SUPREME COURT.

Chief Justice Zane Renders a Long Decision

IN THE NOTED "CHURCH CASES."

His Honor Reviews the Law and the Master's Report

AND FINDS FOR THE CHURCH.

Held, "Having Abandoned Polygamy, May Use Its Property According to Its Will and the Wishes of its Donors."

The adjourned session of the June term of the Territorial Supreme court was held this morning in the Supreme court room, Dooly building. Chief Justice Zane presided, and there were with him on the bench Associate Justices Blackburn and Miner. The members of the bar gathered in strong force. Judge Anderson occupied a seat among his legal brethren, those present including Attorneys F. H. Richards, W. H. Dickson, Jacob Sheeder, Judge Judd, Judge Sutherland, Judge Loofbourow, Arthur Brown, E. W. Tulloch, C. S. Varian, Jos. M. Zane, Ogden Hiles, Judge Bennett, Judge J. A. Marshall, Harlow Ferguson, E. D. Critchlow, W. K. Duffy, J. A. Williams, S. P. Armstrong.

The minutes of the last session of court were read by Clerk Burbe and signed, after which Chief Justice Zane delivered the following anxiously awaited opinion in

THE CHURCH CASES

"The late corporation of the Church of Jesus Christ of Latter-day Saints, and others, defendants, vs. the United States of America, plaintiff.

"We are now asked upon to designate the objects to which the personal property in the hands of the receiver shall be devoted, and to decide upon the mode of its application.

"The questions presented for our decision require an examination of the Master's report, and the interpretation of congressional enactments designed to suppress polygamy, as well as an application of the doctrine of cypres applicable to the rights of property dedicated to charitable uses.

"The act is maintained under Sec. 17 of an act to have March 3rd, 1887, and is as follows:

"That the acts of the Legislative Assembly of the Territory of Utah, incorporating, continuing, or providing for the corporation known as the Church of Jesus Christ of Latter-day Saints, and the ordinance of the so-called general assembly of the State of Deseret incorporating the Church of Jesus Christ of Latter-day Saints, so far as the same are now have legal force and validity, are hereby disapproved and annulled, and the said corporation, in so far as it may have or pretend to have, any legal existence, is hereby dissolved. That it shall be the duty of the attorney general of the United States to cause such proceeding to be taken in the Supreme court of the Territory of Utah as shall be proper to amend the foregoing provisions of this section and to wind up the affairs of said corporation conformably to law, and in such proceedings the court shall have power, and it shall be its duty, to make decrees or orders for the purpose of effectuate the transfer of the title to real property now held and used by said corporation for places of worship, and parsonages connected therewith, and burial grounds, and all the institutions mentioned in section three of this act and section twenty-six of this act, to the respective bodies mentioned in section twenty-six of this act, and for the purpose of the vesting and court shall have the power to make such orders and decrees as may be necessary to carry into effect the provisions of this section. Section thirteen recites in its first section quoted made it "the duty of the attorney general of the United States to institute and prosecute proceedings in behalf and instead in the United States for the dissolution of corporations who should be held in violation of section three of the act of Congress approved July 1st, 1862, entitled "An act to punish and prevent the practice of polygamy in the territories." This section also ordered that such property so forfeited and escheated should be disposed of by the secretary of the interior and the proceeds thereof applied to the benefit of the common schools in the territory in which such property might be, and provided that no building, or the grounds appurtenant thereto, held and occupied exclusively in which to worship God, or parsonage connected therewith or burial grounds should be forfeited. And section 3 above mentioned declared that it should not be lawful for any corporation or association for religious or charitable purposes to acquire or hold real estate in any territory of a greater value than $50,000, and that all real estate acquired or held by any such corporation or association contrary to the provisions of this act should be forfeited and escheated to the United States.

"Section 26, also referred to in section 17, is as follows:

"That no religious society, sole and congregations shall have the right to have and to hold, through trustees appointed by any court exercising probate powers in a Territory, only on the nomination of the authorities of such society, and of congregation, so much real property for the erection or use of houses of worship, and for such parsonages and burial grounds as shall be necessary for the convenience and use of the several congregations of such religious society, sect or congregation."

These acts provide that all real estate held by any church for religious or charitable purposes not used for houses of worship, parsonage or burial grounds, acquired contrary to the act of 1887, shall be forfeited and escheated to the United States.

And they annul the charter of the Church of Jesus Christ of Latter-day Saints and provide for winding up its affairs and for the transfer of its real property not forfeited and escheated, to trustees appointed by the probate court on the nomination of the authorities of said church.

In these enactments Congress recognized the religious of the Latter-day Saints as lawful and their church though disorganized as having the right through trustees selected by its authorities to own houses in which to worship God and for such religious purposes. In the second section of the act of 1862 it is declared that it shall be as essential as not to affect or interfere with the right to worship God according to the dictates of conscience."

Upon a hearing of this case on the bill, answer, evidence and stipulation of the parties, the court held the various sections above mentioned, and the acts referred to, valid and appointed a receiver to take possession of all real and personal property of the defunct corporation and to hold the same to be disposed of according to law, and upon a further and subsequent hearing the court made a further decree by which it set apart to the disincorporated body of religious worshipers, which eighty-seven in post "A" Salt Lake City, known as the "Temple Block" and held the remainder of real estate acquired in violation of the act section of the act of 1862 subject to forfeiture and escheat to the United States. That the personal property of the Church, by reason of the dissolution of its corporation because of the failure or illegality of the trust to which it had been dedicated or its application and in consequence of its use by the corporation by operation of law became forfeited and escheated to the United States. From this decree the defendant and the intervenors, George Ramney and others, on behalf of themselves and all other members of the his corporation appealed to the Supreme Court of the United States. The latter court affirmed the decree appealed from except the part relating to the personal property and held that the personal property could not be appropriated to the purpose to which it had been dedicated because the same was, in whole, or in part, contrary to law or opposed to public policy, that there did not exist any general charitable, moral or legal, legally entitled to any portion of it as successors in interest to the Church, and that it had devolved on the United States, and not being lawfully applicable to the purposes to which it was originally dedicated or for which it had been acquired, it should be disposed of in such manner as should most nearly correspond to those to which it was originally applied, to the extent of the property derived from the donors, and the purpose of the second was to establish a single stage form where each state stands on its own footing. The general purpose was also to emancipate slaves. And those slaves having been liberated, the court held that the fund should be devoted to their use and benefit as freedmen, except a small portion to be used for the benefit of the destitute persons of the same race in Boston and its vicinity. While the mode prescribed by the testator for benefiting the negro race by assisting their liberation and by abolitionist who had escaped from slavery was necessarily abandoned, the general object of the bequest was not. The court devoted it to their use as freedmen and to needy persons of the same race in a particular locality.

In the decision the court went to the verge of the highest tribunal. In the same opinion the court said, "The power of disposition by the state in case of the crown or direct succession to the donative, intention of the donator, whether it is to be designed to have belonged to the king as head of the church as well as of the state, intrusted and empowered it—see his nothing be done in the direction of the growth of the propagation of a false religion. Rex vs. Cullington, 3 Salk. 102, 8 C. L. Cas. 1. 1. 1