

thereto for the purpose of the worship of God, or parsonage connected therewith, or burial ground. So that from the real estate acquired after the 1st day of July, 1862, must be deducted all such real estate as, on the 3rd day of March, 1887, was held or occupied as a building or ground appurtenant thereto for the purpose of the worship of God, or parsonage connected therewith, or burial ground.

The property in which the Church corporation had a vested right at the time of the passage of the act of July 1, 1862, consisted of the Temple Block, the Historian's Office, the Tithing Office—which in the finding of the court is described in two parts—and the real estate connected with those respective premises.

The facts in regard to the first piece of property above described, namely, the Temple Block, are that it was taken possession of by the agents of the Church of Jesus Christ of Latter-day Saints, then existing as a voluntary religious sect, when Salt Lake City was first laid out and surveyed in 1848, and ever since that date has been in possession of the Church, which held it as an unincorporated sect until it became incorporated, and then as a corporation; that at the time it was taken possession of it was a part of the public domain and continued as such until the land was entered by the mayor of the city, with other land, on the 21st day of November, 1871, under the Townsite act of Congress of March 2, 1867. At the time of the passage of the act of 1887 the legal title was in John Taylor as trustee in trust for the corporation.

The property known as the Historian's Office was taken possession of by Albert Rockwood in 1848, when it was a part of the public domain, and it continued to be a part of the public domain until the 21st of November, 1871, when the townsite of Salt Lake City was entered as mentioned above. In 1855 Rockwood's claim was purchased by Brigham Young, trustee-in-trust for the Church; the latter built thereon an office for its historian, and continued in possession until the present time. The legal title became vested in Theodore McKean, who, at the time of the passage of the act of March 3rd, 1887, held it in trust for the Church corporation.

The Tithing Office grounds were taken possession of by the agents of the Church in 1848, when Salt Lake City was first laid out and surveyed, and from that time it was occupied by the Church as a voluntary sect until it became incorporated, and then as a corporation. Prior to 1862 buildings and improvements of considerable value had been erected on it by the corporation. When first taken possession of it was part of the public domain, and continued as such till the 21st of November, 1871, when it was entered in the townsite of Salt Lake City under the town-site act. Brigham Young, who was then the president and trustee-in-trust of the corporation, claimed said land under the town-site law, and it was conveyed to him by Daniel H. Wells, mayor of the city,

under the provisions of said law; Brigham Young conveyed the property to George A. Smith, as trustee-in-trust for the Church; on the death of George A. Smith the title vested in Brigham Young, as his successor, and after Brigham Young's death his executors conveyed the property to John Taylor, as trustee-in-trust for the corporation. At the time of the passage of the act of 1887, by a conveyance from Edward Hunter to Robert T. Burton, it was held by the latter on a secret trust, for the benefit of the corporation.

Without undertaking to go into details as to the facts connected with the original acquisition of these three pieces of property, that is to say, the Temple Block, the Historian's Office, and the two pieces of land belonging and appurtenant to the Tithing Office, it is sufficient to say that the claims of the Church to all this real estate originated in 1848, when Salt Lake City was first laid out and surveyed into lots and blocks, by actual settlement and improvement.

In the case of Hussy v. Smith, 99 U. S., page 22, one Smith had settled upon a lot in Salt Lake City, after the passage of the town-site act of March 2, 1867, but before the entry of the town-site was made by the mayor in 1871. He had mortgaged his interest in the property, which was claimed by him; and the Supreme Court, Mr. Justice Swayne delivering the opinion, held that there could be no question but that under the act of Congress of March 2, 1867, Smith had acquired an equitable interest in the premises, which he could sell and convey. The Court says:

"Until the mayor of Salt Lake City made the entry at the proper land office, which he was authorized to make, the legal title was in the United States. By the entry it became vested in the mayor. He held the entire tract so entered, in trust for the several use and benefit of the occupants thereof, according to their respective interests."

In the case of Stringfellow vs. Cain, 99 U. S., 616, a similar question arose under the townsite law in reference to the right to property in Salt Lake City. In this case the widow of Joseph Cain and her children claimed, by right of inheritance, a portion of the land in controversy, of which her husband and the father of her children had died possessed. Cain died in 1847. His interest in a part of the property was sold by his administrators to pay taxes assessed upon the property after his death, and it was bought by the Stringfellow brothers on the 10th of December, 1869. They paid for the property its full value, and were in actual possession when the entry was made by the corporate authorities at the land office. The children were not made parties to the proceedings under which the sale was made, and neither they nor their mother were in possession of the premises when they were sold. The court says:

"All the interest their father had in the lot when he died was an in-

choate right to the benefit of the townsite law in case the property should be purchased from the United States by the corporate authorities, under the provisions of that law. All he could do was to maintain his occupancy and claim the statutory trust in his favor, in case that trust should be created. He held the possession of one seeking to acquire a title by a possession adverse to all the other inhabitants of the town. His right to maintain this adverse position descended, under the laws of Utah, to his widow and children. There can be no doubt that the possession of the children thus acquired, if continued, would have ripened into a perfect title under the trust."

There can be no doubt, from the decisions of this Court, that the Church of Jesus Christ of Latter-day Saints had and held, on the first day of July, 1862, such an equitable interest in the Temple Block, the Tithing Office property, and Historian's Office and grounds, as constituted a "vested right in real estate," which the act of Congress of that date declared should "not be impaired." The property still belongs to the Church, and should have been set apart to it.

Eighth.

The Church is entitled to have and to hold the Gardo House and grounds as a parsonage, pursuant to sections 18 and 17 of the act of Congress of March 3, 1887 (irrespective of its value or the time of its acquisition), because it had been used and occupied by the president and head of the Church, as a parsonage, eight years prior to the act of March 3, 1887, and is still so used and occupied.

In respect to the Gardo House and grounds, they were owned by Brigham Young, individually, at the time of his death in 1877. He was president of the Mormon Church. After his death his executors transferred and conveyed the property to John Taylor, as trustee-in-trust for the corporation of the Church of Jesus Christ of Latter-day Saints, for a valuable consideration, pursuant to the powers vested in them by the will of Brigham Young; and in April, 1878, John Taylor conveyed the same to Theodore McKean, on a secret trust for the corporation, who held the same upon said trust until the 2d day of July, 1887, when he conveyed the property to Preston, Burton, and Winder, as trustees-in-trust, to hold the same "for the use, benefit and behoof of the president or leader of that certain body of religious worshippers known and called the Church of Jesus Christ of Latter-day Saints, for a residence or parsonage."

The 28th section of the act of Congress of 1887 authorizes all religious societies, sects and congregations to hold, through trustees appointed by the probate court, so much real property for the erection or use of houses of worship, and for parsonages and burial-grounds, as shall be necessary for the convenience and use of the several congregations. The probate court had appointed the trustees, the property had been conveyed to them as a parsonage, and they petitioned the supreme court of