pleading and Evidence in Criminal Cases* (London, 1822) and W Archbold, *Criminal Pleading, Evidence and Practice* (Sweet & Maxwell, London, 2014) ('Archbold CP'). For texts pre-1955, see Sweet & Maxwell, *A Legal Bibliography of the British Commonwealth of Nations* (Sweet & Maxwell, 1955). These include: JW Cecil Turner, *Kenny's Outlines of Criminal Law* (19<sup>th</sup> ed, 1966); R Cross & PA Jones, *An Introduction to Criminal Law* (2<sup>nd</sup> ed, 1949); SF Harris, *Principles of the Criminal Law* (1<sup>st</sup> ed, 1877) and Russell on *Crime and Misdemeanours* (1<sup>st</sup> ed 1819, last ed, 12<sup>th</sup> ed, 1964 (cited)). Blackstone's *Criminal Practice* 2014 ('Blackstone CP') does not deal with the Slave Acts.

<sup>4</sup> See generally, TF Buxton, *The African Slave Trade* (John Murray, 1839); J Stephen, *The Slavery of the British West India colonies delineated* (J Butterworth, 1824); JH Howard, *The Laws of the British Colonies in the West Indies and other parts of America concerning Real and Personal Property and Manumission of Slaves* (J Butterworth, 1827).

<sup>5</sup> Sweet & Maxwell, n 3, vol 2 mentions J Henry, *Points in Manumission and Cases of Contested Freedom* (Reed, 1817) and H Wheaton, *Enquiry into the Validity of the British Claim to a right of Visitation and Search of American vessels suspected to be engaged in the Slave Trade* (Lee & Blanchard, 1842).

this was the result of the untiring efforts of individuals such as Granville Sharp (1735-1813),<sup>6</sup> Thomas Clarkson (1760-1846)<sup>7</sup> and William Wilberforce (1759-1833).<sup>8</sup> Their efforts culminated in the principal Act of abolition, that of 1807.

## 2. UK Slave Trade – Some History

A useful work on slavery - as well as the steps towards abolition - is Hugh Thomas, *The Slave Trade*. His work considers the history of the Atlantic slave trade 1440-1870, as well as the origins of slavery in general.<sup>9</sup>

- Slavery goes way back into human history, long before Roman times.<sup>10</sup> However, in the more modern era, the trade in African slaves to Europe appears to have commenced with the Portuguese in the 1440's. The Spaniards then engaged in similar traffic - followed by many other Europeans, including the British;
- Slavery existed in Anglo-Saxon times in Britain and it continued under the Anglo-Normans. As well as slaves, there also existed in England a landless class called *villeins*. Domestic slavery in England probably died out by 1200<sup>11</sup> while the last case of villeinage is said to have been in 1617;<sup>12</sup>

As to the British trade in African slaves:

- This seems to have commenced in 1562 when Captain John Hawkins (1532-95) shipped slaves from Guinea.<sup>13</sup> Elizabeth I (1558-1603) sanctioned Hawkins' first expedition and his third expedition set off with 6 ships, two of which belonged to the Queen;<sup>14</sup>
- James I (1603-25) granted a monopoly over British African trade in 1618. The grant was made to various court favourites who formed a '*Company of Adventurers to Guinea and Benin*' (Gynny and Bynny).<sup>15</sup> This was the first incorporated company dealing with Africa;<sup>16</sup>
- In 1632, Charles I (1625-49) granted a 31 year licence to various British traders and prominent men of the court to transport slaves from Guinea.<sup>17</sup> In 1651, a new Guinea company was founded. However, it did not prosper;<sup>18</sup>
- In 1660, the '*Royal Adventurers into Africa*' was granted a charter by Charles II (1660-85); it was given a monopoly of East African trade for 1000 years.<sup>19</sup> A new charter was issued in 1663. However, in 1672, the company was wound up and the '*Royal African Company*' (RAC) was founded. The latter was granted a monopoly in African trade until 1668;<sup>20</sup>

<sup>6</sup> See Oxford Dictionary of National Biography ('**ODNB**'). Sharp wrote a number of works advocating the abolition of slavery, including G Sharp, *A Representation of the Injustice and Dangerous Tendency of Tolerating Slavery* (Benjamin White, 1769). See also Sweet & Maxwell, n 3, vol 1, p 158. It was Sharp, an Anglican philanthropist, who initiated *Somerset's Case* (1772), see 2.

<sup>7</sup> See ODNB, n 6. Among his many works is T Clarkson, *History of the Rise, Progress and Accomplishment of the Abolition of the African Slave Trade by the British Parliament* (JW Parker, 1839).

<sup>8</sup> Ibid. See also W Hague, *William Wilberforce: The Life of the Great Anti-Slave Trade Campaigner* (Harper Press, 2007).

<sup>9</sup> H Thomas, *The Slave Trade* (Phoenix, Paperback, 2006).

<sup>10</sup> Thomas, n 9, ch 2.

<sup>11</sup> Ibid, p 36 who also states "'Domesday Book' records only 25,000 *servi*, or about a tenth of the labour force (many were ploughmen, living completely at the lord's disposal, and in his house)." Also 'But after the Norman Conquest [1066] the new lords freed many of the slaves whom they found on the estates, which they seized, and these then joined the ranks of the lower peasantry.'

<sup>12</sup> *Pigg v Caley* (1617) Noy 27 (74 ER 997). See generally, IS Leadem, *The Last Days of Bondage in England*, Law Quarterly Review (1893), vol 9, p 348 *et seq.* and E Washburn, *Extinction of Villenage and Slavery in England, with Somerset's Case*, read before the Massachusetts Historical Society (Boston, 1864).

<sup>13</sup> Thomas, n 9, p 155. John Hawkin's father - William Hawkins - voyaged to Guinea in 1532 and 1553. However, his - and other expeditions to Africa by English explorers prior to 1562 - seem to have been looking for gold rather than trading in slaves. Ibid, pp 154-5. For John Hawkins, who later became Treasurer of the Navy, see ODNB, n 6.

<sup>14</sup> Ibid, pp 156-7. See generally Hague, n 8, ch 6. For a rather florid account of the Hawkins' and the slave trade, see JA Froude, *English Seamen in the Sixteenth Century* (Longmans, 1901).

<sup>15</sup> Ibid, p 174.

<sup>16</sup> This company soon failed. Ibid, p 175.

<sup>17</sup> Ibid, p 176.

<sup>18</sup> Ibid, p 197.

<sup>19</sup> Ibid, p 198.

<sup>20</sup> Ibid, p 201. See also Hague, n 8, pp 117-8.

- The RAC engaged, to a major extent, in African slave trading - trading some 16,000 slaves between 1690-1700.<sup>21</sup> When it lost its monopoly in 1698, the trade was opened to independent traders. The town of Bristol became an important UK base for slave trading;<sup>22</sup>
- After the treaty of Utrecht in 1713,<sup>23</sup> the 'South Sea Company' was formed. It engaged, to a major extent, in the African slave trade, even after its stock market 'bubble' burst in 1720;<sup>24</sup>
- By the 1730's, London had overtaken Bristol as the main slave port <sup>25</sup> and, between 1740-1750, Britain dominated the slave trade across the Atlantic.<sup>26</sup> Indeed, it became the major slave trading nation.

*In conclusion, by the eighteenth century, Britain was heavily engaged in the slave trade.*

### **3. Abolition of Slavery in England**

The opposition to slavery - and slave trading - began in England mid 17<sup>th</sup> century. <sup>27</sup> In the early 18<sup>th</sup> century more strident voices in Britain were raised against the slave trade. In particular, by religious persons (often Quakers), by some philosophers and by Dr Samuel Johnson (1709-84). <sup>28</sup> As to lawyers, considerable influence should be accredited to Blackstone who, in the first volume of his *Commentaries on the Laws of England* (1765), stated:

[the] spirit of liberty is so deeply implanted in our constitution, and rooted even in our very soil, that a slave or a negro, the moment he lands in England, falls under the protection of the laws, and with regard to all natural rights becomes *eo instanti* a freeman.<sup>29</sup>

*Somerset's Case* (1772) <sup>30</sup> confirmed, it is said, that there could be no slaves in England - albeit Lord Mansfield probably intended to restrict his decision to making it unlawful for slaves in England being taken abroad against their will. The last public sale of a black slave is said to have been in Liverpool in 1779.<sup>31</sup> In respect of legislative developments, Stephen (writing in 1883), noted that:

The crime of slave trading has, in a legal point of view, hardly any history, but the suppression of the slave trade was a memorable transaction, and the laws by which it was branded a crime of the greatest enormity form an essential part of that history. <sup>32</sup>

Chronological developments leading to abolition of the slave trade in Great Britain, include the following events:

- In 1780, Pennsylvania abolished slavery and - in America - by 1786, slaves could only be introduced into Georgia.<sup>33</sup> In 1784, the first petition to abolish the slave trade was made to the House of Commons

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<sup>21</sup> Ibid, p 204.

<sup>22</sup> Ibid, p 205. Thomas notes there were over 2,000 slave voyages from Bristol from 1698 - 1807.

<sup>23</sup> Pursuant to this treaty, Britain acquired Gibraltar and Minorca as well as Newfoundland and Nova Scotia. See Thomas, n 9, p 235.

<sup>24</sup> Thomas, n 9, p 241.

<sup>25</sup> Ibid, p 245.

<sup>26</sup> Ibid, p 264.

<sup>27</sup> Ibid. pp 471-4.

<sup>28</sup> Ibid, ch 25. The methodist, John Wesley (1703-91) opposed the slave trade. So did Dr William Paley (1743-1805) in his work on *Moral Philosophy*, published in 1785. See also DM Walker, *The Oxford Companion to Law* (Oxford, 1980) (definition of slavery).

<sup>29</sup> W Blackstone, *Commentaries on the Laws of England* (Oxford, Clarendon Press, 1<sup>st</sup> ed, 1765-9, University of Chicago Press reprint, 1979), vol 1, p 123. See also pp 411-3. At p 412 'the law of England abhors, and will not endure the existence of, slavery within this nation...now it is laid down, that a slave or negro, the instant he lands in England, becomes a freeman; that is, the law will protect him in the enjoyment of his person, his liberty and his property.' See also Thomas, n 9, p 469.

<sup>30</sup> Also called *Somerset v Stewart* (1772) Lofft 1 (98 ER 499) and 20 ST 1. See also FO Shyllon, *Black Slaves in Britain* (OUP, 1974), F Hargrave, *An Argument in the Case of James Sommersett, A Negro* (printed for the author and sold by W Otridge and G Kearsley, 1775) and J Oldham, *The Mansfield Manuscripts* (University of North Carolina Press, vol 2, ch 21 (he notes that Blackstone's statement on slaves, see n 29, changed somewhat in his 2<sup>nd</sup> edition, see p 1233). See also J Campbell, *The Lives of the Chief Justices of England* (John Murray, 1849), vol 2, pp 13-9 (cases of Holt CJ) and pp 481-9 (*Somerset's Case*).

<sup>31</sup> Thomas, n 9, p 483.

<sup>32</sup> JF Stephen, *History of the Criminal Law of England* (Macmillan, 1883), vol 3, p 255.

<sup>33</sup> Thomas, n 9, p 480.

(by the town of Bridgwater)<sup>34</sup> and, in 1787, the '*Committee of the Society for the purpose of effecting the Abolition of the Slave Trade was formed*','<sup>35</sup>

- In 1788, a committee of the Privy Council was set up to investigate the slave trade<sup>36</sup> and, from 1789, there commenced major debates in the House of Commons as to the trade. This was stimulated in large part by the philanthropist and abolitionist, Samuel Wilberforce, who sought to pass a bill in 1792 abolishing the trade;<sup>37</sup>
- In 1806, it was enacted that - after August 1807 - no new ships should be employed in the slave trade;<sup>38</sup>
- The Slave Trade Abolition Act 1807 received royal assent on 25 March 1807. It abolished the slave trade as from 1 May 1807. The Act was passed in the House of Commons by 283 votes to 16.<sup>39</sup> In 1811, a new Act made slaving a felony, punishable by transportation for 14 years.<sup>40</sup> Thereafter, several administrative Acts were passed<sup>41</sup> until slave legislation was consolidated in the Slave Act 1824 (see below);
- By the Slavery Abolition Act 1833 (repealed) slavery was abolished throughout the colonies as from 1 August 1834.

*In conclusion, by 1807, the slave trade had been abolished in England. Thereafter, legislation was directed at encouraging (forcing) other nations such as the Portuguese, Spanish and French to accept the same, as well as abolishing it in the British colonies.*

#### **4. Slave Act 1824 - Introduction**

The Slave Act 1824 (the '**1824 Act**')<sup>42</sup> consolidated prior Acts relating to the abolition of the slave trade.<sup>43</sup> The eminent jurist and judge, Sir James Fitzjames Stephen (writing in 1883) noted of this Act, which was drafted by his father:<sup>44</sup>

This is a most elaborate and comprehensive act. It enumerates every sort of act or contract which can in any way be regarded as constituting or as being auxiliary to slave trading. It first declares all such acts and contracts to be illegal, and then in a series of clauses imposes ruinous money penalties in the way of fine or forfeiture on all persons who are concerned in any way of them in any capacity, and on all their '*procurers, counsellors, aiders, and abettors*'. It then proceeds to declare in equally comprehensive

<sup>34</sup> Ibid, p 490

<sup>35</sup> Noted by Stephen, n 32, vol 3, p 255. Granville Sharp was its first chairman. See also L Radzinowicz, *A History of English Criminal Law* (Stevens & Sons, 1948), vol 1, p 350. See also Hague, n 8, p 148.

<sup>36</sup> Thomas, n 9, p 495.

<sup>37</sup> Ibid, pp 512, 526.

<sup>38</sup> 46 Geo 3, sess 2, c 52. Stephen, n 32, vol 3, p 255 'The act forbids in an elaborate way, and subject to some temporary exemptions, all trading in slaves either between Africa and the West Indies, or between one West Indian colony and another, or between colonies and foreign countries, and penalty being forfeiture of the ship, and of £ 50 a head for the slaves on board. All slave trading contracts, and the insurance of slave ships were forbidden under heavy money penalties.'

<sup>39</sup> 47 Geo 3 sess 1, c 36. Stephen, n 32, vol 3, p 255 '[This Act] greatly increased the severity of the act of 1806, including a larger number of cases and inflicting much heavier penalties in respect of them. It declared that from May 1, 1807, 'the African slave trade...shall be...abolished, prohibited, and declared to be unlawful.' Thomas, n 9, p 555 notes that the duke of Clarence (the future George IV, 1820-30) complained that 'Lord Grenville [Prime Minister, 1806-7], at one blow, destroys...the maritime strength of the nation.' See also Hague, n 8, pp 353-8.

<sup>40</sup> 51 Geo 3 c 23. Stephen, n 32, vol 3, p 256 'In 1811, a still more severe act was passed...which made slave trading felony, punishable with fourteen years transportation, and the serving on board a slave ship or insuring the vessel a misdemeanour punishable with imprisonment up to two years. See also Thomas, n 9, p 573 and WO Russell, *A Treatise on Crimes and Misdemeanors* (1<sup>st</sup> ed, 1819), ch 19.

<sup>41</sup> Stephen, n 32, vol 3, p 256 cites them and notes 'several administrative provisions, and acts of parliament intended to carry into effect treaties for the suppression of the slave trade made with Spain, Portugal, and the Netherlands.'

<sup>42</sup> 5 Geo 4 c 113. '*An Act to amend and consolidate the laws relating to the abolition of the Slave Trade.*' See also Halsbury, *Laws of England* (4<sup>th</sup> ed), vol 11(2), para 824.

<sup>43</sup> Noted by Harris, n 3, (17<sup>th</sup> ed, 1943), p 327. Thomas, n 9, p 596 'In March 1824 Britain passed a bill declaring that any British subject found guilty of trading slaves should be deemed guilty of 'felony, piracy and robbery, and should suffer death without benefit of clergy and loss of lands, goods and chattels as pirates, felons and robbers upon the seas ought to suffer.' Strong language, it might be said, for a commerce which until eighteen years before had been carried on by the best men in British commercial life and which, for over 200 years, had been practised by royal dukes, peers, and lord mayors.'

<sup>44</sup> Stephen, n 32, vol 3, p 256 '[this Act] was drawn by my father, and was dictated by him in one day and at one sitting. It consists of fifty-two sections, and fills twenty-three closely-printed octavo pages. Many of the sections are most elaborate.'

language that every person guilty of slave trading at sea ‘*shall be deemed and adjudged guilty of piracy, felony, and robbery, and being convicted thereof, shall suffer death without benefit of clergy, and loss of lands, goods, and chattels, as pirates, felons, and robbers upon the sea ought to suffer.*’

The amplitude, energy, and indignation of the words are very characteristic of their author. Many other acts of slave trading are declared to be felony, and punished by fourteen years’ transportation; and serving on slave ships is made a misdemeanour, subjecting the offender to two years’ imprisonment. Capital punishment for this offence was taken away in 1837...but in other respects the law has remained unaltered since 1824.<sup>45</sup> (*wording divided for ease of reference*).

The 1824 Act was amended by the Slave Acts 1843 (the ‘**1843 Act**’)<sup>46</sup> and 1873 (the ‘**1873 Act**’),<sup>47</sup> such that they should be construed together.<sup>48</sup> Many of the sections of these Acts have been repealed and only the rump is left, principally in the 1824 Act. Prior to considering these Acts, the following may be noted.

#### **(a) 1824 Act applies to British Subjects Only**

The 1843 Act, s 1, provides that the 1824 Act is to be deemed to:

extend and apply to *British subjects* wheresoever residing or being, and whether within the dominions of the British crown or of any foreign country. (*italics supplied*)

Also that:

all the several matters and things prohibited by the [1824 Act]... when committed by *British subjects*, whether within the dominions of the British crown or in any foreign country . . . shall be deemed and taken to be offences committed against the said several Acts respectively, and shall be dealt with and punished accordingly: Provided nevertheless, that nothing herein contained shall repeal or alter any of the provisions of the said Act. (*italics supplied*)

Thus, the Acts *only apply to British subjects*. However, it applies to British subjects wherever they are - whether in the UK, and British Overseas Territory (‘**BOT**’)<sup>49</sup> or a foreign country. That the 1824 Act covers acts in a foreign country was confirmed in *R v Zulueta* (1843)<sup>50</sup> - albeit the jury found the defendant not guilty.<sup>51</sup> So too, in *Santos v Illidge* (1860) although the court was more divided on the issue.<sup>52</sup> Today, it is asserted, the application of this Act only to British subjects (a limited class of persons) is too narrow. It should apply to any person residing in the UK, at least.

#### **(b) Prolix Nature of 1824 Act**

The 1824 Act was very prolix.

<sup>45</sup> Ibid, pp 256-7.

<sup>46</sup> 6 & 7 Vict c 98. ‘*An Act for the more effectual suppression of the Slave Trade.*’

<sup>47</sup> 36 & 37 Vict c 88 ‘*An Act for consolidating with amendments the Acts for carrying into effect treaties for the most effectual suppression of the Slave Trade, and for other purposes connected with the Slave Trade.*’

<sup>48</sup> See 1843 Act, s 1 (the 1824 Act shall apply to all British subjects wherever residing) and the 1873 Act, s 24.

<sup>49</sup> BOT comprise: Akrotiri & Dhekelia, Anguilla, Bermuda, British Antarctic Territory, British Indian Ocean Territory, British Virgin Islands, Cayman Islands, Falkland Islands, Gibraltar, Monserrat, Pitcairn Islands, St Helena, Ascension and Tristan de Cunha.

<sup>50</sup> 1 C & K 215 (174 ER 781). See also JF Stephen, *A Digest of the Criminal Law: Crimes and Punishments* (Macmillan & Co, 1883), p 79, n 3. See also *Lopez v Burslem* (1843) 4 ST (NS) 1331 (Brazilian owned ship seized in Sierra Leone for breach of Slave Acts).

<sup>51</sup> The defendant was the son of successful London merchant and an associate of the slave trader Pedro Blanco. He was charged under the 1824 Act, s 10, his crime being to illegally fit out, man, navigate, equip, despatch, use and employ a vessel for the purpose of the slave trade. The vessel in question was called the ‘*Augusta*.’ It was seized off the river Gallinas, now the coast of Liberia, by a Royal Navy vessel. The court held that the 1824 Act was not confined to acts done by British subjects in England or in the British colonies. It also applied to acts done by British subjects in furtherance of that trade in places not part of the British dominions. The defendant was found not guilty. Thomas, n 9, pp 803-4 asserts this was rather a generous verdict given the circumstances. The court also held that - to convict a party charged with having employed and loaded a vessel for the purpose of slave trading - it was unnecessary to show the vessel which carried the goods was intended to be used for the purpose of bringing back slaves in return. It was sufficient if there was a slave adventure and the vessel was, in any way, equipped in the advancement of that adventure. Also, where a party living in London was charged with having chartered a vessel and loaded goods on board for the purpose of slave trading it was held that slave trading papers found on board the vessel when she was seized in foreign parts, but not traced in any way to the knowledge of such party, were inadmissible in evidence against him. Maule J, p 227 observed ‘I cannot help thinking that the legislature had the intention, among other things, of preventing Englishmen from dealing in slaves on the coast of Africa.’

<sup>52</sup> 8 CB (NS) 861 (Court of Exchequer Chamber) (141 ER 1404). The case concerned a contract of sale by the defendants (British subjects) to the plaintiff (a Brazilian) of certain slaves in Brazil where the holding of slaves was then lawful (slavery was abolished in Brazil in 1888). Cf. Stephen, n 50, p 79, n 3 (he says the court was equally divided. However, this would not appear correct).

- In particular, as to the remaining sections of the same, s 2 makes trading in slaves unlawful. However, it prescribes no punishment and it is left to s 10 to punish dealing in slaves;<sup>53</sup>
- Today, these two sections would be merged - which is what Sir James Fitzjames Stephen did in his *Digest of the Criminal Law: Crimes and Punishments* (1883), a text designed to consolidate the criminal law.<sup>54</sup> Doing this makes the wording much more intelligible and - it is asserted - this should be done in respect of any modern consolidation.

## 5. 1824 Act – Trading in Slaves

### (a) Terms of Section 2

The 1824 Act, s 2,<sup>55</sup> was set out - typical of much Victorian legislation - in one great ‘wodge’. In order to make it more intelligible, I have divided it up and added (a), (b) *etc.* I have also added headings, and placed matters in italics where there is a different purposive element. Thus, s 2 (the headnote of which is ‘*To trade in slaves declared unlawful*’) provides that ‘*It shall not be lawful for any persons to:*

- (a) **Trade.** Deal or trade in, purchase, sell, barter, or transfer, or to contract for the dealing or trading in, purchase, sale, barter, or transfer of slaves, or persons intended to be dealt with as slaves; or to
- (b) **Carry.** Carry away, or remove, or to contract for the carrying away or removing of slaves or other persons, as or in order to their being dealt with as slaves; or to
- (c) **Import.** Import or bring, or to contract for the importing or bringing into any place whatsoever slaves or other persons, as or in order to their being dealt with as slaves; or to
- (d) **Ship - Carry.** Ship, tranship, embark, receive, detain, or confine on board, or to contract for the shipping, transshipping, embarking, receiving, detaining, or confining on board of any ship, vessel, or boat, slaves or other persons, *for the purpose of their being carried away or removed, as or in order to their being dealt with as slaves*; or to
- (e) **Ship - Import.** Ship, tranship, embark, receive, detain, or confine on board, or to contract for the shipping, transshipping, embarking, receiving, detaining, or confining on board of any ship, vessel, or boat, slaves or other persons, *for the purpose of their being imported or brought into any place whatsoever as or in order to their being dealt with as slaves*; or to
- (f) **Fit Out.** To fit out, man, navigate, equip, despatch, use, employ, let, or take to freight or on hire, or to contract for the fitting out, manning, navigating, equipping, despatching, using, employing, letting, or taking to freight or on hire, any ship, vessel, or boat, in order to accomplish any of the objects, or the contracts in relation to the objects, which objects and contracts have herein-before been declared unlawful; or to
- (g) **Lend.** Lend or advance, or become security for the loan or advance, or to contract for the lending or advancing, or becoming security for the loan or advance of money, goods, or effects employed or to be employed in accomplishing any of the objects, or the contracts in relation to the objects, which objects and contracts have herein-before been declared unlawful; or to
- (h) **Security.** Become guarantee or security, or to contract for the becoming guarantee or security, for agents employed or to be employed in accomplishing any of the objects, or the contracts in relation to the objects, which objects and contracts have herein-before been declared unlawful; or
- (i) **Engage.** In any other manner to engage or to contract to engage directly or indirectly therein as a partner, agent, or otherwise; or
- (j) **Ship - Goods.** Ship, tranship, lade, receive, or put on board, or to contract, for the shipping, transshipping, lading, receiving or putting on board of any ship, vessel, or boat, money, goods, or effects to be employed in accomplishing any of the objects, or the contracts in relation to the objects, which objects and contracts have herein-before been declared unlawful; or to
- (k) **Command.** Take the charge or command, or to navigate or enter and embark on board, or to contract for the taking the charge or command, or for the navigating or entering and embarking on board of any

<sup>53</sup> S 10 contains almost identical wording to s 2. See 6.

<sup>54</sup> See n 50.

<sup>55</sup> Its headnote provides: ‘*The purchase, sale, or contract for slaves declared unlawful; as also the exportation and importation of slaves; the shipping of slaves in order to exportation or importation; the fitting out vessels; making loans or guarantees; the shipping of goods, &c. or serving on board ships employed for any of the aforesaid purposes; or the insuring of slave adventures.*’

ship, vessel, or boat, as captain, master, mate, petty officer, surgeon, super-cargo, seaman, marine, or servant, or in any other capacity, knowing that such ship, vessel, or boat is actually employed, or is in the same voyage, or upon the same occasion, in respect of which they shall so take the charge or command, or navigate or enter and embark, or contract so to do as aforesaid, intended to be employed in accomplishing any of the objects, or the contracts in relation to the objects, which objects and contracts have herein-before been declared unlawful; or to

(l) **Insure.** Insure or to contract for the insuring of any slaves, or any property, or other subject matter, engaged or employed or intended to be engaged or employed in accomplishing any of the objects, or the contracts in relation to the objects, which objects and contracts have herein-before been declared unlawful.

#### (b) Commentary

In terms of modern drafting, this section is not required since it merely makes a matter *unlawful*, without specifying the punishment.<sup>56</sup> Further, all these acts are unlawful, regardless as to whether the person in question ‘*knew*’ of matter. Thus, it makes it unlawful for a person to insure a vessel - regardless of whether he is aware or not that it is intended such vessel be used to transport slaves. Today, s 2 would be merged with s 10 (see below) which is what Stephen did in his re-formulation (see 7).<sup>57</sup>

*In conclusion, it is asserted this section 2 is not required in any modern re-statement of the law.*

### 6. 1824 Act – Dealing in Slaves

#### (a) Terms of Section 10

The 1824 Act, s 10 (persons dealing in slaves)<sup>58</sup> concerns persons dealing in slaves. It is also prolix and, thus, as with s 2 above, I have inserted (a), (b), (c) *etc* as well as headings and italicised the references to ‘*knowingly and wilfully*’. I have also italicised references to contracts since, as well be seen, Stephen conflates these (see 7, correctly it is asserted). Section 10 provides that, ‘*If any persons shall:*

(a) **Trade.** Deal or trade in, purchase, sell, barter, or transfer, *or contract for the dealing or trading in, purchase, sale, barter, or transfer of slaves, or persons intended to be dealt with as slaves, or shall ... carry away, or remove, or contract for the carrying away or removing of slaves or other persons, as or in order to their being dealt with as slaves, or shall import or bring, or contract for the importing or bringing into any place whatsoever slaves or other persons, as or in order to their being dealt with as slaves, or shall... ship, tranship, embark, receive, detain, or confine on board, or contract for the shipping, transshipping, embarking, receiving, detaining, or confining on board of any ship, vessel, or boat, slaves or other persons, for the purpose of their being carried away or removed, as or in order to their being dealt with as slaves; or*<sup>59</sup>

(b) **Ship.** Ship, tranship, embark, receive, detain, or confine on board, or contract for the shipping, transshipping, embarking, receiving, detaining, or confining on board of any ship, vessel, or boat, slaves or other persons, for the purpose of their being imported or brought into any place whatsoever, as or in order to their being dealt with as slaves; or<sup>60</sup>

(c) **Fit Out.** Fit out, man, navigate, equip, despatch, use, employ, let, or take to freight or on hire, *or contract for the fitting out, manning, navigating, equipping, despatching, using, employing, letting, or taking to freight or on hire any ship, vessel, or boat, in order to accomplish any of the objects, or the contracts in relation to the objects, which objects and contracts have herein-before been declared unlawful; or*<sup>61</sup>

(d) **Lend.** *Knowingly and wilfully* lend or advance, or become security for the loan or advance, *or*

<sup>56</sup> It is also unnecessary prolix since ‘*slave*’ could have been defined to also cover ‘*persons intended to be dealt with as slaves*’ and the frequent references to contracts, could have been set out such that all the sub-crimes covered any contract in relation thereto.

<sup>57</sup> It may be noted that Halsbury, n 42, refers to s 10 only.

<sup>58</sup> The headnote is ‘*Persons dealing in slaves, or exporting or importing slaves; or shipping slaves in order to exportation or importation; or fitting out slave ships; or embarking capital in the slave trade; or guaranteeing slave adventurers; or shipping goods, &c. to be employed in the slave trade; or serving on board slave ships as captain, master, &c. surgeon, &c.; or insuring slave adventures; or forging instruments relating to the slave laws; declared guilty of felony, &c.*’ See also Russell, n 3, vol 2, p 1541.

<sup>59</sup> This sub-section of s 10 conflates s 2 (a)-(d), see 5.

<sup>60</sup> Ibid, s 2 (e), see 5.

<sup>61</sup> Ibid, s 2(f), see 5.

*contract for the lending or advancing, or becoming security for the loan or advance, of money, goods, or effects employed or to be employed in accomplishing any of the objects, or the contracts in relation to the objects, which objects and contracts have herein-before been declared unlawful; or*<sup>62</sup>

(e) **Security.** *Knowingly and wilfully become guarantee or security, or contract for the becoming guarantee or security, for agents employed or to be employed in accomplishing any of the objects, or the contracts in relation to the objects, which objects and contracts have herein-before been declared unlawful, or in any other manner to engage or to contract to engage directly or indirectly therein as a partner, agent, or otherwise; or*<sup>63</sup>

(f) **Ship - Goods.** *Knowingly and wilfully ship, tranship, lade, receive, or put on board, or contract for the shipping, transshipping, lading, receiving, or putting on board of any ship, vessel, or boat, money, goods, or effects to be employed in accomplishing any of the objects, or the contracts in relation to the objects, which objects and contracts have herein-before been declared unlawful; or*<sup>64</sup>

(g) **Command.** *Take the charge or command, or navigate, or enter and embark on board, or contract for the taking the charge or command, or for the navigating or entering and embarking on board of any ship, vessel, or boat, as captain, master, mate, surgeon, or supercargo,<sup>65</sup> knowing that such ship, vessel, or boat is actually employed or is, in the same voyage or upon the same occasion in respect of which they shall so take the charge or command, or navigate or enter and embark, or contract so to do as aforesaid, intended to be employed in accomplishing any of the objects, or the contracts in relation to the objects, which objects and contracts have herein-before been declared unlawful; or*<sup>66</sup>

(h) **Insure.** *Knowingly and wilfully insure or contract for the insuring of any slaves, or any property or other subject matter engaged or employed in accomplishing any of the objects, or the contracts in relation to the objects, which objects and contracts have herein-before been declared unlawful; or*<sup>67</sup>

*'then and in every such case the person or persons so offending, and their procurers, counsellors, aiders, and abettors'* have committed an offence, the maximum punishment for which is 14 years imprisonment.

## (b) **Commentary**

This section 10 effectively re-states s 2, conflating some provisions. However, it provides for the crime. More importantly, unlike s 2, it makes it clear that certain sub-crimes are committed only if the person '*knowingly and wilfully*' does the act. Today, this is a more appropriate, since it removes the element of strict liability. Further, '*wilfully*' adds little to '*knowingly*'. Thus, the former word is to be preferred.

*In conclusion, any re-statement of ss 2 and 10 should be based on s 10. Further, it should make all the sub-crimes depend on a person 'knowingly' doing something.*

## 7. **Stephen's Re-Formulation of Sections 2 & 10**

Stephen proposed a more succinct and modern formulation of ss 2 and 10 in his *Digest*, published in 1883. In a footnote, he stated:

The language of this Act [ie 1824 Act] is very elaborate, and I have not noticed every deviation from it. I believe that this and the next article give it its effect quite correctly, though in a very different shape.<sup>68</sup>

Thus, his article 123 provided that '*Each of the following acts and every contract to any one of them is an act of slave-trading:* (I have added in headings, to help compare with ss 2 and 10):

(a) **Trade.** To deal or trade in, purchase, sell, barter,<sup>69</sup> or transfer slaves or persons intended to be dealt with as slaves.

(b) **Carry.** To carry away or remove slaves or other persons as or in order to their being dealt with as slaves.

<sup>62</sup> Ibid, s 2(g), see 5

<sup>63</sup> Ibid, s (h) & (i), see 5.

<sup>64</sup> Ibid, s 2 (j), see 5.

<sup>65</sup> Halsbury, n 42 'A *'supercargo'* is an officer in a merchant ship who manages the sale *etc* of cargo.'

<sup>66</sup> Ibid, s 2(k), see 5 (however, for lesser crew, the wording is not the same and their offence is a misdemeanour, see 8).

<sup>67</sup> Ibid, s 2 (l), see 5.

<sup>68</sup> Stephen, n 50, p 77, fn 1 (one would agree). See also the succinct summary in Halsbury, n 42.

<sup>69</sup> Barter is unlikely today. In any case, it is asserted that it is covered by the word '*deal in*'.



(c) **Import.** To import or bring into any place whatsoever slaves or other persons as or in order to their being dealt with as slaves.

(d) **Ship.** To ship, tranship, embark, receive, detain, or confine on board any vessel<sup>70</sup> slaves or other persons for the purpose of their being carried away or removed as or in order to their being dealt with as slaves; or for the purpose of their being imported into any place whatever as or in order to their being dealt with as slaves.

(e) **Fit Out.** To fit out, man, navigate, equip, dispatch, use, reply,<sup>71</sup> let, or take to freight, or on hire, any vessel, in order to do any act of slave-trading before mentioned.

(f) **Lend.** To lend or advance, or become security for the loan or advance of money, goods or effects, employed or to be employed in any act of slave-trading before mentioned.

(g) **Security.** To become guarantee or security for agents employed or to be employed in any act of slave-trading before mentioned.

(h) **Engage.** To engage in any other manner in any act of slave trading before mentioned, directly or indirectly, as a partner, agent or otherwise.

(i) **Ship - Goods.** To ship, tranship, lade, receive, or put on board of any vessel money, goods, or affects, to be employed in any act of slave trading before mentioned.

(j) **Command.** To take the charge or command, or to navigate, or enter or embark on board any vessel in any capacity, knowing that such vessel is employed in any act of slave-trading before mentioned, or is intended to be so employed upon the voyage or upon the occasion in which the embarkation takes place.

(k) **Insure.** To ensure slaves or property employed or intended to be employed in slave trading.

While this is better than the prolix wording in the 1824 Act (which it adequately covers), it is asserted that a modern formulation can improve it further, *viz.*

- It should only be a crime for a person to ‘*knowingly*’ engage in ‘*slave trading*;’
- ‘*Slave Trading*’ should be defined and there should be a separation between **direct** slave trading (i.e. (a)-(d) and (j)) and **indirect** ‘slave trading’ (the remainder), the former being the more culpable;
- ‘*Slave trading*’ should cover not just ‘*vessels*’<sup>72</sup> - the only effective means of transporting slaves in Victorian times - but also other ‘*designated transport*’ - such as aircraft and vehicles;<sup>73</sup>
- ‘*Slave*’ should include any person ‘*intended to be dealt with as a slave*;’
- Some of the Victorian wording is obscure or it is out of place or it is too wide in scope. It should be replaced by more modern language.

Thus, in a modern formulation, it is asserted it should be a crime for a relevant person<sup>74</sup> to **engage in slave trading**, ‘*slave trading*’ being defined to:

(a) deal, trade in, purchase, sell, transfer, carry away, remove, import or bring into any place whatsoever, any slave;<sup>75</sup> or

(b) ship, trans-ship, embark, receive, detain or confine on board any designated transport, any slave,<sup>76</sup> or

(c) command,<sup>77</sup> navigate,<sup>78</sup> or [serve]<sup>79</sup> on any designated transport in any capacity [or employment

<sup>70</sup> A footnote states ‘*ship, vessel, or boat.*’

<sup>71</sup> I do not think this word adds anything.

<sup>72</sup> The 1873 Act, s 2 stated that ‘vessel’ meant any vessel used in navigation.’ For Stephen’s definition, see n 70.

<sup>73</sup> Vehicles should include lorries *etc.*

<sup>74</sup> See 4(a).

<sup>75</sup> ie. Stephen’s (a)-(c), see 7. See also s 10 which contains these words, see 6.

<sup>76</sup> Ibid, (d), see 7.

<sup>77</sup> Stephen also uses the words ‘*take charge*’ (as does s 10). However, this would seem to be covered by the word ‘*command.*’

<sup>78</sup> Ibid, (j), see 7. The word is rather obscure in this context. It would seem to be used in order to refer to the captain or senior officer. Given this, a modern formulation would be ‘*command, act as captain, officer or in any other capacity or employment on a designated transport which is used for the transport of a slave or slaves.*’

<sup>79</sup> The words used by Stephen are ‘*enter or embark*’. However, today, the word ‘*serve*’ would seem more intelligible.

where such designated transport is used for the transport of a slave or slaves];<sup>80</sup>

(d) engage in any other manner in any act of slave trading, directly or indirectly, as partner, agent or otherwise; This clause - it is asserted - is unnecessary today, being too wide in scope - especially in referring to 'indirectly' and 'otherwise'. If necessary, the word 'deal in' in (a) could be defined so as to cover any ownership, partnership or agency of whatever nature held in: (i) any designated transport used to convey a slave, or (ii) in any company or other legal person which has been formed in order to acquire, transport, buy or sell any slave *etc.*

This crime of 'slave trading' should be punishable with up to 14 years imprisonment. Preserving the context of s 10, then, this crime, as re-formed, categorises slave trading into: (a) dealing in slaves; (b) transporting slaves; (c) being employed on board transport used to convey slaves.

In respect of indirect acts, it is asserted it should also be a crime for a relevant person to **assist slave trading**, that is, to:

(a) fit out, *man, navigate*,<sup>81</sup> equip, use, let, take to freight or hire any designated transport;<sup>82</sup>

(b) lend money, guarantee, provide security for or insure, any designated transport;<sup>83</sup>

[(c) ship, tranship, lade, receive or put on board any designated transport, any money, goods or effects, to be employed in any act of slave trading;]<sup>84</sup>

(d) enter into any contract relating to (i) slave trading or (ii) to (a)-(c).<sup>85</sup>

knowing that such transport is employed in slave-trading or is intended to be so employed. This should be punishable with up to, say, 10 years imprisonment, being a lesser offence. This crime, then, categorises indirect slave trading into: (a) using transport for slave trading; (b) financing transport for slave trading; (c) placing goods on a slave ships; (d) any contract in respect of direct, or indirect, slave trading.

*In conclusion, it is asserted it should be a crime to: (i) engage in slave trading or (ii) assist in slave trading.*

## 8. 1824 Act – Employment on Slave Ship

The 1824 Act, s 11<sup>86</sup> provides that 'if any person shall

enter and embark on board, or contract for the entering and embarking on board of any ship, vessel, or boat, as petty officer, seaman, marine, or servant, or in any other capacity not herein-before specifically mentioned, knowing that such ship, vessel, or boat is actually employed or is, in the same voyage or upon the same occasion in respect of which they shall so enter and embark on board, or contract so to do as aforesaid, intended to be employed in accomplishing any of the objects, or the contracts in relation to the objects, which objects and contracts have herein-before been declared unlawful, then and in every such case the persons so offending, and their procurers, counsellors, aiders, and abettors, shall be guilty of an offence.'<sup>87</sup> (*italics supplied*)

<sup>80</sup> The addition of the word 'employment' would seem useful. In his re-statement, Stephen separated out this crime from the 1824 Act, s 10. His article 116 (serving on a slave ship, felony) stated 'Every one commits the same offence, and is liable to the same punishment as is specified in the last Article, who takes charge or command, or navigates, or embarks on board any vessel as captain, master, mate, surgeon, or supercargo, or contracts to do so, knowing that such vessel is actually employed, or is on that voyage or occasion intended to be employed in any act of slave trading.' However, it is asserted that (knowingly) to serve in any capacity comprises direct involvement and it should be punished with the maximum sentence, see 8.

<sup>81</sup> In Stephen's formulation (and s 10) the words 'man, navigate' are inserted. However, since they comprise direct involvement in slave trading, it would seem better for them to be placed in the definition of the same. Further, 'navigate' is repeated, unnecessarily, in two of the sub-crimes (see Stephen's (e) and (j)).

<sup>82</sup> ie. Stephen's (f), see 7. 'Designated transport' would be defined to cover any 'vessel, aircraft, vehicle or other means of transport of whatever nature'.

<sup>83</sup> Ibid, (g) & (h).

<sup>84</sup> Is this necessary today? It would seem too peripheral to the crime of slave trading. Further, it is unlikely that large sums of money (for buying slaves) would be stowed on board a slave ship, today, as opposed to in Victorian or former days.

<sup>85</sup> This covers the frequent references to contract in s 10.

<sup>86</sup> Its headnote provides: 'Seamen, &c. serving on board such ships declared guilty of a misdemeanor etc.'

<sup>87</sup> Russell, n 3, vol 2, p 1541 'Section 11 in effect provides that it shall be a misdemeanour for any person to serve or contract to serve as a petty officer or in any inferior capacity in any ship knowing that the ship is (or is, on that voyage intended to be) employed in any object forbidden by section 10. The same penalty is decreed for any person abetting this offence.'

The punishment is imprisonment for a term not exceeding 2 years.<sup>88</sup> As Halsbury notes, the reference to ‘seamen’ in s 11 is to persons other than those referred to in s10.<sup>89</sup> Further, in 1824, it is, perhaps, understandable that those merely serving as crew on a slave ship should receive a lesser punishment. They would likely be unaware of what was happening when they first boarded the vessel and it would have been difficult (if not dangerous) for them to leave the vessel in a foreign country when it picked up slaves. Also, their ability to influence the decisions of those in command would likely be nil, their being mere cabin boys *etc.*<sup>90</sup> Today, it is asserted that the position is different and all persons in whatever employment or capacity they serve on a transport carrying slaves should be capable of being punished with the maximum sentence, if necessary.

*In conclusion, it is asserted there should be no differentiation in any modern re-statement.*

## 9. 1873 Act - Visitation & Seizure

The 1873 Act, s 3 (visitation and seizure by cruisers, &c. of suspected slave ships) provides that:

where a vessel is, on reasonable grounds, suspected<sup>91</sup> of being engaged in, or fitted out for the slave trade, it shall be... lawful:

(a) If the vessel is a British vessel,<sup>92</sup> or is engaged in the slave trade<sup>93</sup> within British jurisdiction, or is not a vessel of a foreign state,<sup>94</sup> for any commander or officer of any of [HM’s] ships, for any officer bearing [HM’s] commission in the army or navy, for any officer of [HM’s] customs in the [UK]<sup>95</sup> or Channel Islands, for any member of the Isle of Man Constabulary, for the governor of a colony,<sup>96</sup> or any person authorised by any such governor,...and

(b) If the vessel is the vessel of a foreign state, for any commander or officer of any of [HM’s] ships, when duly authorised in that behalf, in pursuance of any treaty<sup>97</sup> with that state...

to visit and seize and detain such vessel, and to seize and detain any person found detained or reasonably suspected of having been detained as a slave, for the purpose of the slave trade, on board any such vessel, and to carry away such vessel and person, together with the master and all persons, goods, and effects on board any such vessel, for the purpose of bringing in such vessel, person, goods, and effects....

It is asserted this wording is still important and that it should be retained in any modern re-statement - albeit modernised. In the case of (a), it would seem appropriate for this to now cover any ‘designated transport’. However, in the case of (b), unless treaties are entered into, it would not seem possible to extend the same. What is not clear in s 3, at present, is whether the UK authorities can confiscate (without payment) any slave transport. It would seem appropriate that this occur in modern times in the case where the owner (legal or equitable) is aware of its being used for slave trading. In respect of aircraft, reference may be made to *Air Canada v UK* (1995) in which UK Customs seized an aircraft operated by Air Canada at a UK airport for having on-board a prohibited drug.<sup>98</sup>

<sup>88</sup> Stephen, n 50, p 80, in his re-statement, in article 117 (serving on a slave ship, misdemeanour), provided ‘Every one commits a misdemeanour, and is liable upon conviction, to a maximum punishment of two years imprisonment, who with the knowledge mentioned in the last Article, does any of the things mentioned in that article, as petty officer, seaman, marine, or servant, or in any other capacity not specifically mentioned therein.’

<sup>89</sup> Halsbury, n 42, para 824, n 2.

<sup>90</sup> See *R v De Zulueta*, n 50, p 224 (in respect of the ship’s crew, who likely realised the real purpose of the ship’s voyage).

<sup>91</sup> As to reasonable suspicion see *R v Casaca* (1880) 5 App Cas 548. A Portuguese vessel was seized in Sierra Leone (a British colony) under the 1824 and 1873 Acts. It was later released by the Vice-Admiralty court of Sierra Leone on the basis that it was not engaged in the slave trade but was chartered, and intended, to carry free immigrants only. This decision was upheld by the Judicial Committee of the Privy Council.

<sup>92</sup> 1873 Act, s 2, ‘vessel’ means any vessel used in navigation.’

<sup>93</sup> Ibid, ‘slave trade’ when used in relation to any particular treaty does not include anything declared by such treaty not to be comprised in the term or in such treaty’.

<sup>94</sup> Ibid, ‘vessel of a foreign state’ means a vessel which is justly entitled to claim the protection of the flag of a foreign state, or which would be so entitled if she did not lose such protection by being engaged in the slave trade.’

<sup>95</sup> Halsbury, *Statutes of England* (4<sup>th</sup> ed), vol 9(1), pp 68-9 (re 1873 Act) notes that a reference to an officer of customs is to be construed as a reference to an officer of customs and excise by virtue of the Customs and Excise Management Act 1979, s 1771(1), sch 4, para 1. And a reference to an officer of customs and excise is to be construed as a reference to an officer of revenue and customs by virtue of the Commissioners for Revenue and Customs Act 2005, s 6(2), s 50(2).

<sup>96</sup> 18973 Act, s 2, ‘governor’ includes the officer for the time being administering the government of any colony; and where there is a local governor or lieutenant-governor under a governor-general, means the local governor or lieutenant-governor....’

<sup>97</sup> Ibid, ‘treaty’ includes any convention, agreement, engagement, or arrangement.’

<sup>98</sup> *Air Canada v UK* (1995) 20 EHRR 150. See also European Convention on Human Rights, art 1, para 2 of Protocol 1.

This was seizure, not confiscation. However, in the case of slave trading, it is appropriate (it is asserted) that the punishment be even more draconian.

Finally, the 1873, s 3 provides that:

All persons authorised to make seizures under this Act shall, in making and prosecuting any such seizure, have the benefit of all the protection granted to persons authorised to make seizures under any Act for the time being in force relating to [HM's] customs in the [UK]...<sup>99</sup>

This would also seem appropriate to retain in a modern formulation - albeit with modern wording.

*In conclusion, the right of visitation and seizure should be modernised and extended, today, to cover any designated transport and not just vessels..*

#### **10. 1873 Act – Jurisdiction of the Courts**

The 1873 Act, s 26 (jurisdiction of the court over offences under [1824 Act]) provides that:

Any offence against this Act or the said enactments with which this Act is to be construed as one, or otherwise in connexion with the slave trade, shall for all purposes of and incidental to the trial and punishment of a person guilty of such offence, and all proceedings and matters preliminary and incidental to and consequential on such trial and punishment, and for all purposes of and incidental to the jurisdiction of any court, constable, and officer with reference to such offence, be deemed to have been committed either in the place in which the offence was committed... or in any place in which the person guilty of the offence may for the time being be... and the offence may be described in any indictment or other document relating thereto as having been committed at the place where it was wholly or partly committed, or as having been committed on the high seas or out of [HM's] dominions, and the venue or local description in the margin may be that of the place in which the trial is held.

Where any such offence is commenced at one place and completed at another, the place at which such offence is to be deemed to have been committed shall be either the place where the offence was commenced or the place where the offence was completed.

Where a person being in one place is accessory to or aids or abets in any such offence committed in another place, the place at which such offence is to be deemed to have been committed shall be either the place in which the offence was actually committed or the place where the offender was at the time of his being so accessory, aiding, or abetting.

In Victorian times, it was important to locate the *venue* in order to determine which court had jurisdiction,<sup>100</sup> especially when Britain had many colonies and where slavery was still permitted in some countries, such that they would not act. Thus, the 1824 Act referred to Vice-Admiralty courts, slave courts and British slave courts.<sup>101</sup> The latter do not exist today, and most Vice-Admiralty courts in BOT are likely obsolete or would not have the judicial expertise.<sup>102</sup> Given this, it would seem appropriate that the Crown court have jurisdiction<sup>103</sup> not least since the 1824, 1843 and 1873 Acts cover British subjects.

*In conclusion, the Crown court should have jurisdiction over slave trading, save where the legislation of a BOT expressly provides otherwise.*

#### **11. Coroners and Justice Act 2009**

This Act ('2009 Act'), s 71 (slavery, servitude and forced or compulsory labour) provides that:

a person (D) commits an offence if - (a) D holds another person in slavery or servitude and the circumstances are such that D knows or ought to know that the person is so held, or (b) D requires another person to perform forced or compulsory labour and the circumstances are such that D knows or

<sup>99</sup> See also Russell, n 3, vol 2, p 1542.

<sup>100</sup> See eg. *Penal Reform in England* (Macmillan & Co, 1946), p 52.

<sup>101</sup> See 1824 Act, s 2 'The term "*Vice-Admiralty Court*" does not include any Vice-Admiralty Court which for the time being has under its commission a limited jurisdiction only in matters relating to the slave trade.' Also, 'The term "*British slave court*" means the High Court of Admiralty of England, every Vice-Admiralty Court in Her Majesty's dominions out of the United Kingdom.' Also, 'The term "*slave court*" means every British slave court, every mixed commission or court established under any existing slave trade treaty, and the court of any foreign state having jurisdiction to try and condemn a vessel engaged in the slave trade.' See also Archbold CP, n 3, para 2-56.

<sup>102</sup> See generally, GS McBain, *Abolishing Various Obsolete Courts* (2012) Coventry LJ, vol 17, no 1. See also Halsbury, n 42, vol 1(1), para 490. It mentions various colonial (now BOT) courts of Admiralty. However, it is asserted that these would not have the expertise, today, to deal with such matters and it would be better for the Crown court to have jurisdiction where British subjects (or residents) are involved.

<sup>103</sup> It may be noted that, in *R v Zulueta*, see n 50, the Central Criminal Court (Old Bailey) had jurisdiction.

ought to know that the person is being required to perform such labour.<sup>104</sup>

Sub-section 2 provides that the references to holding a person in slavery or servitude or requiring a person to perform forced or compulsory labour are to be construed in accordance with Article 4 of the Human Rights Convention which prohibits a person from being held in slavery or servitude or being required to perform forced or compulsory labour. This Convention was incorporated into UK law pursuant to the Human Rights Act 1998.

- The punishment - on summary conviction under s 71 - is imprisonment not exceeding the relevant period<sup>105</sup> or a fine not exceeding the statutory maximum, or both. On conviction on indictment, it is imprisonment not exceeding 14 years or a fine, or both;<sup>106</sup>
- Definitions of 'slavery', 'servitude' and 'forced or compulsory labour' may be found in *Siliadan v France* (2006).<sup>107</sup>

Section 71 is different in scope to the Slave Acts 1824-73. The latter are directed at the slave trade and the shipping of slaves, whereas s 71 is directed at the employment of a person as a slave in the UK.

*It is asserted, however, that these Acts and s 71 should be placed together in a Public Order Act for easier location and citation. Further, the punishments in both should be aligned, to ensure consistency in this area.*

## **12. Asylum and Immigration (Treatment of Claimants Etc) Act 2004**

This Act (the '2004 Act'), s 4, provides that:

a person commits an offence if he arranges or facilitates the arrival in the [UK] of an individual (the "passenger") and - (a) he intends to exploit the passenger in the [UK] or elsewhere, or (b) he believes that another person is likely to exploit the passenger in the [UK] or elsewhere.

Also,

- a person commits an offence if he arranges or facilitates travel within the UK by an individual (the "passenger") in respect of whom he believes an offence under ss 1 may have been committed and (a) he intends to exploit the passenger in the UK or elsewhere, or (b) he believes another person is likely to exploit the passenger in the UK or elsewhere;<sup>108</sup>
- a person commits an offence if he arranges or facilitates the departure from the UK of an individual (the "passenger") and (a) he intends to exploit the passenger outside the UK, or (b) he believes another person is likely to exploit the passenger outside the UK.<sup>109</sup>

The punishment, on conviction on indictment, is imprisonment not exceeding 14 years, a fine or both. On summary conviction, it is imprisonment not exceeding 12 months, a fine not exceeding the statutory maximum or both.<sup>110</sup> This section is also different to the Slave Acts 1824, since it deals with facilitating the arrival of a person for the purpose of human trafficking.

*It is asserted, however, that these Acts and s 4 should also be placed together in a Public Order Act, for easier location and citation. Further, the punishments in both should be aligned, to ensure consistency in this area.*

## **13. Conclusion**

Today, it is important that the English legal system is modern and up-to date. So too, its legislation. Thus, the Slave Acts 1824-73 should be consolidated and modernised. In particular:

<sup>104</sup> See also Blackstone CP, n 3, para B2.190-194.

<sup>105</sup> Ss (4) provides that the 'relevant period' means - (a) in relation to England and Wales, 12 months; (b) in relation to Northern Ireland, 6 months.

<sup>106</sup> See also Archbold CP, n 3, para 19-437 & 19-439. Also *A-G's References (Nos 2,3,4, & 5) R v Connors* [2013]2 Cr App R and Blackstone CP, n 3, B2.192.

<sup>107</sup> 43 EHRR 16. See also *R v K (S)* 2011 2 Cr App R 34 (decision on 2004 Act, s 4). See also Archbold CP, n 3, para 19-438 and Blackstone CP, n 3, B2.193. See also *CN v UK* (2013) 56 EHRR 24.

<sup>108</sup> Section 4(2).

<sup>109</sup> Section 4 (4) 'For the purposes of this section a person is exploited if (and only if) - (a) he is the victim of behaviour that contravenes Article 4 of the Human Rights Convention (slavery and forced labour), (b) he is encouraged, required or expected to do anything as a result of which he or another person would commit an offence under the Human Organ Transplants Act 1989 (c. 31) or the Human Organ Transplants (Northern Ireland) Order 1989 (S.I. 1989/2408 (N.I. 21)), (c) he is subjected to force, threats or deception designed to induce him - (i) to provide services of any kind, (ii) to provide another person with benefits of any kind, or (iii) to enable another person to acquire benefits of any kind, or (d) he is requested or induced to undertake any activity, having been chosen as the subject of the request or inducement on the grounds that - (i) he is mentally or physically ill or disabled, he is young or he has a family relationship with a person, and (ii) a person without the illness, disability, youth or family relationship would be likely to refuse the request or resist the inducement.

<sup>110</sup> Ibid 4(5).

- Crimes relating to slave trading should apply not just to *British subjects*, which is now a relatively small category of persons. It should also cover, at least, all persons *residing* in the UK and it should also apply to their acts of slave trading, wherever committed;
- Slave trading should be a crime only where it is committed *knowingly* (intentionally). There should also be a distinction between *direct* and *indirect* involvement (with a lesser punishment for the latter);
- In Victorian times, slave trading was only carried out in *ships* since there were no aircraft and vehicles. The latter should now be included;
- The right of *visitation and seizure* should be preserved but modernised. It should also be clarified that there is a right of confiscation in the case of the slave transport;
- The *Crown court* should have general jurisdiction over the above, save where the law of a BOT expressly provides otherwise (which is unlikely);
- These Acts, together with the 2009 Act, s 71 and the 2004 Act, s 4, should be placed together in modern legislation. See **Appendix A** for possible wording *re* a modern re-formulation of the Slave Acts.

## **APPENDIX A**

### **1. Slave Trading**

It is a crime for a relevant person to engage in slave trading. The punishment is a term of imprisonment not exceeding 14 years.

### **2 Assist Slave Trading**

It is a crime for a relevant person to assist slave trading, that is to:

- (i) fit out, man, navigate, equip, use, let, take to freight or hire any designated transport;
- (ii) lend money, guarantee, provide security for, or insure, any designated transport;
- [(iii) ship, tranship, lade, receive or put on board any designated transport, any money, goods or effects, to be employed in any act of slave trading;]
- (iv) enter into any contract relating to (i), (ii) [or (iii)],

knowing such transport is employed in slave-trading or is intended to be so employed. The punishment is a term of imprisonment not exceeding 10 years.

### **3. Visitation and Seizure of Suspected Slave Ships**

(1) If a vessel is, on reasonable grounds, suspected of being engaged in (or fitted out for) slave trading, it is lawful, if:

- (a) the vessel is a British vessel; or
- (b) it is engaged in slave trading within British jurisdiction; or
- (c) it is not a vessel of a foreign state,

for any

- (i) commander or officer of any of [HM's] ships, or
- [(ii) officer bearing [HM's] commission in the army or navy;]
- (iii) officer of [HM's] customs in the [UK ] or Channel Islands;
- (iv) member of the Isle of Man Constabulary;
- (v) governor of a [BOT] or any person authorised by the same

to undertake the acts referred to in (3).

(2) If a vessel is, on reasonable grounds, suspected of being engaged in, or fitted out for, slave trading, it is lawful, if the vessel is the vessel of a foreign state, for any commander or officer of any of [HM's] ships, when duly authorised in that behalf, pursuant to any treaty with that State to undertake the acts referred to in (3)

(3) The acts are to:

- (a) visit, seize and detain such vessel;
- (b) seize and detain any person found on board reasonably suspected of being a slave;
- (c) take such vessel together with the master and all persons, goods, and effects on board such vessel for

the purpose of bringing in such vessel, person, goods, and effects.

#### **4. Definitions**

‘*Designated Transport*’ means any vessel, aircraft or vehicle of whatever nature;

‘*Relevant person*’ means: (a) a British subject; (b) a person residing in the United Kingdom;

‘*Slave*’ includes any person intended to be dealt with as a slave;

‘*Slave trading*’ means to knowingly:

(a) deal, trade in, purchase, sell, transfer, carry away, remove, import or bring into any place whatsoever, any slave;

(b) ship, trans-ship, embark, receive, detain or confine on board any designated transport, any slave;

(c) command, navigate, enter or embark on any designated transport intended to be used for the purpose of (a) or (b).

‘*Vessel*’ means any vessel used in navigation, including a ship or a boat;

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