

different; but there is no room for such an inquiry in this case.

The Chairman—One question more, not because I regard it as material, but for information. I suppose that this fund donated to the Church and expended in charities is limited, as far as the object of the charities are concerned, to members of the Church?

Mr. Broadhead—I suppose that is so. But how that is managed is a matter of detail on which I am not informed at all. This is a copy of Judge Bradley's opinion. It is very lengthy, and I have only marked one or two portions of it.

The Chairman—Have you an extra copy of that opinion?

Mr. Broadhead—No, sir; this is the only copy, but you can have this after I get through; but, however, it will not be very long before it is published.

The Chairman—I had a copy, but I mislaid it.

Mr. Broadhead—This is the United States against the Church of Jesus Christ of Latter-day Saints, numbers 1031 and 1054, October term, 1889. This is a very learned dissertation upon the subject of charitable uses. Judge Bradley says:

The property in question has been dedicated to public and charitable uses. It matters not whether it is the product of private contributions, made during the course of half a century, or of taxes imposed upon the people, or of gains arising from fortunate operations in business, or appreciation in value, the charitable uses for which it is held are stamped upon it by charter, by ordinance, by regulation and by usage, in such an indelible manner that there can be no mistake as to their character, purpose, or object.

He says further:

The principles of the law of charities are not confined to a particular people or nation, but prevail in all civilized countries pervaded by the spirit of Christianity. They are found imbedded in the civil law of Rome, in the laws of European nations, and especially in the laws of that nation, from which our institutions are derived. A leading and prominent principle prevailing in them all is, that property devoted to a charitable and worthy object, promotive of the public good, shall be applied to the purposes of its dedication, and protected from spoliation and from diversion to other objects. Though devoted to a particular use, it is considered as given to the public, and is, therefore, taken under the guardianship of the laws. If it can not be applied to the particular use for which it was intended, either because the objects to be subserved have failed, or because they have become unlawful or repugnant to the public policy of the State, it will be applied to some object of kindred character so as to fulfill in substance, if not in manner and form, the purpose of its consecration.

Of course where there is no purpose shown—for example, in the celebrated case of Jackson against Phillips, in which there is a most learned opinion on the subject of charitable uses by Judge Gray, of the Supreme Court, then Judge of the supreme court of Massachusetts—there were two objects in the will. One was to provide for the maintenance and support of fugitive slaves and the other was for the promotion of the cause of female suffrage. The court held that the cause of female suffrage was not a charitable use. It decided against it. It decided against it, but held that the other was a charitable use, and instructed the master to find a scheme by which any portion of the fund not provided for and devoted to the

other object might be devoted to some other object of charity, by way of approximation to that for which it was given. In that case there was no other provision; but here is a provision, as I undertake to show by facts—in other words, that there are other charitable uses than that of promoting the progress of the Mormon religion, and that is, the support of the poor, education of children, etc.

Mr. Rogers—What case was that to which you alluded?

Mr. Broadhead—It is the case of Jackson against Phillips (14 Allen, Massachusetts), and it is a very learned opinion and a very able opinion.

Further on Judge Bradley says:

Property, destined to superstitious uses, is given by law of Parliament to the King, to dispose of as he pleases; and it falls properly under the cognizance of a court of revenue. But where property is given to mistaken charitable uses, this court distinguishes between the charity and the use; and seeing the charitable bequest in the intention of the testator, they execute the intention, varying the use, as the King, who is the executor of all charities and the constitutional trustee for the performance of them, pleases to direct and appoint.

Further on he says:

And in all these cases the general intention of the testator in favor of charity will be effectuated by the court through a *cy-près* application of the fund. The same propositions are laid down by Mr. Justice Story in his equity jurisprudence, sections 1167 *et seq.*, but it is unnecessary to make further quotations.

These authorities are cited (and many more might be adduced) for the purpose of showing that where property has been devoted to a public or charitable use which cannot be carried out on account of some illegality in or failure of the object, it does not, according to the general law of charities, revert to the donor or his heirs, or other representatives, but is applied under the direction of the courts, or of the supreme power in the State, to other charitable objects, lawful in their character, but corresponding, as near as may be, to the original intention of the donor.

He says further:

It is not our province to pass judgment upon the necessity or expediency of the act of February 19, 1887—

That is a mistake in the date; it ought to be the 20th. There was a conflict about the time it went into effect; the government claimed it was the 20th of February and the other side stated it was 3d of March.

It is not our province to pass judgment upon the necessity or expediency of the act of February 19th, 1887, under which this proceeding was taken. The only question we have to consider in this regard is as to the constitutional power of Congress to pass it. Nor are we now called upon to declare what disposition ought to be made of the property of the Church of Jesus Christ of Latter-day Saints. This suit is, in some respects, an ancillary one, instituted for the purpose of taking possession of and holding for final disposition the property of the defunct corporation in the hands of a receiver, and winding up its affairs. To that extent, and to that only, the decree of the circuit court has gone. In the proceedings which have been instituted in the district court of the Territory, it will be determined whether the real estate of the corporation which has been sequestered (excepting the portions exempted by the act) has, or has not, escheated or become forfeited to the United States. If it should be decided in the affirmative, then, pursuant to the terms of the act, the property so forfeited and escheated will be disposed of by the Secretary of the Interior, and the proceeds applied to the use and benefit of common schools in the Territory.

It is obvious that any property of the corporation which may be adjudged to be forfeited and escheated will be subject to a more absolute control and disposition by the government than that which is not so forfeited.

Of course if it is forfeited and escheated it becomes the property of the government, and the government may do what it pleases with it.

The non-forfeited property will be subject to such disposition only as may be required by the law of charitable uses; whilst the forfeited and escheated property, being subject to a more absolute control of the government, will admit of a greater latitude of discretion in regard to its disposition.

Then in the winding up of his opinion he says this, in regard to the intervening petition, to which I have made reference:

The application of Romney and others,—and it is for them I speak now in this case,—

representing the nonincorporated members of the Church of Jesus Christ of Latter-day Saints, is fully disposed of by the considerations already adduced. The principal question discussed has been, whether the property of the Church was in such a condition as to authorize the government and the court to take possession of it and hold it until it shall be seen what final disposition of it should be made; and we think it was in such a condition, and that it is properly held in the custody of the receiver. The rights of the Church members will necessarily be taken into consideration in the final disposition of the case. There is no ground for granting their present application. The property is in the custody of the law, awaiting the judgment of the court as to its final disposition in view of the illegal use to which it is subject in the hands of the Church of Jesus Christ of Latter-day Saints, whether incorporated or unincorporated. The conditions for claiming possession of it by the members of the sect or community under the act do not at present exist.

We do not set out any of these objects of charity in that application. We ask that the property might be turned over to them for charitable uses without specifying them, and perhaps they should have specified them in this petition, and we did not claim in the argument before the court, as Judge Bradley says, that the members of the Church were entitled individually or collectively to the Church property in their own right; not at all. We claim that they were entitled to hold it in trust for the purpose for which it was given, and one assignment of error was in these words:

Because if it finally shall be held that said act is valid in so far as it repeats the charter of said corporation, and if said corporation shall finally be adjudged dissolved, still upon such dissolution the real estate and property belonging to said corporation ought in law and equity to be adjudged to be and become the property of the individual members of said corporation at the date of its dissolution, charged with the same trust, uses, and purposes under which it was acquired and held by said corporation.

And that is where we say it ought to go, and that is where Judge Bradley says it ought to go; but these facts were not before him. And if there has been no other charity pointed out, if they were unable to point out any other charity than the support and maintenance of the Church, then this might as well be devoted to general educational purposes as not, except that the donor's wishes and intentions ought to be respected; although some part may be an illegal use, whatever use is legal it should be devoted to, or carry out the intention for which it was originally given. I must hurry on for I do not wish to detain you, but I want to refer to one or two authorities. I do not intend to read