

of it and from the organization courts of equity down to the presiding it has been a standing axiom a court of equity

NEVER DECLARES FORFEITURES.

net one of its prerogatives; it is within its jurisdiction, it don't belong to it. After a forfeiture has been declared as in the case of office found in quo warranto, the court of equity gather up and administer the duties arising from that forfeiture. That is all that it and that is all that Congress undertakes to do in this instance; because the men who passed the law knew perfectly well that they did not clothe a court of equity with power to entertain a quo warranto proceeding, and pass upon questions of forfeiture. The Constitution, in express terms, prohibits anything of the kind. I call your honors' attention to the seventh amendment of the Constitution, which is as follows:

suits at common law, where the value in controversy shall exceed twenty dollars, the right of trial by jury shall be preserved, and no fact tried by a jury shall be otherwise examined in any court of the United States than according to the rules of the common law.

Will this Court presume that Congress was so careless of the powers they were exercising or the restrictions under which they were acting as to seek to clothe a court of equity with that power? It constituted this court a court of equity; it has made it a court for the exercise of special jurisdiction. This is an appellate court for the Territory exercises the ordinary appellate powers. It is not a court in which parties can sue each other originally, it is a court in which cases come up on appeal or by writ of error, but Congress clothed this court with equity powers that it might administer the duties of this case, but not to declare a forfeiture of a purchase as in a quo warranto proceeding. On the contrary it assumes the very opposite, for it says, after referring to the acts, that so far as they still have legal existence the corporation is hereby dissolved; that is by a decree or judgment as could be entered a nisi prius in a quo warranto. That is the decree that Congress undertakes to enter in this case; but Congress has no judicial power to enter a decree dissolving this any other corporation, nor to take away from it its estate, and then clothe a court with the powers of a court of equity to administer whatever duties may arise under it. If it had no power to do that, that

ENDS THIS CASE.

is unnecessary for me to follow my young friend in the argument he has made to show that this case might progress to some termination, although the declaration that this corporation was dissolved was inoperative and void. Well, to go back to an old and quite often repeated illustration, that would be very much like undertaking to play the part of Hamlet with Hamlet left

our honors, I will now come to the question that is involved here, embraced in the statement of the agreement of parties, which, the agreement of parties, are all facts to be considered in connection with this motion, and neither side offer any other. We were precluded from doing so and I insist that government counsel shall not utter any. We shall offer no facts, because we have said in our agreement that we will offer none, and we respectfully submit that your honors will consider no other. Now, the facts, so far as the question of property is concerned, relate to real personal property. If this court is that Congress may enter a decree of dissolution, a judicial decree of dissolution, and then turn the equity that may arise over to the courts of the country to be administered, I wish to call your honors' attention to the property, because that becomes then an important element in the question of the appointment of a receiver. Before, however, saying anything upon that subject, I desire to call your honors' attention to this fact, that the cause pending before this court is an adversary proceeding. It is not present the condition of property in limine; but of property in contention, where it is litigated by the bill to be in the possession of one party, and is sought to be taken out of the possession of that party by the court pendente lite; is the condition of this case. The authorities therefore that my friends read in reference to the fact that a court cannot be wrong in taking property that is in limine does not apply here at all. In a case of this kind, what is the rule of law? The party who seeks the interposition of a court, and invokes this strong power of a court of chancery must establish two things before the demand be granted. First he must establish a prima facie right to property. I claim that he has set up to the property must be established so as to establish a prima facie right in his case. It must appear that the

PROPERTY IS IN DANGER

destruction or waste and that the party in whose charge it is cannot be responsible in damages for that waste. Where these two things are made to appear in an application before a chancellor we have nothing to say against him but merely the power, but discretion of exercising that right. It been done in this case? It must be a relation to some property. A

party cannot come into court in a bill, not even the United States, on a disjunctive excorsion. He must start by saying in his bill that he has this right and that there is this property. That must be shown in the bill. The bill is no evidence of the facts; it is simply evidence of the claim. That is all. The facts must be made manifest to the court by proper proof, usually in the form of affidavits or documentary evidence, or in some manner of that kind, and then come the affidavits and documents from the other side. In this case the agreement of the parties, the United States through her counsel here, and the defendant through its counsel, have agreed as to what these facts are. They are now on file in this court. Now, do they show that there is any property that this court can take into its possession through the medium of a receiver, and that it should take it into its possession? First, in regard to this real estate. This agreement shows three pieces of real estate, two of them held and occupied long anterior to the act of 1862. The legal title was not received by the corporation until since the act of 1862, but the occupancy and

POSSESSION AND USE

long antedated the act of 1862. The third is called the Gardo House property. That has been acquired since the act of 1862. That was acquired by this Church corporation and set apart as the residence of its president, and we say—I think your honors will say—it is fairly within the power endowed to the party defendant in this suit. The parsonages as well as houses of worship are not to be affected. The other is the historian's office, which is on the same block, but somewhat separated, according to the statement of facts, from the other. They are all here in the city of Salt Lake. Their titles are held in trustees appointed under the twenty-sixth section of the act of 1862. So that all three pieces of this property are at this time, and were at the commencement of this suit, in the legal possession of the trustees of the Church, appointed under the act of Congress that you are called upon here to execute. They are each stated as having a certain value for the purpose of this motion. There is no claim that any of them, or either of them, has a rental value or that any rents could be collected. That is the state of the real estate; but, says my young friend, these lands were not patented to the city of Salt Lake until after the passage of the act of 1862, and that the actual legal title did not come to this Church until subsequent to that, and that therefore they had no vested right to be secured. He says they are "squatters' rights." Your honors, I cannot take up much time in discussing that proposition, but I shall call your honors' attention to a few authorities to controvert the position of my young friend. In the first place, he is in error as to the time when the first so-called townsite act was passed; it was passed in 1844, and will be found in the 5th statutes at large, page 657. It has been a long time since persons or communities who have been permitted to settle on public land belonging to the government, the legal title to which vested in the government, have been called "squatters," as though

THEY HAD NO RIGHTS.

I say it is a long time since this term has been used, and it sounded a little strange to me when employed yesterday. The idea that the people who came over these rugged mountains and desert plains in 1846-7-8 and 9, and who settled in this valley—some of them even before the United States had acquired any title here, for its title was obtained from Mexico under the treaty of Hidalgo in 1848—people who have made the sterile plains blossom as the rose, for where this beautiful city now stands was then a barren wilderness—who settled upon the public land and made their homes with the tacit consent of the government—I say it sounds strange to me to hear that these people are presumed to have no rights at all. It is true the government never had given any final title, except as it had provided by the laws from time to time. Your honors will find that in 99th United States, 110, in the case of Stringfellow vs. Cain, the Supreme Court of the United States held that when any one who had settled here, in this very city, upon just such a title as that now in question, and had possessed and occupied the land, and made it habitable and valuable, he had such an interest in that land as descended to his heirs. That is what the Supreme Court held in that case. But it is admitted in the statement of facts that the United States did patent this land to the mayor of the City of Salt Lake, as representing the inhabitants of the city, under the townsite act, and that the mayor did convey the tracts of land under discussion, so that the legal title vested in this corporation. Now, it is argued that, notwithstanding the fact that the United States did issue that patent after 1862, it only did so for the purpose of taking it away from this people again under the act of 1862. With regard to

A VESTED RIGHT

and the definition of that term, it is only necessary for me to call your honors' attention to the definition of vested right to be found in 2nd Bouvier's Law Dictionary as follows: VEST.—To give an immediate fixed right of present or future enjoyment. An estate is vested in possession when there exists a right of present enjoyment; and an estate is vested in interest when there is a present fixed right of future enjoyment.

And it was that kind of a vested right that the Supreme Court in the Stringfellow case held passed to the heirs of the one who possessed it.

I have said all upon the question of real property that I think it necessary to say, and we come now to the question of personal property. The stipulation discloses the fact that anterior to the taking effect of this act, namely, on the 23rd day of February, 1837, John Taylor, Trustee-in-Trust, held certain personal property in trust; that that property was located within the limits of the different local corporations of the Territory attached to this Church; that it aggregated a certain value. I want to call your honors' attention to the fact that this property was not held as corporate property. It was the gatherings of the members of that Church put into the hands of the Trustee of this corporation for certain specified purposes; that is what it was. It was not corporate property. It was property held by the corporation's Trustee-in-Trust. Now does this act propose to

DEFEAT ANY TRUST?

I think not, and I presume that your honors will not undertake to appoint a receiver to take trust property that is now in trust in other hands, for the same identical purpose for which it was offered and given, and that is precisely what the statement of facts shows. But they say that by its recitals he might have other property, and they insist therefore that there is some other undefinable property. This agreement of facts goes on to show that after executing that instrument, transferring this property, it was delivered to the corporations named in the instrument. But, says the Assistant District Attorney, how could that be done between the 28th of February and the 3rd of March? Well, the stipulation of facts admits that it was done, and if it could not have been done in that time, and they were not satisfied with the statement, they should have asked for an additional statement upon this subject, or have called for additional particulars, which would unquestionably have shown just what we now claim that the statement shows. This property was turned over to the people, or corporations in the localities where it had been originally donated by them, for certain purposes. The statement shows that every dollar's worth of property that was in the hands of John Taylor, that had any description—that could be identified—was, before the taking effect of this act, put into different trusts. It had been conveyed to local corporations. The fact that the property has been turned over; that it was in the stakes so called; that it was within the limit of the Church organization, would indicate clearly where it came from. It has simply been turned back to the original donors to be held by them in trust. Now, are your honors going to appoint a receiver to disturb that property without these parties being heard? Are you going to

REACH OUT YOUR STRONG ARM

for that purpose and try to gather up this property, much of which undoubtedly has been disposed of in the manner in which the donors intended? If your honors please, that is the whole of this case. Is there, then, under the principles of equity, sufficient cause to justify the appointment of a Receiver? Would it be a fair judicial exercise of discretion to do so? Because the Supreme Court of the United States has held that unless it is a fair exercise of discretion on the part of the court, it is liable to be reviewed and the act of the lower courts set aside on that ground.

Now, your honors, I am about to conclude my argument in this case. There are a great many things I could say in regard to it, but I do not know that I would be able to throw any additional light upon the important points involved. I will leave the case with this court, with the judicial department of the government, and in doing so I think I may be pardoned if I quote in substance—not literally of course, for I could not do that—an exalted sentiment which I heard fall from the lips of his honor, the chief justice of this court, not a great while ago, in regard to the high office of the judiciary of this country, and the distinction that necessarily exists between the judiciary and the other departments of the government, especially with reference to the outcry against the people here, and which doubtless many members of Congress have listened to, for they are often incited to do things as matters of policy. The learned chief justice remarked that it was the office of the judiciary to consider the law and the facts before them in an unprejudiced manner, and to give to their decisions their consciences and their best judgments, or, in use the language of Lord Coke: "It is given to the judiciary to decide the very law and not that which hath a semblance of law." And I may add, your honors, that:

THE CONSTITUTIONAL LIBERTY

of the private citizen and the vested rights of the people have always heretofore found a safeguard in the judiciary—though not always in legislative assemblies. Less complaint, perhaps, can be made of the executive department, because it has less to do in these matters. I desire to say further, that almost any inconvenience might arise and be suffered, rather than that the great safeguards of civil liberty should be broken down. They have been a long time building. Sometimes it has been a slow labor, like the secret work

of the coral, growing in the midst of the ocean, by which a continent is finally lifted up to view; sometimes like the resistless cyclone, the tornado or the earthquake; and when one hundred years ago our fathers gathered the wisdom that had accumulated up to that time upon this question, and put it into our system of government—into our Constitution—it was left to the co-ordinate branches of this government, and to the people of this country, not merely to foster the institutions of liberty as they then stood, not merely to cherish the principles of Maxima Charta as embodied in the Constitution, but to enlarge upon them in the direction of civil liberty and the rights of the citizen. This doctrine that my friend spoke about, while alluding to the police power of the government, as he would expound it, would justify the

UKASE OF THE CZAR OF RUSSIA;

it would justify the edicts of the most despotic government on the face of the earth. It is on that very ground that absolute monarchies and despotic governments claim their power—police power. A proper degree of that power undoubtedly exists in our government, under proper safeguards by the judiciary; for the courts must define its limits and protect the citizen from its encroachments. It is a great preservative power, but if it is exercised as claimed and clamored for in this case, I know of no right of the American citizen that is too sacred for it to lay hold of and destroy.

That Colorado Accident.

The News published Thursday a brief account of a terrible disaster at Emory Gap, Colorado. We now learn, through the Denver News, that later intelligence of the disaster shows it to be worse than at first reported. The accident was on Spaulding's contract, and was caused by placing a keg of powder in a blast that had failed to accomplish its purpose before the smoldering fuse had died out. The entire force of hands were gathered in the cut when the explosion took place, throwing rocks, dirt and men into one common heap. Three Americans and one Italian were picked up dead and some twenty others were injured, many, it is thought, fatally. Physicians were summoned from all the surrounding towns, and the injured are being cared for as best they can. The recent rains have made the roads almost impassible, and further particulars were not looked for in the next twenty-four hours.

In Cache County.

On Wednesday Deputy Marshals Steel and Whetstone arrested Thomas Duce, of Hyde Park, for unlawful cohabitation. There being an indictment against him he was taken to Ogden.

Petersen Griffiths, of Hyde Park, was arrested on the charge of unlawful cohabitation on Wednesday. He was placed under \$1,000 to appear for examination when wanted.

H. W. Bowman had a hearing before Commissioner Goodwin yesterday. It appears that he was cut from the church a number of years ago and has since been living only with a plural wife. He was bound over on the charge of unlawful cohabitation to appear before the grand jury.

On Wednesday evening last Thomas Jones, quite an aged man, and an old resident of this city was going up the cañon when he was thrown from a wagon and dragged on the ground a considerable distance. He was badly bruised and a slight fracture was caused to one of the bones of the shoulder. Dr. Snow attended to his injuries and he is now getting along reasonably well.—Logan Journal, Oct. 24, 1887.

The Dead Man Identified.

From Wm. Tassler, of 600 S. East Temple Street, a former partner of the deceased, we learn that the name of the man who died at the City Hall, was Edward Simpson. That he was 55 years of age, and originally from Scotland, but lived for some years in New York City, where his mother, brother and sister now reside. He came to California from Australia in '59, and from Eureka, Nevada, to Ericson in '78. His right foot was so badly frozen in '74 that it was amputated close to the instep. He came to the Overland House in this city with his partner in the Highland Chief, John Handford, from Alta, on the 15th inst. to sell ore from the mine supposedly to the amount of \$200. He had been paralyzed once or twice with lead poison. Mr. Pitts of the Overland House being questioned, said he did not recognize deceased from the description in the papers. That he came to his house on Wednesday evening (the 5th inst.) with his partner. That on the Saturday following Mr. Handford said he had sold the ore, but stated that he would not give all that was due to Simpson, as he would spend it for drink. He paid Simpson's board up to Wednesday after breakfast and left five dollars to his credit besides, intending that deceased should return to Alta on Tuesday. But Simpson stopped over Thursday night and disappeared on Friday morning. He left no effects at the hotel. It seems somewhat singular that Simpson's identity should have so long remained an apparently unattractive mystery.

TELEGRAPHIC NEWS.

ST. PETERSBURG, Oct. 21.—Excavations in Jerusalem, on ground belonging to the Russian government have resulted in the discovery of the remains of an ancient town wall and the position of the gates of the town during the life time of the Savior, through which the Savior passed to Golgotha. Grand Duke Sergius, president of the Palestine Society, invites subscriptions to a fund for the purpose of preserving these relics.

LOS ANGELES, Cal., Oct. 21.—A dispatch has been received here from Chihuahua, Mexico, stating that John Dickerson, well known on this coast as a capitalist and speculator in various enterprises, has been shot and killed by Mexican bandits. No particulars have been received, but from meagre information it is believed the murder is similar to that of Leon Baldwin, who was killed at Durango a few weeks ago. Dickerson was engaged at Chihuahua as manager of several mines in which he held large interests. He leaves a wife and three children residing in this city and a daughter attending school in Berlin.

CHICAGO, Oct. 21.—Hon. E. B. Washburne, ex-United States minister to France, died at the house of his son, Hempstead Washburne, at this city at 4 o'clock this afternoon, of congestion of the heart and brain. Mr. Washburne had about recovered from his last attack of brain congestion and arose this morning feeling quite well. About 8 o'clock, as he was seated in a barber chair, he was seized with pain in the region of the heart so severe that he was rendered for a time speechless.

MR. WASHBURN

was assisted to bed and his family physician hastily summoned. His physician prescribed for the attack. In a short time he experienced great relief. He rested quite easily for the remainder of the day, the family of his son Hempstead remaining at his bedside. Shortly before four o'clock he arose without assistance to take a drink of water, but was immediately seized with a recurrence of the pain in the heart, this time more severe than before. He was quickly assisted to bed and restoratives administered. He lay for a few moments apparently resting, after which he turned his head to one side, and soon expired without giving any indication of further pain. After the second seizure Mr. Washburne never spoke. His sudden death was a severe and almost

UNEXPECTED BLOW

to his family, as his doctors had been led by the general improvement in his condition for the past two weeks to believe that he had fully recovered from the late attack and would be spared several years. Mr. Washburne's wife, it will be remembered, died a few months ago. He leaves five children. Definite arrangements for the funeral have not yet been decided upon, but it is believed that services will be held in Chicago next Wednesday after which the body will be taken to Galena, Ill., and interred on Thursday.

NEW YORK, Oct. 23.—The steam launch Mary burst her boiler to-day at the foot of 116th Street, instantly killing John and Patrick Cunningham, brothers. Carl E. Smith, owner of the launch, was blown into the river, but saved several others badly bruised.

PITTSBURG, Oct. 23.—To-night Mrs. Lizzie Adams, of Washington Street, was murderously assaulted by an Italian named John Bosso, while on her way home from church. Bosso was intoxicated and was annoyed at a crowd of hoodlums who were tormenting him. Finally he became so enraged that he drew a knife and turned upon his tormentors. At that moment Mrs. Adams passed and the frenzied man rushed upon her, and thrust the knife blade passing through her left lung. With cries of pain the innocent victim fell fainting to the pavement and her assailant turned to flee, but the mob of hoodlums seized him, however, and after heating him with sticks and stones, were only prevented from lynching him by the intervention of a number of determined citizens, who rescued the bleeding and helpless man and gave him up to the police. Mrs. Adams was carried to her home. She is in a critical condition and will probably die.

MARRIAGES.

PARDON-ANDERSON.—In Logan, Oct. 19th, 1887, William Pardon and Catherine V. Anderson, both of this city.

DEATHS.

WHITTAKER.—October 19th, 1887, of diphtheria and croup, Sarah Charlotte Whittaker, daughter of Henry and Sarah H. Whittaker, of the seventeenth Ward, this city; born March 10, 1823.

GULVER.—In this city, October 22, 1887, Frank Eugene, son of George and Amanda Gulver; born December 2, 1874.

CUMMOCK.—At Almy, Wyoming, on the 17th inst., from injuries received about three weeks ago in No. 5 Mine, Henry Cummock, Jr., aged 21 years. He leaves a wife and 2 small children. Deceased was a very exemplary young man, and took a leading part in all matters of benefit to the young and the people in general. He was possessed of the love and esteem of those with whom he associated.—[COM.]