vs. Bertie, (2 Vern. 333, 342,) said: "It is true infants are always favored. In this court there are several things which belong to the king as *pater patriæ*, and fall under the care and direction of this court, as charities, infants, idiots, lunatics, etc.,"

The Supreme Judicial Court of Massachusetts well said, in Sohier v. Mass. Gen. Hospital, (3 Cush. 482, 497): "It is deemed indispensable that there should be a power in the legislature to authorize the sale of the estates of infants, idiots, insane persons, and persons not known, or not in being, who cannot act for themselves. The best interest of these persons, and justice to other persons, often require that such sales should be made. It would be attended with incalculable mischiefs, injuries, and losses, if estates, in which persons are interested, who have not capacity to act for themselves, or who cannot be certainly ascertained, or are not in being, could, under no circumstances, be sold, and perfect titles effected. But, in such cases, the legislature, as *parens patriæ*, can disentangle and unfetter the estates, by authorizing a sale, taking precaution that the substantial rights of all parties are protected and secured."

These remarks in reference to infants, insane persons and persons not known, or not in being, apply to the beneficiaries of charities, who are often incapable of vindicating their rights, and justly look for protection to the sovereign authority, acting as *parens patriæ*. They show that this beneficent function has not ceased to exist under the change of government from a monarchy to a republic; but that it now resides in the legislative department, ready to be called into exercise whenever required for the purpose of justice and right, and is as clearly capable of being exercised in cases of charities as in any other cases whatever.

It is true that in some of the States of the Union in which charities are not favored, gifts to unlawful or impracticable objects, and even gifts affected by merely technical difficulties, are held to be void, and the property is allowed to revert to the donor or his heirs or other representatives. But this is in cases where such heirs or representatives are at hand to claim the property, and are ascertainable. It is difficult to see how this could be done in a case where it would be impossible for any such claim to be made—as where the property has been the resulting accumulation of ten thousand petty contributions, extending through a long period of time, as is the case with all ecclesiastical and community funds. In such a case the only course that could be satisfactorily pursued would be that pointed out by the general law of charities, namely, for the government, or the court of chancery, to assume the control of the fund and devote it to the lawful objects of charity most nearly corresponding to those to which it was originally destined. It could not be returned to the donors, nor distributed among the beneficiaries.

The impracticability of pursuing a different course, however, is not the true ground of this rule of charity law. The true ground is that the property given to a charity becomes in a measure public property, only applicable as far as may be, it is true, to the specific purposes to which it is devoted, but within those limits consecrated to the public use, and become part of the public resources for promoting the happiness and well-being of the people of the state. Hence, when such property ceases to have any other owner, by the failure of the trustees, by forfeiture for illegal application, or for any other cause, the ownership naturally and necessarily falls upon the sovereign power of the state; and thereupon the court of chancery, in the exercise of its ordinary jurisdiction, will appoint a new trustee to take the place of the trustees that have failed or that have been set aside, and will give directions for the further management and administration of the property; or if the case is beyond the ordinary jurisdiction of the court, the legislature may interpose and make such disposition of the matter as will accord with the purposes of justice and right. The funds are not lost to the public as charity funds; they are not lost to the general objects or class of objects which they were intended to subserve or effect. The state, by its legislature or its judiciary, interposes to preserve them from dissipation and destruction, and to set them up on a new basis of usefulness, directed to lawful ends, coincident, as far as may be, with the objects originally proposed.

The interposition of the legislature in such cases is exemplified by the case of The Town of Pawlet v. Clark & al., (9 Cranch, 292), which arose in Vermont. In the town charter, granted in the name of the king in 1761, one entire share of the town lands was granted "as a glebe for the Church of England as by law established." There was no Episcopal church in the town until 1802. In that year one was organized, and its parson laid claim to the glebe lands, and leased them to Clark and others. Of course, this church had never been connected with the "Church of England as by law established;" and the institution of such a church in 1802 was impossible, and would have been contrary to the public policy of the state. Meantime, in 1794, the legislature had granted the glebe lands to the several towns to be rented by the selectmen for the sole use and support of public worship, without restriction as to sect or denomination. This law was subsequently repealed, and in 1805 the legislature passed another act, granting the glebe lands to the respective towns, to apply the rents to the use of schools therein. This was held to be a valid disposition. Mr. Justice Story, in the course of an elaborate opinion, amongst other things showed that a mere voluntary society of Episcopalians within a town could no more entitle themselves, on account of their religious tenets, to the glebe, than any other society worshiping therein. "The glebe," he said, "remained as an *hæreditas jasens*, and the state, which succeeded to the rights of the crown, might, with the assent of the town, alien or encumber it, or might erect an Episcopal church therein," etc. "By the revolution the State of Vermont succeeded to all the rights of the crown as to the unappropriated as well as the appropriated glebes." (pp. 334, 335.) Again: "Without the authority of the state, however, they (the towns) could not apply the lands to other uses than public worship; and in this respect the statute of 1805 conferred a new right which the towns might or might not exercise at their own pleasure." (p. 336.)

Coming to the case before us, we have no doubt that the general law of charities which we have described is applicable thereto. It is true, no formal declaration has been made by Congress or the territorial legislature as to what system of laws shall prevail there. But it is apparent from the language of the organic act, which was passed September 9, 1850, (9 stat. 453,) that it was the intention of Congress that the system of common law and equity which generally prevails in this country should be operative in the Territory of Utah, except as it might be altered by legislation. In the 9th section of the act it is declared that the Supreme and District Courts of the Territory "shall possess *chancery* as well as *common law* jurisdiction," and the whole phraseology of the act implies the same thing. The territorial legislature, in like manner, in the first section of the act regulating procedure, approved December 30, 1852, declared that all the courts of the Territory should have "*law* and *equity* jurisdiction in civil cases." In view of these significant provisions we infer that the general system of common law and equity, as it prevails in this country, is the basis of the laws of the Territory of Utah. We may, therefore, assume that the doctrine of charities is applicable to the Territory, and that Congress, in the exercise of its plenary legislative power over it, was entitled to carry out that law and put it in force, in its application to the Church of Jesus Christ of Latter-day Saints.

Indeed, it is impliedly admitted by the corporation itself, in its answer to the bill in this case, that the law of charities exists in Utah, for it expressly says: "That it was, at the time of its creation, ever since has been, and still is, a corporation or association for religious or charitable uses." And again it says:

"That prior to February 28, 1887, it had, as such corporation, as it lawfully might by the powers granted to it by its acts of incorporation, acquired and held from time to time to certain personal property, goods, and chattels, all of which it had acquired, held and used solely and only for charitable and religious purposes; that on the 28th day of February, A. D. 1888, it still held and owned certain personal property, goods, and chattels donated to it by the members of said church and friends thereof solely and only for use and distribution for charitable and religious purposes;" and "that on February 28, 1887, John Taylor, who then held all the personal property, moneys,