Court of Errors and Appeals.

HUTCHINS'S EXECUTOR.
vs
HENRY GEORGE.

The opinion of Vice Chancellor Bird in this case has made it clear by cogency of argument as well abundance of authority that the bequest contained in the will of George Hutchins, by which the "Hutchins Fund" was created, was undoubtedly a proper charitable bequest, within the meaning and intent of the Statute of Charitable Uses. (43 Eliz. Chap. 4.)

His decision against the validity of the bequest, is reached in the conclusion of the decree, and is contained in these words: "Whatever might be the rights of the individual author in the discussion of such questions in the abstract (the present system of land tenure) 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 charitable, however radical the works of Mr. George may be, however much in conflict with prevailing convictions or prejudices; *I can find but the one thing in them that in any sense makes it my duty to say the Court cannot regard the bequest as charitable.*"

And this one thing as already intimated which the

New Jersey State Library

Vice Chancellor has found is that Mr. George refers to the present system of land tenure as robbery.

At no place in his opinion do we find a single authority, or quotation from Judicial decision to justify his conclusion, and it is very strange at this time in the world's history that not one authority can be found upon which the Vice Chancellor can base his conclusion. This fact alone speaks volumes against its soundness. For ever since the birth of time "Man's inhumanity to man" has produced countless revolutions and agitations against the laws which were upheld by the tribunals of the times, and in which language plain and emphatic condemned the social state which rendered the lives of the people miserable.

Need we overlook the Bible? And of this the Vice Chancellor says: "It seems to me that if this principal be followed to all its logical consequences, all donations for the spread of the Bible and to foreign missions to aid in the accomplishment of their work would fall under judicial condemnation, *for most clearly the work of spreading the Gospel as carried on by foreign missions is successful only in proportion as it overturns and obliterates existing laws, customs, institutions and religions whose origin is so remote as to be beyond discovery.*"

There can be no objection therefore in the Vice Chancellor's mind to a revolution or an agitation, which overturns or obliterates *existing laws, customs, institutions and religions*, if the propagators of the movement and the educating processes which support it, cautiously guard themselves against using the term robbery in their proceedings, and a trust created for the purpose of disseminating educational literature for such a purpose will be sustained by the Courts after the Judges have thoroughly investigated and dissected books in vain to discover the use of the word "robber" or the term "robbery."

If the principle enunciated by the Vice Chancellor had

prevailed, Roman law, in the days of Cæsar Augustus and his immediate successors, it is very doubtful whether we would have the Bible to-day to send to foreign missions for the purpose of overturning governments and religions. But the liberality of those times and succeeding ages has enabled trusts to be formed for the purpose of disseminating Bible ideas.

To insult the Scribes and Pharisees under the old dispensation was equal to blasphemy, and yet the Master said to them: "Ye hypocrites! well hath Isaias prophesised of you saying, 'This people honoreth me with their lips but their hearts are far from me.'"

Matthew, chap. 15. Mark, chap. 7.

And to the money changers who were plying a profitable and legitimate trade in the temple, with the sanction of the priests and pharisees, he said, as he whipped them out: "It is written, my house shall be called the house of prayer, *but you have made it a den of thieves.*"

Matthew, chap. 21; Mark, chap. 11.

And to the chief priests and ancients: "I say to you, the publicans and harlots shall go into the kingdom of God before you."

Matthew, chap. 21.

And again to the scribes and pharisees: "*Woe to you scribes and pharisees, hypocrites*, because you are like to whited sepulchres, which outward appear to men beautiful, but within are full of dead men's bones, and of all filthiness."

Matt., chap. 23.

And even the lawyers received attention: "*Woe to you lawyers*, for you have taken away the key of knowledge.

You, yourselves, have not entered in, and those that were entering in, you have hindered."

Luke, chap. 11.

So that it is plain that what the Vice-Chancellor stamps the impress of illegality upon, is actually supported by the Great Master, Christ himself. If for the purpose of denouncing, decrying and calling attention to the civilization of His day, He applied such stigmas and epithets to the powers and ruling classes as "hypocrites," "thieves," "whited sepulchres," and threatened the temple with destruction, it would not at all be amiss to say to the modern agitator: "Go thou and do likewise;" especially as we have the encouragement of no less a light than St. Thomas a'Kempis in his "De Imitatione Christi."

It is seeming strange that the intense and bitter struggle for the emancipation of the colored slaves produced no judicial condemnation of strong language, such as we meet with in this case, especially when we recall the fiery enthusiasm of William Lloyd Garrison, Daniel Webster and Wendell Phillips.

In 1820, at Plymouth, Webster styled what the Vice-Chancellor calls "the great body of the laws which the Courts administer," (slavery laws) "that work of hell, foul and dark—the slave trade."

"The present system of finance," said Wendell Phillips in 1870, speaking of the same "great body of the laws," "*robs labor*, gouges capital, makes the rich richer, and the poor poorer, and turns a republic into an aristocracy of capital."

That "great body of the laws," which the Courts administer, known as a protective tariff, has time again, upon the floors of Congress and in the debates of the country, been termed *robbery*, and still I think I can confidently say that if the work of an anti-protection writer such as Prof.

Sumner of Yale, or Prof. Wells, were to be made the subject of a trust, the Courts would not wade through them to discover whether the term robbery was applied to that "great body of laws" for the purpose of annulling the trust.

Herbert Spencer's works would fare badly under the Vice Chancellor's decision, for Spencer says: "Equity therefore, does not permit property in land. *It can never be pretended that the existing titles to such property are* legitimate. Should any one think so, let him look in the Chronicles. *Violence, fraud, the preorogative of force, the claims of superior cunning—these are the sources to which those titles may be traced. The original deeds were written with the sword rather than the pen; not lawyers, but soldiers, were the conveyors; blows were the current coin given in payment; and for seals, blood was used in preference to wax.* Could claims be thus constituted? Would the original claimants be non-suited at the bar of reason because the thing *stolen* from them had changed hands? "Had we to deal with the parties who originally *robbed* the human race of its heritage we might make short work of the matter."

Social Statics, pp. 132, 133 and 142.

But such use of the word is sanctioned by the highest tribunal in the land. Mr Justice Miller, in the Supreme Court of the United States in sending the opinion of the Court in Topeka v Kansas, says, speaking of taxation: "To lay with one hand the power of the government and the property of the citizen and with the other bestow it on favored individuals to *aid* private enterprises and build up private fortunes *is none the less robbery because it is done under the form of law and is called taxation.*"

Savings and Loan Association vs. Topeka, 87 U. S. (20 Wall) 655.

So that there we find that the writer who denounces as robbery, the great body of the laws which the courts ad-

minister, has authority to justify him. In other words, the Supreme Court of the United States tell us that what is robbery in the abstract is none the less robbery because it is recognised as legal in that "great body of the laws which the Courts administer."

In so far as the Vice Chancellor enters into a discussion of the works of Mr. George, we find that he has a total misconception of the views and purposes of the author. For instance, at p. 25. "But our author, by a stroke of the pen or an act of legislation, 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."

This would read very well, and make Mr. George worse than an Irish landlord, if there were facts in the book upon which it could rest. As a matter of fact Mr. George uses this language in "Progress and Poverty," under the title, "The Persistence of Poverty," under our present conditions.

"As De Tocqueville observes in one of his letters to Mme. Groetchine: "We so soon become used to the thought of want that we do not feel that an evil which grows greater to the sufferer the longer it lasts, becomes less to the observer by the very fact of its duration,' and perhaps the best proof of the justice of this observation is that in cities where exists a pauper class and a criminal class; where young girls shiver as they sew for bread; and tattered and barefooted children make a home in the streets; money is regularly raised to send missionaries to the heathen. Send missionaries to the heathen! It would be laughable if it were not so sad. Baal no longer stretches forth his hideous sloping arms; but in Christian lands mothers slay their infants for a burial fee! And I challenge the production from any authentic accounts of savage life, of such descriptions of degradation as are to be

found in official documents of highly civilized countries, in reports of sanitary commissioners, and of inquiries into the condition of the laboring poor."

Progress and Poverty, p. 258.

And for a complete refutation of this misconception of the Vice-Chancellor I refer the Court to this whole chapter, entitled "The Persistence of Poverty."

The Vice-Chancellor also speaks (p. 25,) (as if Mr. George advocated it) about taking away the inducements to labor, and another reaping your harvest, and your children crying for bread; your improvements gone with the soil, and "then indeed will the sweet reviving life-giving sunshine of our present civilization disappear more rapidly than did the Roman at the appearance of the Goths and Vandals."

But Mr. George also has something to say about this "live-giving sunshine" under present conditions. Under the title of "The Problem," p. 7, he says: "Some get an infinitely better and easier living, but others find it hard to get a living at all. The 'tramp' comes with the locomotive, and almshouses and prisons are as surely the marks of 'material progress' as are costly dwellings, rich warehouses and magnificent churches. Upon streets lighted with gas and patrolled by uniformed policemen, beggars wait for the passer-by, and in the shadow of college and library, and museum, are gathering the more hideous Huns and fiercer Vandals, of whom Macauley prophesied. In factories where labor-saving machinery has reached its most wonderful development, little children are at work. Wherever the new forces are anything like fully utilized, large classes are maintained by charity or live on the verge of recourse to it. Amid the greatest accumulations of wealth men die of starvation, and hungry infants suckle dry breasts; while everywhere the greed of gain, the worship of wealth shows the force of the fear of want. The promised land flies before us like the

mirage. The fruits of the tree of knowledge turn, as we grasp them, to apples of Sodom that crumble at the touch."

See also p. 327, Progress and Poverty.

But undoubtedly the most convincing portion of the Vice Chancellor's opinion which illustrate his misconception of the whole work and purpose of the author as well as the further fact that the Vice Chancellor did not correctly read (if he read them at all) the works which he has condemned, is this, "Suppose the theories of our author should prevail and the determination be to resolve society into its original elementary or first principles, what is to be done with the billions of dollars of improvements which now beautify and adorn the earth. Who would be entitled to them? Could another who had spent neither a moment of time nor a dollar in their construction, say to the Astors or to the Vanderbilts that he had an equal claim to such improvements with them?"

This is what "Progress and Poverty," p. 358, says:
" What is necessary for the use of land is not its private ownership, *but the security of improvements*. It is not necessary to say to a man 'This land is yours' in order to induce him to cultivate or improve it. It is only necessary to say to him 'Whatever your labor or capital produces on this land shall be yours.' Give a man security that he may reap and he will sow; assure him of the possession of the house he wants to build and he will build it. These are the natural rewards of labor. It is for the sake of reaping that men sow; it is for the sake of possessing houses that men build. The ownership of land has nothing to do with it, etc., etc.' 'The mere pledge of an Irish landlord, that for twenty years he would not claim in rent any share of their cultivation induced Irish peasants to turn a barren mountain into a garden; on the mere security of a fixed ground rent for a term of years, the most costly buildings of such cities as London and New York are erected on leased ground.' "

"The complete recognition of common rights to land need in no way interfere with the complete recognition of individual right to improvements or produce. "Two men may own a ship without sawing her in half." There is a lot in the center of San Francisco, to which the common rights of the people of that city are yet legally recognized. It is covered with fine buildings, the property of private individuals, that stand there in perfect security. The only difference between this lot and those around it is that the rent of the one goes into the common school fund, the rent of the other into private pockets. What is to prevent the land of a whole country being held by the people of the country in this way?

In view of this plain, business like statement of facts, the woeful pen picture by the Vice Chancellor of "the mighty hordes that roamed over Asia nearly 2,000 years ago," falls flat and causes unnecessary alarm.

"The law," says the Vice Chancellor, (p. 27,) "for many centuries has acknowledged and sustained the right of individuals to hold title to lands, to dispose of those titles at their own will and pleasure."

This can hardly be called a correct exposition of the law. What, with the right of eminent domain, the provisions of Magna Charta, the statute of Quia Emptores, the state de donis conditionalibus, the common law rule against perpetuities, and the statute 39 and 40, Geo. III, on the same subject, and other like interferences with the possession of landed property, we should say that the subject of land in the eyes of the law always has been and now is treated as a class, *sui generis*.

In Shirley's Leading Common Law Cases, p. 120, in a note to the case of Egerton v. Brownlow, 4 H. L. Cas , we find the following: "May I not do what I will with mine own? Why, certainly; but perhaps you will have the kindness to tell us what is your own. *No man, ac-*

cording to our law, is the owner of land; at the most he is *tenant* in fee simple, the *ownership* residing all the time in the Crown—that is, in the State. As to *personal property*, the law recognizes a quasi ownership. In other words, it protects a man in the enjoyment of it. But of course an act of Parliament can take away all those safeguards which are thrown around the enjoyment of property, whether real or personal, and when the interests of the State and the interests of individuals happen to clash, *public policy* (that is 'the public good, recognized and protected by the most general maxims of the law and the Constitution,') requires that the former shall prevail. It is to be observed that in dealing with cases of this kind *the courts are not distributing a kind of equity differing with the length of each judge's foot, but are acting on certain well known principles and maxims*, such as salus populi suprema lex. Nihil quod est inconveniens est licitum, sic utere tuo ut alieneum non laedas, &c."

"But" says the Vice Chancellor, (p. 27) "the process of a proper mental training must be begun. The alphabet and spelling book of a new departure must be learned." And p. 28, "the revolution contemplated involves every moral, social, political and economical problem."

Let us see, Adam Smith discussed the question of land taxation, but left it unsettled.

John Stuart Mill proposed to nationalize the future "unearned increment in the value of land," and appropriate it for state use.

Herbert Spencer proposed to abolish all private titles, declare all land public property and let it out to the highest bidder.

This is the "revolution contemplated" by Mr. George: "It is not necessary to confiscate land; it is only necessary to confiscate rent. To appropriate rent by taxation. We may put the proposition in practical form by proposing

'*To abolish all taxation save that upon land values.*' In this way the state may become the universal landlord without calling herself so, *and without assumnig a single new function. In form the ownership of land would remain just as now.* No owner of land need be dispossessed and no restriction need be placed on the amount of land anyone could hold. For rent being taken by the state in taxes, land no matter in whose name it stood or in what parcels it was held, would be really common property, and every member of the community would participate in the advantages of its ownership."

Chap. 11, Book 8, Progress and Poverty, p. 364.

This 'revolution" is to be effected in this mode.

"The machinery alrea ly exists. Instead of extending it all we have to do is to simplify and reduce it. By leaving to landowners a per centage of rent, which would be probably much less than the cost and loss involved in attempting to rent land through State agency, and by making use of this existing machinery we may, without jar or shock assert the common right to land by taking rent for public uses. We already tak' some rent in taxation. We have only to make some changes in our modes of taxation to take it all."

Progress and Poverty, p 364.

Nor is this consummation so chemerical as to be the work "of ages," as the Vice-Chancellor suggests, (p. 27.)

Senates and Assemblies of the people, and the intelligence of the land recognizing that some remedy must be found to stem the overflowing tide of poverty and dissatisfaction now manifesting itself (in the midst of a new land stocked with wealth,) in strikes and lockouts, and what Prof. Barnard of Columbia College,in a recent number of *The North American Review* styled "A Warfare Against Society," are turning to it as a remedy.

The Radical Council of the City of London are now contemplating its adoption.

Legislative committees in Ohio, Pennsylvania, Rhode Island and Indiana have invited the author of "Progress and Poverty" to the halls of legislation, to discuss its operation and details, and in the *New York Sun* of the 8th inst., is found the following:

A PROPOSAL TO ADOPT HENRY GEORGE'S THEORY.

SPRINGFIELD, Ill., March 8.—In the State Senate to-day a resolution was introduced for the submission to a vote of the people at the general election in November, 1890, of a constitutional amendment providing that all taxes in the State be raised by an assessment on land only, according to the plan proposed by Henry George.

There is nothing illegal in seeking to bring about a change in existing laws *if the modus operandi* proposed *be legal.* The Vice-Chancellor recognizes this in his opinion and refuses to bring this case within the determination of Jackson *v* Philips, and he well remarks (p. 31,) that if the spirit of that decision were carried to its logical extent, "donations for the spread of the Bible and to foreign missions would fall under judicial condemnation."

The Christian religion is part of the law of the land, so blasphemy against Christ was a crime, even at common law. And yet Jewish charities have been sustained in England. 1 Ambler 228, note; 2 Granston, 487; 7 Vesey, 417; Shelton, 107; Boyle, 27.

And the "sacred writings" of Joanna Southcote, in which she declared that she was with child of the Holy Ghost and the mother of a second Messiah, (heresy and blasphemy of the rankest kind.) were sustained as a charitable bequest. 31 Bev, 14; Opinion of V. C., p. 20.

Charities existed and were sustained as valid common law trusts long anterior to the statute of Elizabeth. 2

Russell, 407; Girard's Executors 42, U. S 167.

And at page 415 of his Commentaries, Mr. Justice Story says charities are to be liberally construed.

"A charitable use," says Mr. Justice Swayne in Ould *v.* The Washington Hospital, 95 U. S., 303, "where neither law nor public policy forbids, may be applied to almost anything that tends to promote the well-doing and well-being of social man."

"What is charity?" says Mr. Webster in Vidal *v.* Girard's Executors, 42 U. S., 172; "It is the indulgence of kind affections, love, *sympathy for our fellow-creatures.*"

That this is the spirit which actuates Mr. George in his works, no one will gainsay.

"I have," says he in his conclusion to 'Progress and Poverty' entitled 'The problem of individual life,' "in this inquiry followed the course of my own thought. When in mind I set out on it I had no theory to support, no conclusions to prove. Only when I first realized the squalid misery of a great city it appalled and tormented me, and would not let me rest for thinking of what caused it, and how it could be cured. But out of this inquiry has come to me something I did not think to find, and a faith that was dead revives."

It is respectfully submitted that the bequest should be sustained.

JAMES F. MINTURN,

Of Counsel with Henry George.

N. J. COURT OF ERRORS AND APPEALS.

Between

HENRY GEORGE,

Appellant,

and

WILLIAM S. BRADDOCK, EXECUTOR, &c., et al.,

Respondents.

ON APPEAL.

POINTS OF RESPONDENT,

MARY HUTCHINS.

I.

The gift in trust to Henry George is not a charity in law.

The statute, 43 Eliz., c. 4, though not of force in this State, is the foundation in part at least of the law of charities here.

Thompson's Exrs. v. Norris, 5 C. E. Gr., 522.

That statute is entitled "An act to redress the misemployment of lands, goods and stock of money heretofore given to charitable uses."

Bequests for charity must come within the enumeration or intendment of this statute.

Story's Eq. (Red. Ed.), §§ 1155, 1164.
Kendall v. Granger, 5 Beav., 301.
Williams v. Williams, 4 Seld., 547.
Brown v. Yeall, 7 Ves., 50, note.
Owen v. Miss. Soc'y, 4 Kern., 397, 403.

See 2 Roper on Legacies (White) ch. 19, § 1, p. 1116.

"Charity has obtained a signification in law, and courts do not uphold purposes not charitable within the meaning of the law."

Perry on Trusts, § 709.

"A bequest may in an enlarged sense be charitable and yet not within the purview of the statute."

2 Story, (Red. Ed.) Sec. 1155.

Though a bequest "for free schools" is good under statute, "No schools for dancing or fencing are within the intent of the law because they are matters of delicacy, not of necessity."

Sir Francis Moore's Exposition of 43 Eliz., Duke 128.

We insist that this bequest for disseminating a man's utopian and chimerical theories of land tenures is not a charitable purpose at law.

II.

The trust is void for uncertainty.
For vagueness and uncertainty and generality in the object.

What does the term "*cognate subjects*" include? and what works may not be distributed under the latitude of these words of the trust, viz.: "*And any other of his books*

and pamphlets which he may think it wise to gratuitously distribute in this country."

They may be utterly at variance with every idea of charity—subversive of government—revolutionary.

Where the bequest can be applied to other than strictly charitable purposes, the court will not execute the trust, or where there is too much discretion in the trustee.

Thomson's Exrs. v. Norris, 4 C. E. Gr., 307 ; 5 C. E. Gr., 489.

Morice v. Bishop of Durham, 9 Ves., 399.

Affirmed S. C., 10 Ves., 539.

Williams v. Kershaw, 5 Clark & Fin., 111, note.

Ellis v. Selby, 1 Myl. & Craig, 286.

James v. Allen, 3 Merivale, 17.

Williams v. Williams, 5 Law Jour., ch. 4.

Kendall v. Granger, 5 Beav., 300.

1 Jarm. on Wills, 404.

Re. Jarman's Est., 8 ch. Div. 584.

2 Story's Eq. Jur., §§ 1158, 1164, 1183.

2 Redfield on Wills, p. 380.

2 Roper on Legacies, 1237 & cases.

See Nash v. Morley, 5 Beav., 177.

See Vesey v. Jamison, 1 Sim. & Stew., 69.

See Thomson v. Shakspear, 1 De Gex., Fish v. Jones, 399.

See, also, Brown v. Yeall, 10 Ves., 534.

In Kendall v. Granger, just cited, the bequest was to be applied "for the relief of domestic distress, assisting indigent but deserving individuals *or encouraging undertakings of general utility.*" Lord Langdale said if the sentence had ended with the word "individuals" it would have been a good bequest, *but that the remainder might include purposes not charitable, and the whole was void.*

We insist that consistently with the will the funds may be applied for purposes entirely foreign to charity and that the trust, as a charity, must fail.

III.

The bequest is void as against public policy.

The theories advanced in the works sought to be distributed are against the policy of the law, as also their tendency is against public policy.

"Trusts are illegal when they are for purposes of immorality or contravene some statute or are contrary to public policy."

Bacon on Uses, 9.

1 Lewin on Trusts, § 94.

Schouler on Wills, § 22.

See Lammond v. Peoples, 6 Ired. Eq. 137.

See Stevens v. Ely, 1 Dev. Eq. 493.

"Courts will not carry into effect charitable donations against public policy or *which tend to a breach of the laws of the land.*

Perry on Trusts (1872), § 715.

2 Waite's Ac. and Def, 148.

In England bequests to superstitious uses are void as contrary to public policy.

Note Pomeroy's Eq. Jur., vol. 2, § 1021.

Citing Att'y Gen'l v. Fishmongers Co., 5 My. and Craig, 11.

West v. Shuttleworth, 2 My. and K. 684.

In Re Blundell, 30 Beav., 360.

Cary v. Abbot, 7 Ves., 490.

Fund given in trust to apply the income to printing and

promoting the doctrine of the Supremacy of the Pope held void, as against public policy.

De Themmines v. De Bonneval, 5 Russ., 288.

Bequest to procure discharge of persons imprisoned for non-payment of fines under the game laws was held void, as against public policy.

Thrupp v. Collett, 5 Jur., 111; S. C., 26 Beav., 126.

IV.

The Trust is against the policy of the law in that it seeks the dissemination of theories which do not concur with and are opposed to the existing law.

"The court will not permit the system of trusts to be directed to any object that contravenes the policy of the law."

1 Lewin on Trusts, § 94.

"Gifts for purposes *prohibited by or opposed to the existing laws* cannot be upheld as charitable, even if for objects which otherwise would be deemed such.

Justice Gray in Jackson v. Phillips, 14 Allen, 555.

Speaking, in the same case, of a trust looking toward the securing of the right of franchise to women, Mr. Justice Gray said: "Whether such an alteration of the existing laws and frame of government would be wise and desirable, is a question upon which we cannot, sitting in a judicial capacity, properly express any opinion. *Our duty is limited to expounding the laws as they stand*, and those laws do not recognize the purpose of overthrowing or changing them in whole or in part, as a charitable use. Id., p. 571.

"A trust that looks to political agitation and to at-

tempts to alter existing laws can not be recognized by this court as charitable."

Id. p. 555.

See De Themines v. De Bonnival supra.

See Tudor, 21–25 and cases.

Sir Francis Moore, who drew 43 Eliz., says, in his exposition of it, that one of the requisites of a good bequest for charity is that it must be in accordance with the law: And he cites the instance of a gift for providing seats for beggars on the highway to beg in, which he says was bad, "*for charity must concur with the law and the law prohibits begging.*"

Duke on Char. uses, p. 126.

Yet the intention of the testator here was manifestly charitable.

The right to make a will is statuory.

A gift by will is *given effect by law* and must *concur and be in entire consonance with law.*

There are many cases, though not bearing on point of illegality, from which it can readily be drawn by inference that a trust for charity must conform to the law.

See Chan Walworth, in 6 Paige, p. 650.

See Tappan v. Doblois, 45 Me., 122.

See Holmes v. Mead, 52 N. Y., 344.

Johnson v. Magre, 4 Iowa, 180.

1 Swan (Tenn.), 348.

1 Sandford (N. Y.), ch. 439.

4 Selden, 525.

Attention is called to the following citations from the works of Henry George, offered in the Court below:

"*Progress and Poverty.*"

P. ~~237~~ 295-296; Caption of book 7; pp. ~~239, 243, 244, 245, 246,~~ 299: 302. 303. 304. 305. 306.

309. 310. 312. 313 & 314. 321. 322. 326. 327. 328. 329. 33
247, 248, 249, 257, 258, 259, 261, 262 and 263, 265, 266. 333.
"Private property in land is unjust, a usurpation and a fraud," pp. 275, 277, 280, 281. 343 &c. 345. 349.
Private ownership must be abolished, pp. 284, 287, 289, 290, 291, 346, 393, 394. 354. 356 &c. 361. 362. 493.

"The Land Question."

Pp. 9 and 10, 32, 33, 34, 36, 37, 41, 42, 43, 47, 51, 52, 53, 60.

"Property in Land."

Pp. 50 and 51, 56, 57, 60, 61, 62, 67, 70 and 73. Titles of no validity

"Protection and Free Trade."

Pp. 289, 297, 342 and 349.

"Social Problems." 207. 208. 210 &c. 214. 217.
Pp. 85, 86, 173, 174, 175, 176, 177, 219, 220, 221, 222, 265. 277. 27
223, 224, 226, 227, 233, 247. 280. 282. 296. 311. 312. 315.

Our insistment, therefore, is upon the grounds stated—that this court cannot enforce this trust as a charitable purpose in law.

SCHUYLER C. WOODHULL,
Sol'r of Mary Hutchins.

N. J. COURT OF ERRORS AND APPEALS.

Between WILLIAM S. BRADDOCK, Executor, Complainant, and HENRY GEORGE, et als., Defendants.	ON APPEAL FROM CHANCERY.

10

Argument of Charles Van Dyke Joline, counsel for James Hutchins.

The bill is filed for construction of the following clause of the will of George Hutchins :

"Lastly. All the rest and residue of my estate, of any and every form, kind and description whatsoever, 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 this land of said George's publications

20

on the all important land question and cognate subjects, including his 'Progress and Poverty,' his Replies to Criticisms Thereon, his 'Problems of the Times,' and any other of his books and pamphlets which he may think it wise and proper gratuitously to distribute in this country."

The bill is filed by the executor.

Three answers have been filed, one by Henry George, the trustee, alleging that the trust is legal, and one by Mary Hutchins, and one by James Hutchins, the widow and brother respectively, of the testator, alleging its illegality.

Upon the question of what is and what is not a charitable use, we have no criterion but the rules of the common law, and they are obligatory upon us.

Thomson vs. Morris, 5 C. E. Gr., 522.

The word charity has a technical meaning in the law, and in its widest sense denotes all the good affections men ought to bear to each other; in its most restricted and common sense relief of the poor; in neither of these senses is it employed in this court. Here its signification is derived chiefly from the statute of 43 Elizabeth 4. Those purposes are charitable which that statute enumerates, or which, by analogy, are deemed within its spirit and intendment.

Morice vs. Bishop of Durham, 8 Vesey, 405.

Another definition is a gift to the general public use, which extends to the poor as well as to the rich, as a gift of money for water-works.

Jones vs. Williams, Amb., 652.

A charity, in a legal sense, is a gift to be applied consistently with existing laws for the benefit of an indefinite number of persons, either by bringing their hearts under the influence of education or religion, by relieving

their bodies from disease, suffering or constraint, by assisting them to establish themselves for life, or by erecting or maintaining public buildings or works or otherwise lessening the burdens of government.

Jackson vs. Phillips, 14 Allen, 555.

Perry on Trusts, § 697; Story Eq., § 1115.

The gift in this case is sustainable only upon the theory that it is a charity for educational purposes.

Conceding that the gift is for such purposes, the law is:

1st. The purposes must be definite and certain and capable of exact execution.

2d. The gift must not contravene the provisions of the law; must not be against public policy. In other words, the education to be promoted must be such as the law regards as useful; the bounty must be according to the laws, not against them. We contend

1st. That the gift is indefinite, vague, uncertain and impracticable of exact execution.

2nd. That it contravenes the law and is against public policy.

1st. Aside from the provisions of 43 Eliz., Ch. 4, the rule is that a gift for a purpose so indefinite and vague that a court cannot enforce it is void.

Story, Equity, §§ 1155, 1156, 1156a, 1157, 1158, 1164, 1174, 1182, 1183. Norris vs. Thomson, 4 C. E. Gr. 312.

Same case, 5 C. E. Gr., 480, 522.

Perry on Trusts, §§ 711, 713.

Hesketh vs. Murphy, 9 Stew., 305.

A trust to be valid must be under the control of the court and it must be of such a nature that its administration may be reviewed. It must be governed by some principles familiar to the Court.

Perry on Trusts, 711.

Attorney General vs. Moore, 4 C. E. Gr. 507.

The paramount business is to ascertain from, the will, as explained by the subjects to which it pertains, the purpose of the testator, and if such purpose be not illegal and can be plainly ascertained to carry it into effect.

Hesketh vs. Murphy, 9 Stew., 309.

The rule is, that a trust for a charitable use is void if it is indefinite, vague, uncertain and impractical of exact execution. There must be no option to apply it to other than strictly charitable purposes. The trust must be of such a character that the trustee is bound to apply the fund wholly to charitable purposes ; it must be obligatory upon him. There must not be an election to apply the fund to purposes not charitable. The object must be specific.

Cases cited above, also cases cited on pp. 6 and 7 of this argument.

Where a trust is in such general terms that the fund may be applied at the discretion of the trustees, not only to purposes strictly charitable according to the settled meaning of the term, but to other indefinite purposes, it is void for the reason that the court cannot direct the application of any part to charitable uses, against the terms of the trust giving an option to the trustees to apply it wholly to other purposes of a different kind.

DeCamp vs. Dobbins, 2 Stew., 46.

No forced construction will be adopted to uphold the gift.

Perry on Trusts, § 701.

A stricter rule prevails in America than in the English courts.

Jarmyn on Wills, p 403, note 3, edition of Randolph & Talcott.

Taking the rule laid down in DeCamp vs. Dobbins,

in 4 Stew. 695, that precedent is of not much account and that general rules of construction are the best criteria, even a casual examination of the bequest will show its illegality.

The money is left to Mr. George, in trust, to spread the light on social and political liberty and justice in the U. S. of America, by means of the distribution of George's books on the land question and cognate subjects, including "Progress and Poverty," "Replies to Criticisms" and "Problems of the Times," and any other of his books or pamphlets which he may think wise and proper to distribute. Can a court determine what the light on social and political liberty and justice is or may be, and administer its diffusion? It is a very vague and uncertain phrase, may imply one thing to-day, and another thing to-morrow, may mean this to one man and that to another man.

To buy such books as might have a tendency to promote the interests of virtue and religion and the happiness of mankind, &c., declared illegal.

Brown vs. Yeall, 7 Vesey, note 5, p. 50 cited; 10 Vesey, p. 27.

Lord Thurlow said, that he didn't know what books had such a tendency.

Per Eldon, 10 Vesey, p. 534.

May not the court here say that it does not know what books will spread the light, from among those written or to be written by Mr. George on the land question. And must it not know first what the light, &c., is, and what the land question is.

But if it is whatever Mr. George may write on the all important land question and cognate subjects, we ask what is the all important land question, and what are its cognate subjects? How is the court to determine that?

If the direction had been simply for the distribution of the three books named in the bequest, and those had come within the pale of a legal charity there would have been some definiteness. But the bequest goes farther. It confers upon George power and discretion *ad libitum* to distribute any other book that he had at that time written or might thereafter write.

Certainly a bequest to spread the light, &c., by the distribution of what a man had written on the land question and cognate subjects, including certain books, and any other of his books or pamphlets which he might think it wise and proper to distribute, is, to use the language of this court in Norris vs. Thompson, 5 C. E. Gr., p. 522, indefinite in its objects and impracticable of exact execution. It is in effect a gift to be disposed of in any manner that the trustee may think fit, and is void.

Vesey vs. Jamson, 1 Sim. & Stu., p. 71.

The fund is not apportioned by the donor and the trustee may expend the whole for one purpose or another not charitable and at the same time execute the exact power given him.

Perry on Trusts, § 711.

In Ellis vs. Selby, 1 Mylne & Craig, p 299, the language was to such charitable, or other purposes, as my said trustees, etc., shall think fit. The Court held that the gift failed for indefiniteness.

Mr. Hutchin's bequest to Mr. George is to distribute such other of his books and pamphlets as he may think it wise and proper to distribute—language as vague and indefinite as the above.

In Morice vs. Bishop of Durham, 9 Vesey, 309, 406, the language was "in trust for such objects of benevolence "and liberality as the trustee in his own discretion shall "most approve." Held void.

The Master of the Rolls, Sir William Grant, lays down the rule in these words: "The question is not whether he may not apply it upon purposes strictly not charitable, but whether he is bound so to apply it."

There can be no doubt that there is no such binding force upon Mr. George.

In James vs. Allen, 3 Merrivale, p 17, the decision was based upon the use of the phrase "benevolent purposes." The Court lays down this significant rule: "If it might "consistently with the will be applied to other than strict- "ly charitable purposes, the trust is too indefinite for the "Court to execute."

In Morice vs. The Bishop of Durham, 10 Vesey, 543, Lord Eldon, in affirming the decree of Sir Wm. Grant in the same case (cited above) says: The question is, whether the testatrix meant to confine the defendant to such acts of charity or charitable purposes as this court would have enforced by decree and reference to a Master.

If the trustee takes for purposes not sufficiently defined to be controlled and managed by the Court, the bequest is void. Idem; Story Eq. Jur., § 1183.

In Vesey vs. Jamson, 1 Sim. & Stu., p. 69, the language was upon trust to pay and apply the same to such charitable or public purposes, &c., as the executors, &c., should, in their discretion, will and pleasure, think fit. The court held that the purposes were so general and undefined that they must fail altogether.

In Fowler vs. Garlike, 1 Russ. & Mylne, 232, the language was upon trust to dispose of at "such times and in "such manner and for such uses and purposes as they "shall think fit, it being my will that the distribution shall "be left entirely to their discretion." Held too uncertain for the court to execute. In Gibbs vs. Rumsey, 2 Vesey & Beames, p. 294, the money was given to trustees and executors to be disposed of as they in their discretion should think proper. Held too indefinite.

In Kendall vs. Granger, 5 Beavan 303, the Court held that if the testator had stopped with a direction that was strictly charitable, the bequest would have been upheld, but having gone further and enumerated purposes not charitable, there was an option to apply them to the latter purposes. This is a case directly in point. If Mr. Hutchins had directed simply the distribution of Henry George's enumerated works, the purpose would have been definitely stated, it would have been charitable (provided, however, that said words did not contravene public policy and the law of the land) but he goes further and in the last clause gives him an option to apply them to purposes not charitable.

Nash vs. Morley, 5 Beavan, p. 177.

In Thompson vs. Thompson, 1 Collier, p. 398, there was an alternative, and the gift was declared void.

Thompson vs. Norris, 4 C. E. Gr., 312; Chamberlain vs. Stearns, 111 Mass., p. 268; 1 Jarmyn on Wills (ed. of Randolph & Talcott), p. 403, note 3; Pomeroy Equity Jur., §1018—1029; Nichols vs. Allen, 130 Mass., p. 212; Alliffe vs. Wells, 130 Mass., 221.

What power, under the peculiar phraseology of this will, has the Court of Chancery to interpose and correct any abuse or misuse of the funds, for the trust must be of such a nature that the cestui que trust is capable of enforcing its execution by proceedings in a Court of Chancery.

Att'y Gen. vs. Moore, 4 C. E. Gr., p. 507.
Maut vs. Getzendanner, 65 Ind. 527.
Morice vs. Durham, 10 Vesey, 543.

Mr. George has the power "to distribute any other of "his books and pamphlets which he may think it wise "and proper," &c.

Suppose he should think that polygamy or free love was social liberty and justice, or that socialism, communism, anarchy or nihilism represented the highest type of social or political liberty or justice, how could the Court prevent him from distributing such writings.

Or suppose that he should think that the cause of liberty and justice and of the land question and its cognate subjects would be subserved by the distribution of his criticism of Vice Chancellor Bird and his opinion, a criticism which abounds in bitter denunciation, and rancorous reflections, how could the Court prevent its distribution. It would not be regarded as a valid charitable use, but the will gives him the power to do it; and further, the language of the will gives Mr. George power to distribute any of his works, irrespective of whether they tend to spread the light, &c., or whether they relate to the land question or its cognate subject. The only limitation is his sense of wisdom and propriety. There is no other restriction. How can the Court control his sense of wisdom and propriety? He would be obliged to answer only, "I think the distribution of this work wise and proper," and the trust could be completely executed without bestowing any of the moneys upon purposes strictly charitable.

2nd. The trust is void because it is for purposes that contravene an express provision of the law, and are forbidden by public policy.

Perry on Trusts, § 715; Thrupp vs. Collett, 26 Beaven, 125, (for discharge of persons violating game laws); Russell vs. Jackson, 10 Hare, 204, 215, (Socialism); De Themmines vs. DeBonneville, 5 Russ. 288, (maintaining the supremacy of the Pope in temporal affairs); DaCosta vs. DePas Ambler, 226; 2 Swans, 487 n; Jackson vs. Phillips, 14 Allen, 555, 571, (woman suffrage); Cary vs. Abbott, 7 Vesey, 494.

The bounty must be according to the laws not against them—Duke 126, 169. It must be to promote such education as the laws of the land recognize as useful—2 Dane, Ab. 237. It is the duty of the court to give effect to the bounty of the founder only when it can be done without infringing any known rule of law.—Story Eq., Jur., (12 Ed.,) § 1192, note 2.

The law sanctions, permits and protects the right of private property in land.—Blackstone, Book 2, Chap. 1. The fundamental law of this State does the same.—Constitution of N. J., Article 1, § 1. The Constitution of the U. S. secures one's property.—Fifth Amendment.

The writings of Henry George, named in the bequest, proclaim the illegality of private property in land. He says: We must make land common property.—Progress and Poverty, p. 294. It cannot be defended on the score of justice. There is no power on earth which can rightfully make a grant of exclusive ownership in land.—Idem, p. 303. The puniest infant in the most squalid tenement house in New York has the same right as the millionaire to the latter's lands, and is robbed if the right is denied.—Idem, p. 305. Private property in land is a primary wrong; it is a fundamental injustice. —Idem, p. 305. Vice and misery, poverty and pauperism are its direct and necessary results.—Idem, p. 306. Its recognition is a denial of the natural rights of other individuals.—Idem, p. 306. Why should they who suffer hesitate for a moment to sweep it away?—Idem, p. 306 It rests on force, and no complaint can be made when force annuls it.—Idem, p. 307.

And improvements rest on no better title—p. 308.

There is no just title to exclusive possession of the soil, and private property in land is a bold, bare, erroneous wrong.—Idem, p. 322.

He advises its nationalization in a much more direct and easy way than by purchase. He says, "They will not trouble themselves about compensating the proprie-

tors of the land. Nor is it right that there should be any concern about the proprietors of land.—p. 326. See Amendment 5 to Cons. of U. S.

It is not merely a robbery in the past; it is a robbery in the present.—p. 328.

Private ownership is the result of usurpation.—p. 332.

Historically, as ethically, private property in land is robbery.—p. 333.

He advises its confiscation.—p. 362, 363.

He advises confiscation of rents—p. 364—by the appropriation of rent by taxation; the abolition of all taxation save that upon land values.—pp. 363, 364, 365.

In "Social Problems," which is the same book as "Problems of the Times," he says that "The experiment of popular government in the United States is clearly a failure."—p. 30. He advocates a thing that looks very much like repudiation—p. 222—and robbery. —p. 225. See on this, Property in Land, p. 24 to 32.

Ridicules our system of jurisprudence.—Social Problems, p. 236.

See also Social Problems, pp. 264, 265, and Chapter XIX.

See also The Land Question (Lovell's Library, No. 390), pp. 43, 51, 52, 53, Chapter 12, p. 66.

Anarchy and bloodshed the results of private property in land.—Idem, pp. 83 and 84, 86.

He further says: All that is necessary to social regeneration is included in the motto of those Russian patriots, sometimes called Nihilists, "Land and Liberty."

All of these teachings are repugnant to the law of the land, and certainly are not consonant with the legal idea of charity. The education must be such as the law of the land recognizes as useful.

It is needless to say that "those Russian patriots" believe in the dynamite bomb, and urge its use as the best means of acquiring what they conceive to be their rights.

To sustain this bequest as a charity the Court will be obliged to sanction the usefulness of the above teachings. "Can it declare that to be a great purpose of public utility which assails the very institutions under which we live?"

Mr. George's theories may be correct, but they must be disseminated under some other guise than that of a legal charity.

They are opposed to existing laws; therefore, not to be upheld as charitable, even though their objects might otherwise be deemed such. Jackson vs. Phillips, 14 Allen, 555. Chief Justice Beasley, in Hasketh vs. Murphy, 9 Stew., 308, says, in effect, that the purpose of the testator is to be explained by the subjects to which it pertains, and if they are illegal the gift is not to be carried into effect. The purpose of the testator in the case in hand was to distribute writings which teach a contempt for the law of the land, &c. Such a purpose is illegal, and the gift is void.

For a very clear and accurate criticism of Mr. George's theories and their tendencies, see The New Princeton Review for March, 1887, Vol. 3, No. 2, p. 259.

To sustain this bequest as a legal charity the Court must declare that the first section of Article 1 of our constitution sanctions an injustice and a bold, bare, enormous wrong; that it is a denial of the natural rights of man; that it rests in force, and that it countenances a robbery, and at the same time must be willing to believe and declare that the long line of decisions in this State which maintain the justice of private property in lands are obnoxious to justice and are the forcible, because legal, method of accomplishing a robbery. There is no escape from this conclusion. Courts, however, are constituted not to overthrow but to maintain and sustain the supremacy of the law.

At the time of the passage of 43 Elizabeth, 14, private property in land was permitted and protected in

England. Such a trust as this could not have been considered within its purview. Rather it must have been excluded. If beyond its meaning, how is it possible to bring it by analogy within its spirit and intendment.

A careful perusal of the entire will indicates that the object of the testator was to keep his name alive as much as anything else. If the Court should reach this conclusion, the case of Detweiler vs. Hartman, 10 Stew., p. 354, is applicable.

The question of liberty of speech and the freedom of discussion is not involved in this controversy.

The Constitution of New Jersey guarantees that "Every "person may freely speak, write and publish his senti- "ments on any subject." Article 1, § 5. And the First Amendment to the Constitution of the United States is to the same effect.

The decision of the Court that this bequest is illegal will not deprive Mr. George from freely speaking. writing and publishing his sentiments on any subject.

If the view of the Vice Chancellor in this respect is correct (vide his opinion, 17 Stew., p. 136,) it would be impossible for the Court ever to prevent the application of a bequest for the distribution of one's writings, on the ground that they are not within the legal definition of a charity. One would have but to say to the Court, admitting that the teachings are without the legal definition of a charity, still you can't prevent the application of this money to their distribution, for if you should do so you prevent free speech, &c., and the Court is deprived of all jurisdiction.

Such, however, is not the law. There is a distinction between the control that a Court has over an individual, personally, and the control that it has over moneys de-

voted by will to charitable uses. The individual may speak, write and publish what he pleases, but the moneys may be devoted to the publication and distribution of such writings only as come within the legal term of charity. Henry George's writings, named in the will, do not come within that term.

Jackson vs. Phillips, 14 Allen, p. 555.

The cypres power as applied to charities in England is of doubtful validity, and has never been exercised in this State.

Thompson vs. Norris, 5 C. E. G., 522; Hesketh vs. Murphy, 9 Stew., 305, 306, 310.

It is in any event applied only where gifts are made to charity generally.

DeCamp vs. Dobbins, 2 Stew., 43.

It has no existence in N. Y., where Mr. George lives. Williams vs. Williams, 4 Seld., 548; Beekman vs. Bonsor, 23 N. Y., 298, and argument of Mr. Noyes appended to said report. The application of cypres ceases when there is not to be found a general trust for charity.

Story Eq. Jur., § 1182.

Aside from the tendency of the courts to doubt the existence of this power, we submit that the gift is not made to charity generally. It is not for education genally, but solely to spread the views and theories of a particular man, and being void the estate goes to the heirs-at-law.

De Camp vs. Dobbins, 4 Stew., 692.

Story Eq. Jur., § 1183.

Morice vs. Bishop of Durham, 10 Vesey, 521.

Respectfully submitted,

C. V. D. JOLINE,

Counsel for James Hutchins.

APPENDIX.

That portion of the case of Jackson vs. Phillips, 14 Allen, 539, which relates to the creation of a sentiment that will put an end to negro suffrage, does not militate against the position assumed in this brief. It decides that it is a legal charity to permit money to be devoted to the preparation and circulation of books, &c., which will create a sentiment, that is to say, public opinion or a harmony of thought, (p. 565) on some public question. And the decision distinctly says that the methods are not by legislation or political action, but by moral influence and voluntary manumission of slaves—p. 565. This is a definition of the nature of that trust, and it indicates that the court can control the character of the books, &c., to be published. The decision certainly would have been different had the books, &c., been enumerated and had they contravened the law. If Mr. Hutchins' direction had been for the creation of a sentiment against the evil involved in the law as it relates to land tenures, there would have been a possibility of its legality. He, however, doesn't do this. He enumerates certain books. This necessitates an examination of the contents and teachings, which shows that they are subversive of the law.

In Jackson vs. Phillips, the methods were instruction of the moral sense of the slave-holders and others, influencing them to voluntary manumission. Henry George advocates the forcible taking of lands, unequal taxation; not the creation of a sentiment, &c., that will induce the voluntary submission of one's lands to the State for the benefit of the public. Trusts which look solely to political agitation and to attempts to alter existing laws are not charitable. Jackson vs. Phillips, 14 Allen, p. 565.

Nor is this changed by finding that any one of the books

is not against the law. The direction is to publish all; they must all stand or none.

Mr. George would commit the soil to the government, to the legislative, executive and judicial bodies. Yet he declares them all to be corrupt.

In The other portion of that decision relating to slavery, the court held to be legal because ~~the bequest~~ it could be applied in a lawful manner.—Id., p. 570.

It has no application here.

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10 The decision in Thornton vs. Howe, 31 Beavan p. 14, is incomprehensible. It is certainly not based upon sound reasoning. Because there is some good in one's writings, mixed with the folly, the incoherence and the confusion of a foolish, ignorant person of an enthusiastic turn of mind, should not make those writings valid as a charity. Such a decision is an offer of a premium to hypocrisy, for one has only to write all that he pleases that contravenes the law, and the interspersing of a few matters of an opposite sort will render the writing a charity. Mr. George
20 says that the experiment of popular government in the U. S. is a failure. This is clearly beyond the limits of a writing that would be called charitable. But he adds, "not that it is a failure everywhere or in everything." According to the Southcote decision, this is a saving clause and while the former clause would exclude his book as a charitable use the latter would re-admit it.

The Court says, on page 20, that Joanna Southcote's writings contain little about her peculiar ideas on the subject that she was with child by the Holy Ghost.
30 This should not have influenced the court. It is a mystery how it could permit any book containing such a statement to be spread under the mantle of charity.

Henry George's works are, however, permeated with his denunication of the perfidy of the law of the land, as heretofore shown.

TRENTON TIMES Print, Corner Greene and Front Streets, Trenton, N. J.

N. J. Court of Errors and Appeals.

Between
HENRY GEORGE,
Appellant,
and
HUTCHINS' EXEC'R et als.,
Appellees.
} *On Appeal.*

JOHN T. WOODHULL,
Solicitor.

SAMUEL W. BELDON,
Of Counsel.

While the opinion in this case is f unded upon a single objection to the books to be distributed under the gift in this will, the legality of which is in contention in this cause, the decree adjudging the gift illegal, in general terms, the whole question is opened and makes it necessary for us to support those portions of the same opinion which are favorable or tacitly conceded to us therein, as well as to attack the single portion antagonistic.

Speaking then to the general question, this residuary clause in the will seeks to establish a trust which is void

New Jersey State Library

as a perpetuity, if it cannot be sustained under the exception to the law against perpetuities, granting immunity from the operation of that law to such perpetuities as the courts will uphold as charities.

Our contention is that this gift is a charitable trust.

I.

What is a charity?

1. The laws of New Jersey are the same as those of England in the classification of objects which are and are not charities; and, by the law of England, they include other objects of beneficence than those mentioned in the statute of Elizabeth.

Thompson's Execr. *v.* Norris, 5 C. E. G. 489–522.
O'Hara on Construction of Wills, 401.

Lord Hardwicke, in
Jones *v.* Williams, Amb. 651,
defines a charity as "A gift to a general public use which extends to the poor as well as to the rich."

His definition has been approved in many cases.

Franklin *v.* Armfield, 2 Sneed. 305.
Cresson's Appeal, 30 Penn. 437.
Price *v.* Maxwell, 28 Penn. 35.
Cogglestall *v.* Pelton, 7 Johns. Ch. 292.
Am. Asylum *v.* Phœnix Bank, 4 Conn. 172.

But the definition which seems to have been favorably accepted by our courts in New Jersey is that of Mr. Justice Gray, in

Jackson *v.* Phillips, 14 Allen 539.
Brown *v.* Pancoast, 7 Stew. 321.
DeCamp *v.* Dobbins, 2 Stew. 36.

New Jersey State Library

He says a charity is "A gift to be applied consistently with existing laws for the benefit of an indefinite number of persons, by bringing their minds or hearts under the influence of education or religion," &c.

The principle that general education is a charity is well established in this State.

Stephens *v.* Shippen, 1 Stew. 487.
Taylor *v.* Bryn Mawr, 7 Stew. 101
And elsewhere.
Headly *v.* Hopkins' Acad., 14 Pick. 240–253.
Am. Acad. Arts and Sciences *v.* Harvard Col., 12 Gray 582.
Boxford Rel. Soc. *v.* Harriman, 125 Mass. 321.
Drury *v.* Natuck, 10 Allen 169.
Potter *v.* Chopin, 6 Paige 649.
Vidal *v.* City of Phila., 2 How. 127.

And more particularly education by means of the circulation of books or delivery of lectures, has been recognized as charitable.

Lowell Execrs., appellants, 22 Pick. 215.
Brown *v.* Pancoast, 7 Stew. 321.

And still more particularly trusts for the circulation of books and the delivery of lectures upon particular subjects, are deemed charitable.

Jackson *v.* Phillips, 14 Allen 539.
Thornton *v.* Howe, 31 Beav. 14.

The gift in question in this case is for public education by means of the distribution of books. The gift, expressed in the words of the testator, is "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 distribution all over the land of said George's publications,"

Page 13, 14.

and comes directly within the above cases, as the books alluded to, and which have been marked as exhibits in this case, treat of the subjects designated.

II.

But while a general view of the gift brings it within the rule of cases which would, beyond doubt, establish it as a charity, it has been and doubtless will be urged by those who are now the appellees, that a closer inspection of the gift and of the books therein alluded to, discloses defects and objectionable features which must compel the court to withhold its protection.

Those defects and features which will be noticed in this brief are:

1. That the books (exhibits) characterize certain existing laws and adjudications under them as criminal.
2. That the gift is opposed to existing law.
3 That the gift is too uncertain and indefinite to be administered.

The first of which the Vice Chancellor bases his conclusions upon, and the last two of which are, in the form urged upon the previous argument, not approved by him.

I. It will be seen by an examination of the opinion of the Vice Chancellor, that while it may be true that objections one and two are in some senses identical, as possibly they may both in reality rest on the reason of public policy, the objection, which is the Vice Chancellor's, differs from the second in that his objection goes only to the mode of expression of the idea and not really to the substance.

He declares on page 31 that he does not follow nor concur in the opinion in Jackson *v.* Phillips, that "these laws do not recognize the purpose of overthrowing them or changing them in whole or in part as a charitable use," which would go the substance of the principles

enunciated; but on page 32 rests his conclusions on the ground that the laws and the court's adjudications are denounced as a *crime* by the use of the word "robbery."

Now, it is submitted, in the first place, that the Vice Chancellor is mistaken in saying that a crime is charged, in that the evident intention of the author is not to use the word in its technical, legal sense.

The books are not treatises upon law, nor written by one learned in the law; and, this being the case, it is unfair to put upon them a construction or to give to them an interpretation inconsistent with the sense in which a layman would use them. There are many other senses in which the word is used. The general use of the word, in fact, imparts no such meaning, and the spirit of the context, as well as the profession of the author, argue most strongly for the meaning in general use.

Could it be contended for a moment that the customer who says to the tradesman, selling at a supposed exorbitant price, "It is robbery," charges a crime?

Is the use of the expression, "Robbing Peter to pay Paul," charging upon the actor a crime against Peter?

It is respectfully submitted that the ordinary use of the word carries with it no charge of crime.

Nor does the exact signification given by the lexicographers limit us to the legal interpretation. The first definition of "Rob," given by Worcester, is: "To take away without right." Webster gives many definitions differing from the legal acceptation: "To take away by oppression," "To take from, to deprive," "To withhold what is due," and quotes:

"Rob not the poor, because he is poor."—Prov. 22

"A large tree robs smaller plants near it, of their nourishment."

"Will a man rob God; yet ye have robbed me."—Mal. 3.

The legal definition imparts a felonious intent, which is no part of the general definitions, and certainly is not within the intention of Henry George in his use of the word in any of his works.

The definitions above alluded to, "To take from, to deprive," "To withhold what is due," will fully satisfy the intent of the author, and are no charge of crime.

But even if it were true that the words used did convey the suggestion of crime, it is contended that this is no reason for holding the gift illegal, for the charge is made only against the system by which the matter is regulated and *no revolutionary method is suggested for righting the wrong.*

It is submitted that under the decision in

Jackson *v.* Phillips, IV Allen, 539–565,

it is not the character of assertions or propositions concerning existing laws which determine the legality of the gift, but the means by which it is proposed to relieve from the effects of a system charged as iniquitous.

Under that opinion almost any terms might be used in characterizing a social wrong, but the remedy proposed would be the part submitted to the test.

This portion of the Jackson *v.* Phillips opinion is hereinafter discussed.

It is also submitted, with reference to the conclusion of the Vice Chancellor, that it is illogical.

In substance, he says that all of the arguments used by Mr. George are unobjectionable, but objects to the unavoidable conclusion.

If there is nothing in any of the arguments which the law considers will prevent the books being distributed as a charity, we submit the simple conclusion to which those arguments lead cannot have that effect providing that the conclusion is drawn logically from the arguments, for they must say the same thing.

II. The objection that the gift is opposed to existing laws.

The leading case upon this subject is

Jackson *v.* Phillips, *supra.*

That says, page 555,

"Gifts for purposes prohibited by, or opposed to, existing laws cannot be upheld as charitable, even if for objects which would otherwise be deemed such" and decides the gift of fund to be used for procuring a change in the laws concerning the rights of women to be void for this reason.

The bequest for the establishment of a fund for the "preparation and circulation of books and newspapers, the delivery of speeches and 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" was sustained, notwithstanding the fact that the Court held, impliedly, page 565, that the laws of other States than Massachusetts were to be taken into consideration, and that the laws of some of the States recognized slavery as a part of the same, upon the ground that it was not "the necessary or the reasonable interpretation of the bequest," that it looked to "political agitation and to attempts to alter existing laws." "The manner stated of putting an end to slavery is not by legislation or political action, but by creating a public sentiment,

which rather points to moral influence and voluntary manumission."

Do the words of this gift require any different interpretation?

The distribution in that case was for "creating a public sentiment;" in this, for "spreading the light." Clearly, both expressly point to education, and should receive the same interpretation.

But it may be suggested that the gift in the Massachusetts case was sustained because the means used were, in their absence, presumed to be lawful, but that no such presumption can arise in this case, as the books are present, and are such as should not have the sanction of the law in their distribution.

It is submitted, first, that, under the Jackson *v.* Phillips decision, if the books are not subversive of the Christian religion or of government in their sentiments, the only portion of them which can condemn them will be the means proposed for carrying the reforms suggested into effect. In determining whether or not their sentiments are subversive of the Christian religion or of government, all parts must be construed together.

It would be difficult to select any book which would contain no single unobjectionable phrase, if such phrase were separated entirely from all other parts of the book, but yet the meaning of the author might be entirely unobjectionable.

At the argument below counsel commented upon certain sentences and very few of them at that, which they were pleased to separate from all the context, to

mutilate, and to so deform as to express far from the intention of the author.

An illustration of this might be found in the opinion of the Vice Chancellor as above set out.

This is certainly an unfair method in dealing with substance.

It is submitted that if all parts of these books are read together, they will be found to inculcate the very ideas upon which the Christian religion and the best government are founded. They plead for justice and right to be secured by unselfish methods.

See Progress and Poverty, last chapter Social Problems.

But by these very references I am following almost the method of examination I deprecate:

All we ask is, let no part of any book be interpreted out of connection with any correllative part.

If, then, the general effect and tendency of these books is not adverse to Christianity and government, but rather ennobling and elevating to the reader, and thereby promotes the same, which we contend is the case, by what means are the reforms advocated to be brought about?

This must determine the fate of the gift under Jackson *v.* Phillips.

Is an insurrection advocated?
Is political agitation sought?
Are existing laws to be changed?

To the first two of these questions most decidedly, "No."

To the last one we answer, "Yes, but not such a change as will prevent the books being distributed under this gift."

The change advocated is a change in the law of taxation, nothing more.

The change is all embodied in the proposition in Progress and Poverty, Book VIII., Chap. 2,

"*To abolish all taxation save on land values.*"

With all the revolutionary sentiments generally imputed to Henry George, lo! this is the only change of law proposed; a change in a law constantly the subject of change, a law admittedly imperfect.

Can it be that, in this nineteenth century, it shall be held that advocating, by book, a change in the administration of the tax law, places the book beyond the pale of the law!

It is submitted that there is no case which goes so far —that Jackson *v.* Phillips goes only to *fundamental* law.

It was not urged below, and we do not believe it will be here, that this gift is void because the book, "Protection or Free Trade," advocating a change in the tariff legislation, was to be distributed; such a proposition would seem preposterous; and yet it is not more serious to change the law of taxation than the law of the tariff.

Both are incidental legislation, are matters of convenience, to be changed and reformed as occasion requires.

And the change advocated in the tax law is only a change in administration, and does not go to the overthrow of the same.

If such an advocated change should be sufficient to condemn these books and this gift, the logical conclusion would annihilate all of the public libraries, the missionary and Bible societies of the Christian Church, and would prevent absolutely the distribution under a testamentary gift of any book treating of live objects of the age.

But should it appear that this case is within the opinion in Jackson *v.* Phillips, we desire to call the attention of the court to the fact that that portion of the opinion declaring page 555, "And trusts whose expressed purpose is to bring about changes in the laws * * * are not charitable," &c., is not supported by the authorities which are thereinabove cited.

There is no one of the citations which goes further than to say that trusts for objects forbidden by the law, or, as Perry puts it, "contravening public law," are void.

All of the other citations go to the point of inciting an insurrection or establishing a supreme power other than the one recognized, which can be classed as attacks on existing government.

There is no case that we can find other than Jackson *v.* Phillips, which even seems to say that gifts seeking a change in laws not fundamental, are a class which are declared void.

No such classification is elsewhere made. The general classes are—

Forbidden by law,
Subversive of religion,
Subversive in some degree of government,
Against public policy,

And it is submitted that this last class includes such as are *properly* declared void as seeking a change in existing laws; but that all gifts which may distribute books advocating a change in existing laws are not against public policy, and hence are not all void.

It it contended that it is not against public policy to distribute books advocating a change in such laws as those above mentioned or such a change as above mentioned. Even if such was the policy of the law in earlier ages we deny that it is so to-day.

In this age we are seeking for the best. Any reform is welcome if it be reform; the perfect is the ideal; the perfect in government; the perfect in social condition, as in other spheres.

It cannot be attained without discussion, and it is submitted that no discussion, no proposition of reform, should be discouraged by the law unless it seek to destroy that known by the law to be the best.

If it be correct that public policy is the test it is submitted that the general tendency of these books, as is gathered from them as a whole, must govern, and that that tendency is to make better citizens of those who read.

There are no appeals to the lower natures of men, but all to the higher. There can be no improper motives inspired by these books.

If they are incorrect in their theories, it is only a mistake in science; but in the heart of the books, where they speak to men's hearts, there is no impure inspiration; the teachings would evoke no ignoble sentiment.

While it may be true that that which we regard as a settled right, is pronounced unjust (and nothing more serious can be charged), no revolution, no insurrection is urged, no "demand of right," but unselfish relinquishment of right, just the very course commended in Jackson *v.* Phillips, "moral influence and voluntary manumission."

3. As to the question of indefiniteness or uncertainty.

The discussion of this branch of the case is so completely covered by the discussion of the same branch in the Jackson *v.* Phillips case, that it is omitted here.

The following authorities are submitted, however; cases and discussions of cases where the gift was more uncertain than in this case.

DeCamp *v.* Dobbins, 2 Stew. 36, 4 Stew. 671.
Stevens *v.* Shippen, 1 Stew. 487.
Goodell *v.* Union Asso'n, 2 Stew. 32.
2 Roper on Legacies, Ch. 19 § 6.
O'Hara on Construction, § 369 *et seq.*

Respectfully submitted,

JOHN T. WOODHULL,
Solicitor of,
SAMUEL W. BELDON,
Of Counsel with, Appellant.

March 13th, 1889.

IN CHANCERY OF NEW JERSEY.

Between	
WILLIAM S. BRADDOCK, Executor, Complainant,	BILL FOR CONSTRUCTION.
and	
HENRY GEORGE, et als., Defendants.	

To his Honor Theodore Runyon, Chancellor of the State of New Jersey:

Humbly complaining, showeth unto your Honor, your orator, William S. Braddock, of Waterford, in the county of Camden and State of New Jersey, as executor of the last will and testament of George Hutchins, deceased, that on the seventh day of September, eighteen hundred and eighty-six, George Hutchins, of Ancora, in the county of Camden and State of New Jersey, died, leaving him surviving Mary Hutchins, his wife.

That on the twenty-eighth day of February, A. D. 1887,

the last will and testament of the said George Hutchins, deceased, was admitted to probate by the Orphans' Court of the county of Camden; that on the same day letters testamentary, by order of the said Court, were granted to your orator, the executor named in the said will.

The following is a copy of the said last will and testament of George Hutchins, deceased:

"Know all men by these presents, that I, George "Hutchins, of Ancora, in the township of Winslow, "county of Camden and State of New Jersey, being of "sound and disposing mind and memory, do hereby make "and publish this my last will and testament, hereby also "revoking all former wills and testaments by me at any "time heretofore made.

"First. I hereby constitute and appoint William S. "Braddock, of Bates' Mill, county and State aforesaid, "to be sole executor of this my last will, directing my "said executor to duly and justly pay the legacies here-"inafter given out of my estate.

"Second. I hereby give and devise to my wife, Mary "Hutchins, the one-third part of all my property in land, "real estate and Northern Pacific preferred railroad stock "and script, together with what she may select for her "own use of my household goods and furniture, with the "exception of one sewing machine.

"Third. I hereby give to Sarah Wood, wife of William "S. Wood, of Parker, county of Randolph, State of In-"diana, one sewing machine, with money enough to cover "the expenses of putting it in shipping order, duly ad-"dressed to her from the railroad station most convenient "to my house.

"Lastly. All the rest and residue of my estate, of any "and every form, kind and description whatsoever, 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 im- "portant 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; pro- "vided, first, that said George, his heirs, executors and "administrators, shall regularly furnish true annual re- "ports of the management and disbursement of the said "'Hutchins' Fund' to the paper called '*The Irish World "and the American Industrial Liberator*,' or its acknowl- "edged successor, and shall also annually mail or other- "wise send a copy of said paper, containing such annual "report, to each of the following persons, to-wit: my "aforementioned wife, Mary Hutchins, now of this place, "William S. Wood, now of Parker, county of Randolph, "State of Indiana, and James Hutchins, now of Selma, "county of Delaware and State of Indiana, and provided, "second, that said George, his heirs, executors and ad- "ministrators, shall cause to be inserted or printed oppo- "site the title page of every free copy of his books dis- "tributed 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. In "testimony whereof, I have hereunto set my hand and "seal and publish and declare this to be my last will and "testament, in the presence of the witnesses named be- "low, this eighth day of September, in the year one thou- "sand eight hundred and eighty-three.

"GEORGE HUTCHINS. [L. S.]

"The above instrument, consisting of one sheet, was "now here subscribed by George Hutchins, the testator, "in the presence of each of us; and was at the time de- "clared by him to be his last will and testament, and we, "at his request, and in his presence, sign our names there- "to as attesting witnesses.

"G. W. BLATHERWICK,
"THOMAS C. EDWARDS,
"Witnesses."

A copy of which said last will and testament, duly certified by the Surrogate of the county of Camden, is now in your orator's possession and ready to be produced as this Honorable Court shall direct, and to which your orator, for greater certainty, begs leave to refer.

And your orator further shows, that the next of kin of the said George Hutchins, deceased, are James Hutchins and Israel Hutchins, of Selma, in the State of Indiana, half brothers, and May Cole, whose place of residence is to your orator unknown, but he has been informed that she lives in the State of Kansas.

That an inventory was filed in the Surrogate's office of the county of Camden, on the fifth day of March, A. D. 1887, showing the goods and chattels, rights and credits and effects of the said George Hutchins, deceased, which have come to the hands of your orator as executor, to amount to the sum of nine thousand three hundred and eighty-six dollars and ten cents.

That the real estate belonging to the said George Hutchins consists of five acres of land at Ancora, in the county of Camden and State of New Jersey; that the value of the said real estate, as your orator has been informed and believes to be true, is one thousand dollars.

And your orator further shows, that he has been informed that the gift, in trust, of the residue of the estate, after paying the legacies to Henry George, as specified in the said last will and testament of George Hutchins, de-

ceased, is not a legal and valid gift; or if it is a legal and valid gift, it is void for uncertainty, and is not such a trust as will be enforced in a court of equity, and that he has no right to pay over to the said Henry George the residue of the said estate.

That James Hutchins, one of the next of kin of said George Hutchins, deceased, by his counsel, has informed your orator that the said gift of the residue of the estate in trust to said Henry George is not a legal and valid gift, but is void, and has directed your orator not to pay over the residue of the said estate to the said Henry George until ordered to do so by the decree of a competent court.

In tender consideration whereof, and for as much as your orator is without adequate remedy in the premises, at and by the strict rules of common law, and can only obtain relief in this Honorable Court, where matters of this nature are properly cognizable and relievable.

Your orator, therefore, prays that he may have the aid of this Honorable Court in the construction of the said last will and testament of George Hutchins, deceased, that it may declare:

First. Whether the gift in trust of the residue of the estate to Henry George, after deducting the specific legacies, is a legal and valid gift, and will be enforced in a court of equity.

Second. Whether your orator, under the terms of the will, shall sell the real estate as aforesaid included in the estate of George Hutchins, deceased.

Third. Whether the said Mary Hutchins, widow of the said George Hutchins, deceased, is entitled to dower in the said real estate.

Fourth. That, if the said gift of the residue of the estate to the said Henry George in trust is declared invalid or void, whether the said George Hutchins died intestate as to the said residue, and whether your orator shall distribute the same according to the statute of distributions.

Fifth. If the said gift in trust to Henry George is declared invalid, illegal or void, whether your orator shall then, under the terms of the will, sell the said real estate; and whether the residue of the money arising from the sale of the said real estate, after deducting the devise of one-third to the said Mary Hutchins, shall be considered as part of the said personal estate and be distributed as such, or shall be distributed among the heirs of the said George Hutchins, under the provisions of the law of descent of real estate. To the end, therefore, that the said Henry George, Mary Hutchins, James Hutchins, Israel Hutchins and Mary Cole may, without oath, to the best and utmost of their respective knowledge, remembrance, information and belief, full, true and perfect answer make to all and singular the matters aforesaid, and that as fully and particularly as if the same were here repeated and they and every of them distinctly interrogated thereto; and that your orator may have such further or other relief in the premises as the nature of the case may require and as shall be agreeable to equity and good conscience.

May it please your Honor, the premises considered, to grant unto your orator the State's writ of subpœna, issuing out of and under the seal of this honorable court, to be directed to the said Henry George, Mary Hutchins, James Hutchins, Israel Hutchins and (May Cole) commanding them and each of them, by a certain day and under a certain penalty therein to be expressed, to be and appear before your Honor in this honorable court, then and there to answer all and singular the said premises, and to stand to, abide by and perform such decree therein as to your Honor shall seem meet, and shall be agreeable to equity and good conscience.

And your orator, as in duty bound, will ever pray, &c.,

[Signed] GEO. A. VROOM,
Solicitor of Complainant.

IN CHANCERY OF NEW JERSEY.

Between

WILLIAM S. BRADDOCK,

Executor, &c.,

Complainant,

and

HENRY GEORGE, et als.,

Defendant.

ON BILL &C., ANSWER.

The answer of Henry George, defendant, to the bill of complaint of William S. Braddock, executor of the last will and testament of George Hutchins, deceased, complainant.

This defendant, now and at all times hereafter, saving and reserving to himself all and all manner of benefit and advantage of exception to the many errors, uncertainties and imperfections in the said bill of complaint contained, for answer thereunto, or unto so much thereof as this defendant is advised it is material or necessary for him to make answer unto, answering says:

That, to the best of his knowledge, information and belief, it is true, as set out in the said complainant's bill of complaint, that on or about the seventh day of September, eighteen hundred and eighty-six, one George Hutchins, of Ancora, in the county of Camden and State of New Jersey, died, leaving Mary Hutchins, his wife, him surviving; that on the twenty-eighth day of February, eighteen hundred and eighty-seven, the last will and testament of the said George Hutchins, deceased, was

admitted to probate by the Orphan's Court of the county of Camden, and that on the said last mentioned date, letters testamentary, by order of the said court, were granted to the said complainant, executor, &c., as aforesaid, upon the said last will and testament of the said George Hutchins, deceased, a copy of which is in the said complainant's bill of complaint fully set forth.

And this defendant, further answering, says that it may be true, as set forth in the said complainant's bill of complaint, that the next of kin to the said George Hutchins, deceased, are James Hutchins and Israel Hutchins, of Selma, in the State of Indiana, half brothers, and May Cole, who is said to reside in the State of Kansas, but that he has no knowledge upon the point; and, neither admitting nor denying the statements of said bill upon this particular, he leaves the said complainant to prove the same; that it may be true that an inventory was filed in the Clerk's office of the said county of Camden, on the fifth day of March, eighteen hundred and eighty-seven, showing the goods and chattels, rights and credits and effects of the said George Hutchins, deceased, which have come to the hands of the said complainant, executor, &c., as aforesaid, to amount to the sum of nine thousand three hundred and eighty-six dollars and ten cents, but that the truth of these statements contained in said bill is without the knowledge of this defendant and, neither admitting nor denying those particulars, he leaves the said complainant to prove the same; that it may be true that the real estate that belonged to the said George Hutchins, deceased, consists of five acres of land at Ancora, aforesaid, and that the value of the said land is one thousand dollars, but that the facts as set forth in the said complainant's bill of complaint, relating to these statements respecting the area and value of such lands, are unknown to this defendant, and, neither admitting nor denying the truth of the said

statements, he leaves the said complainant to prove the same. And this defendant, further answering, says that it may be true, as set forth in said complainant's bill of complaint, that said complainant has been informed that the gift, in trust, of the residue of the estate of the said George Hutchins, deceased, after paying the legacies therein mentioned to this defendant, as specified in the said last will and testament of the said decedent, is not a legal and valid gift; or, if it is a legal and valid gift, it is void for uncertainty, and is not such a trust as will be enforced in a court of equity; and that he has no right to pay over to this defendant the residue of said estate; but this defendant denies that the intimations and allegations relating to the said gift, in trust, to this defendant in the said will contained are warranted, or just, or true, and that, as this defendant has been informed and believes, he has a good defense to the allegations in said bill contained; that the said gift, in trust, is legal and valid; that it is neither void nor voidable for uncertainty; that the said gift, being dedicated to a broad, useful and educational purpose, is a trust that will be enforced by this honorable Court—a trust that this defendant accepts and will endeavor to execute according to the spirit of its dedication; and that the said William S. Braddock, executor, &c., as aforesaid, may, and of right should, pay over to this defendant, as trustee, the residue of the said estate according to the true intent, spirit and direction of the said last will and testament of the said George Hutchins, deceased.

And this defendant denies that any other matter or thing material or necessary for this defendant to make answer unto, and not herein or hereby well and sufficiently answered, confessed or avoided, traversed or denied, is true, to the knowledge or belief of this defendant.

All which matters and things this defendant is ready to aver, maintain and prove, as this honorable court shall

direct, and he prays this honorable court for a construction of the terms of the said will and that he may be decreed to receive the residue of the said estate as therein directed, together with all his reasonable costs and charges in this behalf sustained.

JOHN T. WOODHULL,
Sol'r for defendant Henry George.

IN CHANCERY OF NEW JERSEY.

Between

WILLIAM S. BRADDOCK, Executor of the last will and testament of George Hutchins, deceased,

Complainant,

and

HENRY GEORGE, ET AL.,

Defendant.

ANSWER OF MARY HUTCHINS.

The answer of Mary Hutchins, one of the defendants, to the above bill of complaint.

This defendant, answering, says, that she admits that on the seventh day of September, A. D. 1886, George Hutchins departed this life, leaving him surviving this defendant, his wife;

That on the twenty-eighth day of February, 1887, the last will and testament of the said George Hutchins was admitted to probate, and letters testamentary granted thereon to William Braddock, the complainant;

That the copy of the last will and testament of the said George Hutchins, as set out in said bill, is a true copy;

That the next of kin of the said George Hutchins are James Hutchins, Israel Hutchins and May Cole;

That an inventory has been filed in the office of the Surrogate of Camden county, showing that the goods and chattels, rights and credits and effects of the said George Hutchins, deceased, amount to the sum of nine thousand three hundred and eighty-six dollars and ten cents;

That the real estate of which the said George Hutchins' died seized consists of five acres of land at Ancora, but the value of said land this defendant does not know.

And this defendant, further answering, says that the gift of the residue of the estate of the said George Hutchins, deceased, after deducting the specific legacies named in the said will, to the said Henry George, in trust for the purposes set out in said last will and testament of George Hutchins, deceased, is not a valid and legal gift, and should not be enforced.

This defendant, therefore, prays that the said gift to Henry George, in trust, of the residue of the said estate, may be declared to be invalid and illegal, and such a trust as will not be enforced by a court of equity;

That the said executor may be decreed to pay to this defendant her dower right in the said real estate, of which the said George Hutchins died seized;

That the said George Hutchins may be declared to have died intestate as to the said residue of his estate, so as aforesaid given to Henry George, in trust, and that the said executor may be decreed to pay to this defendant one-half of the said residue, according to the statute of distributions.

That she may be hence dismissed, with her reasonable costs and charges in this behalf sustained.

(Signed)

SCHUYLER C. WOODHULL,
Sol'r for def't., Mary Hutchins.

An answer was also filed by the defendant, James Hutchins, C. V. D. Joline, solicitor, similar to that filed by the defendant, Mary Hutchins.

February 16th, 1888.

The cause came on for final hearing before Vice Chancellor Bird, in the presence of respective counsel of parties, upon bill and answers and proofs.

The complainant offered in evidence certified copy of last will and testament of George Hutchins. The defendant, Henry George, offered in evidence certain books, to-wit: "Progress and Poverty," "Social Problems," "The Land Question," "Protection or Free Trade," "Topics of the Times," which he proposed to distribute under the terms of the last will and testament of George Hutchins, dec'd.

STATE OF NEW JERSEY, } *ss.*
CAMDEN COUNTY. }

I, GEORGE S. WEST, Surrogate of the County of Camden, do certify the annexed [SEAL.] to be a true copy of the Last Will and Testament of George Hutchins, late of the County of Camden, deceased, and that William S. Braddock, the executor named therein, proved the same before the Surrogate and is duly authorizee to take upon himself the administration of the estate of the testator, agreeably to the said Will.

Witness my hand and seal of office, the tenth day of May, in the year of our Lord one thousand eight hundred and eighty-eight.

GEO. S. WEST,
Surrogate.

Know all men by these presents, that I, George Hutchins, of Ancora, in the township of Winslow, county of Camden and State of New Jersey, being of sound and disposing mind and memory, do hereby make and publish this my last will and testament, hereby revoking all former wills and testaments by me at any time heretofore made.

First. I hereby constitute and appoint William S. Braddock, of Bates' Mill, county and State aforesaid, to be sole executor of this my last will and testament, directing my said executor to duly and justly pay the legacies hereinafter given out of my estate.

Second. I hereby give and devise to my wife, Mary Hutchins, the one-third part of all my property in land, real estate and Northern Pacific preferred railroad stock and script, together with what she may select for her own use of my household goods and furniture, with the exception of one sewing machine.

Third. I hereby give to Sarah Wood, wife of William S. Wood, of Parker, county of Randolph, State of Indiana, one sewing machine, with money enough to cover the expenses of putting it in shipping order, duly addressed to her from the railroad station most convenient to my house.

Lastly. All the rest and residue of my estate, of any and every form, kind and description whatsoever, 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 this land of said George's publications on the all important Land Question and cognate subjects, including his "Progress and Poverty," his replies to 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, first, that said George, his heirs, executors and administrators, shall regularly furnish true annual reports of the management and disbursement of the said "Hutchins' Fund" to the paper called "*The Irish World and the American Industrial Liberator*," or its acknowledged successor, and shall also annually mail or otherwise send a copy of said paper, containing such annual report, to each of the following persons, to-wit: my aforementioned wife, Mary Hutchins, now of this place, William S. Wood, now of Parker, county of Randolph, State of Indiana, and James Hutchins, now of Selma, county of Delaware and State of Indiana, and provided, second, 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. In testimony whereof, I have hereunto set my hand and seal and publish and declare this to be my last will and testament, in the presence of the witnesses named below, this eighth day of September, in the year one thousand eight hundred and eighty-three.

"GEORGE HUTCHINS. [L. S.]

The above instrument, in writing, consisting of one sheet, was now here subscribed by George Hutchins, the testator, in the presence of each of us; and was at the time declared by him to be his last will and testament, and we, at his request, and in his presence, sign our names thereto as attesting witnesses.

G. W. Blatherwick,
Thomas C. Edwards,
Witnesses.

IN CHANCERY OF NEW JERSEY.

Hutchins, Executor,
v.
Henry George, et als.

A bequest for the distribution of books, in which the author describes the system by which the land owners of the country hold the title to their lands as robbery, is not such a charity as the courts will enforce.

Mr. George A. Vroom, for complainant.
Mr. John T. Woodhull, for defendant Henry George.
Mr. Schuyler C. Woodhull, for defendant Mary Hutchins.
Mr. C. V. D. Joline, for defendant James Hutchins.

Bird, V. C.: William S. Braddock, the executor of the last will and testament of George Hutchins, deceased, by his bill, asks for the construction of the will of the said deceased. The will, first makes provision for the wife of the testator, and makes other disposition of a small amount of his property, and then, and lastly, makes the provision for the construction of which this bill is filed.

"Lastly. All the rest and residue of my estate, of any and every form, kind and description whatsoever, 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, first, that the said George, his heirs, executors and administrators, shall regularly furnish true annual reports of the management and disbursements of the said "Hutchins Fund" to the paper called "*The Irish World and The American Industrial Liberator*," or its acknowledged successor, and shall also annually mail, or otherwise send a copy of said paper containing such annual reports to each of the following persons, to wit: My aforementioned wife, Mary Hutchins, now of this place; William S. Wood, now of Parker, county of Randolph, State of Indiana, and James Hutchins, now of Selma, county of Delaware and State of Indiana; and provided, second, 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 bill shows that the executor had been warned by the heirs-at-law and next of kin of the said testator, that

the said bequest is void, and that he will not be justified in attempting to comply with the provisions of the will respecting it. He prays, therefore, for the court to declare whether or not such gift, in trust, of the residue, is legal and valid, and whether it will be enforced in a court of equity or not; and whether, under the terms of the will, he is authorized to make sale of the real estate mentioned therein; and whether the said Mary Hutchins, the widow, is entitled to dower in the real estate; and fourth, whether or not, if the said gift to the said Henry George be declared invalid, the said testator died intestate as to the said residue, and in that case how shall the said residue be distributed; and in case the said residuary clause be declared invalid, whether or not the said executor is authorized to sell the real estate, and if so, as to the disposition of the proceeds thereof; and whether one-third of the proceeds of the sale shall be considered as personal estate and be distributed as such.

The defendants, Mary Hutchins, the widow, and George Hutchins, one of the legatees, insist that the said residuary clause is invalid, and, therefore, cannot be enforced. First, they insist that it is not a charitable bequest, within the meaning of the term as understood by all text writers and judges who ever have had occasion to pass thereupon. Much reliance is placed upon the statute, 43 Elizabeth, Chapter 4, by the defendants. They urge that every adjudication since that time has gone upon the theory that nothing will be supported of the character named which is not clearly and indisputably a charity. It is said that this was the view presented by Chief Justice Marshall in Baptist Association vs. Hart's Executor, 4 Wheaton 1, in which he says: "We have no trace in any book of any attempt in the Court of Chancery, anterior to the statute, to enforce one of these vague bequests for charitable uses." Notwithstanding this eminent authority, the opinion of the court in Vidal vs. Girard's Executors, 2 How. 126,

194, seems to establish the fact that the Court of Chancery had such power and exercised it before the act referred to was passed. And it is insisted that whether or not the said statute be enforced in new Jersey, the spirit and intent thereof prevails. Thompson's Executors vs. Norris, 5 C. E. G., 522. And, to support this, Story's Equity, Section 1155, is cited.

What is a charity? Since it often happens that definitions are framed from and for particular cases, I will not attempt defining it; but will be content with the views of others of great experience and learning which are relied upon by counsel for defendants. Perry on Trusts, Section 709, is cited, where the learned editor says: "Charity has obtained a significance in law, and courts do not uphold or administer trusts for particular purposes which are not charitable within the meaning of the law." Mr. Story adds: "A bequest may in an enlarged sense be charitable and not within the purview of the statute." Another authority, it is said, writes: "Such charitable bequests only as are within the letter and spirit of the statute" are sustained, citing Story, sections 1155, 1158, 1164; Kendall v. Gandure, 5 Bea., 311; Williams v. Williams, 4 Seld., 547; Brown v. Yeald, 7 Beas., 50, and note; Owen v. Miss. Society, 4 Kern, 307, 397, 403.

Again, it is said that all of the purposes to which any charitable bequest can be made may be classified under those which are ecclesiastical, educational or elesemosynary. Attorney General v. Calvert, 23 Bea., 258. And it is claimed that the gift which we are now considering cannot be brought within either of these classifications, for, it is said, that in no sense does the gift in question have a tendency to benefit or to improve mankind, being in no sense a school of learning to educate mankind The claim, further, is that there must be an indubitable benefit, a tendency to humanize, to elevate and to im-

prove mankind before a gift of this nature can be declared valid or enforced by the courts.

It is said further that in Brown v. Pancoast, 7 Stew., 321, Chancellor Runyon said that a gift by the testator for the purpose of creating a fund, the income of which should be devoted to the purchase of books in founding a useful library, was charitable. Council says, with respect to this: "Incontestibly this was a good bequest, and should be enforced;" but says, "Far different is the purpose under consideration; here the bequest is to spread light on the land question by purchasing and distributing books written by the trustee on that question. And it is a bequest for spreading abroad a man's theories on the question of land tenures and their abuses and cognate subjects."

A bequest, then, of a fund to perpetuate a useful library is good. The bequest under consideration is to spread the light on the land question, in other words on the question as to who shall hold the title to lands, or how that title shall be held, or for whose benefit. Now if the gift to establish a library without classification of the books or without reference to their character, (except that they be useful) certainly a gift to establish a library to be composed of a certain class of books, or of books upon certain subjects, would be good also. Would not a gift for the purpose of founding an institution to publish the works of Newton, or of Bacon, or of Milton, or of Shakespeare, or of Edwards, or of Bancroft, or of Irving, or of McCosh, or Webster or Marshal, be good? Incontestibly so. If not, then I do not see how we can sustain the numerous gifts to the Bible Society, within the control of various denominations of Christians in this country. But if I am right in this then it must follow that a gift to circulate any portion of these works or any one of them would also be lawful. And look to high authority.

There can be no doubt but that the circulation of one book may be the object of a testator's bounty. A testatrix provided that the residue of her estate should be applied towards the printing, publishing and propagation of the sacred writings of the late Joanna Southcate. The heirs filed a bill alleging that the gift for such purpose was either void in law, on the ground that the writings were of a blasphemous and profane character, or that the trust so declared was for the propagation of doctrines subversive to the Christian religion. It seems that Joanna Southcate taught in her books that she was with child by the Holy Ghost, and that a second Messiah was about to be born of her body. In speaking of her, Sir John Romilly, Master of the Rolls, said: "In the history of her life, her personal disputations and conversations with the devil, her prophecies and her inter-communings with the spiritual world, I have found much that, in my opinion, is very foolish, but nothing which is likely to make persons who read them either immoral or irreligious." Again, he says, "I cannot say that the bequest of a testator to publish and propagate works in support of the Christian religion is a charitable bequest, and at the same time say that if another testator should select for this purpose some three or four authors, whose works will in his opinion produce that effect, such a bequest thereupon ceases to be charitable. Neither can I do so if the testator should select one single author." The bequest was sustained. Thornton v. Howe, 31 Bev., 14.

If it be so that a bequest for the distribution of the works of Joanna Southcate, or of the Bible, by an institution founded for that purpose, is valid, then it is clear that a bequest for any other single and definite purpose which will, if carried out, have a tendency to enlighten or improve mankind, with respect to a given subject or theory, such gift must also be valid, as a charity, and can be enforced by the courts. It will be noted that I say to

enlighten or to improve mankind. And it is not necessary that I should more particularly define the object to be had in view in every such discussion. Certainly if the purpose of the testator was to disseminate doctrines immoral in their character, tendency, or influence, they could not be called charitable, in any sense, nor could they in any sense be said to elevate or improve mankind. I cannot but add that it is not the individual judgment, which is to be the guide in every such case, for manifestly that may be regarded as hostile to the public welfare by one individual, which by another would be deemed most useful or beneficial. This assertion is founded upon what we are taught in all the pages of history. It is everywhere written that the efforts of enlightened individuals upon one hand to break through the clouds of darkness and of ignorance, or to overcome oppression and resistance, have upon the other hand been as stoutly opposed, if not by persons equally intelligent, yet by persons enjoying the benefits and advantages which came to them from the existing condition of things, and placed them in positions of supremacy, or of happiness, above their fellows. Suffice it to say that our National history had its origin in this great truth, and gives us numerous illustrations of the inestimable value of it.

Now, with these suggestions as to the law, and as to the fundamental principles which should control, let us see what it is which the testator in the case before us desires to disseminate. A few quotations from the books which have been offered in evidence are essential, and a few will suffice; those which have been presented by counsel for the defence, I will give. Chapter 1, of Book 7, in the work on Progress and Poverty, the author heads with the phrase: "The injustice of private property in land." Amongst many of his declarations in that chapter, he says: "There is in nature no such thing as a fee simple in land; there is on earth no power which can

rightfully make a grant of exclusive ownership in land. If all existing men were to unite to grant away their equal rights, they could not grant away the right of those who followed them. For what are we but tenants for a day? * * * Let the parchments be ever so many, or possession ever so long, natural justice can recognize no right in one man to the possession and enjoyment of land that is not equally the right of all his fellows. Though his titles have been acquiesced in by generation after generation, to the landed estates of the Duke of Westminster, the poorest child that is born in London to-day has as much right as his eldest son. Though the sovereign people of the State of New York consent to the landed possessions of the Astors, the puniest infant that comes wailing into the world in the squalidist room of the most miserable tenement house, becomes at that moment seized of an equal right with the millionaires. And it is robbed if the right is denied. * * * The wide spreading social evils which everywhere oppress men and amid an advancing civilization spring from a great primary wrong—the appropriation as to the exclusive property of some men of the land on which and from which all must live. * * * As for the deduction of a complete and exclusive individual right to land from priority of occupation, that is, if possible, the most absurd ground on which land ownership can be defended. Priority of occupation gives exclusive and perpetual title to the surface of a globe on which, in the order of nature, countless generations succeed each other. Had the men of the last generation any better right to the use of this world than we of this? or the men of a hundred years ago? or of a thousand years ago?

The title of chapter three suggests the contents of it, namely: "Claim of land owners to compensation."

The truth is, and from this truth there can be no escape, that there is and can be no just title

to exclusive possession of the soil, and that private property in land is a bold, bare, enormous wrong, like that of chattel slavery. * * * * * * The examination through which we have passed has proved conclusively that private property in land cannot be justified on the ground of utility—that, on the contrary, it is the great cause to which are to be traced the poverty, misery and degradation, the social disease and political weakness which are showing themselves so menacingly amid advancing civilization. Expediency, therefore, joins justice in demanding that we abolish it. * * * *

The land of Ireland, the land of every country, belongs to the people of that country. * * * The common right to land has everywhere been primarily recognized, and private ownership has nowhere grown up save as the result of usurpation. * * * Historically, as ethically, private property in land is robbery. It nowhere springs from contract; it nowhere can 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.

In his work on "Social Problems," Henry George says:

"The more we examine the more clearly we see that public misfortunes and corruptions of government do spring from neglect or contempt of the natural rights of man. * * * * * The institution of public debts, like the institution of private property in land, rests upon the preposterous assumption that one generation may bind another generation. If a man were to come to me and say, "Here is a promissory note which your great-grandfather gave to my great-grandfather, and which you will oblige me by paying," I would laugh at him, and tell him that if he wanted to collect his note he had better hunt up the man who gave it; that I had nothing to do with my great-grandfather's promises. And if he were to insist upon payment, and to call my attention to the terms

of the bond, in which my great-grandfather expressly stipulated with his great-grandfather that I should pay him, I would only laugh the more, and be more certain that he was a lunatic. To such a demand any one of us would reply in effect, "My great-grandfather was evidently a knave or a joker, and your great-grandfather was certainly a fool, which quality you certainly have inherited if you expct me to pay the money because my great-grandfather promised that I should do so. He might as well have given your great-grandfather a draft upon Adam or a check upon the First National Bank of the Moon. * * * * * While, as for the great National debts to the world, incurred as they have been for purposes of tyranny and war, it is impossible to see in them anything but evil. Of these great National debts that of the United States will best bear examination; but it is no exception."

Some observations seem to be necessary in order to understand the full measure of the subject we are dealing with. The sentiments or expressions, which I have above recited, are levelled at the foundation of laws and customs, as they have existed for many centuries, wherever civilization has had the slightest foothold; are levelled at principles, which, in all ages, where men have been at all enlightened and made progress from barbarism, have been fostered as amongst the foremost incentives to human action; and at principles which have, during all the period named, been regarded as the very bulwarks of freedom and stability amongst the nations of the earth. Indeed, in one sentence it may be said that nothing, excepting only the Gospel, has done so much towards lifting man from the degrading superstition and slavery of heathenism as the possibility, by generous effort, of acquiring a certain foothold upon the soil which, if he improves, shall be his own and shall descend as an inheritance to his posterity, or shall be disposed of accord-

ing to the owner's will and pleasure. But our author, by a stroke of the pen, or an act of legislation, 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.

Take away this inducement to labor, that is, say to the hungry you have no more right to plough and to sow a given tract of land than any other of the millions who tread the earth, and if you do plough and sow and cultivate another has the same right to reap, or if you do these things and die before you have gathered, strangers may enter and reap, and your children, for whom you have have wrought, may go crying for bread; say to those who go a step beyond, and waste the energies of a lifetime in improving the soil, in erecting comfortable dwellings and barns, that another has equal claim, not only to the soil itself, but to all that has been put upon it for its adornment; and that even the distress of advanced years and the necessities of a growing household will not protect the possessor, nor insure his posterity in a title thereto, then indeed will the sweet, reviving, life-giving sunshine of our present civilization disappear more rapidly than did the Roman at the appearance of the Goths and Vandals.

The laws, the customs, the institutions amid which we have been brought up, and which have shed that influence which we regard as hallowed or sacred upon us, have so influenced us that we cannot look at this subject in any other light than above expressed. These laws, customs and institutions may stand upon a false foundation, and may shed a false or misleading light, but to ignore the fact of their influence, or the fact of their existence cannot be conceived of for one moment, and much less are we inclined to reject and overthrow them when we con-

sider that they have been sanctioned and maintained by the judgment, the labor and the skill of the best and wisest of men which the past generations have produced. But the importance of the subject warrants another observation.

Suppose the theories of our author should prevail, and the determination be to resolve society into its original elementary or first principals, what is to be done with the billions of dollars of improvements which now beautify and adorn the earth? Who would be entitled to them? Could another, who had spent neither a moment of time nor a dollar in their construction, say to the Astors or to the Vanderbilts that he had an equal claim to such improvements with them? Could the tramp say to the day laborer who, by dint of industry, had procured for himself the title to a lot and erected thereon a dwelling for himself and family, that that was as much his dominion and inheritance? And if such difficulties as these were to be securely removed or overcome and the wide world lay open before all men equally, and all the laws on the subject of titles were abolished and it were to be considered that each man, woman and child had an equal right to the whole and to every part, with all the other millions of inhabitants, what then would the order of affairs be? Or what then would be the sequence of the first demonstration? Indeed, it may be there would be no human effort. Perhaps, if there was no such thing as a holding, as a title, as a tenure, there would be no labor expended. The whole social system thus transformed, if not deformed, and the self imposed edict that no one had any right to the soil under his feet except during the momentary occupation, have we not then a picture of what would ensue in the mighty hordes that roamed over Asia nearly two thousand years ago?

While these suggestions show us the extent and importance of the discussion, they do not seem to terminate

the discussion. I have said this question is not to be determined by the judgment of a single individual, nor of a single court, composed of many individuals, but it is to be determined by the true reason or spirit of law, as it has been declared and upheld for long periods of time. And the law, as I have shown, for many centuries, has acknowledged and sustained the right of individuals to hold title to lands, to dispose of those titles at their own will and pleasure, and upon their death, if not otherwise disposed of, said lands to descend to their heirs-at-law.

It is said, however, that while this is an historical fact, it is nevertheless only the semblance of a right, and has nothing to commend it but the veneration which we pay to antiquity. It is urged that this great fallacy, like many others, is doomed to vanish before the light of true inquiry. It is also claimed that oftentimes the greater the wrong, the more deep-rooted and irresistible does it become; and that what has been growing for ages, and winning the admiration of men, because it fostered their greed and pampered their vices and sustained their indulgences, will take ages to remove. It is claimed that these vices and indulgences, and this greed of mankind, have imposed the fetters which now enslave and degrade the millions of earth. This, of course, is upon the theory that our habits of thought have been such that we are at present unable to distinguish the truth from error. Nor have any of the enlightened men in former ages been protected by their nearer approach to the point of departure from falling under the same hallucination.

But the process of a proper mental training must be begun. The alphabet and spelling book of a new departure must be learned. This, although the work of time, it may be of ages, the beginning cannot be postponed. Illustrations, we are assured, may be had. The ignorance of the people during the feudal ages, and the

hardships which they endured and submitted to at the hands of their chiefs, though few in number, were not removed nor overcome until generation after generation had gone down in the mighty struggle for freedom from that bondage which was gross in its character, debasing in its influence and demoralizing upon the whole body politic. Century after century were human beings held in worse bondage still, and sold like chattels in the public markets; and to remove this blight upon civilization, the discussion, though feeble in its inception, waxed warmer and warmer throughout the ages, until horrid war came to the front and marked an era of unexampled devastation and blood.

The brief glance, above given, shows us that the revolution contemplated involves every moral, social, political, and economical problem; and that the only hindrance to its triumph is said to be the ignorance, prejudice or selfishness of the rulers, sages and philosophers of the present age. Whilst it is both difficult and unpleasant to believe our moral capacities are so blunted or blinded, as is indicated, that nothing but another deluge can regenerate mankind; yet in this undertaking we have no concern, in that direction, any farther than to survey the plan designed and declared to be a mark of safety for the people as against all social, political and economical ills. With this to guide us, I conceive the extent of our duty to be to declare whether or not it is within the pale of the law for the testator to undertake, by the means indicated, the work of accomplishing such a revolution.

And this brings me to the last and most serious view of this branch of the subject. Notwithstanding the practical working out of this problem by our author and his adherents involves our homes, and our firesides, our church, and our state, and all the institutions established and regulated thereby, yet there is one fundamental principle that lies so hard by, and is so interwoven with all

the rest, that I cannot forget nor mistrust it, nor even venture to say that it too is not involved in this controversy; I refer to the liberty of speech and the freedom of the press. But it is asked how is this principle involved? I answer much every way. Think a moment and it will appear plain. One testator says, by his bequest, circulate the Bible, another the tract, and another establish libraries which circulate everything that is not of an immoral tendency and much that is, which issues from the press. In many of these last institutions doubtless may be found books most questionable in their character, including many infidel publications of every type. This fact was admitted on the argument. These, without the slighest discrimination, have been upheld by the courts as charitable institutions. It would be impossible upon principle to say otherwise, for whenever the courts undertake the work of the critic or the censor, and to declare this or that is bad, or this or that is good, when dealing with questions of this character, unless the book be irreligious or immoral, then indeed the system of charities which is designed to elevate mankind by the diffusion of knowledge through books must at once begin to decline. I am not required to say what the Court should do, in case of a bequest providing for the circulation of an infidel or blasphemous or immoral publication. According to the enlightened training of the present age, we cannot believe that such a case will ever arise, although the generous efforts of many, the most God-fearing, do though unintentionally encourage the circulation of such books, by their indiscriminate donations, establishing public libraries. Whether the courts could undertake the winnowing process is not now material.

But the most that I can say of the books before me is that they are not indifferent on the subject of Christianity. It seems to be recognized throughout. I do not find anything in them of a rebellious or treasonable

character or that is directly calculated to foment public disturbances, or to incite the masses of the people to revolt, although they contain many assertions to the effect that every one has an equal right with every other one to the land; and these assertions the author endeavors by various forms of argument to sustain and enforce, and sometimes by the use of statements couched in very strong language; yet it cannot be said, so far as I have been able to ascertain, that any other principle or doctrine is comprehended which should induce the court to refuse to aid in enforcing the trust, except as will hereafter appear.

Now, can the court, according to its past history and former adjudications, lay its hand upon this gift and restrain the executor from such disposition of it by declaring the bequest void or illegal, because it is not a charity. In my judgment this would be contrary to the true spirit and meaning of the law, because, as I have intimated, I fear it would be aiming a blow at the liberty of speech and the freedom of discussion. This consideration is at the very threshold. The present advanced stage of civilization has no other bond so securely sealed, no other bond cemented by so many precious yet sometimes conflicting interests, no other bond made so sacred by innumerable ties, recollections and historic events, as the bond that vouchsafes to us the liberty of speech and the freedom of discussion. I am sure that the most of those who enjoy this civilization feel too proud of the vantage ground attained by the instruments of free speech and free discussion to lay the foundations for the surrender of them, by depriving any other one of the use of such means, when they seek to advance their views with respect to fundamental principles which they insist would procure for us a still higher, nobler and purer civilization.

From these observations it will appear, that, upon the

whole case, I am disposed to sustain the bequest in the will, and would do so, notwithstanding the clear and strong expressions in the very learned and most able opinion, in the case of Jackson vs. Phillips, 14 Allen 539, 471, in which it is declared "that a trust to secure the passage of laws granting women, whether married or unmarried, the right to vote, to hold office, to hold, manage and devise property, and all other civil rights enjoyed by men, can not be sustained as a charity," were it not for the exception to be referred to. The reason given in that case is that the bequest aimed directly and exclusively at the change of the laws and that it was not for the Court to determine whether laws were wise or unwise, but simply to expound them as they stand. It was observed "Those laws do not recognize the purpose of overthrowing them or changing them in whole or in part as a charitable use." It seems to me that if this principle be followed to all its logical consequences, all donations for the spread of the Bible, and to foreign missions to aid in the accomplishment of their work, would fall under judicial condemnation; for most clearly the work of spreading the gospel, as carried on by foreign missions, is successful only in proportion as it overturns and obliterates existing laws, customs, institutions and religions, whose origin is so remote as to be beyond discovery. And to avoid a consequence so disastrous, has induced me to pay no little attention to the subject matter, and to intimate, as I have, that the cause of truth, virtue and good government can never suffer by the utmost liberality of discussion, even though the Courts, when called upon to sustain bounties as charities, do so, unless such right of discussion should be abused.

The exception to which I have adverted, has reference to what Mr. George says with respect to the claim of land owners to compensation. He says: "It is not merely a robbery in the past, it is a robbery in the pres-

ent—a robbery that deprives of their birth-right the infants that are 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?" Again he says: "Historically as ethically, private property in land is robbery."

Clearly, the author, in these passages, not only condemns existing laws, but denounces the fact that 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. This would not be charitable. Society has constituted courts for the purpose of assisting in the administration of the law and in the preservation of the rights of the citizens, and of the public welfare; but I can conceive of nothing more antagonistic to such purpose than for the courts to encourage, by their decrees, the dissemination of doctrines which may educate the people to the belief that the great body of the laws which such courts administer concerning titles to land have no other principle for their basis than robbery.

I have sought to overcome the view just expressed, by striving to bring the books of Mr. George within that branch of the opinion in Jackson v. Phillips, *supra*, which maintained that efforts to produce a change in public opinion on the subject of slavery, by the publication of books, newspapers, speeches and lectures, was charitable,

but I have not been able so to do, for the reason given. However radical the works of Mr. George may be, however much in conflict with prevailing convictions or prejudices, I can find but the one thing in them that in any sense makes it my duty to say that the Court cannot regard the bequest as charitable.

If I am correct in the foregoing view, the testator died intestate as to all of his estate not disposed of by the three first paragaphs of his will.

I will advise a decree in accordance with these views.

IN CHANCERY OF NEW JERSEY.

Between

WILLIAM S. BRADDOCK, Executor of the last will and testament of George Hutchins, deceased,

Complainant,

and

HENRY GEORGE, et al.,

Defendants.

BILL FOR CONSTRUCTION.

FINAL DECREE.

This cause coming on to be heard, in the presence of respective counsel of parties, upon the pleadings and proofs therein, and the Court having heard the arguments of counsel thereon. It is, on this thirtieth day of June, eighteen hundred and eighty-eight, on motion of F. C. Lowthrop, Jr., of counsel with the complainant, ordered, adjudged and decreed, that the gift of the residue of the

estate of George Hutchins, deceased, the testator, to the defendant, Henry George, in trust, is invalid and void as a charity, and that the said testator, George Hutchins, died intestate as to the said residue of his estate so as aforesaid given and bequeathed to the said Henry George, in trust. And it is further adjudged and decreed that the complainant, as executor of the said testator, under the will as construed, has no power to make sale of the real estate therein mentioned. And it is further adjudged and decreed, that the defendant, Mary Hutchins, widow of the said George Hutchins, is not entitled to dower in the said real estate; and it is further adjudged and decreed, that all the real estate comprised in the residue of the estate so as aforesaid devised and bequeathed in trust to the defendant, Henry George, descends to the heirs-at-law of the said tesator, George Hutchins; and it is further ordered that all the parties hereto do recover their costs to be taxed, and that the said executor of the will of George Hutchins, deceased, do pay out of the funds of the said estate, to George A. Vroom, solicitor of the complainant, a counsel fee of seventy-five dollars, and to John T. Woodhull, solicitor of the defendant, Henry George, a counsel fee of seventy-five dollars; and to S. C. Woodhull, solicitor of Mary Hutchins, a counsel fee of seventy-five dollars; and to C. V. D. Joline, solicitor of the defendant, James Hutchins, a counsel fee of seventy-five dollars.

Respectfully advised,
ALEX. T. McGILL, Jr.,
Chancellor.

John T. Bird,
Vice Chancellor.

A true copy.
Allan McDermott,
Clerk.

IN CHANCERY OF NEW JERSEY.

Between

WILLIAM S. BRADDOCK, Executor of the last will and testament of George Hutchins, deceased,

Complainant,

and

HENRY GEORGE, et al.,

Defendants.

BILL FOR CONSTRUCTION.

The defendant, Henry George, hereby appeals from so much of the final decree made in this court, in the above stated cause, as declares the gift of the residue of the estate of said George Hutchins, deceased, the testator, to the defendant Henry George, in trust, is invalid and void as a charity, and that the said testator, George Hutchins, died intestate as to the said residue of his estate, so as aforesaid given and bequeathed to the said Henry George in trust, and that all the real estate comprised in the residue of the estate so as aforesaid devised and bequeathed in trust to the defendant Henry George, descends to the heirs-at-law of the said testator, George Hutchins, to the Court of Errors and Appeals in the last resort in all cases.

Dated October 8th, A. D., 1888.

JOHN T. WOODHULL,
Sol'r of Defendant, Henry George.

Sam'l W. Beldon, of Counsel.

I conceive there is good cause for appeal in the above stated cause.

SAM'L W. BELDON,
Of counsel with def't, Henry George.

NEW JERSEY COURT OF ERRORS AND APPEALS.

Between	
HENRY GEORGE,	
Appellant,	ON APPEAL.
and	PETITION.
WILLIAM S. BRADDOCK, EXECUTOR, &c., et al.,	
Respondents.	

To the Honorable the Court of Errors and Appeals in the last resort in all causes:

The humble petition of Henry George, the appellant in the cause hereinafter stated, respectfully shows that your petitioner finds himself aggrieved by a final decree made in the Court of Chancery by his honor Alexander T. McGill, Jr., Chancellor of New Jersey, bearing date the thirtieth day of June last past, wherein William S. Braddock, executor of the last will and testament of George Hutchins, deceased, was complainant and the said Henry George, your petitioner, Mary Hutchins, James Hutchins, Israel Hutchins and May Cole were defendants, in this respect, to-wit: that the said decree adjudges that the gift of the residue of the estate of said George Hutchins, the testator, to the defendant, Henry George, in trust, is invalid and void, as a charity, and that the said testator, George Hutchins, died intestate as to the said residue of his estate so as aforesaid given and bequeathed

to the said Henry George, in trust, and that all the real estate comprised in the residue of the estate so as aforesaid devised and bequeathed in trust to the defendant, Henry George, descends to the heirs-at-law of the said testator, George Hutchins.

And your petitioner humbly appeals from that part of the decree of the Chancellor which decrees as aforesaid, upon the ground that the same is erroneous, for that the said gift of the residue of the estate of George Hutchins, deceased, the testator, in trust to your petitioner, is valid in law and good as a charity; and for that the said George Hutchins did not die intestate as to the said residue and for that the real estate comprised in the said residue should not descend to the heirs-at-law of the said George Hutchins, deceased, but was given and devised to your petitioner by a good and valid devise, which your petitioner insists, as above set out, is good and effectual for passing the title of the same to your petitioner in trust as aforesaid. Your petitioner therefore prays that the said decree of the said Chancellor may be, in the particulars aforesaid, reversed, set aside and for nothing holden, and that your petitioner may have such relief in the premises as to this honorable Court shall seem meet.

JOHN T. WOODHULL,
Solicitor of Appellant.
SAMUEL W. BELDON,
of Counsel with Appellant.

NEW JERSEY COURT OF ERRORS AND APPEALS.

Between

HENRY GEORGE,

Appellant,

and

WILLIAM S. BRADDOCK, et al.,

Respondents.

The answer of the above named respondent, William S. Braddock, to the petition of appeal of the above named appellant.

This respondent, not acknowledging all or any of the matters, which in the said petition of appeal are contained to be true, for answer thereto, nevertheless, says and admits that a decree was, on the thirteenth day of June last past, made and entered in the Court of Chancery, in the cause for that purpose mentioned in the said petition, as is therein stated; but as to the substance and form thereof, this respondent prays to refer thereto when the same shall be produced. And this respondent is advised and believes that the said decree is agreeable to equity, and he prays that the same may be affirmed, with costs to be adjudged to this respondent.

GEORGE A. VROOM,
Sol. for and Counsel with the Respondent.