

take care of themselves—widows and orphans, aged and infirm people, some stricken by sickness, and others afflicted with extreme poverty. To relieve the suffering of such from hunger and want would certainly be a commendable work. It had been often held by the courts to be one of the most sacred duties devolving upon Christian communities to make provision for the relief and support of the needy; it was a charity which ought to be favored by all. Counsel emphatically denied, as had been suggested by counsel on the other side, that this was an effort on the part of the Church to wrest the fund in controversy from the purposes designed by the courts, and bring it back into the hands of the leaders of the Church to be applied by them to improper purposes. Did it follow, he asked, because it was to the best interests of the community that the people should be educated that, therefore, this property of the Church should be devoted to the general cause of education—to the public schools? If so, and this fund was found to be insufficient, then, upon the same line of reasoning, it would be right next to take the property belonging to the Catholics, and then, if that was not sufficient to meet the wants of education, fall upon that of the Methodists, Presbyterians, or any other religious sect! That must be so if the argument in this case meant anything; for all of those religious bodies had more property than the law allowed. Was that the way our children should be educated? He had not a single word to say against the grand system of education in this country—against the free school system existing in this Territory. He was proud to be able to say that he was one of those who had been privileged to enact the law creating the free school system in Utah. He realized that not only the greatness and glory of this commonwealth, but the stability of the government, largely depended upon the intelligence of the people. But while he would sustain that system and try to make the public schools all that could be desired by their most ardent advocates—giving the child of the pauper the same advantages that were afforded to the child of the millionaire—he would have it done in the noble way provided by law, whereby the burden should be borne by all citizens, according to their means, and not by robbing any church or plundering any particular class of the community. This effort which was now being made to divert a fund which had been contributed by an industrious and frugal people—a fund lawfully acquired—to take it away from them and from the uses for which it was designed—even for as laudable a purpose as that of the public schools—would be a reproach upon our public school system and an infamous outrage perpetrated under the guise of law and in the name of justice.

Referring to the subject of polygamy as raised in the present examination, counsel said the testimony adduced conclusively proved that the practice had absolutely ceased to exist in the Church. What more could the "Mormon" do in this regard than had been done? Their leading men testify on oath, in the most solemn manner, that this action

was taken in good faith and their evidence must carry conviction to the souls of all reasonable people. Would a man in the position of President Woodruff perjure himself for the paltry benefits which would result to the poor members of his Church through the application of this fund? The thought is preposterous. He realized, when he came here, that the eyes of his people and of the civilized world were upon him, and, in his simple way, he told the plain, unvarnished truth. No man who heard him can doubt it.

It had been said by the court of last resort that in this country people had the right to believe and entertain what opinion they pleased. It was the boast of Americans that conscience was free and untrammelled in this land. All the government asked was that the people should conform their actions to the requirements of the law. This had been done and the supremacy of the law had been fully recognized by the "Mormon" people. This fund should not be taken from them and diverted to a use for which it was never intended, a use for which it was not needed; because the school law made ample provision for the building of school houses, the employment of teachers and the maintenance of schools, without resorting to the robbery of religious associations or churches for that purpose.

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followed on the government side, taking a general review of the whole case. He was inclined to think that after the experience through which the "Mormon" people has passed of late years they could not be driven again into the condition from which they had extricated themselves. In the application of this fund the government had no desire to place a block in the way of those desiring to do the right thing. Counsel referred to the law as to charitable uses, and said that if the late corporation of the Church of Jesus Christ of Latter-day Saints at its dissolution had no successor, and neither Congress nor the courts could interfere, then the fund must necessarily remain for ever in the hands of the Receiver, or the court, without application or utility. But such would not be. It was already decided that the Church was not the owner of this property; the members of the Church were not the owners and had no legal or equitable title to it. But it was originally dedicated to public charity, a charity whose objects were tainted with illegality, to which it could not be applied as it had been, which in that respect had failed; and now they were going to carry out the intention of the donors so far as might be, by devoting this fund to objects of undoubted usefulness. It was for this court to ascertain and report a scheme best suited to meet the case. It was not enough to say that the property was to be devoted to a charity corresponding most nearly to that of the object for which it was originally intended; because whenever it happened in the course of the administration of a charity that it could not be any longer beneficially applied to that object, it was made an especial ground for the court to again apply the property, according to the doctrine of *cy pres*, to some useful purpose, changing the purpose in order that there might be a beneficial application. The evidence tended to show that from

the foundation of this Church contributions were made to it for its support, by members of that Church, in accordance with certain laws or rules laid down, by which the amount and character of such contributions were to be determined. They were to be made for what purpose? According to the declaration, "to lay the foundation for the building up of the kingdom," to pay the debt of the Presidency of the Church, to build Temples, etc. There was nothing in these rules which required or exacted any sort of contribution to be applied to the benefit of the poor, nor, in terms, to the erection or repair of meeting-houses. Yet those were the two objects to which the defendant's counsel claimed this property should be devoted, excluding Temples. The evidence before them showed that each ward or local community was charged with the support of its own poor; furthermore, that each ward or locality was charged primarily with the erection of its own meetinghouse; that when the poor were supported, the account was balanced up, giving credit to the locality to the extent of the support furnished by the Church. The evidence tended clearly to show that the poor were charged on the local communities, in which they lived, and met by contributions made in kind, and out of which no surplus arose. The Church had not pretended to support its poor; there had been no appropriation of any part of the general fund in any method that could be called even the stepping-stone to the furnishing of adequate provision for the poor, either locally or generally. Would they set aside this fund in the way asked by the other side in order that it might be doled out to 60,000 people at the rate of \$2 per head per year? The defendant's counsel had hinted that education was the most foreign to the purpose contemplated by those who made donations to the Church—that the pittance given to the poor was everything, but that education was nothing. The evidence before them did not bear out that theory at all. On this point counsel quoted from the evidence of Dr. John Park and other witnesses on the government side as to the educational needs of the Territory. The government was not, he said, interested in any petty scheme. It did not want to take this property from those whose sweat and toil created it; but the end sought was to put that property back where they would derive the highest possible benefit from it. "We do not want," continued counsel, "to put it in the hands of those people who (in the language of the Supreme court) would apply it to unlawful and illegal purposes; but in making an application of it the rights of the members of this Church may be considered." It was urged that the government wanted to wrest this fund from those who earned it and give it to those who did not—to take it from the "Mormons" and give it to the non-"Mormons." If it could be lawfully applied exclusively to the "Mormon" children he would say let it go there; but the conditions were such that it could not possibly be done without wasting and squandering the fund and rendering it useless to everybody. The public schools of this Territory were supported by general taxa-