

A RECEIVER GRANTED.

Sophistical Argument of the Territorial Supreme Court.

WHOLESALE CONFISCATION OF THE PROPERTY OF THE LATTER-DAY SAINTS ENDORSED.

The session of the Territorial Supreme Court on Saturday evening, was largely attended, there being present beside a majority of the members of the Salt Lake bar, Col. Broadhead, Mrs. M. M. Ricker, Judge Dusenberry, Mayor Dusenberry, Mayor Armstrong, Bishop J. R. Winder, Judge E. A. Smith, Alderman Robert Patrick and many others. The three judges were present, and the anticipated decision on the question of appointing a receiver in the suit of the government against the Church was read by Chief Justice Zane as follows:

THE OPINION.

In the Supreme Court of the Territory of Utah, June term, 1887.

United States of America, Plaintiff,

vs.

The Church of Jesus Christ of Latter-day Saints et al., Defendants.

Zane C. J.

The complainant filed in this Court its bill in chancery under an act of Congress in force March 3d, 1887. The bill prayed that a decree be made by this Court forfeiting the charter and dissolving the corporation known as the Church of Jesus Christ of Latter-day Saints, as well as for the appointment of a receiver of the assets of the corporation, until disposition could be made thereof according to law, and for other relief. The motion for the appointment of a receiver is now submitted for our decision, on the bill and the facts as stated in a stipulation entered into by the parties and filed in the case.

On the 8th day of February, 1851, the Assembly of the so-called State of Deseret, afterwards organized as the Territory of Utah, passed an ordinance incorporating the Church of Jesus Christ of Latter-day Saints. After the organization of the Territory of Utah, this ordinance was re-enacted January 19th, 1855, by the Legislature and approved by the Governor of the Territory. This is

THE CHARTER

In question; its terms are as follows:

An ordinance incorporating the Church of Jesus Christ of Latter-day Saints.

SEC. 1. Be it ordained by the General Assembly of the State of Deseret: That all that portion of the inhabitants of said State, which now are, or hereafter may become residents therein, and which are known and distinguished as "The Church of Jesus Christ of Latter-day Saints," are hereby incorporated, constituted, made and declared a body corporate, with perpetual succession, under the original name and style of "The Church of Jesus Christ of Latter-day Saints," as now organized, with full power and authority to sue and be sued; defend and be defended, in all courts of law or equity in this State; to establish, order and regulate worship, and hold and occupy real estate and personal estate, and have and use a seal, which they may alter at pleasure.

SEC. 2. And be it further ordained that said body of church as a religious society, may, as a general or special conference elect one "trustee-in-trust," and not to exceed twelve assistant trustees, to receive, hold, buy, sell, manage, use and control the real and personal property of said Church, which said property shall be free from taxation; which trustee and assistant trustees, when elected or appointed, shall give bonds with approved security, in whatever sum the said conference may deem sufficient for the faithful performance of their several duties; which said bonds, when approved, shall be filed in the general branch recorder's office, at the seat of general Church business, when said bonds are approved by said conference; and said trustee and assistant trustees shall continue in office during the pleasure of said Church, and there shall also be made by the clerk of the conference of said Church, a certificate of such election or appointment of said trustee and assistant trustees, which shall be recorded in the general Church recorder's office at the seat of general Church business; and when said bonds are filed, and said certificates recorded, said trustee or assistant trustees may receive property, real or personal, by gift, donation, bequest, or in any manner, not incompatible with the principles of righteousness, or the rules of justice; inasmuch as the same shall be used, managed, or disposed of for the benefit, improvement, erection of houses of public worship and instruction, and the well-being of said Church.

SEC. 3. And be it further ordained: That, as said Church holds the constitutional and original right, in common with all civil and religious communities, "to worship God according to the dictates of conscience," to reverence communion agreeably to the principles of truth, and to solemnize marriage compatible with the revelations of Jesus Christ, for the security and full enjoyment of all blessings and privileges embodied in the religion of Jesus Christ free to all it is also declared that said Church does and shall possess and enjoy continually the power and authority, in and of itself to originate, make, pass and establish rules, regulations, ordinances, laws, customs and ceremonies, for the good order, safety, government, convenience, comfort and control of said Church, and for the punishment or forgiveness of all offenses relative to fellowship, according to church covenants; that the pursuit of bliss, and the enjoyment of life, in every capacity of public association and domestic happiness, temporal expansion, of spiritual increase upon the earth may not legally be questioned: Provided, however, that each and every act, or practice so established, or adopted for law or custom, shall relate to solemnities, sacraments, ceremonies, consecrations, endowments, tithings, marriages, fellowship or the religious duties of man to his Maker; inasmuch as the doctrines, principles, practices for performances, support, virtue and increase

morality, and are not inconsistent with, or repugnant to the Constitution of the United States, or of this State, and are founded in the revelations of the Lord.

SEC. 4. And be it further ordained: That said Church shall keep at every fully organized branch or stake, a registry of marriages, births and deaths, free for the inspection of all members and for their benefit.

SEC. 5. And be it further ordained: That the presidency of said Church shall fill all vacancies of the assistant trustees, necessary to be filled, until superseded by the conference of said Church.

SEC. 6. Be it further ordained: That no assistant trustee or trustees shall transact business in relation to buying, selling, or otherwise disposing of Church property, without the consent or approval of the trustee-in-trust of said Church.

The purposes of the corporation as indicated by the powers conferred upon it by this charter, are numerous and varied. Some of them, it is true, are expressed in vague terms, but the capacity is granted to act in various ways, and to make laws and regulations with respect to very many subjects. The corporation is confined to no particular purpose. No precedent can be found for conferring upon a private corporation such a variety of capacities; some of them, it is believed, are above the reach of

HUMAN LAWS.]

The lawmaking power of the State, for the purpose of better government and for the public good enacts charters conferring a portion of the powers entrusted to it, upon the people of a city or village; others authorizing charitable, educational, or religious institutions; and others providing for various pursuits and enterprises. These artificial agencies are provided in order that the people may more conveniently and successfully co-operate for the good of all and for the advancement of human happiness.

The charter of a corporation should always specify the purpose for which the corporation is organized, and powers adapted to that purpose should be granted. If the corporation is to be a public one powers adapted to the regulations of conduct and to public purposes should be given, with such incidental capacity to do business as may be essential to such an organization, and no more. It should never be allowed to engage in general business. If a charter authorizes the organization of a company to acquire and operate a railroad, the power to engage in agriculture should not be granted also. So, if a worshipping congregation should desire to purchase a lot of ground and to

BUILD A CHURCH

and a parsonage, and to employ a minister, the charter should authorize the corporation to do so, but should not confer upon such an organization powers adapted to municipal government, or to the purchase and sale of real and personal property without limit, nor should such corporations engage in general business.

It is an accepted doctrine that the common weal demands that private corporations should be limited each to a particular and specified purpose; even when so limited, they often acquire great influence. If the Legislature, by the instrumentality of the same charter may authorize the organization of a company, for all purposes, if the company may enter upon every field of enterprise and engage in every pursuit and may also control human conduct by means of the powers of a municipal government, and at the same time may possess those of a religious corporation, such corporate influence will be manifested as never before.

The charter of the Church of Jesus Christ of Latter-day Saints is most extraordinary in the extent of the authority it assumes to confer upon, and in the number, the variety and the scope of the power it places in the hands of a religious body. It declares, in effect, that all the Mormon people, who at the time of its enactment were, or who might afterwards become residents of the Territory, are a body corporate, with

PERPETUAL SUCCESSION.

This corporation at the time of its organization embraced nine-tenths of the inhabitants of the Territory—many thousands of people. At the present time it includes probably more than 120,000, and if, in the future, people should continue to be gathered in from all quarters of the globe as they have in the past, their number at no distant day will reach a quarter of a million.

The corporation extends over the whole Territory, including numerous congregations in various localities. At the head of this corporate body, according to the faith professed, is a seer and revelator, who receives in revelation the will of the

INFINITE GOD

concerning the duty of man to himself, to his fellow-beings, to society, to human government and to God. In subordination to this head are a vast number of officers of various kinds and descriptions, comprising a most minute and complete organization. The people comprising this organization claim to be directed and led by inspiration that is above all human wisdom, and subject to a power above all municipal government—above all "man-made laws." These facts belong to history, therefore we have taken notice of them.

Upon such a religious organization as this, unusual and extraordinary powers are conferred by this charter, such as the right of acquiring and disposing of real and personal property without limit and with exemption from

taxation; the authority to solemnize marriage according to revelation; the continuous and inherent authority to make laws and "criteria" for the good order, safety, government, convenience, comfort and control of the Church, which is equivalent to saving the Mormon people; also for the punishment or forgiveness of all offenses

RELATIVE TO MEMBERSHIP

according to Church covenants; that is to say, the church may impose or inflict any punishment, if according to its covenants; what those covenants may be the public may not know.

Further, it is declared that the enjoyment of life in every capacity of public association, domestic happiness, and temporal expansion upon the earth, may not legally be questioned. Here is a wide field of human conduct for a government to agree not to question. Human beings have the capacity to associate publicly for very many purposes and such association may become disorderly and require legal control. In "domestic happiness" this Church professes to believe, is included polygamy; in the estimation of others domestic happiness might include some other practice injurious to society. In the same manner "temporal expansion" might take a direction requiring control.

This grant of power was followed by a proviso that the laws and customs established should "relate to solemnities, sacraments, ceremonies, consecrations, endowments, tithing, marriages, fellowship or the religious duties of man to his Maker; and that the same support virtue and increase morality and are not inconsistent with or repugnant to the Constitution of the United States or of this State, and are founded in the

REVELATIONS OF THE LORD."

The above terms, solemnities, sacraments, ceremonies, consecrations and endowments may be polygamy and unlawful cohabitation in disguise; in fact marriage is included in terms in the charter without specification of the kind of marriage. This is probably the first time that any Legislature committed the regulation of marriage and tithing to a private corporation. It is safe to assume that the right to regulate such matters was never before attempted to be contracted away to a church or any other body of men. Nor are we aware that the right to regulate man's duty to his Maker was ever included in a contract. And finally this charter provides that such laws and customs shall be founded in the revelations of the Lord. This too, probably, is the first time that a legislature expressly limited the rules and laws that a corporation might make by the revelations of the Lord, and made a grant thereof to any person, natural or artificial.

In this charter the respondent insists the Church gained

A VESTED RIGHT

upon its acceptance, and that Congress has no right to disapprove or to annul it. We know of no precedent for holding that a corporation could obtain a vested right in a charter like this. Had the Territorial Legislature the power to grant a vested right to such a charter? The case of Dartmouth College vs. Woodward (4 Wheaton, 518), has been regarded as settling the question that the charter of a private corporation constitutes a contract between a State and a corporation. By this contract the corporation in consideration of presumed benefits to the public obtains a vested right in the charter, unless the Constitution or a general law of the State or the charter itself, reserves the right to amend or repeal. But we find no case holding that a charter granted by the Legislature of a Territory gives such a vested right.

Again, it will be found, we think, that the powers granted by a State in such charters were limited to some particular purpose; that they did not embrace powers which the Legislature possessed for the purpose of government, to be exercised by that body alone, or conferred upon some municipal government for the same purpose. Such powers are never granted by the people to the Legislature to be bartered and sold. A government based upon the will of the people must ever keep such authority within reach of

THE PEOPLE'S WILL.

Legislatures are but the agents of the people with authority to make laws within Constitutional limits but without authority to give or to contract away powers to make laws to govern the people so that private parties may gain vested rights in them. The charter in question assumes to grant to the corporation powers to make regulations and laws with respect to marriage, tithing, fellowship, etc. It confers in express terms upon the church power and authority to originate, make and pass rules, regulations, ordinances and to establish customs and "criteria" for the government, convenience and control of the Church (which means the whole Mormon population of the Territory), as well as the right to acquire by purchase or otherwise real and personal property and to sell and dispose of it at pleasure.

Such are some of the powers conferred upon this Church corporation by this remarkable act. To such a charter it is claimed the Church has acquired a vested right. If this proposition is sound, the corporate body known as the Church of Jesus Christ of Latter-day Saints may endure under this charter

TO DISTANT AGES.

But we are of the opinion that a vested right could not be acquired in such a charter.

Further, Congress possesses the power to enact laws for the government of the Territories. It may make provision for Territorial governments and extend the authority of Territorial Legislatures to all rightful subjects of legislation. Such Territorial governments occupy toward Congress something of the same relation as municipalities—such as city governments—all toward the State Legislatures. A State Legislature can repeal the charter of a municipal government and the ordinances passed under it; so Congress can repeal the organic act of a Territory and all territorial enactments, in pursuance of the Organic Act. Congress is the sovereign power to legislate for the Territories, and all charters from Territorial Legislatures must be held to have been accepted with the knowledge that Congress possessed the authority to

CHANGE OR REPEAL

the law creating them. In the case of the National Bank vs. Yaukton, 101 U. S., 129, the Court says:

The Territories are but political subdivisions of the dominion of the United States, and Congress may legislate for them as a State does for its municipal organizations. In the Organic Act of Dakota there was not an express reservation of power in Congress to amend the acts of the Territorial Legislature, nor was it necessary. Such a power is an incident of sovereignty, and continues until granted away. Congress may not only abrogate laws of the Territorial Legislature, but it may itself legislate directly for the local government. It may make a void act of the Territorial Legislature valid and a valid act void. In other words, it has full and complete legislative authority over the people of the Territories and all the departments of the Territorial governments. It may do for the Territories what the people, under the Constitution of the United States, may do for the States.

This we conceive to be the law upon the subject.

In the case under discussion, the Territory was organized under the Organic Act approved September 9th, 1850. Among other provisions is the following:

That the legislative power of said Territory shall extend to all rightful subjects of legislation consistent with the Constitution of the United States and the provisions of this act.

All the laws passed by the Legislative Assembly and Governor shall be submitted to the Congress of the United States, and if disapproved shall be null and to no effect.

The charter in question was a law passed by the Legislative Assembly, and the right to disapprove it was expressly reserved, and the Church must be held to have accepted it with the knowledge of the reserved right of disapproval. That being so, the Church will not be heard to say that it was

ACCEPTED WITHOUT CONDITIONS.

In order to maintain that the charter when accepted became a contract binding on Congress it is necessary to assume that the acceptance was unconditional; otherwise it is simply an act of the Legislature giving to the corporation the use of the authority contained in it during the pleasure of Congress. The acceptance of the charter subject to disapproval could make the charter no more than a license to the corporation to use the authority granted during the pleasure of Congress.

We are of the opinion therefore, from a view of the whole subject, both from the nature of the powers granted by the charter itself, and from the form of the grant and of the acceptance that the acceptance did not give the corporation a vested right in it.

But, assuming that the acceptance of the charter did not give a vested right in it, the claim is made that the second section of an act of Congress approved July 1st, 1862, made the charter as thereby limited a

LAW OF THE UNITED STATES,

and not subject thereafter to disapproval or appeal. The section is this:

SEC. 2. And be it further enacted, that the following ordinance of the provisional government of the State of Deseret so-called, namely: "An ordinance incorporating the Church of Jesus Christ of Latter-day Saints," passed February eight, in the year eighteen hundred and fifty-one, and adopted, re-enacted, and made valid by the governor and Legislative Assembly of the Territory of Utah by an act passed January nineteenth, in the year eighteen hundred and fifty-five, entitled "An act in relation to the compilation and revision of the laws and resolutions in force in Utah Territory," their publication and distribution, and all other acts and parts of acts heretofore passed by the said Legislative Assembly of the Territory of Utah, which establish, support, maintain, shield or countenance polygamy, be, and the same hereby are, disapproved and annulled. Provided, That this act shall be so limited and construed as not to affect or interfere with the right of property legally acquired under the ordinance heretofore mentioned, nor with the right "to worship God according to the dictates of conscience," but only to annul all acts and laws which establish, maintain, protect or countenance the practice of polygamy, evasively called spiritual marriage, however disguised by legal or ecclesiastical solemnities, sacraments, ceremonies, consecrations, or other contrivances.

In the enacting clause of this section the charter in question termed "An Ordinance incorporating the Church of Jesus Christ of Latter-day Saints" is

REPEALED IN EXPRESS TERMS;

but the proviso limits the effect of the entire act in these respects; first, so

that it shall not affect the right to property legally acquired under the charter; second, so as not to interfere with the right to worship God according to the dictates of conscience; third, so as to annul only all acts and laws which establish, maintain, protect or countenance the practice of polygamy, evasively called spiritual marriage, however disguised by legal or ecclesiastical solemnities, sacraments, ceremonies, consecrations or other contrivances. The enacting clause was not limited to the proviso in the two respects first mentioned, because the clause simply repealed the charter without interfering with the rights of property which had been acquired under it, nor did it interfere with the right to worship God according to the dictates of conscience. And it is not clear that the third limitation mentioned in the standing any portion of the charter, for it is expressly stated that the intention of the law was to annul laws countenancing polygamy or spiritual marriage, though appearing in the law disguised by the name of a solemnity, a sacrament, a ceremony, a consecration, or under any other contrivance; and under just such marks as these, we think,

POLYGAMY

does appear in the charter of the Church of Jesus Christ of Latter-day Saints. With all such disguises and contrivances stripped from this charter, little, comparatively speaking, is left of it.

But assuming that the expressed intent to annul all acts countenancing polygamy left other provisions in force, was the remainder of the charter made an act of Congress? Such an intention is not expressed. It must have been made by implication. From the provisions of the act of 1862 it is clear that Congress did not regard the charter as a contract, otherwise it would not have changed its provisions. We may assume that Congress changed the charter according to its conceptions of duty at the time, with the understanding that it might be changed further or altogether disapproved, whenever the opinion of Congress the good of society required such change or disapproval. We do not think that the act of Congress of 1862 affords the inference that so much of the charter as remained in force was in effect a law of the United States. This view seems to be in accordance with the opinion of the Supreme Court of the United States in the case of *Miners' Bank vs. Iowa* (12 Howard 1). The Territorial Legislature of Wisconsin chartered the *Miners' Bank*. Afterwards an act of Congress annulled the charter in certain particulars, but left other of its provisions in force. Thereafter the Territory was divided by act of Congress and the

TERRITORY OF IOWA

was erected over that part of the former Territory of Wisconsin, in which the bank was situated. Later, the Territorial Legislature of Iowa repealed the charter and directed to settlement of the affairs of the corporation by trustees under the supervision of the court. A quo warrant proceeding was instituted against the bank. In deciding the case on appeal the Court used this language:

It has been argued in this case that Congress in creating the Territorial government of Wisconsin and Iowa, intended to themselves the power of disapproving and thereby annulling the acts of those governments, and had, in the exercise of that power, stricken out several of the provisions of the charter of the Bank of Dubuque, enacted by the Legislature of Wisconsin, and that, therefore, the charter of this bank should be regarded as an act of Congress rather than of the Territorial government. Congress in creating the Territorial governments, and in conferring upon them powers of general legislation, did not, from obvious principles of policy and necessity, ordain a suspension of all acts proceeding from those powers, until expressly sanctioned by themselves, whilst, for considerations equally strong, they reserved the power of disapproving or annulling such acts of Territorial legislation as might be deemed detrimental. The charter of the Bank of Dubuque enacted in all its details and powers ever possessed by it, (and according to which it was, in fact organized,) by the Legislature of Wisconsin, must be looked upon as the creature of that Legislature."

The seventeenth section of the act of March 3d, 1857, under which

THIS BILL IS FILED

is as follows:

SEC. 17. 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 may now have legal force and validity, are hereby disapproved and annulled, and the said corporation, in so far as it may now 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 proceedings to be taken in the Supreme Court of the Territory of Utah as shall be proper to execute the foregoing provisions of this section and 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 such decree or decrees as shall be proper to effectuate the transfer of the title to real property now held and used by said corporation for places of worship, and parsonages, and of the therewith, and burial grounds, and of the description mentioned in the proviso in section thirteen of this act, and in section twenty-six of this act, and the respective trustees mentioned in section twenty-six of this act; and for the purposes of this section said court shall have all the powers of a court of equity.