

by said defendant Eastman to defendant Lee, who paid him a consideration therefor and in good faith, and that he received the title in trust for said defendant corporation, and that thereafter, in pursuance of such trust, he conveyed the land to it.

The testimony shows that Woodruff settlement was commenced a short time prior to 1870, and that in 1870 an ecclesiastical ward of the Church of Jesus Christ of Latter-day Saints was organized at that place, and that defendant Lee became the presiding bishop of the ward. The inhabitants at that time were, with but very few exceptions, members of that church and creed. In 1872 School District No. 2, of Woodruff, was organized pursuant to the statute. The ecclesiastical ward of Woodruff and School District No. 2 comprise the same Territory. Not long after, and perhaps about 1872, the people residing there made small contributions and erected a little log house, which they denominated a schoolhouse, and from that time it was used for school purposes for the district school and for the purpose of a house of worship for the Mormon Church in that ward, and for all other purposes for which a house of that description would be wanted in such a settlement, it being the only public house in Woodruff. The testimony is not very definite and specific as to how this house was built, or as to who had control over it. The testimony rather tended to show that nobody exercised much control over it, but that it stood open and ready for use, and was used for any and all purposes for which the inhabitants wanted it. This condition of things continued until about 1880, when the subject of building a new schoolhouse was discussed through the settlement; and finally, in 1881, a school district meeting was regularly called by the trustees of the district for the purpose of voting upon the proposition as to whether a tax should be levied for the purpose of building a school house for said district. It should be mentioned in this connection that the old house before referred to had been built upon a piece of land which belonged to the government. At the meeting called, as before stated, it was voted by a large majority to build a schoolhouse, and for that purpose to levy a tax. The defendant Lee, who was bishop of the ward, does not seem to have attended this meeting, but he and some others of the leading members of the church, including his two counselors, opposed the levying of a tax for that purpose, and after the meeting, the school trustees, who were all members of the church, took no steps to levy the tax or proceed with it in any manner. The reason, as stated by members of this board and others who were on the stand, was that they had learned from communication with the people after the meeting that a great many were opposed to it. For two years, or about that time, no further steps were taken; but the defendant Lee and many of the members of the church

still continue to oppose it, and, finally, in 1883, another meeting was called. At this meeting, the defendant Lee continued to oppose a tax and advocated the building of a schoolhouse by contribution instead of by tax, and in lieu of the tax which had been voted at the first meeting, and in this he was supported by a great majority of the meeting. At this time there were but five or six persons residing in the district who were not members of the church. The meeting resolved to build a schoolhouse by private donations, and then adjourned. Shortly after that a meeting seems to have been called by the bishop of the members of his own church, (and, indeed, there is no evidence in this case that any person outside the church was invited to, or did, attend this meeting, or that it was known at all outside of the church); and in that meeting the bishop appointed a committee to locate a site for the house, and to take contributions; and as such committee he appointed one of the school board and one other person. This committee seems to have selected the present site of the school house, which was upon the lands of Mr. Eastman. He had entered the land as a homestead, but at that time had not received his patent; and contributions then began to be made by residents of the district and taxpayers of the district not belonging to the church, and some of them made inquiry as to what the house was to be built for, and they were assured that it was for a schoolhouse. The plaintiff Frazier contributed something over fifty dollars. One Crawford, who was not a resident of the district, but was a land-owner therein, contributed fifty dollars in cash, giving to the committee his check payable to the "School Trustees of District No. 2." Mr. Crawford testifies that he was at the meeting where it was voted to build the schoolhouse by contribution, and there explicitly stated that he would contribute fifty dollars to the building of a schoolhouse, if it was to be a schoolhouse and was to be in lieu of a tax levied for that purpose; and he testifies that he was assured by the defendant Lee, and by various others, that such was the purpose. The schoolhouse was completed in 1883 or 1884, and they commenced to use it for a schoolhouse, the district school being held therein. It was also used as a place of worship by the members of the defendant corporation. It was also used as a place for public gatherings, after the manner that schoolhouses in the outlying settlements are usually used; and during the next three or four years both parties in this case made an effort to show, on the part of the complainant, that the school board had possession and control of it, and on the part of the defendant, that the Bishop had control of it. As before stated, at that time all the members of the board were members of the church, and all the inhabitants of the district except five or six. The testimony further shows that all of the social gatherings which were held in the community, whether they were held in the

school house or any other public place, were controlled and governed by the Bishop. If a dance was to be held in the school house for the benefit and amusement of the young people, it was not permitted unless the Bishop or one of his counselors, or somebody appointed by him, presided over it. And this, I think, is a fair inference from the testimony, and had been the case no matter where the assemblage had been held. The small number outside the church, and the unanimity with which the church members acted in all these matters, may, I think, account for the apparent discrepancy in the testimony, there not being a sufficient number of people who cared to oppose the Bishop's views to constitute a public gathering.

In 1884 Mr. Eastman received from the government his patent for the land, and it was recorded June 4th, 1885. After that time Frazier called upon Mr. Eastman and asked him about the title to this piece of land, and pressed the question as to who had the title to it, reminding him that it was to go to the district. Mr. Eastman informed the plaintiff that he thought he had deeded the land to the probate judge, but upon being pressed the deed to the probate judge was produced, and it appeared that it was only for the streets in Woodruff. This was after the patent was issued to Eastman and after he had deeded to Lee as heretofore stated, and was probably in 1885. On the 15th day of April, 1885, Eastman deeded the piece of ground to the defendant Lee as the Bishop of Woodruff Ward in trust for all the inhabitants of said ward. This deed was recorded January 13th, 1886, and on May 29th, 1886, the defendant Lee deeded the land to the defendant corporation. The defendant corporation was organized May 13th, 1885.

After this deed was made from Eastman to defendant Lee and before it was recorded there was considerable inquiry among the residents of the district about who held the title to the land. Application was made to the defendant Call, who was a member of the school board some time in 1887, to know who held the title to it and he gave such inquirers to understand that the school board held it. To the deed from Lee to the defendant corporation Call was a witness. After this schoolhouse was completed the district board levied a tax upon the district and furnished it with seats and other proper utensils for running a school. Inquiry continued as to where the title of this property was, but no satisfactory information in relation to it seems to have been given until these deeds, as before stated, went upon record. At the school meeting in 1887 Walter J. Frazier and one Brown were elected trustees. Walter is a son of the plaintiff, and is not a member of the church. Brown is a member of the church, and seems to have taken some part in finding out where this title rested. About the time of this meeting and before the old board disbanded, of which defendant, Call was a member, and on October 29,