

## CHAPTER III.

### THE COLONIAL CHARTERS.

WHEN our ancestors came to this country, they brought with them the common law of England, including the writ of *habeas corpus*, (the essential principle of which, as will hereafter be shown, is to deny the right of property in man,) the trial by jury, and the other great principles of liberty, which prevail in England, and which have made it impossible that her soil should be trod by the foot of a slave.

These principles were incorporated into all the charters, granted to the colonies, (if all those charters were like those I have examined, and I have examined nearly all of them.)—The general provisions of those charters, as will be seen from the extracts given in the note, were, that the laws of the colonies should “not be repugnant or contrary, but, as nearly as circumstances would allow, conformable to the laws, statutes and rights of our kingdom of England.”\*

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\* The second charter to Virginia (1609) grants the power of making “orders, ordinances, constitutions, directions and instructions,” “so always as the said statutes, ordinances and proceedings, as near as conveniently may be, be agreeable to the laws, statutes, government and policy of this our realm of England.”

The third charter (1611 — 12) gave to the “General Court” “power and authority” to “make laws and ordinances” “so always as the same be not contrary to the laws and statutes of our realm of England.”

The first charter to Carolina, (including both North and South Carolina,) dated 1663, authorized the making of laws under this proviso—“Provided nevertheless, that the said laws be consonant to reason, and as near as may be conveniently, agreeable to the laws and customs of this our kingdom of England.”

The second charter (1665) has this proviso. “Provided nevertheless, that the said laws be consonant to reason, and as near as may be conveniently, agreeable to the laws and customs of this our realm of England.”

The charter to Georgia, (1732,) an hundred years after slavery had actually existed in Virginia, makes no mention of slavery, but requires the laws to be “reasonable and not repugnant to the laws of this our realm.” “The said corporation shall and may form and prepare laws, statutes and ordinances fit and necessary for and concerning the government of the said colony, and not repugnant to the laws and statutes of England.”

The charter to Maryland gave the power of making laws, “So, nevertheless, that the laws aforesaid be consonant to reason, and be not repugnant or contrary, but (so far as conveniently may be,) agreeable to the laws, statutes, customs, and rights of this our kingdom of England.”

Those charters were the fundamental constitutions of the colonies, with some immaterial exceptions, up to the time of the revolution; as much so as our national and state constitutions are now the fundamental laws of our governments.

The authority of these charters, during their continuance, and the general authority of the common law, prior to the revolution, have been recognized by the Supreme Court of the United States.\*

The charter granted to Sir Edward Plowden had this proviso. "So, nevertheless, that the laws aforesaid be consonant to reason, and not repugnant and contrary, (but as convenient as may be to the matter in question,) to the laws, statutes, customs and rights of our kingdoms of England and Ireland."

In the charter to Pennsylvania, power was granted to make laws, and the people were required to obey them, "Provided nevertheless that the said laws be consonant to reason, and be not repugnant or contrary, but, as near as conveniently may be, agreeable to the laws, statutes, and rights of this our kingdom of England."

I have not been able to find a copy of the charter granted to the Duke of York, of the territory comprising New York, New Jersey, &c. But Gordon, in his history of the American Revolution, (vol. 1, p. 43,) says, "The King's grant to the Duke of York, is plainly restrictive to the laws and government of England."

The charter to Connecticut gave power "Also from time to time, to make, ordain and establish all manner of wholesome and reasonable laws, statutes, ordinances, directions and instructions, not contrary to the laws of this realm of England."

The charter to the Massachusetts Bay Colony, (granted by William and Mary,) gave "full power and authority, from time to time, to make, ordain and establish all manner of wholesome and reasonable orders, laws, statutes and ordinances, directions and instructions, either with penalties or without, so as the same be not repugnant or contrary to the laws of this our realm of England."

The charter to Rhode Island granted the power of making laws, "So as such laws, ordinances, constitutions, so made, be not contrary and repugnant unto, but (as near as may be) agreeable to the laws of this our realm of England, considering the nature and constitution of the place and people there."

Several other charters, patents, &c., that had a temporary existence, might be named, that contained substantially the same provision.

\* In the case of the town of Pawlet v. Clarke and others, the court say—

"Let us now see how far these principles were applicable to New Hampshire, at the time of issuing the charter to Pawlet.

"New Hampshire was originally erected into a royal province in the thirty-first year of Charles II., and from thence until the revolution continued a royal province, under the immediate control and direction of the crown. By the first royal commission granted in 31 Charles II., among other things, judicial powers, in all actions, were granted to the provincial governor and council, 'So always that the form of proceeding in such cases, and the judgment thereupon to be given, be as consonant and agreeable to the laws and statutes of this our realm of England, as the present state and condition of our subjects inhabiting within the limits aforesaid (i. e. of the province) and the circumstances of the place will admit.' *Independent, however, of such a provision, we take it to be a clear principle that the common law in force at the emigration of our ancestors, is deemed the birthright of the colonies, unless so far as it is inapplicable to their situation, or repugnant to their other rights and privileges. A fortiori the principle applies to a royal province.*"—(9 Cranch's U. States' Reports, 332-3.)

No one of all these charters that I have examined—and I have examined nearly all of them— contained the least intimation that slavery had, or could have any legal existence under them. Slavery was therefore as much unconstitutional in the colonies, as it was in England.

It was decided by the Court of King's Bench in England— Lord Mansfield being Chief Justice—before our revolution, and while the English Charters were the fundamental law of the colonies—that the principles of English liberty were so plainly incompatible with slavery, that even if a slaveholder, from another part of the world, brought his slave into England— though only for a temporary purpose, and with no intention of remaining— he nevertheless thereby gave the slave his liberty.

Previous to this decision, the privilege of bringing slaves into England, for temporary purposes, and of carrying them away, had long been tolerated.

This decision was given in the year 1772.\* And for aught I see, it was equally obligatory in this country as in England, and must have freed every slave in this country, if the question had then been raised here. But the slave knew not his rights, and had no one to raise the question for him.

The fact, that slavery was *tolerated* in the colonies, is no evidence of its legality; for slavery was tolerated, to a certain extent, in England, (as we have already seen,) for many years previous to the decision just cited—that is, the holders of slaves from abroad were allowed to bring their slaves into England, hold them during their stay there, and carry them away when they went. But the toleration of this practice did not make it lawful, notwithstanding all customs, not palpably and grossly contrary to the principles of English liberty, have great weight, in England, in establishing law.

The fact, that England *tolerated*, (i. e. did not punish criminally,) the African *slave-trade* at that time, could not legally establish slavery in the colonies, *any more than it did in England*— especially in defiance of the positive requirements of the charters, that the colonial legislation should be consonant to reason, and not repugnant to the laws of England.

Besides, the mere toleration of the *slave trade* could not make slavery itself— *the right of property in man*— lawful anywhere;

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\* *Somerset v. Stewart*.—Lofft's Reports, p. 1 to 19, of Easter Term, 1772. In 2<sup>d</sup> Dublin edition, the case is not entered in the Index.

not even on board the slave ship. Toleration of a wrong is not law. And especially the toleration of a wrong, (i. e. the bare omission to punish it criminally,) does not legalize one's claim to property obtained by such wrong. Even if a wrong can be legalized at all, so as to enable one to acquire rights of property by such wrong, it can be done only by an explicit and positive provision.

The English statutes, on the subject of the slave trade, (so far as I have seen,) never attempted to legalize the right of property in man, *in any of the thirteen North American colonies*. It is doubtful whether they ever attempted to do it anywhere else. It is also doubtful whether Parliament had the power — or perhaps rather it is certain that they had not the power — to legalize it anywhere, if they had attempted to do so.\* And the cautious and curious phraseology of their statutes on the subject, indicates plainly that they themselves either doubted their power to legalize it, or feared to exercise it. They have therefore chosen to connive at slavery, to insinuate, intimate, and imply their approbation of it, rather than risk an affirmative enactment declaring that one man may be the property of another. But Lord Mansfield said, in *Somerset's case*, that slavery was "*so odious that nothing can be suffered to support it, but positive law.*" No such positive law (I presume) was ever passed by Parliament — certainly not with reference to any of these thirteen colonies.

The statute of 1788, (which I have not seen,) in regard to the slave trade, may perhaps have relieved those engaged in it, in certain cases, from their liability to be punished criminally for the act. But there is a great difference between a statute, that should merely screen a person from punishment for a crime, and one that should legalize his right to property acquired by the crime. Besides, this act was passed after the separation between America and England, and therefore could have done nothing towards legalizing slavery in the United States, even if it had legalized it in the English dominions.

The statutes of 1750, (23, George 2d, Ch. 31,) may have possibly authorized, by implication, (so far as Parliament could thus authorize,) the colonial governments, (if governments they could be called,) *on the coast of Africa*, to allow slavery under

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\* Have Parliament the constitutional prerogative of abolishing the writ of *habeas corpus*? the trial by jury? or the freedom of speech and the press? If not, have they the prerogative of abolishing a man's right of property in his own person?

certain circumstances, *and within the "settlements" on that coast.* But, if it did, it was at most a grant of a merely local authority. It gave no authority to carry slaves from the African coast. But even if it had purported distinctly to authorize the slave trade from Africa to America, and to legalize the right of property in the particular slaves thereafter brought from Africa to America, it would nevertheless have done nothing towards legalizing the right of property in the slaves that had been brought to, and born in, the colonies for an hundred and thirty years previous to the statute. Neither the statute, nor any right of property acquired under it, (in the individual slaves thereafter brought from Africa,) would therefore avail anything for the legality of slavery in this country now; because the descendants of those brought from Africa under the act, cannot now be distinguished from the descendants of those who had, for the hundred and thirty years previous, been held in bondage without law.

But the presumption is, that, even after this statute was passed in 1750, if the slave trader's *right of property* in the slave he was bringing to America, could have been brought before an English court for adjudication, the same principles would have been held to apply to it, as would have applied to a case arising within the island of Great Britain. And it must therefore always have been held by English courts, (in consistency with the decisions in *Somerset's case*,) that the slave trader had no legal ownership of his slave. And if the slave trader had no legal right of property in his slave, he could transfer no legal right of property to a purchaser in the colonies. Consequently the slavery of those that were brought into the colonies after the statute of 1750, was equally illegal with that of those who had been brought in before.\*

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\* Mr. Bancroft, in the third volume of his history, (pp. 413-14,) says:

"And the statute book of England soon declared the opinion of its king and its Parliament, that 'the trade,' (by which he means the *slave trade*, of which he is writing,) "is highly beneficial and advantageous to the kingdom and the colonies." To prove this he refers to statute of "1695, 8 and 10 Wm. 3, ch. 25." (Should be 1697, 8-9 and 10 Wm. 3, ch. 26.)

Now the truth is that; although this statute may have been, and very probably was designed to *insinuate* to the slave traders the personal approbation of Parliament to the slave trade, yet the statute itself says not a word of slaves, slavery, or the slave trade, except to forbid, under penalty of five hundred pounds, any governor, deputy-governor or judge, in the colonies or plantations in America, or any other person or persons, for the use or on the behalf of such governor, deputy-governor or judges, to be "a factor or factor's agent or agents" "for the sale or disposal of any negroes."

The statute does not declare, as Mr. Bancroft asserts, that "the (slave) trade is

The conclusion of the whole matter is, that until some reason appears against them, we are bound by the decision of the King's

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highly beneficial and advantageous to the kingdom and the colonies ;" but that "the trade to Africa is highly beneficial and advantageous," &c. It is an *inference* of Mr. Bancroft's that "the trade to Africa" was the *slave* trade. Ever this inference is not justified by the words of the statute, considering them in that legal view, in which Mr. Bancroft's remarks purport to consider them.

It is true that the statute assumes that "*negroes*" will be "imported" from Africa into "England," (where of course they were not slaves,) and into the "plantations and colonies in America." But it nowhere calls these "*negroes*" *slaves*, nor assumes that they are slaves. For aught that appears from the statute, they were free men and passengers, voluntary emigrants, going to "England" and "the plantations and colonies" as laborers, as such persons are now going to the British West Indies.

The statute, although it apparently desires to insinuate or faintly imply that they are property, or slaves, nevertheless studiously avoids to acknowledge them as such distinctly, or even by any necessary implication ; for it exempts them from duties as merchandize, and from forfeiture for violation of revenue laws, and it also relieves the masters of vessels from any obligation to render any account of them at the custom houses.

When it is considered that slavery, property in man, can be legalized, according to the decision of Lord Mansfield, by nothing less than positive law ; that the rights of property and person are the same on board an English ship, as in the island of Great Britain ; and that this statute implies that these "*negroes*" were to be "imported" into "England," as well as into the "plantations and colonies in America," and that it therefore no more implies that they were to be *slaves* in "the plantations and colonies" than in "England," where we know they could not be slaves ; when these things are considered, it is perfectly clear, as a *legal* proposition, that the statute legalized neither slavery in the plantations and colonies, nor the slave trade from Africa to America — however we may suppose it to have been designed to hint a personal approbation, on the part of Parliament, of the actual traffic.

But lest I may be suspected of having either misrepresented the words of the statute, or placed upon them an erroneous legal construction, I give *all* the words of the statute, that make any mention of "*negroes*," or their importation, with so much of the context as will enable the reader to judge for himself of the legal import of the whole.

The act is entitled, "*An Act to settle the Trade to Africa.*" Sec. 1, recites as follows :—

"Whereas, the Trade to Africa is highly beneficial and advantageous to this kingdom and to the Plantations and Colonies thereunto belonging."

The act contains *twenty-one* sections, regulating trade, duties, &c., like any other navigation act. "*Negroes*" are mentioned only in the following instances and connexions, to wit :

Sec. 7. "And be it enacted by the authority aforesaid, That from and after the four-and-twentieth day of June, one thousand six hundred ninety-and-eight, it shall and may be lawful to and for any of the subjects of his majesty's realms of England, as well as the said Company,\* to trade from England or any of his majesty's plantations or colonies in America to the coast of Africa, between Blanco and Cape Mount, answering and paying a duty of ten pounds per centum ad valorem for the goods and merchandises to be exported from England or any of his majesty's plan-

\* The Royal African Company.

Bench in 1772, and the colonial charters. That decision declared that there was, at that time, in England, no right of property in

tations or colonies in America to and for the coast of Africa, between Cape Blanco and Cape Mount, and in proportion for a greater or lesser value, and answering and paying a further sum and duty of ten pounds per centum ad valorem, red wood only excepted, which is to pay five pounds per centum ad valorem, at the place of importation upon all goods and merchandize (negroes excepted) imported in (into) England or any of his majesty's plantations or colonies in America, from the coast of Africa, between Cape Blanco and Cape Mount aforesaid. \* \* \* And that all goods and merchandize, (negroes excepted,) that shall be laded or put on board any ship or vessel on the coast of Africa, between Cape Blanco and Cape Mount, and shall be imported into England or into any of his majesty's plantations or colonies aforesaid, shall answer and pay the duties aforesaid, and that the master or chief officer of every such ship or vessel that shall lade or receive any goods or merchandize (negroes excepted) on board of his or their ship or vessel between Cape Blanco and Cape Mount, shall upon making entry at any of his majesty's custom houses aforesaid of the said ship or vessel, or before any goods or merchandize be laded or taken out of the said ship or vessel (negroes excepted) shall deliver in a manifest or particular of his cargo, and take the following oath, viz.

"I, A. B., do swear that the manifest or particular now by me given in and signed, to the best of my knowledge and belief doth contain, signify and express all the goods, wares and merchandizes, (negroes excepted,) which were laded or put on board the ship called the \_\_\_\_\_, during her stay and continuing on the coast of Africa between Cape Blanco and Cape Mount, whereof I, A. B., am master."

Sec. 8. "And that the owner or importer of all goods and merchandize (negroes excepted) which shall be brought to England or any of his majesty's plantations from any part of Africa between Cape Blanco and Cape Mount aforesaid shall make entry of all such goods and merchandize at one of his majesty's chief custom houses in England, or in such of his majesty's plantations where the same shall be imported," &c.

Sec. 9. \* \* \* "that all goods or merchandizes (negroes excepted) which shall be brought from any part of Africa, between Cape Blanco and Cape Mount aforesaid, which shall be unladed or laded before entry made and signed and oath of the true and real value thereof made and the duty paid as aforesaid, shall be forfeited, or the value thereof."

Sec. 20. "And be it further enacted by the authority aforesaid, that no governor, or deputy-governor of any of his majesty's colonies or plantations in America, or his majesty's judges in any courts there for the time being, nor any other person or persons for the use or on behalf of such governor or deputy-governor or judges, from and after the nine-and-twentieth day of September, one thousand six hundred and ninety-eight, shall be a factor or factor's agent or agents for the said Company,\* or any other person or persons for the sale or disposal of any negroes, and that every person offending herein shall forfeit five hundred pounds to the uses aforesaid, to be recovered in any of his majesty's courts of record at Westminster, by action of debt, bill, plaint or information, wherein no essoign, protection, privilege or wager of law shall be allowed, nor any more than one imparlance."

Sec. 21. "Provided that this act shall continue and be in force *thirteen years*, and from thence to the end of the next sessions of Parliament, and no longer."

Even if this act had legalized (as in reality it did not legalize) the slave trade during those thirteen years, it would be impossible now to distinguish the descend-

\* The Royal African Company.

man, (notwithstanding the English government had for a long time connived at the slave trade.)—The colonial charters required

ants of those who were imported under it, from the descendants of those who had been previously, and were subsequently imported and sold into slavery without law. The act would therefore avail nothing towards making the existing slavery in this country legal.

The next statute, of which I find any trace, passed by Parliament, with any apparent view to countenance the slave trade, was the statute of 23d George II., ch. 31, (1749—50.)

Mr. Bancroft has committed another still more serious error in his statement of the words (for he professes to quote precise words) of this statute. He says, (vol. 3, p. 414,)

“At last, in 1749, to give the highest activity to the trade, (meaning the slave trade,) every obstruction to private enterprise was removed, and the ports of Africa were laid open to English competition, for ‘the slave trade,’—such” (says Mr. Bancroft,) “are the words of the statute—‘the slave trade is very advantageous to Great Britain.’”

As words are, in this case, things—and things of the highest legal consequence—and as this history is so extensively read and received as authority—it becomes important, in a legal, if not historical, point of view, to correct so important an error as that of the word *slave* in this statement. “The words of the statute” are not that “the slave trade,” but that “the trade to and from Africa is very advantageous to Great Britain.” “The trade to and from Africa” no more means, *in law*, “the slave trade,” than does the trade to and from China. From aught that appears, then, from so much of the preamble, “the trade to and from Africa” may have been entirely in other things than slaves. And it actually appears from another part of the statute, that trade was carried on in “gold, elephant’s teeth, wax, gums and drugs.”

From the words immediately *succeeding* those quoted by Mr. Bancroft from the preamble to this statute, it might much more plausibly, (although even from them it could not be legally) inferred that the statute legalized the slave trade, than from those pretended to be quoted by him. That the succeeding words may be seen, the title and preamble to the act are given, as follows:

“An act for extending and improving the trade to Africa.”

“Whereas, the trade to and from Africa is very advantageous to Great Britain, and necessary for supplying the plantations and colonies thereunto belonging, with a sufficient number of negroes at reasonable rates; and for that purpose the said trade” (i. e. “the trade to and from Africa”) “ought to be free and open to all his majesty’s subjects. Therefore be it enacted,” &c.

“Negroes” were not slaves by the English law, and therefore the word “negroes,” in this preamble, does not *legally* mean slaves. For aught that appears from the words of the preamble, or even from any part of the statute itself, these “negroes,” with whom it is declared to be necessary that the plantations and colonies should be supplied, were free persons, voluntary emigrants, that were to be induced to go to the plantations as hired laborers, as are those who, at this day, are induced, in large numbers, and by the special agency of the English government, to go to the British West Indies. In order to facilitate this emigration, it was necessary that “the trade to and from Africa” should be encouraged. And the form of the preamble is such as it properly might have been, if such had been the real object of Parliament. Such is undoubtedly the true legal meaning of this preamble, for this meaning being consistent with natural right, public policy, and with the fundamental principles of English law, legal rules of construction imperatively require



the legislation of the colonies to be "consonant to reason, and not repugnant or contrary, but conformable, or agreeable, as nearly as

that this meaning should be ascribed to it, rather than it should be held to authorize anything contrary to natural right, or contrary to the fundamental principles of British law.

We are obliged to put this construction upon this preamble, for the further reason that it corresponds with the enacting clauses of the statute—not one of which mentions such a thing as the *transportation of slaves to, or the sale of slaves in* "the plantations and colonies." The first section of the act is in these words, to wit:

"That it shall and may be lawful for all his majesty's subjects to trade and traffic to and from any port or place in Africa, between the port of Sallee in South Barbary, and the Cape of Good Hope, when, at such times, and in such manner, and in or with such quantity of *goods, wares and merchandizes*, as he or they shall think fit, without any restraint whatsoever, save as is herein after expressed."

Here plainly is no authority given "to trade and traffic" in anything except what is known either to the English law, or the law of nature, as "goods, wares, or merchandizes"—among which *men* were *not* known, either to the English law, or the law of nature.

The second section of the act is in these words:

"That all his majesty's subjects, who shall trade to or from any of the ports or places of Africa, between Cape Blanco and the Cape of Good Hope, shall forever hereafter be a body corporate and politic, in name and in deed, by the name of the Company of Merchants Trading to Africa, and by the same name shall have perpetual succession, and shall have a common seal, and by that name shall and may sue, and be sued, and do any other act, matter and thing, which any other body corporate or politic, as such, may lawfully do."

Neither this nor any other section of the act purports to give this "Company," in its corporate capacity, any authority to buy or sell slaves, or to transport slaves to the plantations and colonies.

The twenty-ninth section of the act is in these words:

"And be it further enacted, by the authority aforesaid, that no commander or master of any ship trading to Africa, shall by *fraud, force or violence*, or by any other indirect practice whatsoever, take on board, or carry away from the coast of Africa, any negro or native of the said country, or commit, or suffer to be committed, any violence on the natives, to the prejudice of the said trade; and that every person so offending shall, for every such offence, forfeit the sum of one hundred pounds of lawful money of Great Britain; one moiety thereof to the use of the said Company hereby established, and their successors, for and towards the maintaining of said forts and settlements, and the other moiety to and for the use of him or them who shall inform or sue for the same."

Now, although there is perhaps no good reason to doubt that the *secret* intention of Parliament in the passage of this act, was to stimulate the slave trade, and that there was a tacit understanding between the government and the slave dealers, that the slave trade should go on unharmed (in practice) by the government, and although it was undoubtedly understood that this penalty of one hundred pounds would either not be sued for at all, or would be sued for so seldom as *practically* to interpose no obstacle to the general success of the trade, still, as no part of the whole statute gives any authority to this "Company of Merchants trading to Africa" to transport men from Africa against their will, and as this twenty-ninth section contains a special prohibition to individuals, under penalty, to do so, no one can pretend that the trade was legalized. If the penalty had been but one pound, instead of one hundred pounds, it would have been sufficient, *in law* to have

circumstances would allow, to the laws, statutes and rights of the realm of England." That decision, then, if correct, settled the

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rebutted the pretence that the trade was legalized. The act, on its face and in its legal meaning, is much more an act to prohibit, than to authorize the slave trade.

The only possible *legal* inference from the statute, *so far as concerns the "supplying the plantations and colonies with negroes at reasonable rates,"* is, that these negroes were free laborers, voluntary emigrants, that were to be induced to go to the plantations and colonies; and that "the trade to and from Africa" was thrown open in order that the facilities for the transportation of these emigrants might be increased.

But although there is, in this statute, no authority given for—but, on the contrary, a special prohibition upon—the transportation of the natives from Africa against their will, yet I freely admit that the statute contains one or two strong, perhaps decisive implications in favor of the fact that slavery was allowed in the English settlements *on the coast of Africa*, apparently in conformity with the customs of the country, and with the approbation of Parliament. But that is the most that can be said of it. Slavery, wherever it exists, is a local institution; and its toleration, or even its legality, *on the coast of Africa*, would do nothing towards making it legal in any other part of the English dominions. Nothing but positive and explicit legislation could transplant it into any other part of the empire.

The implications, furnished by the act, in favor of the toleration of slavery, in the English settlements, on the coast of Africa, are the following:

The third section of the act refers to another act of Parliament "divesting the Royal African Company of their *charter*, forts, castles and military stores, canoe men and *castle-slaves*;" and section thirty-first requires that such "officers of his majesty's navy," as shall be appointed for the purpose, "shall inspect and examine the state and condition of the forts and settlements on the coast of Africa, in the possession of the Royal African Company, and of the number of the soldiers therein, and also the state and condition of the military stores, castles, *slaves*, canoes and other vessels and things, belonging to the said company, and *necessary for the use and defence of the said forts and settlements*, and shall with all possible despatch report how they find the same."

Here the fact is stated that the "Royal African Company," (a company that had been in existence long previous to the passing of this act,) had held "castle slaves" "for the use and defence of the said forts and settlements." The act does not say directly whether this practice was legal or illegal; although it seems to imply that, whether legal or illegal, it was tolerated with the knowledge and approbation of Parliament.

But the most distinct approbation given to slavery by the act, is implied in the twenty-eighth section, in these words:

"That it shall and may be lawful for any of his majesty's subjects trading to Africa, for the security of their goods and *slaves*, to erect houses and warehouses, under the protection of the said forts," &c.

Although even this language would not be strong enough to overturn previously established principles of English law, and give the slave holders a legal right of property in their slaves, in any place where English law had previously been expressly established, (as it had been in the North American colonies,) yet it sufficiently evinces that Parliament approved of Englishmen holding slaves in the settlements *on the coast of Africa*, in conformity with the customs of that country. But it implies no authority for transporting their slaves to America; it does nothing towards legalizing slavery in America; it implies no *toleration* even of slavery anywhere, except upon the coast of Africa. Had slavery been positively and

law both for England and the colonies. And if so, there was no *constitutional* slavery in the colonies up to the time of the revolution.

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explicitly legalized on the coast of Africa, it would still have been a local institution.

This reasoning may appear to some like quibbling; and it would perhaps be so, were not the rule well settled that nothing but explicit and irresistible language can be legally held to authorize anything inconsistent with natural right, and with the fundamental principles of a government.

That this statute did not legalize the right of property in man, (unless as a local principle on the coast of Africa,) we have the decision of Lord Mansfield, who held that it did not legalize it in England; and if it did not legalize it in England, it did not legalize it in any of the colonies where the principles of the common law prevailed. Of course it did not legalize it in the North American colonies.

But even if it were admitted that this statute legalized the right of property, on the part of the slave trader, in his slaves taken in Africa after the passage of the act, and legalized the sale of such slaves in America, still the statute would be ineffectual to sustain the legality of slavery, *in general*, in the colonies. It would only legalize the slavery of those particular individuals, who should be transported from Africa to America, subsequently to the passage of this act, and in strict conformity with the law of this act — (a thing, by the way, that could now be proved in no case whatever.) This act was passed in 1749 — 50, and could therefore do nothing towards legalizing the slavery of all those who had, for an hundred and thirty years previous, been held in bondage in Virginia and elsewhere. And as no distinction can now be traced between the descendants of those who were imported under this act, and those who had illegally been held in bondage prior to its passage, it would be of no practical avail to slavery now, to prove, (if it could be proved,) that those introduced into the country subsequent to 1750, were legally the property of those who introduced them.