HENRY GEORGE

VS.

HUTCHINS' EXECUTOR

A Day in Court with "Progress and Poverty."

A Signal Service Rendered to Social Reform, as Recorded in a Remarkable Legal Decision.

THE last will and testament of one George Hutchins, who died a resident of New Jersey in 1886, provides an interesting legal episode in the life of Henry George. In disposing of the residue of his estate in the aforementioned will, the decedent constituted Henry George the trustee of a fund for distributing the latter's books and other writings, in the following (slightly abridged) language:

"Lastly. All the rest and residue of my estate I hereby give, devise and bequeath, under the name of 'The Hutchins' Fund,' to Henry George, the well-known author of 'Progress and Poverty,' his heirs, executors and administrators, in sacred trust, for the express purpose of spreading the light on social and political liberty and justice in these United States of America, by means of the gratuitous, wise, efficient and economically conducted distribution all over the land of said George's publications on the all-important land question and cognate subjects, including his 'Progress and Poverty,' his replies to the criticisms thereon, his 'Problems of the Times,' and any other of his books and pamphlets which he may think it wise and proper to gratuitously distribute in this country; provided that said George, his heirs, executors and administrators, shall cause to be inserted or printed opposite the title page of every free copy of his books distributed by means of this fund, this my solemn request, virtually, to wit, that each recipient shall read it and then circulate it among such neighbors or other persons as in his best judgment will make the best use of it."

The relatives of the testator opposed the carrying out of the above bequest, and warned the executor that it was void and unenforceable. Thereupon the executor filed a bill in the Court of Chancery of New Jersey to test the validity of the bequest as a charitable trust. The hearing came on before Vice-Chancellor Bird.

Although recognizing that the author's works contained nothing of a "rebellious or treasonable character," the vice-chancellor nevertheless agreed with the objectants that the trust was invalid, on the ground that in his writings Henry George, to use the language of the Court, "denounces the fact that the secure title to land, in private individuals, is robbery—is a crime."* The opinion went on to say that "whatever might be the rights of the individual author in the discussion of such questions in the abstract, it certainly would not become the court to aid in the distribution of literature which denounces as robbery—as a crime—an immense proportion of the judicial determinations of the higher courts. This would not be legally charitable." A decree was thereupon advised and entered, declaring the trust void.

The decision of Vice-Chancellor Bird greatly agitated Henry George. Denouncing it as "asinine," he instructed his counsel to carry the case to the Court of Errors and Appeals, the highest tribunal in New Jersey. In taking this step, the author of "Progress and Poverty" rendered a signal service to the cause of freedom. Had the ruling of Vice-Chancellor Bird gone unchallenged, it would have been cited again and again, to the great discomfort of Georgeist economists. "Fortunately," justice swung in freedom's favor, for in the June term of 1889 the appellate court of last resort, composed of sixteen judges, unanimously reversed the decree of the Court of Chancery. A masterful opinion was written by Beasley, who was then the Chief Justice of the Supreme Court of New Jersey and, ex-officio, a judge of the Court of Errors and Appeals. (It might be remarked that Justice Beasley is regarded as the most brilliant jurist in the history of the bench of his state.) While regretting that the limitations of space prevent a complete transcription of the opinion, it is believed that the following excerpts taken therefrom are sufficiently integrated to give the reader an adequate presentation of Henry George's "day in court." Herewith is the abridged opinion, with a minimum of editing and legal phraseology:

HENRY GEORGE v. HUTCHINS' EXECUTOR

[June Term, 1889. Reported in 45 N. J. Equity 757.]

BEASLEY, C. J.

A single glance at the rule of judgment propounded in the Court below will suffice to show that it is one of entire novelty. Stripped of unnecessary terms, in its ultimate analysis, it promulges this far-reaching principle, that a court of law will not, in view of the purposes for which it was instituted, lend its aid, by its decree, to the agitation of the question whether the laws which it is in the habit of executing *have or have not any better foundation than wrong and injustice.* (Italics ours.)

The vice-chancellor educes this principle from a consideration of the functions and constitution of judicial tribunals; and, if I were to stand on that ground and indulge in speculation, it must be confessed that my conclusion would be the opposite of that which he has arrived at. I cannot perceive for what reason it is incompatible with judicial position to aid, if invested with such power, in the circulation of the works of a learned and ingenious man [Henry George] putting under examination and discussion any part of the legal system.

The testator's scheme was designed to be educational with respect to an important branch of legal and economic science, and, in his opinion, the circulation of the works of Mr. George would contribute to the accomplishment of that purpose. Therefore, viewing the sub-

*This is a splendid illustration of distorting an idea out of context, and is a favorite device of those unable to refute the logic and justice of George's teachings.

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ject from the standpoint suggested, I could not, in the line of judicial duty, have sanctioned a principle that, while it would repress the dissemination of the writings of Mr. George, would undoubtedly lend its aid to the circulation of the reply of the Duke of Argyle thereto, on the ground that the former are aggressive towards the legal establishment in question, while the monograph† of the latter, on that subject, tends to quietism and public acquiescence. In such a situation, if I had possessed the power, I should not only have sanctioned, but have favored, the propagation of any or all of these works, in the conviction that such discussions advance the cause, not of error, but the cause of truth.

In the case of Jackson v. Phillips, the controversy also related to a charitable use, the bequest being of a fund to trustees, "to be expended at their discretion in such sums, at such times and such places as they may deem best, for the preparation and circulation of books, newspapers, the delivery of speeches, lectures and such other means as, in their judgment, will create a public sentiment that will put an end to negro slavery in this country." The decision of the court, in its own language, was: "The bequest itself manifests its immediate purpose to be to educate the whole people upon the sin of a man's holding his fellow-man in bondage; and its ultimate object, to put an end to negro slavery in the United States; in either aspect, a lawful charity."

It is conspicuous that this decision is diametrically opposed to the rule under criticism. In the present case, the decision was that the court would not help in the circulation of books that strove to show that private ownership in lands, the validity of which has been repeatedly recognized by the courts, had no better foundation than robbery. In the reported case, the court helped the dissemination of writings whose object was to prove that the ownership of human being, which was a species of property established by the federal constitution itself, and sustained as such by repeated judgments both in the national and state courts, had no better foundation than sin.

The legal rule imposing limits on charitable uses is one of great importance; and, influenced by that consideration, I have examined, with care, the principle upon which the present case has been decided, and my conclusion is, that such principle does not consist with the authorities, and if it were adopted by this court would be productive of serious mischief. If sanctioned, the subject, with respect to the rights of donors in this field, would be involved in clouds and darkness, for instead of a rule we would have a speculation. By force of the prevalence of such a change, it may well be doubted whether it would not be altogether impracticable to disseminate, by means of a charitable use, the works of any of the leading political economists, either of the present or past age, for it is believed that none can be found that do not, in material particulars, make war, more or less aggressive, upon some parts of every legal system as it now subsists. Certain it is that neither the "Political Economy"‡ of Mr. John Stuart Mill, nor the "Social Statics"‡ of Mr. Herbert Spencer, could be so circulated, *for each of these very distinguished writers denies the lawfulness of private ownership in land.* (Italics ours.) A principle bearing such fruits could not properly be introduced into our legal system, except upon the compulsion of irresistible authority.

It is obvious that, by the application of the ordinary test, and which it has been thus insisted is, and always has been, the legal test, the works now in question do not come under the proscription of the law. It has been heretofore stated that they do not tend to the corruption of morals or religion, and it is equally evident that they are not opposed to any legal rule or ordinance . What these writings are calculated, and were intended, to effect is, to cause the repeal, in a legitimate mode, of the laws at present regulating the title to land and the substitution of a different system. It would seem to be quite out of the question for this court to declare that such an endeavor is opposed to the law, *for it is simply a proposition to alter the law according to the law.* (Italics ours.)

The charitable use created in this will must be sustained, and the decree appealed from, to that end, must be reversed.

Decree unanimously reversed.

[Perhaps it should be noted, as a fact of legal experience, that so-called "charitable trusts," such as "The Hutchins' Fund" above, are peculiarly liable to attack. Testators and settlors who would endow an organ of the Georgeist movement are advised to use extreme caution in the event they do not care to make their bequests in the form of an outright, unconditional gift to a definitely named legatee.—ED.]

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Please, I want a permit so I may clean my teeth,
I have a permit for the top row but not for the row underneath.
Please, I want a permit to put up my umbrella in the rain,
Shall I need another permit to take it down again?
Please, I want a permit to call my soul my own,
Please I want a permit because I want to be alone.
Please, I want a permit to finish off this song,
If I do not get a permit I'll go on and on and on.

—*Watchman-Examiner.*

CORRECTION

Instead of Fairfield Hoban, erroneously announced in the last issue as the author of a series of articles to be published in this journal, the name should have read Thurston Warren. His sketch of the Norris-Thompson family appears on page 12.*

† See "Property in Land," a passage-at-arms between the Duke of Argyll and Henry George, contained in the work entitled, "The Land Question." (Published by Robert Schalkenbach Foundation.)

‡ See references to this work in "Progress and Poverty," as well as other books by Henry George.