## CHURCH AND STATE.

### Senator Morgan's Resolutions.

#### Government Interference in Church Affairs.

In the United States Senate, February 1, Mr. Morgan made the following able speech in support of his Resolutions against Government interference in ecclesiastical affairs:

The next business on the Calendar was the resolutions submitted by Mr. Morgan, January 11, 1886, in relation to the appointment of officers of the United States to participate with the officers of any church in the joint conduct and administration of the spiritual or temporal affairs of such church, etc.

Mr. Morgan. Let the resolutions be read.

The President *pro tempore*. The resolutions will be read.

The Chief Clerk read as follows:

Whereas the union of church and state in the conduct of a joint administration of the temporal or spiritual affairs of any church or religious sect or society is dangerous to the freedom of religious worship and opinion, and violates the principles of the Constitution of the United States:

*Resolved*, 1. That in the opinion of the Senate it is not within the power of Congress to appoint officers of the United States, by whatever name they may be called, who shall, in the name of, or on behalf of, the United States, be required to participate with the officers of any church or religious sect or society, whether or not the same is incorporated, in the joint conduct and administration of the spiritual or temporal affairs of such church, sect, or society.

2. That it is a practical violation of the Constitution for the President of the United States to appoint any such officer under any law which assumes to confer such power on him, and that requires such duties to be performed by such appointees as are mentioned in the first resolution, and that fixes upon them a direct accountability to the executive or legislative department of the Government of the United States for their conduct in office.

3. That it is not the constitutional function of the executive or legislative department of the Government of the United States to exert control in the direction and administration of the religious or temporal affairs of any church or religious sect or society; but such power, if it may be in any case lawfully exerted by any department of the Government of the United States, can only be exercised by the judicial department.

4. That the power of Congress to grant charters of incorporation to religious societies in localities under its exclusive jurisdiction does not extend to and include the right or authority to participate in the administration of the affairs of such incorporations through the agency of officers of the United States appointed for such purpose and accountable to the Government for their conduct in office.

Mr. Morgan. Mr. President, the proposition stated in these resolutions I have always considered as axiomatic if not self-evident, and I would certainly not have brought them to the attention of the Senate but for the fact that certain recent actions of the Senate itself seems to me to make it necessary that we should now have some definition, perhaps for the first time in the history of the Government, of what is the extent of the power of the Congress of the United States to interfere in the temporal administration of the churches of this country.

The separation of church and state in this country grew out of a sentiment which was promoted more earnestly and zealously by Roger Williams than by any other American citizen of whom I have any information. He started the great controversy in the time of the inauguration of the colonial system in this country which should separate the power of the government from the spiritual or temporal power of the church, and which should draw the line of demarkation between those powers which in England had been combined, not merely as an act of law, but in the establishment or ordination of one of the estates of the realm. The Church of England, from which country we obtained our liberties and the first germs of our civilization, and our first ideas of personal protection and liberty, is not an incorporation. It may not be called a creature of the law any more than Parliament can be called a creature of the law, or the royal prerogative a creature of the law. The Church of England is one of the estates of the realm. In the establishment of our constitutional system of government and even of our colonial system of government it was determined by almost the unanimous consent of the American people that that feature of the British Government should find no place either in the colonial system or in the States united under the more perpetual union that we now enjoy.

Recently an act was passed by this body, which requires that the President shall appoint and the Senate shall confirm fourteen trustees to act in a church. It makes no difference whether the action of the trustees is to be spiritual or temporal, whether the board of trustees is to be controlled by the spiritual authorities of the Church, or whether they hold some right merely in trust of a temporal character, some property right for the benefit of the congregation; still there is distinctly the union in that act of Church and State when we require that persons who hold the positions of officers of the United States Government shall, in that character also hold the offices of a church, or an institution that calls itself a church. I regard that as an invasion of the fundamental law of the Constitution of the United States affecting the executive power, the legislative power, and also the judicial power. Neither one has had to meet heretofore such a baneful attack. Neither one, after this law shall have gone into existence, can ever welcome again to itself the thought that it is free from association from spiritual affairs and church government.

In the District of Columbia there are many churches incorporated, none of them, I believe, by a special act of Congress, but under a general law of incorporation these religious establishments and charitable institutions have become incorporated with boards of managers, with trustees, and also with certain rights of spiritual and temporal control in the regulation of their own church affairs. So churches have been incorporated in the Territories, some by special act and some under general law. The question arises, has Congress the power to enact a law whereby the President shall be authorized and required to present to the Senate for confirmation the trustees in a church in the District of Columbia?

The President *pro tempore*. It is the duty of the Chair to inform the Senator that under the five-minute rule his time is up.

Mr. Morgan. I ask unanimous consent to be allowed to make a few additional observations.

The President *pro tempore*. If there be no objection, that will be considered as the consent of the Senate. The Senator will proceed.

Mr. Morgan. There is no reason, if Congress can intervene in the churches in the District of Columbia to appoint trustees for the management of their temporal affairs, why they may not extend their jurisdiction and also control their spiritual affairs. The question is not how far Congress may go in its legislation, but whether it can take the first step.

As I understand the Constitution of the United States, there is a positive inhibition upon us against legislating in regard to the establishment of religion; not to legislate either to establish it, to prevent its establishment, or to break down its establishment. The question is, whether the subject is one within the domain of the legislative power of the Congress of the United States. The only safe rule that can be adopted is to adhere to the plain mandate of the Constitution that this subject is not within the domain of the Congressional power of legislation, that it is a subject under our Constitution which is left entirely to the free consciences of the people, who may assemble themselves in congregations under whatever organization they may choose to have, or whatever the organization we may choose to give them, without our interfering or interposing the power of the Government of the United States to participate in any way in the regulation or control of those assemblages or congregations.

Sir, we have passed an act here and sent it to the other House which requires that the President of the United States shall appoint fourteen officers of the United States as trustees in the Mormon Church at Salt Lake, in Utah. Let it be remembered that there are Mormon churches elsewhere than in Utah. In looking over a publication made by Mr. Childs, of the Philadelphia Ledger, the other day, I examined the list of churches in the city of Philadelphia, that city of brotherly love and of high morality, which we are all proud of. I find that among the congregations that exist in that city are two Mormon churches, one polygamist and the other anti-polygamist.

I doubt very much whether the State of Pennsylvania, which has broader powers in this regard than the Congress of the United States—because I do not understand that Pennsylvania is under a positive inhibition to legislate on such topics at all—I doubt very much whether the State of Pennsylvania could inject into that polygamous church in Philadelphia a body of trustees and, in the name of the State of Pennsylvania, regulate and control its affairs even to expurgate the polygamous feature from its creed. But there it stands in the light of day, there it stands by the tolerance, shall I say, of the people of Pennsylvania? It may be a tolerance that involves the deepest contempt of those people for it, yet it is such a tolerance as prevents that State from an actual interference in the affairs of that church.

Religion has been made free from the law in this country. Divorce of the church and the state was decreed when our Constitution was formed; but the Congress of the United States, it seems, wants to celebrate the nuptials of the new union between the Mormon Church and the United States government, and take charge of the ordinances of that polygamous establishment in Utah. We have not sought to inject our powers into the Presbyterian or Methodist or Episcopalian or Baptist or the Catholic Church in this country. We seek for the first display of this character of power, of a mingled authority of church and state, this new idea of the union of law and religion, in enacting that the bonds of union shall be celebrated at the polygamous altar of the Church of Jesus Christ of Latter-day Saints in the City of Salt Lake, the capital of Utah.

I maintain that the President of the United States would consult his duty in refusing to appoint this board of trustees which the Senate has voted shall be appointed by him and sent to the Senate for confirmation. We may put a law upon the statute-book here requiring him to make such appointments, and this President or another may approve it and it may take the form and shape of a law; but when these trustees come to be appointed by him, it would be equally the duty of the Senate to say, that appointment and that law violate the Constitution of the country, and it shall not be a proper subject to be considered in this body whether we will confirm, or not, the appointees.

The only power that can be exercised authoritatively over the church organizations in this country is clearly defined in the case of Watson vs. Jones, in 13 Wallace's Reports. That is a case of great importance, and if the resolution should go to a committee, as I think it need not go to a committee, I respectfully call the attention of that committee, whatever it shall be—I suppose it will be the Judiciary, if any—to the influence of this case of Watson vs. Jones upon this great question. That was a Kentucky controversy. It arose in a litigation between the authority of the general assembly of the Presbyterian Church in the United States and the Walnut Street Church in Louisville, Ky. The question was, who had the jurisdiction to determine who were the board of trustees chosen by the church; who were the men who had the legal title to the property held in trust for the congregation; who had the right to select a pastor; who had a right to conduct the financial affairs of the church; who had a right to determine upon the admission of members, their rejection, or any question relating to membership? That case came from the circuit court of the United States, on appeal to the Supreme Court of the United States, and the Supreme Court, after deliberate consideration, announced certain results as the conclusions to which they arrived, to which I will invite the attention of the Senate very briefly.

I will read some extracts from the opinion of the Supreme Court in the case of Watson vs. Jones:

> The questions which have come before the civil courts concerning the rights to property held by ecclesiastical bodies may, so far as we have been able to examine them, be profitably classified under three general heads, which, of course, do not include cases governed by considerations applicable to a church established and supported by law as the religion of the State.
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> 1. The first of these is when the property which is the subject of controversy has been, by the deed or will of the donor or other instrument by which the property is held, by the express terms of the instrument devoted to the teaching, support, or spread of some specific form of religious doctrine or belief.
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> 2. The second is when the property is held by a religious congregation which, by the nature of the organization, is strictly independent of other ecclesiastical associations, and so far as church government is concerned, owes no fealty or obligation to any higher authority.
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> 3. The third is where the religious congregation or ecclesiastical body holding the property is but a subordinate member of some general church organization in which there are superior ecclesiastical tribunals with a general and ultimate power of control more or less complete, in some supreme judicatory over the whole membership of that general organization.
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> In regard to the first of these classes it seems hardly to admit of a rational doubt that an individual or an association of individuals may dedicate property by way of trust to the purpose of sustaining, supporting, and propagating definite religious doctrines or principles, provided that in doing so they violate no law of morality and give to the instrument by which their purpose is evidenced the formalities which the laws require. And it would seem also to be the obvious duty of the court, in a case properly made, to see that the property so dedicated is not diverted from the trust which is thus attached to its use. So long as there are persons qualified within the meaning of the original dedication, and who are also willing to teach the doctrines or principles prescribed in the act of dedication, and so long as there is any one so interested in the execution of the trust as to have a standing in court, it must be that they can prevent the diversion of the property or fund to other and different uses. This is the general doctrine of courts of equity as to charities, and it seems equally applicable to ecclesiastical matters.
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> In such case, if the trust is confided to a religious congregation of the independent or congregational form of church government, it is not in the power of the majority of that congregation, however preponderant, by reason of a change of views on religious subjects, to carry the property so confided to them to the support of new and conflicting doctrine. A pious man building and dedicating a house of worship to the sole and exclusive use of those who believe in the doctrine of the Holy Trinity, and placing it under the control of a congregation which at the time hold the same belief, has a right to expect that the law will prevent that property from being used as a means of support and dissemination of the Unitarian doctrine, and as a place of Unitarian worship. Nor is the principle varied when the organization to which the trust is confided is of the second or associated form of church government. The protection which the law throws around the trust is the same. And though the task may be a delicate one and a difficult one, it will be the duty of the court in such cases, when the doctrine to be taught or the form of worship to be used is definitely and clearly laid down, to inquire whether the party accused of violating the trust is holding or teaching a different doctrine, or using a form of worship which is so far variant as to defeat the declared objects of the trust.
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> The second class of cases which we have described has reference to the case of a church of a strictly congregational or independent organization, governed solely within itself, either by a majority of its members, or by such other local organism as it may have instituted for the purpose of ecclesiastical government, and to property held by such a church, either by way of purchase or donation, with no other specific trust attached to it in the hands of the church than that it is for the use of that congregation as a religious society.
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> In such cases where there is a schism which leads to a separation into distinct and conflicting bodies, the rights of such bodies to the use of the property must be determined by the ordinary principles which govern voluntary associations. If the principle of government in such cases is that the majority rules, then the numerical majority of members must control the right to the use of the property. If there be within the congregation officers in whom are vested the powers of such control, then those who adhere to the acknowledged organism by which the body is governed are entitled to the use of the property. The minority, in choosing to separate themselves into a distinct body, and refusing to recognize the authority of the governing body, can claim no rights in the property from the fact that they had once been members of the church or congregation.
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> This ruling admits of no inquiry into the existing religious opinions of those who comprise the legal or regular organization; for, if such was permitted, a very small minority, without any officers of the church among them, might be found to be the only faithful supporters of the religious dogmas of the founders of the church. There being no such trust imposed upon the property when purchased or given, the court will not imply one for the purpose of expelling from its use those who by regular succession and order constitute the church, because they may have changed in some respect their views of religious truth.
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> But the third of these classes of cases is the one which is oftenest found in the courts, and which, with reference to the number and difficulty of the questions involved, and to other considerations, is every way the most important.
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> It is the case of property acquired in any of the usual modes for the general use of a religious congregation, which is itself part of a large and general organization of some religious denomination, with which it is more or less intimately connected by religious views and ecclesiastical government.
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> The case before us is the one of this class growing out of a schism which has divided the congregation and its officers, and the presbytery and synod, and which appeals to the courts to determine the right to the use of the property so acquired. Here is no case of property devoted forever by the instrument which conveyed it, or by any specific declaration of its owner, to the support of any special religious dogmas, or any peculiar form of worship, but of property purchased for the use of a religious congregation; and so long as any existing religious congregation can be ascertained to be that congregation, or its regular and legitimate successor, it is entitled to the use of the property. In the case of an independent congregation we have pointed out how this identity, or succession, is to be ascertained, but in cases of this character we are bound to look at the fact that the local congregation is itself but a member of a much larger and more important religious organization, and is under its government and control, and is bound by its orders and judgments. There are in the Presbyterian system of ecclesiastical government, in regular succession, the presbytery over the session or local church, the synod over the presbytery, and the general assembly over all. These are called, in the language of the church organs, "judicatories," and they entertain appeals from the decisions of those below; and prescribe corrective measures in other cases.
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> In this class of cases we think the rule of action which should govern the civil courts, founded in a broad and sound view of the relations of church and state under our system of laws, and supported by a preponderating weight of judicial authority, is that whenever the questions of discipline, or of faith, or ecclesiastical rule, custom, or law have been decided by the highest of these church judicatories to which the matter has been carried, the legal tribunals must accept such decisions as final and as binding on them in their application to the case before them.

Applying the doctrines of this decision to the powers of the church in Utah which is alleged to be an ecclesiastical denomination with certain governing powers in its church organization, are we not bound as the Supreme Court have been bound to accept from that church its decree as to its will and purpose in the conduct and management of the church; and are not the trustees that we put in there bound, as the trustees of Walnut Street Church were bound by the declaration of the General Assembly of the Presbyterian Church in the United States, to execute the will of that great judicatory? What else is the Mormon Church, incorporated under that act of the Legislature of the Territory of Utah, except a great and supreme ecclesiastical judicatory? If it be not polygamous it is lawful. If it be polygamous, the trustees can not correct polygamy. Such duties do not and can not belong to their office. They claim that the polygamous feature of the Mormon Church is a question of doctrine and faith which the great supreme judicatory has the right to decide, and that it is the practice and not the creed which the laws may touch, and the Supreme Court of the United States would sustain them, if necessary, under this opinion, unless that decision involved absolutely and expressly, or by necessary intendment, the support or propagation of a crime against society in the United States.

We all understand of course that any organization pretending to be a church which undertakes to propagate a crime can not claim the immunity or benefit of being a Christian or religious organization which Congress may not touch. But, sir, the existence of crime in a church does not concern the power of Congress to interpose trustees there. When we acknowledge, as we do in this act, that it is a church having rightfully this supreme judiciary, and that it is a church incorporated by law in which every Mormon in Utah is an incorporator, when having made all these declarations in behalf of that church we for any purpose, whether to purify its morals or to rob it of its property, interpose officers of the Government of the United States there to control its affairs as a board of trustees, we usurp to ourselves a power that even the judiciary have found themselves unable to grasp. The Supreme Court declare expressly that they are bound by the supreme judicators of a church in matters relating to church government and property and by its decrees, and they have no power to reverse the judgment of the General Assembly of the Presbyterian Church in the United States in respect of the right of control over the Walnut Street church. For the reason that this is a subject which under the laws and the Constitution of the country is beyond the reach of legislative power and also of judicial power, it is also beyond the power of the Executive. The President can never constitutionally appoint these officers of the United States to offices created in the Mormon Church with powers to assist in its administration and to report their official conduct to the Secretary of the Interior.

I have thought, Mr. President, that the Senate could well afford to express its opinions upon these resolutions. The country is not going to be quiet after we have asserted on our part the right to interfere by law in the church management of any of the churches that happen to be in the Territories within our exclusive jurisdiction. After we have once asserted and maintained by enacting a law that we have the right to put trustees into a church and participate in its management, and that those trustees are not to be selected by the church, and are not to be chosen in a manner conformable to its charter or to its principles, or method of organization, but they are to be officers of the United States and, as such, are to take their seats in a church board, the country can not be quiet while such a declaration, coming from this august body, remains uncontradicted upon the record of our proceedings. I have therefore felt it my duty to call attention to the subject for we have unwittingly or not—no, not unwittingly, for argument was made against it—spread upon the records of this body the declaration of our power to recognize a church as something that has lawful existence both in morals and in law, and thus recognize it to provide for the appointment by the President and confirmation by the Senate of trustees to hold a seat in that board to manage its affairs. Whether it is to manage things temporal or spiritual in a church, Congress can not send its agents of the government to rule in the affairs of a church.

The Presiding Officer (Mr. Harris in the chair). The Senator from Alabama will please suspend. The hour of 2 o'clock having arrived it is the duty of the Chair to lay before the Senate the unfinished business, which is by unanimous consent the bill (S 9) to fix the day for the meeting of the electors of President and Vice-President, and to provide for and regulate the counting of the votes for President and Vice-President, and the decision of questions arising thereon.

## KAYSVILLE JOTTINGS.

KAYSVILLE, Utah,
February 11, 1886.

*Editor Deseret News:*

Having a desire to be represented in your valuable paper, (as a community who contribute much for the support and spread of truth) I will endeavor to represent the feelings and prosperity of the people.

With all the bitterness of the anti-"Mormon" crusade, and the unjust unconstitutional laws which are being formulated and enforced against a God-fearing, law-abiding people, we still continue to grow and smile under the rod of oppression and prosper in the Zion of our God.

Last Thursday was our fast meeting; a good turn-out was the order of the day; many were the good and timely instructions of the brethren, and a spiritual feast was enjoyed; 18 children were blessed; hence you see we are doing our duty in propagating our species and preserving the little ones to become useful men and women, quite different to our would-be reformers who take a pride in destroying the unborn. It is

A STARTLING FACT,

but a true one, that 6,000 women die yearly in the United States from the cause of destroying the unborn, yet they will turn to Utah, with all the horror imaginable, and scorn the "Mormons" for complying with the law of God. We might say with propriety, "Thou hypocrite; first cast out the beam out of thine own eye: and then shalt thou see clearly to cast out the mote out of thy brother's eye."

We have had one of the Josephite Apostles in the ward promulgating their side of the Gospel: strange they accept Joseph Smith as a prophet and yet deny many of his principal doctrines. They, like many so-called Christians, have accepted the invitation of the clamoring multitude and laid aside some of the most obnoxious tenets of their faith, to gratify the ungodly and become as they.

Spring apparently has burst upon us, the farmers are getting out their plows and proceeding to work as though it was April.

For some time past there has been considerable experimenting for

FLOWING WELLS,

with many failures, encountering hard strata and breaking the pipe; but eventually Brother George Stevenson is the lucky man. Tuesday, the 9th, he obtained a flow of 20 gallons per minute, at a depth of 193 feet, thus encouraging others to enterprise, and I have reason to believe that ere many years the Sand Ridge slope will be covered with flowing streams of water.

On the 8th inst. a company organized at North East Kaysville, for the purpose of devising a plan for sinking down wells to any depth.