Trust Fund For The Dissemination Of Georgist Principles Are Legal

By Frederic Cyrus Leubuscher

Most Georgeans will raise astonished eyes when they read this title. They readily grant that the majority of the people do not understand "what it is all about" and that until they do governments will not carry those principles into effect. But it seems preposterous to even question the right of a testator to establish a fund or add to an existing fund in order to teach people "what it is all about." Strange to say, in the courts of two states and in two federal courts it has been strenuously urged that such gifts are void.

The main contention was that they were not "public bequests" because they were illegal, "immoral" and opposed to "the existing social order" and should therefore not be sustained by Equity Courts which have supervision over charitable, educational and eleemosynary organizations. Two of these are courts in New York and New Jersey and the others are the U. S. Board of Tax Appeals and U. S. Circuit Court of Appeals. All except the U. S. Board of Tax Appeals were unanimous in holding that such gifts were "public bequests." The U. S. Circuit Court of Appeals reversed the Board of Tax Appeals.

In addition, the U. S Treasury Department and the New York State Tax Department hold that such bequests are tax exempt and that the organizations formed to carry them into effect are exempt from income taxation; also that gifts to them are deductible by income-tax-payers

As the federal government and two of the leading states have thus passed on this question it may safely be assumed that it is settled in this country. In no other state has the legality of a bequest to teach Georgism even been raised.

The earliest case, about fifty years ago, was entitled George V. Braddock, 45 N. J. Eq. 757, unanimously reversed by the Court of Errors & Appeals, 6 L. R. A. 511.

This case arose out of a comparatively small bequest to Henry George in the will of one George Hutchins, a Camden County, N. J. farmer, for the setting up of a trust to engage in the dissemination of the writings of George. In a Chancery action brought by the Executor, Vice Chancellor Bird sustained a plea to invalidate the bequest on the general ground that George's books, in attacking private property in land, were opposed to public policy. It was in the appeal to the Court of Errors and Appeals from the ruling of the Vice Chancellor that Chief Justice Beasley delivered his noted opinion sustaining the validity of the trust.

The Chief Justice, speaking for a unanimous court, quotes the purpose of the bequest

"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* *."

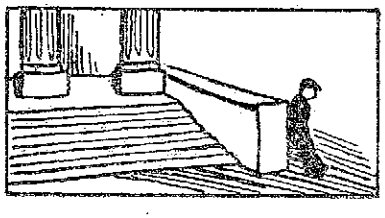
and then proceeds (p. 759):

"It is now urged that the doctrines taught in the works thus designated are of such a character that the court will not permit their dissemination. The inquiry thus started should be preceded by a consideration of the rule or text applicable to such affairs.* * *."

Chief Justice Beasley then argues that the scientific or literary value of George's books has nothing to do with the rule. He admits that he has concluded that the books are very valuable contributions to the science of economics but that the rule is: "the writings to be circulated must not be hostile to religion, to law or to morals."

It is pointed out that the Vice-Chancellor does not state that George's writings are either sacrilegious or immoral but that "they are antagonistic to law."

"The view belongs to mankind, and is a heritage that is inalienable, and that, consequently, one generation, or a series of generations, of men cannot, either by act or omission, debar a succeeding generation from claiming its own. The doctrine, therefore, inculcated is, that no private, absolute ownership in land can rightfully exist, the consequence being that the public, as the real proprietor, has the right to regain possession of all property of this nature by the use of any legal method.



The Vice-Chancellor says:

"Clearly, the author, in these passages, not only condemns existing laws, but denounces the fact that the secure title to land in private individuals is robbery—is 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 question in the abstract, it certainly would not become the court to aid in the distribution of literature which denounces as robbery—as a crime—an immense proportion of the judicial determinations of the higher courts. This would not be legally charitable. Society has constituted courts for the purpose of assisting in the administration of the law; and in the preservation of the rights of 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 in 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."

The learned Chief Justice, in commenting on the opinion of the Vice Chancellor, says he does not believe that the decision of the Court below was based on the use of the word "robbery" or on any other mere turn of phrase. "It would manifestly be absurd to declare that the Courts will not assist in providing for a discussion of the existing title to land."

"The decree in this instance frustrated the will of this testator: declared his trust void, and diverted the property vested in it, in other directions. It would seem, therefore, that the rule in question should have been, and , if it is to be adopted, must be, thus formulated: that a court of equity will not permit the fulfillment of a testamentary use that is designed to circulate works that call in question any of the fundamental rules and establishments of the law* * *."

The court goes on to state that all works of leading political economists, either of the present or past age, make war, more or less agressive, upon some parts of every legal system as it now subsists and that it is certain neither the 'Political Economy of John Stuart Mill nor the the 'Social Statics' of Herbert Spencer, could be so circulated, for each of these very distinguished writers denies the lawfulness of private ownership in land.

The Court of Errors and Appeals pointed out that discussion and studies should be advanced and that it would seem to be out of the question for a court to ever declare itself opposed to such discussions "for it is simply a proposition to alter the law according to the law."

Due to the space limitations of a magazine article it is impossible to present herewith the greater part of this masterly and cogent opinion of Chief Justice Beasley. Some years later the Illinois Court of Appeals had occasion to pass on the same principle of law. The same points were raised against a bequest for woman suffrage. The judgment overruling the objections was based largely on the opinion of Chief Justice Beasley in the New Jersey case. Garrison v. Little, 76 Ill. Appeals, 402.

The second case in which the Georgean teachings were discussed arose under the will of Robert Schalkenbach who died November 13, 1924. The executor claimed that the fund (which was afterwards incorporated under the name of Robert Schalkenbach Foundation) was exempt from federal and state estate taxes because it was for educational purposes. The New York State Tax Commission agreed with him but the Commissioner of Internal Revenue did not. The Commissioner disallowed exemption on several grounds, one of them being that the legacy was to be used for purposes "against the present public order." The executor appealed to the Board of Tax Appeals which sustained the Commissioner. Leubuscher v. Commissioner of Internal Revenue, 21 B. T. A. 1022.

The executor thereupon appealed to the U. S. Circuit Court of Appeals. That Court, in a unanimous opinion, reversed the Board of Tax Appeals and the Commissioner and declared that the Schalkenbach bequest "for teaching, expounding and propagating the ideas of Henry George as set forth in his said books" was exempt from the federal estate tax. The opinion recites that the Board of Tax Appeals "admitted the educational purpose for which the testator made his bequest." The opinion concludes: "* * * it is clear that this bequest was exclusively for educational purposes if we look to the provisions of the will as we are obligated to * * *."

Leubuscher v. Commissioner of Internal Revenue 54 Fed. (2nd) 998.

Not content with this declaration of a high federal court a half dozen years later some of Mr. Schalkenbach's relatives questioned the validity of this bequest in the New York Surrogate's Court. One of the grounds was that the bequest to teach the Georgean principles was not a "public trust" and therefore void. Surrogate Foley, who is considered one of the ablest probate judges in the United States, decided on the authority of the U. S. Circuit Court opinion in Leubuscher v. Commissioner, discussed above, that "the gifts to the Foundation were valid charitable gifts." (Matter of Schalkenbach, 155 Misc. 332).

In a letter to **The Freeman** Mr. C. LeBaron Goeller of Endwell, N. Y., calls attention to an interesting episode in connection with the Braddock case fifty years ago. After Mr. George's principles had been vindicated by the Court of Errors and Appeals and in accordance therewith he had been paid $20,000, he turned the money over to Mr. Hutchins widow without deducting a penny for the considerable legal expense to which he had been subjected. In transmitting the money Mr. George wrote her: " I fought this matter in the courts because I believe in the principles I advocate and I could not stand quietly by while a judicial officer designated my doctrines as antagonistic to law. I never had the slightest intention of depriving you of the money which your late husband so generously willed to me for the purpose of spreading the truths which we both knew to be truths."