

Counsel J. Hamilton Lewis, assisted by William B. Fleming and John M. Duffy as special counsel, presented a case to the Board of Equalization which it seemed impossible for that Board to escape. But it has escaped it so far. It has done so by simply refusing, arbitrarily and with a high hand, to act upon it. Whether the power of the courts can yet be invoked we are not advised; but upon the showing made by Mr. Lewis and his associates, that power should be invoked, if not with reference to this year's appraisalment then to next year's.

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From the presentation made it appears that in 1873 the Board assessed 51 railroads on their franchise values; that this number was increased until 1875, when there were 61, and that the number dropped to none from 1877 to 1900. Since 1900 it has ranged from 2 to 4. On the matter of values, the franchise value in 1873 was \$64,611,070, and since then it has run steadily down. From 1877 to 1900 it was nothing, and in 1905 it was less than one million. This year it is raised to about three millions. "It then appears," as is well observed by the special counsel named above, "that in 1873, when the railroads had less than two-thirds of the present mileage and less than one-third of the present values, this capitalization was assessed at more than \$64,000,000, whereas since 1876 it has either escaped assessment altogether or been assessed at a nominal sum." We repeat that the Board of Equalization is morally immaculate so far as we know to the contrary. But we do not know everything.

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VESTED RIGHTS.

As public sentiment more and more insistently questions the moral right of individuals to own common property, these privileged individuals and their parasitical apologists increasingly assert the sanctity of "vested rights." Consequently an antithetical relationship of moral rights and vested rights is becoming continually, in greater and greater degree, a burning issue with reference to private property.

It is an issue that has always flamed up whenever legal privileges of the few in any form have been assailed as derogatory to the natural rights of the many. Royal rights to govern from thrones have, for instance, been defended against demands for popular government on the ground that these so-called rights were vested. Similarly vested rights to govern in hereditary legislative bodies have been defended—are indeed still de-

fended, though weakly—because they were vested. The defense of great landed estates against the plainest dictates of the moral law is a familiar instance of a resort to the doctrine of vested rights as an armor for the perpetuation of wrongs. To-day we hear the same appeal to vested rights for the protection of owners of great iron deposits, great coal deposits, great railroad rights of highway, great oil-pipe lines, and the stock which represents vast interests in mere privileges—in the values of common property held by individuals or corporations as private property.

The fallacy which may be found in these deceptive uses of the doctrine of vested rights is not far to seek nor difficult to find, if the desire be to find and not to confuse. It consists in conjuring a legal expedient into the semblance of a moral principle.

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The legal expedient known as the doctrine of vested rights has a useful function in its own sphere. Its function is to put an end to controversies over circumstances whose effects, so far as we can know them, are complete with the happening. Any wrong which is complete with its commission, any right which is temporary in its effects upon others, should be removed from the field of controversy after the lapse of a reasonable time.

This is in the interest not only of social peace but also of a fair adjustment of social relationships. No one should be held answerable for wrongs, or be required to prove rights affecting past interests, after time has blurred the memory of witnesses. However important the matter may have been to the parties originally, it becomes less important even to them as the years go by. Peaceable possession, not redress, comes then to be the important consideration.

If, for illustration, one man steals a horse from another, the gain to the one and the loss to the other are complete at the time. A wrong has been done which ought to be righted; but if the injured party sleeps upon his right, he ignores the wrong to himself and allows an assertion of title by the other to grow into an appearance of unquestioned right. No one is injured but himself, and he has acquiesced in the injury. Not only that, but the injury itself is temporary. The horse will soon die, and thereafter the title will be of no value.

The theft itself soon ceases to affect the distribution of the products of labor. Though all such property as horses, houses and machinery were

stolen from their rightful owners today, the distribution of labor products would not be thereby affected a hundred years hence—probably not in fifty or twenty-five, possibly not in ten—unless the thieves were allowed with these speedily perishable things to buy some form of governmental power over their fellows. Wrongs like these are not continuing in their character and operation. Rights so acquired are not capable in themselves of generating continuous wrongs. The rightful owner loses this property and no other; the thief gains this property and no other. To hold, therefore, that lapse of time makes good this title, originally bad, operates only to silence controversy over ancient deeds of a kind that die with the doing. It does not operate to license perennial theft. Over all such legal titles as spring from wrongs of a non-continuing character, wrongs like the theft of a horse, the doctrine of vested rights is wise and useful.

But the beneficiaries of and the apologists for privilege, make of this wise and useful doctrine, which ought to be held to apply only to titles to perishable things,—they make of it a wicked sort of morality fetish, using it not for the purpose of silencing ancient controversies over titles to perishable things, but for the purpose of establishing institutional plunder. They confuse temporary wrongs with continuing wrongs, and apply the doctrine of vested rights to both. Resorting to this legal expedient, which finds its justification in the social necessity for ignoring ancient wrongs that are not continuing, they utilize it as a principle for giving moral sanction to the predatory effects of ancient wrongs that are continuing.

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This subject has been picturesquely illustrated by Henry George in the seventh chapter of his *Land Question*:

Captain Kidd was a pirate. He made a business of sailing the seas, capturing merchantmen, making their crews walk the plank, and appropriating their cargoes. In this way he accumulated much wealth, which he is thought to have buried. But let us suppose, for the sake of the illustration, that he did not bury his wealth, but left it to his legal heirs, and they to their heirs and so on, until at the present day this wealth or a part of it has come to a great-great-grandson of Captain Kidd. Now, let us suppose that some day—say a great-great-grandson of one of the shipmasters whom Captain Kidd plundered, makes complaint, and says: "This man's great-great-grandfather plundered my great-great-grandfather of certain things or certain sums, which have been transmitted to him, whereas but for this wrongful act they would have been transmitted to me;

therefore, I demand that he be made to restore them." What would society answer?

Society, speaking by its proper tribunals, and in accordance with principles recognized among all civilized nations, would say: "We cannot entertain such a demand. It may be true that Mr. Kidd's great-great-grandfather robbed your great-great-grandfather, and that as the result of this wrong he has got things that otherwise might have come to you. But we cannot inquire into occurrences that happened so long ago. Each generation has enough to do to attend to its own affairs. If we go to righting the wrongs and reopening the controversies of our great-great-grandfathers, there will be endless disputes and pretexts for dispute. What you say may be true, but somewhere we must draw the line, and have an end to strife. Though this man's great-great-grandfather may have robbed your great-great-grandfather, he has not robbed you. He came into possession of these things peacefully, and has held them peacefully, and we must take this peaceful possession, when it has been continued for a certain time, as absolute evidence of just title; for, were we not to do that, there would be no end to dispute and no secure possession of anything.

Now, it is this common-sense principle that is expressed in the statute of limitations—in the doctrine of vested rights. This is the reason why it is held—and as to most things held justly—that peaceable possession for a certain time cures all defects of title.

But let us pursue the illustration a little further:

Let us suppose that Captain Kidd, having established a large and profitable piratical business, left it to his son, and he to his son, and so on until the great-great-grandson, who now pursues it, has come to consider it the most natural thing in the world that his ships should roam the sea, capturing peaceful merchantmen, making their crews walk the plank, and bringing home to him much plunder, whereby he is enabled, though he does no work at all, to live in very great luxury, and look down with contempt upon people who have to work. But at last, let us suppose, the merchants get tired of having their ships sunk and their goods taken, and sailors get tired of trembling for their lives every time a sail lifts above the horizon, and they demand of society that piracy be stopped.

Now, what should society say if Mr. Kidd got indignant, appealed to the doctrine of vested rights, and asserted that society was bound to prevent any interference with the business that he had inherited, and that, if it wanted him to stop, it must buy him out, paying him all that his business was worth—that is to say, at least as much as he could make in twenty years' successful pirating, so that if he stopped pirating he could still continue to live in luxury off of the profits of the merchants and the earnings of the sailors?

What ought society to say to such a claim as this? There will be but one answer. We will all say that society should tell Mr. Kidd that his was a business to which the statute of limitations and the doctrine of vested rights did not apply; that because his father, and his grandfather, and his great- and great-great-grandfather pursued the business of capturing ships and making their crews walk the plank, was

no reason why he should be permitted to pursue it. Society, we will all agree, ought to say he would have to stop piracy and stop it at once, and that without getting a cent for stopping.

Or supposing it had happened that Mr. Kidd had sold out his piratical business to Smith, Jones or Robinson, we will all agree that society ought to say that their purchase of the business gave them no greater right than Mr. Kidd had.

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It would seem impossible for society to say anything else. But Mr. George was too observant not to see that this is exactly what society would not say, certainly not at first. And as was his habit, seeing this he wrote of it:

We will all agree that that is what society ought to say. Observe, I do not ask what society would say.

For ridiculous and preposterous as it may appear, I am satisfied that, under the circumstances I have supposed, society would not for a long time say what we have agreed it ought to say. Not only would all the Kidds loudly claim that to make them give up their business without full recompense would be a wicked interference with vested rights, but the justice of this claim would at first be assumed as a matter of course by all or nearly all of the influential classes—the great lawyers, the able journalists, the writers for the magazines, the eloquent clergymen, and the principal professors in the principal universities. Nay, even the merchants and sailors, when they first began to complain, would be so tyrannized and browbeaten by this public opinion that they would hardly think of more than of buying out the Kidds, and, wherever here and there any one dared to raise his voice in favor of stopping piracy at once and without compensation, he would only do so under penalty of being stigmatized as a reckless disturber and wicked foe of social order.

If any one denies this, if any one says mankind are not such fools, then I appeal to universal history to bear me witness. I appeal to the facts of to-day.

Show me a wrong, no matter how monstrous, that ever yet, among any people, became engrafted in the social system, and I will prove to you the truth of what I say.

The majority of men do not think; the majority of men have to expend so much energy in the struggle to make a living that they do not have time to think. The majority of men accept, as a matter of course, whatever is. This is what makes the task of the social reformer so difficult, his path so hard. This is what brings upon those who first raise their voices in behalf of a great truth the sneers of the powerful and the curses of the rabble, ostracism and martyrdom, the robe of derision and the crown of thorns.

Am I not right? Have there not been states of society in which piracy has been considered the most respectable and honorable of pursuits? Did the Roman populace see anything more reprehensible in a gladiatorial show than we do in a horse race? Does public opinion in Dahomey see anything reprehensible in the custom of sacrificing a thousand or two human beings by way of signaling grand occasions? Are there not states of society in which, in

spite of the natural proportions of the sexes, polygamy is considered a matter of course? Are there not states of society in which it would be considered the most ridiculous thing in the world to say that a man's son was more closely related to him than his nephew? Are there not states of society in which it would be considered disreputable for a man to carry a burden while a woman who could stagger under it was around?—states of society in which the husband who did not occasionally beat his wife would be deemed by both sexes a weak-minded, low-spirited fellow? What would Chinese fashionable society consider more outrageous than to be told that mothers should not be permitted to squeeze their daughters' feet, or Flathead women than being restrained from tying a board on their infants' skulls? How long has it been since the monstrous doctrine of the divine right of kings was taught through all Christendom?

What is the slave trade but piracy of the worst kind? Yet it is not long since the slave-trade was looked upon as a perfectly respectable business, affording as legitimate an opening for the investment of capital and the display of enterprise as any other. The proposition to prohibit it was first looked upon as ridiculous, then as fanatical, then as wicked. It was only slowly and by hard fighting that the truth in regard to it gained ground. Does not our very Constitution bear witness to what I say? Does not the fundamental law of the nation, adopted twelve years after the enunciation of the Declaration of Independence, declare that for twenty years the slave trade shall not be prohibited nor restricted? Such dominion had the idea of vested interests over the minds of those who had already proclaimed the inalienable right of man to life, liberty, and the pursuit of happiness?

Is it not but yesterday that in the freest and greatest republic on earth, among the people who boast that they lead the very van of civilization, this doctrine of vested rights was deemed a sufficient justification for all the cruel wrongs of human slavery? Is it not but yesterday when whoever dared to say that the rights of property did not justly attach to human beings; when whoever dared to deny that human beings could be rightfully bought and sold like cattle—the husband torn from the wife and the child from the mother; when whoever denied the right of whoever had paid his money for him to work or whip his own nigger was looked upon as a wicked assallant of the rights of property? Is it not but yesterday when in the South whoever whispered such a thought took his life in his hands; when in the North the abolitionist was held by the churches as worse than an infidel, was denounced by the politicians and rotten-egged by the mob? I was born in a Northern State, I have never lived in the South, I am not yet gray; but I well remember, as every American of middle age must remember, how over and over again I have heard all questionings of slavery silenced by the declaration, that the Negroes were the property of their masters, and that to take away a man's slave without payment was as much a crime as to take away his horse without payment. And whoever does not remember that far back, let him look over American literature previous to the war, and say whether, if the business of piracy had

been a flourishing business, it would have lacked defenders? Let him say whether any proposal to stop the business of piracy without compensating the pirates would not have been denounced at first as a proposal to set aside vested rights?

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Mr. George was not content with pointing to the misuse of the doctrine of vested rights in the past. He pointed to its misuse in his own day of a quarter of a century ago, a misuse that is even more common now. Having appealed to other states of society and to times that were past merely to get his readers out of their accustomed ruts of thought, he continued:

The proof of what I assert about the Kidds and their business is in the thought and speech of to-day.

Here is a system which robs the producers of wealth as remorselessly and far more regularly and systematically than the pirate robs the merchantman. Here is a system that steadily condemns thousands to far more lingering and horrible deaths than that of walking the plank—to death of the mind and death of the soul, as well as death of the body. These things are undisputed. No one denies that Irish pauperism and famine are the direct results of this land system, and no one who would examine the subject will deny that the chronic pauperism and chronic famine which everywhere mark our civilization are the results of this system. Yet we are told—nay, it seems to be taken for granted—that this system cannot be abolished without buying off those who profit by it. Was there ever more degrading abasement of the human mind before a fetish? Can we wonder, as we see it, at any perversion of ideas?

Consider: is not the parallel I have drawn a true one? Is it not just as much a perversion of ideas to apply the doctrine of vested rights to property in land, when these are its admitted fruits, as it was to apply it to property in human flesh and blood; as it would be to apply it to the business of piracy? In what does the claim of the Irish landholders differ from that of the hereditary pirate or the man who has bought out a piratical business? "Because I have inherited or purchased the business of robbing merchantmen," says the pirate, "therefore respect for the rights of property must compel you to let me go on robbing ships and making sailors walk the plank until you buy me out." "Because we have inherited or purchased the privilege of appropriating to ourselves the lion's share of the produce of labor," says the landlord, "therefore you must continue to let us do it, even though poor wretches shiver with cold and faint with hunger, even though, in their poverty and misery, they are reduced to wallow with the pigs." What is the difference?

This is the point I want to make clearly and distinctly, for it shows a distinction that in current thought is overlooked. Property in land, like property in slaves, is essentially different from property in things that are the result of labor.

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The property in land to which Mr. George has referred comprised landed property of many dif-

ferent kinds. It comprised property in city building lots, which grows in value as the city grows. It comprised property in unimproved farming lands, which enables mere owners to levy tribute upon working farmers. It comprised property in railroad rights of way, which enables railway corporations to monopolize traffic. It comprised property in natural mineral deposits, which enables owners to consolidate titles in these gifts of nature and thereby to plunder the people for the coal they burn and the iron they use. Of all these he might have said, as he did say of the monopolized lands of Ireland, that the indictment which really lies against the private owners of such natural bounties is not that their predecessors robbed the American people in the distant past, for that makes no difference, but that here and now, at the close of the year 1906 and the opening of the year 1907, they themselves are robbing the American people.

Though they are not robbing the American people now of grants of lands and mines and highways, they are, by means of grants in the past, now robbing the American people of the products of their present labor which is dependent upon those lands and mines and highways. "And shall we be told that there can be a vested right to continue such robbery?"

EDITORIAL CORRESPONDENCE

AUSTRALIA.

(See pages 367, 486.)

Corowa, N. S. W., Nov. 20.—The last session of the second Federal parliament ended last month. The principal acts passed were the Australian industries preservation, British preference, South African preference, spirit duties, agricultural machinery duties, and alteration of Constitution referendum acts.

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The Australian industries preservation act (usually called the anti-trust act), is intended to repress monopolies and prevent "dumping." It prohibits, under heavy penalties, restraint of trade, the destruction or injury by unfair competition of any advantageous Australian industry, and the monopoly of trade. The definitions of unfair competition are very wide and are evidently intended to prevent importers from underselling local manufacturers. As originally introduced, this measure gave the Minister of Customs a great deal of authority, but under the act as passed all power is vested in the Federal High Court, which is, of course, a great improvement.

The British preference act is a sham. The ministry brought in a bill for raising the import duties on a number of articles unless they were manufactured in Great Britain. In some cases Britain had already the whole trade; in others, the articles af-