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FIRST EDITORIAL

A Judicial Don Quixote

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We have before us an interesting decision by the Supreme Court of the United States, rendered the 3d of last month.

One George Schild, the inventor and patentee of an improvement in caisson-gates, brought action in the Federal Courts for the Northern District of California for an infringement of his letters patent. The infringement charged was committed in the United States Navy Yard at Mare Island, California, and the defendants in the suit were George E. Belknap, a commodore in the U.S. Navy, together with a civil engineer, an assistant naval constructor, both in the Navy, and an employee of the Government on the Island.

The defence was that the only caisson-gate constructed by the defendants was constructed on Government premises, for the exclusive use of the Government and public uses of the United States, in the exercise of their sovereign powers.

The facts were not disputed on either side. The Supreme Court threw the case out on the grounds:

1. That the United States could not be sued without its consent, and had never consented by law to be sued in such cases; and
2. That the defendants, being public officers, and acting only in the interest of the public were not individually liable.

There was a dissenting opinion rendered by Judge Harlan. He said:

“If the United States may appropriate to public use the invention of a patentee without his consent and without liability to suit . . . for the value

of the use of such invention; if . . . a public officer, acting only in the interest of the public, is not individually liable for gains, profits and advantages that may accrue to the United States from such use; and if the officer who thus violated the rights of the patentee cannot be restrained by injunction, then the Government may well be regarded as organized robbery so far as the rights of patentees are concerned.”

Looked at from the purely sentimental view point, one would rush to the conclusion that the majority was wrong, and that Judge Harlan is the paladin of Justice. Those who think this way will argue that under the present system he who does not own the means by which to live, lives a wretched life; that the private ownership of the means to a livelihood is, under such a system, as precious as life itself; and, consequently that it ill beseems a high judicial body to overthrow its own “sacred” system of ownership, least of all when the judges so deciding are undoubtedly among the foremost to denounce the “confiscatory” trend of Socialism. There is much in this line of argument, yet it overlooks the important fact that the Law in seeking precedents, and judicial decisions in quoting the Law do not look for a guide, but for a pretext under cover of which to accommodate their utterances and acts to the social evolution that is taking place. There is no greater fallacy than that the Law is conservative and rigid. It is the most flexible, yielding and changing thing on earth.

The private ownership of the means to a livelihood is certainly the foundation of capitalist society; but with the time, a germ, latent in capitalism from its incipiency, finally asserts itself with overpowering force when Capitalism has reached its present stage, and it introduces and enforces quite an amendment to “private ownership,” pure and simple. The amendment consists in the addition of several words. At this stage, the old principle runs thus: “The foundation of capitalist society lies in the private ownership of all means to a livelihood by the capitalist class exclusively.”

The majority of the Court simply adjusted its decision to the evolved capitalist society, and it was logical. Given a capitalist social system, backed by such a well-developed capitalist State as we have, none, except the capitalist and his State has any property rights worth respecting.

Judge Harlan is an anachronism and his decision is out of gear with the times. He stands as Don Quixote, who, despite the changed conditions, seeks to continue the age of knight errantry. Judge Harlan upholds the capitalist system, but denies its logical sequence. No more than Don Quixote strove for a higher order does Judge Harlan strive for Justice. Neither understands his times.

Transcribed and edited by Robert Bills for the official Web site of the Socialist Labor Party of America.

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