

'HOW THE LAW CAME TO SUPPORT SLAVERY'

NICHOLAS LEAH

On Thursday 6 October 2022, Master Satvinder Juss, barrister at 3 Hare Court and professor of law at King's College London, gave a talk entitled: 'How the law came to support slavery'. Organised as part of the Gray's Inn Barristers' Committee's Black History Month programme, it was the first event at the Inn to discuss the interplay between English law and the transatlantic slave trade. Master Juss stressed the importance of understanding, in modern Britain, how the law allowed slavery to happen – a subject of too little research.

Master Juss began by addressing the central tension in the law's relationship with slavery, namely that it constantly changed direction. The early slavery cases, as Edward Fiddes put it in his seminal 1934 article, produced a 'rhymlal seesaw of judicial opinion, now for slavery, now against'. No court ever articulated a firm position on the legality of slavery in England but judges did permit certain contractual and tortious claims – as we would today understand them – to be founded in slave property.

Judicial approaches varied, from a trover claim in 10 adult slaves and one child slave, allowed by Sir Richard Rainsford in *Butts v Penny* (1677), to the refusal of Sir John Holt, of Gray's Inn, to allow a writ of trespass de bonis asportatis (an action of goods carried away) in *Chamberline v Harvey* (1696) or a trover claim in *Smith v Gould* (1706). Nevertheless, even Holt entertained the possibility of a correctly pleaded indebitatus assumpsit (an assumed debt action) claim in *Smith v Brown* (1701) and a trespass quare captivum sum cepit (a captured prisoner action) claim in *Gould*.

As Master Juss pointed out, this vacillating position stood in contradistinction to the laws of colonies like Virginia and Jamaica, which had local statutes establishing the legality of slavery. No such statute existed in the metropolitan British context, and thus judges were the sole arbiters on English law's approach to slavery. This resulted in some

starkly capricious formulations, none more so than the *Yorke-Talbot Opinion* by the Crown's Law Officers: the Attorney General, Sir Philip Yorke (later Lord Hardwicke), and the Solicitor General, Charles Talbot. In their slavery opinion of 1729, brought about by the lobbying efforts of both colonial planters and Christian missionaries, they cited no precedent and offered no justification for their findings that: first, a slave's status did not change on arrival in England; second, baptism did not free a slave; and, finally, slave owners could lawfully compel runaway slaves to return to the colonies.

English law's approach towards slavery continued to cause confusion deep into the 18th century. Even Lord Mansfield's fabled ruling in *Somerset v Stewart* (1772) did not clarify the picture. Master Juss rightly argued that this habeas corpus case neither ended slavery in England nor did it decide that James Somerset was no longer a slave. Conscious of the transatlantic audience and the potential repercussions on the slave trade, Lord Mansfield confined his ruling to the narrow issue that a slave could not be required by arbitrary force to leave England against his will. He was also reluctant to disrupt longstanding principles of

insurance law in *Gregson v Gilbert* (1783), a case arising out of the notorious Zong Massacre, where at least 122 slaves were thrown into the sea. Ultimately, it would take two parliamentary statutes, in 1807 and 1833, to outlaw the slave trade and slavery throughout the British Empire.

After his talk, Master Juss engaged in a lively Q&A session on the law and the legacies of British slave ownership. The talk was well attended, with audience members ranging from GDL and Bar Course students to senior practitioners and legal scholars. Set against the backdrop of the recent Edward Colston controversy

in Bristol and the renewed interest in British imperial history, this event was a welcome addition to the Inn's calendar. A further talk on slavery was delivered by Master Juss in Manchester on 16 February 2023. ■



Master Satvinder Juss