LORD COLERIDGE

Sir John Duke, Baron Coleridge, eminent English jurist, lord chief-justice, orator, and author, son of Sir John Taylor Coleridge, editor of Blackstone's "Commentaries," was born at Ottery St. Mary, Devon, Dec. 3, 1820, and died at London, June 14, 1894. He was educated at Eton, and Balliol College, Oxford, and after gaining a fellowship at Exeter College studied law and was called to the Bar at the Middle Temple, London, in 1847. He became recorder of Portsmouth in 1858, queen's counsel in 1861, and from 1865 to 1873 sat in Parliament as member for Exeter. Although Coleridge early became famous as a speaker, his practice for a time was limited, but after some years his services were in more frequent demand and he was retained as counsel in a number of celebrated cases. In 1868, he was appointed solicitor-general, in 1871 attorney-general, and in 1873 he became chief-justice of the court of common pleas, and was created Baron Coleridge. In 1880, on the death of Sir Alexander Cockburn, Coleridge succeeded him as lord chief-justice of England. In 1833, the chief-justice made a tour in the United States, where he was received with enthusiasm and made a number of eloquent speeches and addresses. Coleridge was a finished speaker, his forensic efforts wanting neither the graces of style nor able reasoning, combined with impressiveness of delivery. Besides his great legal acquirements, he was a man of fine literary tastes, and he contributed frequently to periodicals. He was a brilliant conversationalist, and his friendships, both literary and professional, were extensive. In politics, he was a Liberal and a warm supporter of Mr. Gladstone.

ON THE VALUE OF CLEAR VIEWS AS TO THE LAWS REGULATING THE ENJOYMENT OF PROPERTY

FROM ADDRESS TO THE GLASGOW JURIDICAL SOCIETY IN THE QUEEN'S ROOMS, MAY 25, 1887

IT seems an elementary proposition that a free people can deal as it thinks fit with its common stock, and can prescribe to its citizens rules for its enjoyment, alienation, and transmission. Yet in practice this seems to be anything but admitted. There are estates in these islands of more than a million acres. These islands are not very large. It is plainly conceivable that estates might grow to fifteen

million acres or to more. Further, it is quite reasonably possible that the growth of a vast emporium of commerce might be checked, or even a whole trade lost to the country by the simple will of one, or it may be more than one, great landowner.

Sweden is a country, speaking comparatively, small and poor; but I have read in a book of authority that in Sweden at the time of the Reformation three fifths of the land were in mortmain and what was actually the fact in Sweden might come to be the fact in Great Britain. These things might be for the general advantage, and if they could be shown to be so, by all means they should be maintained. But if not, does any man possessing anything which he is pleased to call his mind deny that a state of law under which such mischiefs could exist, under which a country itself would exist, not for its people but for a mere handful of them, ought to be instantly and absolutely set aside?

Certainly there are men who, if they do not assert, imply the negative. A very large coal owner some years ago interfered with a high hand in one of the coal strikes. He sent for the workmen. He declined to argue but he said, stamping with his foot upon the ground, "All the coal within so many square miles is mine, and if you do not instantly come to terms not a hundredweight of it shall be brought to the surface, and it shall all remain unworked."

This utterance of his was much criticised at the time. By some it was held up as a subject for panegyric and a model for imitation; the manly utterance of one who would stand no nonsense, determined to assert his rights of property and to tolerate no interference with them. By others it was denounced as insolent and brutal, and it was suggested that if a few more men said such things, and a few men acted

on them, it would very probably result in the coal owners having not much right of property left to interfere with. To me it seemed then, and seems now, an instance of that density of perception and inability to see distinctions between things inherently distinct of which I have said so much.

I should myself deny that the mineral treasures under the soil of a country belong to a handful of surface proprietors in the sense in which this gentleman appeared to think they did. That fifty or a hundred gentlemen, or a thousand, would have a right, by agreeing to shut the coal mines, to stop the manufactures of Great Britain and to paralyze her commerce seems to me, I must frankly say, unspeakably absurd.

It is not even the old idea about such things. Coal-mining is comparatively recent; but the custom of bounding as to tin in Cornwall, the customs of the High Peak in Derbyshire as to lead, the legal rule everywhere as to gold and silver, are enough to show that in these matters the general advantage was in former days openly and avowedly regarded, and that when rights of private property interfered with it they were summarily set at naught. To extend to coal and copper the old law applicable to tin and lead may be wise or foolish, but is surely no more an assault on property itself than was the old law which prescribed that, in certain places, and under certain circumstances, the owner of the surface should not prevent the winning of mineral treasure by others entirely unconnected with him or with the surface land. It is not to the point to say that these laws were found to be inconvenient, and have in some places and to some extent been abrogated.

It may be so. Inconvenience, that is, that they were not in practice found to be for the general advantage, is a very

good reason for abrogating them. That they existed and had to be modified on grounds of expediency is a proof of the point for which I am contending, namely, that these old laws show that the distinction I think so important was early and largely recognized; and that while property itself was acknowledged, the laws of its enjoyment were regulated according to what was thought to be the general advantage.

I am told, but I do not know of my own knowledge, that the laws in Prussia against the landowner and in favor of the discoverer and winner of mineral treasures are still more stringent than those of Cornwall or Derbyshire, yet, I suppose, that no one will contend that in Prussia the laws of property are disregarded, or that the principle of property is unsafe.

Take again, for a moment, the case of perpetuities, to which I have more than once alluded, as exemplified in gifts *inter vivos*, or in what, by a common but strange abuse of language, are called "munificent bequests," after a man has had all the enjoyment possible to him, to religious or charitable objects. Persons either not capable of attributing definite meaning to their language, or at least not accustomed to do so, talk of any interference with such dispositions as immoral, and brand it as sacrilege.

The wisest clergyman who ever lived, as Mr. Arnold calls Bishop Butler, pointed out nearly 150 years ago that all property is and must be regulated by the laws of the community; that we may with a good conscience retain any property whatever, whether coming from the Church or no, to which the laws of the State give title; that no man can give what he did not receive; and that, as no man can himself have a perpetuity, so he cannot give it to any one else. No answer has ever been attempted to Bishop Butler; none seems pos-

sible; yet men go on, like the Priest and Levite, pass it by on the other side and repeat the parrot cry of immorality and sacrilege without ever taking the trouble to clear their minds, perhaps being congenitally unable to do so, or to ascertain whether there is any argument which will "hold" upon which to justify the charge. These are they who

> "might move
> The wise man to that scorn which wisdom holds
> Unlawful ever,"

and from whom I part with this one word. There may be abundant and very good reasons for maintaining the inviolability of all gifts or bequests in perpetuity, there may be abundant and very good reasons for maintaining the contrary, but to call names does not advance an argument; abuse is not reasoning, and moderate and reasonable men are apt to distrust the soundness of a cause which needs such arts and employs such weapons.

Furthermore, it is often said that you may no doubt alter the laws of property on a proper case being shown for the alteration. Sensible men see that what Bishop Butler calls "plain absurdities" follow from any other doctrine. It would indeed be difficult, in the face of railway bills, gas bills, water bills, tramway bills, dock bills, harbor bills (the catalogue is endless) passed by the hundred every year through both Houses of Parliament, to deny that private property may be rightly interfered with for the public good, even when the public is represented chiefly, if not entirely, by a small band of speculators.

But then it is said you have no right to do it, except on proper compensation. I ask respectfully, however, what is the exact meaning of these words, especially "right" and "proper"? Is the absolute right,—right, I say, not power,

for that no man questions,—is the absolute right of the State intended to be denied to deal with the common stock with or without compensation; and by proper compensation is it meant that the compensation is to be proper in the opinion of the person compensated, or the person compensating or of whom?

Or is it intended to say only that any change in the tenure of property or of the laws of property made by law should be made with as little suffering to individuals as may be, and with as much consideration as possible for the present holders and present expectants of property, whether real or personal. If the latter proposition is intended no man in his senses will differ from it. Men to whose personal loss the law is altered are, as matter of common fairness, to be considered in every way, and nothing should be done to their detriment which it is possible to avoid. Every one will agree in this.

But if the right is questioned, and if the sufficiency of the compensation is to be determined by the person compensated, let this be considered. A foreign army lands, or a foreign fleet threatens our coasts. The general in command of the district, in the name of the Sovereign, that is, of the State, orders the destruction of a house which, if left standing, might be an important military position for the invading army; or it may be, as a military precaution, a large tract of cultivated country, gardens, orchards, or the like, has to be laid entirely waste. Have the owners a claim, a legal right, to compensation?

It has been decided for centuries, in accordance with good sense, most certainly not. *Salus populi suprema lex.*[1] Take another case which has actually happened. Parliament supplies the funds for a great public and national harbor,

[1] The safety of the people is the paramount law.

created by a huge breakwater, which the officers of the Sovereign construct. The effect of this great national work is to turn the tide of the sea full on to the lands of a beach-bounded proprietor some miles off, who could only save his land from utter destruction by the erection of a long and massive sea wall. Has he a claim, a legal right, to compensation? Again I answer most certainly not. *Salus populi suprema lex.*

Many other cases might be put to which the answer would be the same but these are enough for my purpose. And now as to the sufficiency of the compensation. The property is taken and often in the opinion of him who loses it no compensation is sufficient. Suppose the possessor of an ancient and beautiful house, endeared to him by a thousand tender and noble memories, is told that he must part with it for the public good. The public good comes to him, perhaps, represented by an engineer, a contractor, an attorney, a parliamentary agent, and a parliamentary counsel. He is very likely well off in point of money and does not at all want the compensation; but he is a man of feeling, or, if you will, of imagination, and he does want his house. He does not believe in the public caring two straws for the railway between Eatanswill and Mudborough. He thinks it hard that the engineer and the rest of them should pull down his old hall, and root up his beautiful pleasure-grounds.

But he is told that the public good requires it, that a jury will give him compensation, and that he has no cause for complaint; and told sometimes by the very people who, when it is proposed to apply the same process for the same reasons to other rights or laws of property, are frantic in their assertion of the sacredness of these laws, and vehemently maintain that to touch one of them is to assail the existence of

property and dissolve society. Once more let us see things as they are, recognize distinctions, admit consequences, clear our minds, and if we must differ, as probably we must, let us differ without calling names or imputing motives.

These are individual instances; but all history, and in a high degree the history of these islands is full of examples in which the principle has been unhesitatingly applied to whole classes in the name of the public good. To corporations it has been constantly extended, artificial persons so far as the corporation itself goes, we know, yet made up of individuals who have had to submit to deprivation of property and consequent loss of position without a shadow of compensation.

Monasteries, colleges, convents, corporation boroughs, and other corporations have all at different times of our history and under different circumstances been thought either partly or entirely inconsistent with the general welfare; and accordingly their property has been taken from them, sometimes wholly, sometimes in part, sometimes by compulsory sale, sometimes by simple removal. Great proprietors in many cases now stand in the place of these corporations without any injury to the principle of property, though as a consequence of great changes in the laws regulating its enjoyment. And if in times to come, by the same means and for the same reasons other classes of the nation were to stand in the place of these great proprietors, it would not more follow then than it has followed now that the principle of property would be assailed, though the laws by which it is enjoyed might change.

All laws of property must stand upon the foot of general advantage; a country belongs to the inhabitants; in what proportions and by what rules its inhabitants are to own it

must be settled by the law; and the moment a fragment of the people set up rights inherent in themselves and not founded on the public good, "plain absurdities" follow.

This at least seems to have been the view which consciously or unconsciously governed the English lawyers who invented, so greatly to the general advantage, the laws of copyhold. When the tenants had created the farms and built the homesteads on land which they held at the will of the lord, and out of which by the theory of the law they could be turned at his pleasure, though they had made one and built the other; and in respect of which, by the same theory, the lord might have made them pay a heavy rent for what was the fruit of their own hands; the English lawyers intervened with the healing doctrine of the custom of the manor by which fixity of tenure was secured to the tenant and the lord's exactions were curbed within fixed and reasonable limits. Compulsory enfranchisement has followed of late years; but the mitigating effect of manorial custom in harsher times can hardly be overrated; and the absence of such an influence in the sister island, where there are no manors, has sharpened and intensified those hostile feelings between the lord and the tenant which are apt to grow up even in the most favorable circumstances and under the best system of land laws in the world.