OVERRULED.

The Demurrers in the Church Cases Peremptorily Brushed Aside.

ANSWERS FILED IN THE SUITS AGAINST THE CHURCH AND P. E. FUND CO.

THE CASES WILL NOW GO TO THE UNITED STATES SUPREME COURT.

The Territorial Supreme Court met as per adjournment last evening, to continue its proceedings as a court of equity in the suits of the United States against the Church and the P. E. Fund Company.

Col. J. G. Broadhead, Senator J. E. McDonald, Hon. F. S. Richards and Hon. Le Grand Young were entered as attorneys for Bishops Wm. B. Preston, Robert T. Burton and John R. Winder, who had been named as additional defendants. Mr. Richards presented the following demurrer for these defendants:

IN THE SUPREME COURT OF THE TERRITORY OF UTAH. No.....
OF.....TERM.

In Equity.

The United States of America, plaintiff,

vs.

The late corporation of the Church of Jesus Christ of Latter-day Saints, and John Taylor, late Trustee-in-Trust, and Wilford Woodruff, Lorenzo Snow, Erastus Snow, Franklin D. Richards, Brigham Young, Moses Thatcher, Francis M. Lyman, John Henry Smith, George Teasdale, Heber J. Grant and John W. Taylor, late assistant Trustees-in-Trust of said corporation, William B. Preston, Robert T. Burton and John R. Winder, defendants.

DEMURRER.

The above named defendants, William B. Preston, Robert T. Burton and John R. Winder, by protestation, not confessing all or any of the matters and things in the plaintiff's bill of complaint contained to be true in such manner and form as the same is therein set forth and alleged, do demur to the said bill of complaint and for cause of demurrer show and allege:

First. That said Supreme Court of the Territory of Utah has no jurisdiction of, or over said defendants, or either of them, or of the subject matter of said action.

Second. That the acts of Congress of July 1st, 1862, and of March 3d, 1887, referred to in plaintiff's bill of complaint, or so much of said acts as attempt or pretend to dissolve the said defendant corporation, or to interfere with or limit its right to hold property, or which attempt to escheat the same or wind up its affairs are unconstitutional and void.

Third. That said complaint does not state facts sufficient to constitute a cause of action.

Fourth. That the plaintiff has not in and by its said bill of complaint made or stated such a case as entitles it, in a court of equity, to any discovery from these defendants, or either of them, or to any relief against them, or either of them, as to the matters contained in the said bill of complaint, or any of such matters. And that said bill of complaint does not contain any matter of equity whereon this court can ground any decree, or give to the plaintiff any relief against these defendants, or either of them.

Wherefore and for divers other good causes of demurrer, appearing in said bill of complaint, the defendants do demur thereto and humbly demand the judgment of this court, whether they shall be compelled to make any further or other answer to the said bill of complaint; and pray to be hence dismissed with their costs and charges in this behalf most wrongfully sustained.

JAMES O. BROADHEAD,
J. E. MCDONALD,
FRANKLIN S. RICHARDS,
LE GRAND YOUNG,
Attorneys and Counsel for defendants.

I, Franklin S. Richards, one of the attorneys and counsel for the above named defendants, hereby certify that in my opinion the foregoing demurrer is well founded in point of law.

FRANKLIN S. RICHARDS.

TERRITORY OF UTAH, } ss.
County of Salt Lake. }

I, John R. Winder, being first duly sworn on oath, do say that I am one of the defendants in the above entitled action, and that the foregoing demurrer is not interposed for delay.

JOHN R. WINDER.

Subscribed and sworn to before me this ninth day of November, A.D. 1887.

J. H. MOYLE,
[Seal.] Notary Public for Salt Lake County.

Judge Zane—The Court is of the opinion that the demurrer of the respondent to the complaint should be overruled. The reasons for this are given in the opinion filed on the motion to appoint a receiver. This is the order in the Church cases. As to the matter against the P. E. Fund Company, that demurrer is also submitted, is it not?

Mr. Richards—Yes, sir.

Mr. Peters—There is no hurry about that matter, if your honors desire more time. That case has not been fully presented as yet.

Mr. Richards—If the court please, we would ask that the signatures of defendants to the answers in the Church cases be waived. We desire the record to show this.

Court—Let the order be entered.

Judge Zane—The Court is of the opinion that the demurrer in the case of the United States vs. P. E. Fund Company should be overruled. We have not examined it quite as carefully as in the Church case, but it covers substantially the same ground.

Mr. Richards—We also ask that the signatures to the answer in that case be waived.

Judge Zane—Let that order be made, and leave be given to answer.

THE ANSWERS

in the cases were then filed as follows:

IN THE SUPREME COURT OF THE TERRITORY OF UTAH. No.
.....OF.....TERM.

In Equity.

The United States of America, plaintiff,

vs.

The late corporation of the Church of Jesus Christ of Latter-day Saints, and John Taylor, late Trustee-in-Trust, and Wilford Woodruff, Lorenzo, Snow, Erastus Snow, Franklin D. Richards, Brigham Young, Moses Thatcher, Francis M. Lyman, John Henry Smith, George Teasdale, Heber J. Grant and John W. Taylor, late Assistant Trustees-in-Trust of said corporation, defendants.

THE ANSWER

of the corporation of the Church of Jesus Christ of Latter-day Saints to plaintiff's complaint.

The corporation of the Church of Jesus Christ of Latter-day Saints, defendant in plaintiff's complaint, now and at all times hereafter saving and reserving unto itself all benefit and advantage of exception which can or may be had or taken to the many errors, uncertainties and other imperfections of the said bill of complaint of the United States of America, for its several separate answers thereunto, or to so much or such parts thereof as said defendant is advised it is material or necessary to make answer unto, answering says:

First—Said defendant avers that on the 4th day of February, A. D 1851, the assembly of the provisional government of the State of Deseret, which was afterwards organized as the Territory of Utah, passed an ordinance incorporating and granting corporate powers, rights and privileges to the Church of Jesus Christ of Latter day Saints. That afterwards, on the 8th day of February, A. D. 1851, the said ordinance was duly approved; a copy of which said ordinance is hereby made part hereof and attached hereto as Exhibit "A": That afterwards, to-wit, on October 4th, A. D. 1851, an act of the Legislative Assembly of the Territory of Utah was approved, adopting, legalizing and validating all ordinances of the assembly of the provisional government of the State of Deseret, making the same, and all of them, laws of the Territory of Utah; a copy of which said act of the Legislative Assembly of the Territory of Utah is hereby made part hereof and attached hereto as Exhibit "B": That afterwards, to-wit, on Jan. 19th, A. D. 1855, an act of the Legislative Assembly of the Territory of Utah was approved, adopting, re-enacting and making valid the said ordinance of the assembly of the provisional government of the State of Deseret hereinbefore set forth; which said act was entitled "An act in relation to the compilation and revision of the laws and resolutions in force in Utah Territory; their publication and distribution." That said ordinance and said acts of the Legislative Assembly of the Territory of Utah, constituted, and were, and are, a contract by and between the territorial government of the Territory of Utah and the United States of America, on the one part, and the persons accepting said corporate, grant, and becoming thereunder incorporators of the said defendant corporation, the Church of Jesus Christ of Latter-day Saints on the other part: That by said ordinance and acts of said Territorial Legislature, hereinbefore set forth, the said corporation, defendant herein, had and possessed the power to acquire and hold real and personal property without limitation as to the value and amount for the purposes specified in its charter.

Second—Said corporation, defendant herein, further avers that in its corporate name it never acquired, owned or held any real or personal property whatsoever, but that said defendant corporation, by virtue of and under the powers granted by said ordinance, did acquire and hold certain real and personal property through, and in the name of, a Trustee-in-Trust for said defendant corporation: That afterwards, to-wit: on July 1, A.D. 1862, a certain act of the Congress of the United States of America was duly approved, by the third section of which it was enacted and provided that it should not thereafter be lawful for any corporation or association for religious or charitable purposes to acquire or hold real estate in any Territory of the United States during the existence of the territorial government of greater value than fifty thousand dollars, especially providing that existing vested rights in real estate should not be impaired by the provisions of said act; a copy of which said act of Congress is hereby made part hereof and attached hereto as Exhibit "C." And defendant avers that it was at the time of its creation, ever since has been, and still is, a corporation or association for religious or charitable purposes. That afterwards, to wit: on March 3, A.D., 1887, a certain act of the Congress of the United States of America took effect, by which the general government of the United States of America claims, attempts and purports to have disapproved and annulled the said ordinance of the assembly of the provisional government of the State of Deseret, and the said acts of the Legislative Assembly of the Territory of Utah hereinabove set forth and made a part hereof, and claims, attempts and purports to have dissolved and disincorporated said defendant corporation; a copy of section 13,14,17 and 26 of which said last named act of Congress is hereby made part hereof and attached hereto as Exhibit "D" And said defendant corporation here now avers that the said last named acts of Congress, hereinabove set forth and referred to, or so much of said acts as attempt or pretend to dissolve the said defendant corporation, or to interfere with or limit its right to hold property, or which attempt to escheat the same, or to wind up its affairs, were and are unconstitutional, invalid and void: That said General Government of the United States of America has not now, and never has had or possessed the power or right to repeal or annul the ordinance and acts creating said defendant corporation and granting unto it in perpetuity certain rights, powers and privileges, nor any of them, the same being in the nature of contracts by and between the Territorial government of the Territory of Utah and the United States, on the one part, and the incorporators of said defendant corporation, on the other part: That said defendant corporation, relying upon the said ordinance and acts of incorporation as contracts, in good faith acquired and obtained certain real and personal property, as lawfully and justly it might, and held the same by a Trustee-in-Trust, as in said ordinance and acts of incorporation lawfully provided.

Third. Said defendant corporation avers that at the time the said act of Congress last hereinabove set forth, to-wit: March 3, A. D. 1887, went into force and took effect, the said defendant corporation, by and through certain trustees, held and owned three certain pieces, tracts or parcels of real estate, and no more; which said three pieces, tracts or parcels of real estate are described as follows, to-wit:

All of Block eighty-seven (87), in Plat A, Salt Lake City Survey, in Salt Lake County Utah Territory.

Commencing four (4) rods north of the southwest corner of Lot four (4), Block eighty-eight (88). Plat A, Salt Lake City Survey; thence north twenty-six (26) rods thence east twenty (20) rods; thence south twenty two and one-half (22½) rods; thence west fourteen (14) rods; thence south three and one-half (3½) rods; thence west six (6) rods, to the place of beginning, containing two and 157-160 acres.

All of that part of Lot six (6), in Block seventy-five (75), Plat A, Salt Lake City Survey, bounded and described as follows, commencing at the northeast corner of said lot, thence south ten (10) rods; thence west seventeen (17) rods; thence north ten (10) rods; thence east seventeen (17) rods to the place of beginning.

And defendant further avers that it had acquired and owned and held two of said above named tracts or parcels of real estate prior to the passage and approval of said act of Congress approved July 1, A. D. 1862, to-wit; the two pieces of real estate described as follows, to-wit:

All of Block eighty-seven (87), in Plat A. Salt Lake City Survey, in Salt Lake County, Utah Territory.

Commencing four (4) rods north of the southwest corner of Lot four (4), Block eighty-eight (88). Plat A, Salt Lake City Survey; thence north twenty-six (26) rods; thence east twenty (20) rods; thence south twenty-two and one-half (22½) rods; thence west fourteen (14) rods; thence south three and one-half (3½) rods; thence west six (6) rods, to the place of beginning, containing two and 157-160 acres.

That the piece of real estate first above described, to wit: All of Block Eighty-seven (87) in Plat A, Salt Lake City Survey, was on the 19th day of February, 1887, and ever since the year 1850 has been and now is used and occupied exclusively for purposes of the worship of God.

Defendant further avers that the only piece, tract or parcel of real estate that it owned and held by and through Trustee at the time the said act of Congress of March 3, A. D., 1887, took effect, which had been acquired by said defendant corporation subsequent to the passage and approval of the said Act of Congress of July 1, A. D., 1862, was and is the tract or parcel of real estate described as follows, to wit:

All of that part of Lot six (6) in Block Seventy-five (75) Plat A, Salt Lake City Survey, bounded and described as follows, commencing at the north east corner of said Lot, thence south ten (10) rods; thence west seventeen (17) rods; thence north ten (10) rods; thence east seventeen (17) rods, to the place of beginning.

Which said piece, tract or parcel of real estate the said defendant acquired, held and possessed more than five years, to-wit nine years prior to the institution of this suit.

And defendant further avers that the last above described tract of real estate was at the time said act of Congress of March 3, A. D., 1887, took effect, and always since it was acquired, by said corporation has been, and still is, used and occupied only and solely as parsonage property, and that the same was and is necessary for the convenience and use of the congregation, church or religious society using the same as its parsonage.

Said defendant corporation further avers that since the time of its creation as such corporation it has acquired, owned and held divers and sundry other tracts and parcels of real estate but that long prior to the taking effect of said act of Congress of March 3d, A. D., 1887, the said defendant corporation, as it lawfully might, had sold, conveyed, transferred and disposed of all of its said tracts and parcels of real estate by it at any time held and owned, other than the three pieces, tracts or parcels of real estate hereinabove described.

Fourth.—Said defendant corporation further avers that after the passage and taking effect of the said act of Congress of March 3d, A. D., 1887, under, in pursuance of, and in obedience to the requirements of the 26th section of said act, through the proper authorities of the Church of Jesus Christ of Latter-day Saints, it did apply to the proper court exercising probate powers in the said Territory of Utah, to-wit: the Probate Court in and for Salt Lake County, in said Territory, for the appointment of three Trustees to take the title to, and have and hold, the said three tracts or parcels of real estate hereinabove described: That the said court did, pursuant to said 26th section of said act of Congress of March 3d, A. D., 1887, on the 19th day of May, 1887, appoint the following named three Trustees, to-wit: Wm. B. Preston, Robert T. Burton and Jno. R. Winder, to take title and to have and hold the said three tracts or parcels of real estate hereinabove described, and that afterwards the said three tracts or parcels of real estate hereinabove described, with the exception of a part of Lot six (6) in Block seventy-five (75), Plat A, Salt Lake City Survey, bounded, and described as follows: Commencing at a point ten (10) rods west of the northeast corner of said lot and running thence south ten (10) rods, thence west seven (7) rods; thence north ten (10) rods; thence east seven (7) rods, to the place of beginning, were duly and legally deeded, conveyed and transferred to said trustees so appointed as aforesaid; copies of which said deeds of conveyance are hereby made part hereof and attached hereto as Exhibits "E," "F," and "G."

That the said tract last above described being seven by ten rods is now held by Theodore McKean in trust for said defendant corporation and should have been included in his conveyance to said Trustees, Preston, Burton and Winder, but through an oversight and mistake on the part of the draftsman of said deed was until this date unknown to the parties thereto erroneously omitted therefrom.

And said defendant corporation here now avers that since the conveyance of said real estate as hereinabove set forth to said Trustees, so appointed by the Probate Court as aforesaid, it has not held or owned, and does not now hold or own, any real estate whatsoever.

Said defendant corporation further avers that John Taylor, now deceased, was the late Trustee-in-Trust authorized and empowered by said defendant corporation, pursuant to the law of its incorporation, to acquire, own or hold real estate or personal property in trust for said defendant corporation: That said John Taylor departed this life on the 25th day of July, A. D. 1887, and that since his death no successor as Trustee-in-Trust has ever been appointed, elected or chosen by said defendant corporation as Trustee-in-Trust to acquire, own or hold in trust for said defendant corporation, any real or personal property.

Fifth—Said defendant corporation further avers that it is not true, as averred in the eighth paragraph of plaintiff's complaint, that the charter and act of incorporation of defendant was disapproved, repealed and annulled by the Congress of the United States on the 19th day of February, 1887, but, on the contrary, that even if the said act of Congress was and is valid and binding, nevertheless the same did not go into force and take effect until the third day of March, A. D., 1887.

And defendant further avers 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 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. 1887, 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: That defendant at all times from the time of its creation as a corporation up to February 28, 1887, held whatever personal property belonged to it, not in its corporate name, but in the name of a Trustee-in-Trust: That on February 28, 1887, John Taylor, who then held all the personal property, moneys, stocks and bonds belonging to said defendant corporation, as Trustee-in-Trust for said defendant, by and with the consent and approval of defendant, donated, transferred and conveyed all of said personal property, moneys, stocks and bonds held by him belonging to said defendant corporation,—after setting apart and reserving certain moneys and stocks then held by him, sufficient in amount and necessary for the payment of the then existing indebtedness of said defendant corporation, — to cerain ecclesiastical corporations created and existing under and by virtue of the laws of the Territory of Utah, to be devoted by said ecclesiastical corporations solely and only to charitable and religious uses and purposes: That said conveyance of said personal property was made by said Taylor by an instrument in writing, and that pursuant to said instrument in writing said Taylor, as Trustee-in-Trust for said defendant corporation, did deliver to the said various ecclesiastical corporations named in said instrument in writing the said personal property in said instrument mentioned and described; a copy of which said instrument selling, conveying and transferring said personal property to said ecclesiastical corporations is hereby made part hereof and attached hereto as Exhibit "H."

Wherefore defendant avers that at the time said act of Congress of March 3, A.D. 1887, went into force and took effect this defendant corporation did not own, possess or hold any personal property other than the mere furniture, fixtures and implements of and pertaining to its houses of worship and parsonage. And said defendant corporation here now expressly and specifically denies each and every averment and allegation of plaintiff's complaint not hereinabove admitted.

Wherefore and by reason of the facts herein set forth said defendant corporation prays the Court that the prayer of plaintiff in its said complaint be denied, and that upon the final hearing of this case a decree may be rendered and entered by this Court in favor of this defendant corporation, and that said defendant corporation may be dismissed hence with its proper costs and charges in this behalf laid out and expended.

And defendants will ever pray.

JAMES O. BROADHEAD,
J. E. MCDONALD,
FRANKLIN S. RICHARDS,
LEGRAND YOUNG,
Solicitors for defendant corporation.

IN THE SUPREME COURT OF THE TERRITORY OF UTAH. No.....
OF.....TERM.

In Equity.

United States of America, plaintiff,

vs.

The late corporation of the Church of Jesus Christ of Latter day Saints, and John Taylor, late Trustee-in-Trust, and Wilford Woodruff, Lorenzo Snow, Erastus Snow, Franklin D. Richards, Brigham Young, Moses Thatcher, Francis M. Lyman, John Henry Smith, George Teasdale, Heber J. Grant and John W. Taylor, late Assistant Trustees-in-Trust of said corporation, defendants.

The joint and several answer of Wilford Woodruff, Lorenzo Snow, Erastus Snow, Franklin D. Richards, Brigham Young, Moses Thatcher, Francis M. Lyman, John Henry Smith, George Teasdale, Heber J. Grant and John W. Taylor to plaintiff's complaint.

Wilford Woodruff, Lorenzo Snow, Erastus Snow Franklin D. Richards, Brigham Young, Moses Thatcher, Francis M. Lyman, John Henry Smith, George Teasdale, Heber J. Grant and John W. Taylor, made defendants in said plaintiff's complaint, now and at all times hereafter saving and reserving unto themselves jointly, and unto each of them severally, all benefit and advantage of exception which can or may be had or taken to the many errors, uncertainties and other imperfections of the plaintiff's bill of complaint, jointly and severally for answer thereunto, or to so much or to such parts thereof as these defendants, and each of them severally, are advised is material or necessary to answer unto, answering say:

First.—Said defendants, and each of them, except Moses Thatcher, severally deny that they ever were and each and all of them severally deny that they now are Assistant Trustees of the said corporation of the Church of Jesus Christ of Latter-day Saints as set forth and averred in plaintiff's complaint. Said defendants, and each of them, severally aver that they never did, nor did any or either of them ever qualify or give bonds as Assistant Trustees for said defendant corporation, as provided and required by the ordinance and acts of incorporation, to qualify them to act as Assistant Trustees of said corporation. Said defendants, and each of them, admit that they, and each of them, did act as counselors and advisers of the late Trustee-in-trust of said defendant corporation, John Taylor, deceased, not as Assistant Trustees duly qualified in accordance with the acts of incorporation incorporating said defendant corporation, but simply and solely as members of said Church and counselors and advisors of said Trustee-in-Trust when by him asked for counsel and advice regarding the religious and charitable works and affairs of said Church.

And the said Moses Thatcher avers that on the eighth day of April, A. D. 1873, he was duly elected an assistant trustee for said corporation, by said Church of Jesus Christ of Latter-day Saints, at its general conference; that his term of office as such assistant trustee expired on the ninth day of October, A. D. 1875, and that he has never since been nor acted as, nor performed any of the duties of an assistant trustee of said corporation.

Second.—Said defendants, and each of them, jointly and severally aver that they never have, and do not now own, hold in trust or otherwise, or possess, any real or personal property of and belonging to the said defendant corporation. And said defendants, and each of them, jointly and severally specifically deny each and every of the averments and allegations of the plaintiff's complaint, and they, and each and every of them, jointly and specifically disclaim and deny any ownership or possession as trustees,