

The written opinion of Vice-Chancellor Bird of New Jersey in support of his decision declaring void the bequest of the late Geroge Hutchins of that state for the circulation of my books, has now been filed, and on another page a certified copy of it is printed in full.

The reason assigned for this astonishing decision is, if possible, more astonishing still. After the most ridiculous travesty of my aims and teachings, Vice-Chancellor Bird goes on to show why, even, if my books were what he assumes them to be, both reason and authority would forbid him from presuming to declare that they should not be circulated. He suggests, when he does not state, the preposterous and tyrannical consequences which would be involved in such an interference with the liberty of speech and of discussion; he admits that there is nothing in the books of an irreligious, rebellious or treasonable character, or that is "directly calculated to foment public disturbances or to incline the masses of the people to revolt;" he admits that to lay down the principle that the courts would not permit bequests for the circulation of books advocating changes in the laws (which is all that my books advocate) would condemn all donations for the spread of the gospel and for foreign missions. He does all this, and theⁿ, forsooth, he proceeds to annul Mr. Hutchins's bequest because of one solitary declaration in my books - viz., that private property in land is robbery. This he specifically declares is the one thing - the only thing - on which he bases his decision.

- - - - -

If Vice-Chancellor Bird, being called upon to pass on a bequest for the distribution of bibles, were to quote from the scriptures in this fashion:

"Judas went and hanged himself . . . Go, thou, and do likewise."

If he were then to go and draw a horror-stricken picture of the ruin that would overtake society and the desolation that would come upon the earth if everybody were to go and hang themselves; and if, admitting that he could find in this proposal that men should extirpate themselves, nothing which gave him legal warrant for breaking the bequest because he found in the book such expressions as "Swear not at all," or "Woe, unto ye, lawyers! for ye ^{load} ~~have~~ men with burdens grievous to be borne, and ye yourselves touch not the burdens with one of your fingers" - taking the ground that these utterances denounced a custom observed in the courts and were calculated to bring the bench into disrepute, he would be doing just what he does in this opinion.

- - - - -

If in the fact that in commenting on Herbert Spencer's declaration, "Had we to deal with the parties who originally robbed the human race of its heritage we might make short work of the matter" - I say "It is not merely a robbery in the past, it is a robbery in the present;" if in the fact that ^{pre}liminary to a historical review of the origin of the idea which attaches to land the same exclusive right of ownership that justly attaches to the things produced by human labor, I say "Historically, as ethically, private property in land is robbery," Vice-Chancellor Bird finds the only reason for

breaking Mr. Hutchins's will, why does he prostitute a judicial opinion by making it the vehicle for a false and malicious travesty of my views and aims? All that, on his own showing, is, as the lawyers say, aliunde - has nothing to do with the reason he gives for his decision. It is simply the lying appeal of the demagogue to the ignorance of the mob. If Mr. Bird were an irresponsible stump speaker, a vicar general writing for a magazine, or an editor of the Evening Post, we might smile contemptuously at his picture of the theories of "Progress and Poverty" reducing the earth to a common, destroying the sanction of all property, and turning "the sweet, reviving, lifegiving sunshine of our present civilization" into the darkness of nomadic barbarism. But it should arouse a graver feeling when the man who makes this travesty is a vice-chancellor of New Jersey - a judge sitting on the bench, going through the form of administering justice, and bound by the most solemn obligations to speak truthfully and deal fairly.

- - - - -

Vice-Chancellor Bird had the books he misrepresents officially before him. He says he has gone through them, and from two of them he makes extracts. Now it is utterly impossible that he should even have glanced over them without seeing that what they propose is no disturbance of the exclusive title to the possession and use of land; no reduction of tenures to the momentary occupation of the soil under one's feet; no lessening of the security that he who plows may reap; no throwing open for any one to enter, the houses or the barns that labor has raised; no depriving the widow and the orphan of the fruits of the toil of husband or father; no taking from Astor or

Vanderbilt of any portion of any structure they may have erected, or of any article produced by man of which they have become possessed; no question of what shall be done with "the billions of dollars of improvements which now beautify and adorn the earth." When Vice-Chancellor Bird, with my books before him, in an official opinion, delivered under the sanction of his judicial oath, declares that this is what he finds in them, he is guilty of the solemn assertion of a deliberate, gratuitous and malicious falsehood. Not only is it impossible that he could even glance through these books without seeing that they fully recognize the rightfulness and necessity of the exclusive, individual possession of land, and that they assert most emphatically and propose to secure far more fully than is at present secured, the absolute right of the improver to his improvements, the absolute right of the producer to all that he produces; but it is impossible that the vice-chancellor should have read the connecting passages between the sentences he quotes without clearly seeing this.

He not only quotes from my books the declaration that "the land of every country belongs to the people of that country," without telling his hearers that it was John Stuart Mill that said this. He not only quotes from my comments on Herbert Spencer without telling his hearers that Herbert Spencer, as well as I, declares private property in land to be founded on robbery. He not only quotes from my exposition of Thomas Jefferson's doctrine that no generation can rightfully bind another to the payment of a public debt, without saying one word of Thomas Jefferson. But he carefully cuts out and

eliminates by asterisks passages that lie between the sentences and parts of sentences he quotes, which, if left in their proper places, would show the utter falsehood of the tawesty of my doctrines that he makes.

I do not call names. I merely state facts. No one can read - I will not say my books, which Vice-Chancellor Bird says he has gone through; but simply the context of the sentences he has quoted from these books - without seeing that in this opinion the vice-chancellor has resorted to deliberate suppression in order to give currency to a falsehood, and that he is in this the worst kind of a false witness - a false witness sitting on the bench of justice and bound by the judicial oath.

- - - - -

But all this is beside the decision. The elaborate misrepresentation, in which Vice-Chancellor Bird indulges, he throws in is merely the prejudicing of the groundlings. Although the ridiculous and destructive doctrine which he pictures me as advocating "involves our homes and our firesides, our church and our state, and all the institutions established and regulated thereby," although it would "sweep away every thought or sentiment or link which binds individuals to locality, to home, to society, or to government, and send him adrift without rudder, or sail, or guiding star, or beacon light, or a tent to shelter, or a cabin for himself or his little ones," the vice-chancellor cannot find any law for forbidding a bequest for its dissemination, and has too much regard for "freedom of speech and liberty of the press" to try. He formally declares

that any citizen of New Jersey may safely leave whatever he pleases for the dissemination of doctrines that would set not only all Jerseymen, but everybody else adrift in this helpless fashion, and the New Jersey courts will permit it. It is for no such little things that this most cautious vice-chancellor declares the Hutchins bequest invalid. It is for something infinitely worse, as he seems to think, than the destruction of church and state and home and fireside, and the setting of people adrift in this ruthless fashion - it is for saying that private property in land is robbery!

- - - - -

This, then, is freedom of speech and liberty of the press in New Jersey, according to this New Jersey vice-chancellor! You may freely write, speak, print or utter your sentiments with regard to anything that is sanctioned by the laws, provided, you say nothing disrespectful of it! The free trader may oppose a tariff which levies taxes on one man to give a bounty to another man, but must not say protection is theft. The Sabbatarian may oppose the moving of trains on Sunday, but he must not say it is a sin. The anti-monopolist may respectfully object to the conferring of public franchises upon private corporations, but must not say that this involves robbery. The prohibitionist may urge the legal suppression of the liquor traffic, but so long at least as it is recognized by the law, must not say that it is a murderous one, or a poverty-breeding one, or any of the many things of the kind that temperance people are constantly saying about the liquor business. To say, in short, that anything which the laws of New Jersey permit and the courts uphold

is contrary to the moral law is, according to the principle of Vice-Chancellor Bird's opinion, forbidden in New Jersey & not because it may not be true, but because it is to intimate that what the courts may be obliged to uphold is in itself wrong! How many reasons for declaring void a bequest for circulating the bible might not the vice-chancellor find, on this principle, if he searched for them as industriously and with as much determination as he has searched for a reason for declaring void the Hutchins bequest!

But the reason which Vice-Chancellor Bird assigns for declaring void the Hutchins bequest is one he has not found - he has deliberately manufactured it. In order to do this he makes two quotations from "Progress and Poverty" - the one, a paragraph beginning "It is not merely a robbery in the past, it is a robbery in the present," and the other the sentence "Historically as well as ethically private property in land is robbery." Then he goes on:

"Clearly the author in these passages not only condemns existing laws, but denounces the fact of the secure title to land in private individuals as robbery - as a crime. It is this aspect of the case which leads me to the conclusion that the court ought to refuse its aid in enforcing the provisions of this will. 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."

Clearly, and as an absolute matter of fact, I have done nothing of the kind. Here are the two passages from which the vice-chancellor makes his two quotations, the words he has quoted being inclosed in brackets. They are both from Book VII of "Progress and Poverty," entitled "Justice of the Remedy." The first is from Chapter III, entitled, "Claim of Land Owners to Compensation." It is as follows:

"Herbert Spencer says: 'Had we to deal with the parties who originally robbed the human race of its heritage, we might make short work of the matter.' Why not make short work of the matter anyhow? For this robbery is not like the robbery of a horse or a sum of money, that ceases with the act. It is a fresh and continuous robbery, that goes on every day and every hour. It is not from the produce of the past that rent is drawn; it is from the produce of the present. It is a toll levied upon labor constantly and continuously. Every blow of the hammer, every stroke of the pick, every thrust of the shuttle, every throb of the steam engine, pay it tribute. It levies upon the earnings of the men who, deep under ground, risk their lives, and of those who over white surges hang to reeling masts; it claims the just reward of the capitalist and the fruits of the inventor's patient effort; it takes little children from play and from school, and compels them to work before their bones are hard or their muscles are firm; it robs the shivering of warmth; the hungry, of food; the sick, of medicine; the anxious, of peace. It debases, and embrutes, and embitters. It crowds families of eight and ten into a

single squalid room; it herds like swine agricultural gangs of boys and girls; it fills the gin palace and groggery with those who have no comfort in their homes; it makes lads who might be useful men candidates for prisons and penitentiaries; it fills brothels with girls who might have known the pure joy of motherhood; it sends greed and all evil passions prowling through society as a hard winter drives the wolves to the abodes of men; it darkens faith in the human soul, and across the reflection of a just and merciful creator draws the veil of a hard, and blind, and cruel fate!

"(It is not merely a robbery in the past; it is a robbery in the present - a robbery that deprives of their birthright the infants that are now coming into the world! Why should we hesitate about making short work of such a system? Because I was robbed yesterday, and the day before, and the day before that, is it any reason that I should suffer myself to be robbed to-day and to-morrow? any reason that I should conclude that the robber has acquired a vested right to rob me?)

"If the land belong to the people, why continue to permit land owners to take the rent, or compensate them in any manner for the loss of rent? Consider what rent is. It does not arise spontaneously from land; it is due to nothing that the land owners have done. It represents a value created by the whole community. Let the landholders have, if you please, all that the possession of the land would give them in the absence of the rest of the community. But rent, the creation of the

whole community, necessarily belongs to the whole community.

"Try the case of the land holders by the maxims of the common law by which the rights of man and man are determined. The common law we are told is the perfection of reason, and certainly the land owners cannot complain of its decision, for it has been built up by and for land owners. Now what does the law allow to the innocent possessor when the land for which he paid his money is adjudged to rightfully belong to another? Nothing at all. That he purchased in good faith gives him no right or claim whatever. The law does not concern itself with the 'intricate question of compensation' to the innocent purchaser. The law does not say, as John Stuart Mill says: 'The land belongs to A, therefore B who has thought himself the owner has no right to anything but the rent, or compensation for its salable value.' For that would be indeed like a famous fugitive slave case decision in which the court was said to have given the law to the north and the nigger to the south. The law simply says: 'The land belongs to A, let the sheriff put him in possession!' It gives the innocent purchaser of a wrongful title no claim, it allows him no compensation. And not only this, it takes from him all the improvements that he has in good faith made upon the land. You may have paid a high price for land, making every exertion to see that the title is good; you may have held it in undisturbed possession for years without thought or hint of an adverse claimant; made it fruitful by your toil or erected upon it a costly building of greater value than the land itself, or a modest home in which

you hope, surrounded by the fig trees you have planted and the vines you have dressed, to pass your declining days; yet Quirk, Gammon & Snap can mouse out a technical flaw in your parchments or hunt up some forgotten heir who never dreamed of his rights, not merely the land, but all of your improvements, may be taken away from you. And not merely that. According to the common law, when you have surrendered the land and given up your improvements, you may be called upon to account for the profits you derived from the land during the time you had it.

"Now if we apply to this case of The People vs. The Land Owners the same maxims of justice that have been formulated by land owners into law, and are applied every day in English and American courts to disputes between man and man, we shall not only not think of giving the land holders any compensation for the land, but shall take all the improvements and whatever else they may have as well.

"But I do not propose, and I do not suppose that any one else will propose, to go so far. It is sufficient if the people resume the ownership of the land. Let the land owners retain their improvements and personal property in secure possession.

"And in this measure of justice, would be no oppression, no injury to any class. The great cause of the present unequal distribution of wealth, with the suffering, degradation and waste that it entails, would be swept away. Even land holders would share in the general gain. The gain of even the large land holders would be a real one. The gain of the small land

holders would be enormous. For in welcoming Justice men welcome the handmaid of Love. Peace and Plenty follow in her train, bringing their good gifts, not to some, but to all.

"How true this is we shall hereafter see.

"If in this chapter I have spoken of justice and expediency as if justice were one thing and expediency another, it has been merely to meet the objections of those who so talk. In justice is the highest and truest expediency.

- - - - -

The second is from Chapter IV, entitled, "Property in Land Historically Considered,"

"The observations of travelers, the researches of the critical historians who within a recent period have done so much to reconstruct the forgotten records of the people, the investigations of such men as Sir Henry Main, Emile de Laveleye, Professor Nasse of Bonn, and others, into the growth of institutions, prove that wherever human society has formed the common right of men to the use of the earth has been recognized, and that nowhere has unrestricted individual ownership been freely adopted. (Historically, as ethically, private property in land is robbery.) It nowhere springs from contract; it can nowhere be traced to perceptions of justice or expediency; it has everywhere had its birth in war and conquest, and in the selfish use which the cunning have made of superstition and law.

"Wherever we can trace the early history of society, whether in Asia, in Europe, in Africa, in America, or in Polynesia,

land has been considered, as the necessary relations which human life has to it would lead to its consideration - as common property, in which the rights of all who had admitted rights were equal. That is to say, that all members of the community - all citizens, as we should say - had equal rights to the use and enjoyment of the land of the community. This recognition of the common right to land did not prevent the full recognition of the particular and exclusive right in things which are the result of labor, nor was it abandoned when the development of agriculture had imposed the necessity of recognizing exclusive possession of the land in order to secure the exclusive enjoyment of the results of the labor expended in cultivating it. The division of land between the industrial units, whether families, joint families, or individuals, only went as far as was necessary for the purpose, pasture and forest lands being retained as common, and equality as to agricultural land being secured, either by a periodical re-division, as among the Teutonic races, or by the prohibition of alienation, as in the law of Moses.

"This primary adjustment still exists, in more or less intact form, in the village communities of India, Russia, and the Slavonic countries yet, or until recently, subjected to Turkish rule; in the mountain cantons of Switzerland; among the Kayles in the north of Africa, and the Kaffirs in the south; among the native population of Java and the aborigines of New Zealand - that is to say, wherever extraneous influences have left intact

the form of primitive social organization. That it everywhere existed has been within late years abundantly proved by the researches of many independent students and observers, and which are (to my knowledge) best summarized in the "Systems of Land Tenure in Various Countries," published under authority of the Cobden club, and in M. Emile de Laveleye's "Primitive Property," to which I would refer the reader who desires to see this truth displayed in detail."

- - - - -

Are the deductions which the vice-chancellor draws from these passages warranted? Do I, as a matter of fact, denounce "the secure title to land in private individuals as a robbery - as a crime?" Do I, as a matter of fact, "denounce as a robbery - as a crime - an immense proportion of the judicial determinations of the higher courts?" Even in those passages which the vice-chancellor has selected as best suiting his purpose, it may be seen, as is clearly stated in all my books, that I regard the secure title to land in private individuals as necessary to the best use of land, and instead of weakening it would strengthen it. Even in those passages it may be seen, what in other parts of "Progress and Poverty," as in my other books, is stated with the utmost clearness, that in speaking of private property in land as robbery I do not mean the private possession of land, as Vice-Chancellor Bird would make it appear, but what M. de Laveleye calls quiritary property - the attaching to land of the same full rights of exclusive ownership that justly attach to things produced by labor. Even in those passages may be seen, what in other parts of the same book, and all my books, is clearly stated, that I do not regard pri-

vate property in land as an individual robbery or crime, but as a social robbery or crime, for which, not land owners as a class, but the whole people, are responsible. Neither in the passages, from which he selects, nor in any part of my writings can Vice-Chancellor Bird find the slightest justification for his deductions.

I have never recommended that the laws which relate to property in land should not be obeyed; I have never denounced the courts for enforcing them; I have merely urged that the law should be changed, in the appointed and constitutional way - and in this what I have urged is, not a change in the laws relating to the tenure of land, but the laws regarding taxation - laws which are in course of constant change.

Whether Vice-Chancellor Bird's law be good or bad, his facts are false - are not facts at all, but gross, unwarranted inventions of his own.

- - - - -

In concluding this remarkable opinion, Vice-Chancellor Bird alludes (for he probably felt that he could not entirely ignore it), to a legal decision rendered when slavery was as fully recognized by the laws of the United States, and of many of the several states; as private ownership of land is now - a decision in which the court upheld a bequest for the dissemination of anti-slavery literature. He says he has sought to bring my books within that opinion, but has not been able to do so "for reasons given" - i.e., that they contain allegations that "private property in land is robbery."

Did Vice-Chancellor Bird ever see or hear of an anti-slavery

book, paper, tract, lecture or speech that did not contain the assertion that slavery was robbery? Did not all the anti-slavery literature teem with such declarations, and with assertions that the slave trade was piracy, that slave owners were criminals, and that those who attempted to recapture what under the laws of the United States was legal property were kidnappers and man stealers; that they and all who abetted or encouraged them; even though acting by direct authority of the laws and the express commands of the courts, were guilty of far more heinous offenses against the moral law than simple theft, and that there was a higher law that made the constitution and laws of the United States null and void whenever they came in conflict with it?

And yet he declares that while the law would permit bequests for the dissemination of such literature, it will not permit the dissemination of books containing the passages with regard to property in land which he has quoted.

Signed: Henry George.

June 2, 1888.