

of it and from the organization
of courts of equity down to the pres-
ent time it has been a standing axiom
of a court of equity

NEVER DECLARES FORFEITURES.
net one of its prerogatives; it is
within its jurisdiction, it don't be-
lieve it. After a forfeiture has been
declared as in the case of office found
quo warranto, the court of equity
gather up and administer the
rules arising from that for-
feiture. That is all that it
and that is all that Con-
gress undertakes to do in this in-
stance; 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
press terms, prohibits anything of
the kind. I call your honors' atten-
tion to the seventh amendment of the
Constitution, which is as follows:

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

Will this Court presume that Con-
gress was so careless of the powers
it were exercising or the restric-
tions under which they were
exercising 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
purpose of special jurisdiction. This is
an appellate court for the Territory
exercising the ordinary appellate
powers. It is not a court in which
cases can be tried originally, but
a court in which cases come up on
appeal or by writ of error, but Con-
gress clothed this court with equity
powers that it might administer the
rules of this case, but not to de-
clare a forfeiture of a purchase as
on a quo warranto proceeding. On
the contrary it assumes the very op-
posite, for it says, after referring to
the act, that so far as they still
have legal existence the corpora-
tions are hereby dissolved; that is
by a decree or judgment as
could be entered at 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
rights may arise under it. If it had no
power to do that, that

ENDS THIS CASE.
Is unnecessary for me to follow
young friend in the argument he
made to show that this case might
progress to some termination, al-
though the declaration that this cor-
poration was dissolved was inopera-
tive and void. Well, to go back to an
and quite often repeated illustra-
tion, that would be very much
undertaking to play the
Hamlet with Hamlet left

our honors, I will now come to the
question that is involved here,
embraced in the statement of
the agreed to by the parties, which
the agreement of parties, are all
facts to be considered in connec-
tion with this motion, and neither side
offer any other. We were pre-
cluded from doing so and I insist that
government counsel shall not
interfere any. We shall offer no
facts, because we have said in
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 de-
ree of dissolution, a judicial decree
dissolution, and then turn the equi-
ty that may arise over to the courts
of the country to be administered,
I wish to call your honors' atten-
tion to the property, because that be-
comes then an important element in
question of the appointment of a
receiver. Before, however, saying any-
thing 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
settled by the bill to be in the
possession of one party, and is sought
to be taken out of the possession of
party by the court pendente lite;
it is the condition of this case. The
honorable therefore that my friends
read in reference to the fact that
court cannot be wrong in taking
out of property that is in limine does
apply here at all. In a case of this
kind, what is the rule of law? The
party who seeks the interposition of
court, and invokes this strong
power of a court of chancery must
establish two things before the demand
be granted. First he must estab-
lish a prima facie right to property.
claim that he has set up to the
property must be established so as to
be a prima facie right in his case.
It must appear that the

PROPERTY IS IN DANGER
destruction or waste and that the
property in whose charge it is cannot be
preserved in damages for that waste.
where these two things are made
to an application before a chan-
cellor we have nothing to say at
against not 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 dis-
tinguished exaction. He must start by say-
ing 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 evi-
dence 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 de-
fendant through its counsel, have
agreed as to what these facts are.
They are new 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 receivership, 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 Garde House prop-
erty. 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 his-
torian's office, which is on the same
block, but somewhat separated, ac-
cording 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 com-
mencement 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 "squatter's
rights." Your honors, I cannot
take up much time in discussing that
proposition, but I shall call your hon-
ors' 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 com-
munities 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 yester-
day. 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 there
was a 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 govern-
ment—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
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 ad-
mitted 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 hon-
ors' attention to the definition of vested
right to be found in 2d 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 ques-
tion of personal property. The stipu-
lation discloses the fact that anterior
to the taking effect of this act, namely,
on the 28th day of February, 1837, John
Taylor, Trustee-in-Trust, held cer-
tain 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 corpora-
tion for certain specified purposes;
that is what it was. It was not cor-
porate 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 undelineable property. This
agreement of facts goes on to show
that after executing that instrument,
transferring this property, it was de-
livered to the corporations named in
the instrument. But, says the As-
sistant District Attorney, how could that
be done between the 28th of February
and the 3rd of March? Well, the stipu-
lation 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 lo-
calities where it had been originally de-
posited by them, for certain purposes.
The statement shows that every dol-
lar'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 in-
dicate 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 un-
doubtedly 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 Re-
ceiver? Would it be a fair judicial ex-
ercise 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 ad-
ditional light upon the important
points involved. I will leave the case
with this court, with the judicial de-
partment of the government, and in do-
ing so I think I may be pardoned if I
quote in substance—not literally of
course, for I could not do that—an ex-
alted 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 judi-
ciary of this country, and the distinc-
tion that necessarily exists between
the judiciary and the other depart-
ments 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 con-
sider the law and the facts before
them in an unprejudiced manner, and
to give to their decisions their con-
sciences 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 heret-
ofore found a safeguard in the judi-
ciary—though not always in legislative
assemblies. Less complaint, perhaps,
can be made of the executive depart-
ment, 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 safe-
guards 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 hun-
dred 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 gov-
ernment, and to the people of this
country, not merely to foster the in-
stitutions of liberty as they then
stood, not merely to cherish the prin-
ciples 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 govern-
ment, under proper safeguards by the
judiciary; for the courts must de-
fine 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 ac-
complish 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. Physi-
cians 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 impassable, and further par-
ticulars 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 co-
habitation. There being an indict-
ment against him he was taken to Og-
den.

Patersen Griffiths, of Hyde Park, was
arrested on the charge of unlawful co-
habitation on Wednesday. He was
placed under \$1,000 to appear for ex-
amination 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
canyon 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 Scot-
land, 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 Frisco 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 paral-
yzed once or twice with lead poison.

Mr. Pitts of the Overland House be-
ing questioned, said he did not recog-
nize 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, in-
tending that deceased should return to
Alta on Tuesday. But Simpson stop-
ped over Thursday night and disap-
peared on Friday morning. He left no
effects at the hotel. It seems some-
what singular that Simpson's identity
should have so long remained an ap-
parently unattractable mystery.

TELEGRAPHIC NEWS.

ST. PETERSBURG, Oct. 21.—Excava-
tions in Jerusalem, on ground belong-
ing to the Russian government have
resulted in the discovery of the re-
mains 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, pres-
ident of the Palestine Society, invites
subscriptions to a fund for the pur-
pose of preserving these relics.

LOS ANGELES, Cal., Oct. 21.—A dis-
patch has been received here from
Chihuahua, Mexico, stating that John
Dickerson, well known on this coast
as a capitalist and speculator in vari-
ous enterprises, has been shot and
killed by Mexican bandits. No par-
ticulars have been received, but from
meagre information it is believed the
murder is similar to that of Leon Bald-
win, 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 re-
siding in this city and a daughter at-
tending 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, in this city at
4 o'clock this afternoon, of congestion
of the heart and brain. Mr. Wash-
burne 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. WASHBURNES
was assisted to bed and his family
physician hastily summoned. His phys-
ician prescribed for the attack. In a
short time he experienced great relief.
He rested quite easily for the remain-
der 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 be-
fore. 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 chil-
dren. Definite arrangements for the
funeral have not yet been decided
upon, but it is believed that services
will be held in Chicago next Wednes-
day after which the body will be taken
to Galena, Ill., and interred on Thurs-
day.

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 injured.

PITTSBURG, Oct. 23.—To-night Mrs.
Lizzie Adams, of Washington Street,
was murderously assaulted by an Ital-
ian named John Bosso, while on her
way home from church. Bosso was
intoxicated and was annoyed at a
crowd of hoodlums who were torment-
ing 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 into her back,
the long 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 pre-
vented from lynching him by the in-
tervention 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.

PARDOE-ANDERSON.—In Logan, Oct. 19th,
1887, William Pardoe and Catherine V. An-
derson, both of this city.

DEATHS.

WHITTAKER.—October 19th, 1887, of diph-
theria and croup, Sarah Charlotte Whit-
taker, daughter of Henry and Sarah H. Whit-
taker, of the seventeenth Ward, this city;
born March 10, 1823.

GILVER.—In this city, October 22, 1887,
Frank Eugene, son of George and Amanda
Gilver; 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 ex-
emplary young man, and took a leading
part in all matters of benefit to the young
and the people in general. He was posses-
sed of the love and esteem of those with
whom he associated.—[CON.]