

measure of success it is not material now to inquire) to show that conditions have changed since the adjudication in this case was made.

But I have not supposed the binding force of the decree as an adjudication can be avoided in this way.

To adopt the scheme suggested by these defendants, would in my judgment be to practically annul or disregard to decree under which this court and its Master in Chancery are now acting.

Second—A plan has been proposed by Abraham A. Smoot and others, represented by J. W. Judd and King & Houtz, attorneys, in favor of a school known as Brigham Young Academy, located in Provo, Utah, by which it is sought to have this fund or some portion thereof applied to payment of the debts of said institution and to the maintenance thereof.

Willard Young, president of Young University, an institution founded or about to be founded at Salt Lake City, represented by Richard W. Young, an attorney, has proposed a scheme in behalf of said University, asking for the application of the fund to the endowment of a department of law in said institution.

The United States, by its attorney, Hon. C. S. Varian, submits a scheme to the effect that the fund be applied to the use and benefit of the common schools of the Territory.

The application filed on behalf of the Brigham Young Academy and Young University show that each of said schools is a sectarian institution, under the control of the Mormon Church, for instruction, among other things, in the principles of the gospel as taught by the Church of Jesus Christ of Latter-day Saints, and for instruction in the higher grades, in science, literature, art, etc.

A part of the plan, purpose and scope of these schools appears to be the inculcation of the doctrines, tenets and faith of the Church of Jesus Christ of Latter-day Saints, which, according to the evidence adduced before me, still embraces the doctrine of polygamy or plural marriage.

Wilford Woodruff the president and head of the Mormon Church, in speaking of his manifesto issued September 25th, 1890, by which it is claimed the practice of polygamy was abolished, testified as follows on his cross-examination by Mr. Varian:

Q. Mr. Woodruff, is this exhibit A, annexed to this paper, the original manifesto or announcement by you, or is not this one that was made subsequently in answer to statements appearing in the telegraphic dispatches to the press of this country?

A. I never made but one that I recollect.

Q. Did you understand by this declaration a tenet or principle of faith of the Church over which you preside was changed in any degree?

A. No, sir, I do not know that I did with regard to the principle.

Q. Does your Church derive its principles of faith and rules of conduct from the Bible, the Book of Mormon, of Doctrine and Covenants and the revelations of Almighty God?

A. Yes, sir.

Q. Was the principle of plural or celestial marriage derived through a revelation?

A. Yes, sir; the principle that has been adopted by the Church was.

Q. Is not the principle of plural mar-

riage still a tenet of the faith of your Church?

A. Yes, I believe the Church believes in the principle.

Q. Would it not have to be changed by the same power and authority from which it is derived as a principle?

A. Yes, sir. I may remark that a principle may be believed in by the Church—a true principle—and still not be practiced.

Q. You don't understand, then, that the people of your Church indicated, by accepting your declaration, that their views or beliefs upon the principle involved were at all changed, but only that they were willing to follow your advice in submitting to the conditions that confronted them?

A. Yes, sir; I view that to be about the ground.

A belief in the doctrine or principle of polygamy is not criminal. The church and its people avoid criminal liability when they abandon its practice, which they claim they have done.

Still it is not in accordance with a sound public policy to permit or encourage the teaching, in the schools of the country, doctrines or ideas, the practice of which the government finds it necessary to prohibit.

This fund has, as stated in the decree of the Supreme Court of the United States, devolved to the United States. It is the charge and the duty of the United States to see that it is limited and applied to uses wholly lawful and free from objection. If these sectarian schools are faithful to the church which fosters and supports them, their teachings must necessarily have an unhealthy taint.

It can only be when the Church revises its creed as well as its practice, that the schools organized to teach its doctrine will become wholly unobjectionable from a standpoint of sound public policy.

The advantages afforded by these institutions will necessarily be enjoyed by comparatively few in number of the whole people of the Territory and as a rule will be within the reach only of the wealthiest classes.

The work done by the higher institutions of learning ought not to be underestimated.

But the great advantage growing out of a good system of public schools lies in the fact that it comes to the very doors of all the people, and the rich and poor alike may enjoy its benefits on equal terms.

The children of Mormon parentage and of school age in this Territory are perhaps as five to one compared with the number of Gentile parentage.

The placing of this fund to the endowment of the public schools will bring its benefits directly home to the poorer classes of the people, to the homes of children who may never be able to enter an academy or a university.

It has been suggested in argument, that the devotion of this fund to the public schools will be a violation of the intention of the donors. That it will not be a "limiting and appointing it to such charitable uses as may most nearly correspond to those to which it was originally destined."

George Q. Cannon, one of the First Presidency of the Church, testifies as follows:

Q.—State what you know about the in-

tention of the donors who contributed this money and property, as to what disposition should be made of it, and to what use and purpose it should be applied?

A.—They were donated for religious and charitable purposes, and the disposition of it, as to how it should be expended, all that is left entirely to the First Presidency of the Church. I know that to be the feeling of a great many of the contributors myself.

Q.—Well, as far as your knowledge extends, was that the intention of all?

A.—Yes, sir.

The uses to which this fund was in fact put by the First Presidency from the organization of the Church corporation to the time the receiver took possession of it, were numerous and varied.

They builded temples and meeting houses, they built and operated a theater, they constructed water dams and canals, they invested in the stock of "Zion's Co-operative Mercantile Institution," and in gas stocks. They constructed and operated a telegraph line, they had bands of horses and herds of sheep, they contributed to the support of the poor of their church, they donated to the Indians, they colonized settlements of Indians who desired to sever their tribal relations, furnished them teachers, tools, machinery, sawmills, etc.; they contributed to their church schools, and in fact made such disposition of the fund as in the judgment of the first presidency was necessary or expedient for the interests of the Church and its people.

I think it may fairly be said, as a result of the testimony on this point, that the intention of the contributors to this fund was to pay their tithing to the Church, and to leave all matters relating to the use which should be made of the fund so created to the discretion of the leaders of the Church. When the sources from which it was contributed and the uses to which it was applied are considered together, the fund is impressed with the character of a religious and charitable fund.

But it can not be said that any specific charity was within the purview of the donations.

The uses to which this fund was being applied are adjudged to be unlawful, and the court in making a *cy-pres* application of the fund, is not, in my judgment, confined to any particular charity or classes of charities, but the whole range of legitimate charities is open before it.

Any purpose which comes within the definition of the word "charity" in its broadest sense may be selected.

But this discretion of the Master and of the court in the selection should give the fund a direction as nearly akin to its original destination as can lawfully be done. And where no specific intention on the part of the donors can be ascertained, the application should correspond as nearly as lawfully may be done, to the use to which the fund was formerly devoted.

Education, properly directed, is a legitimate charity. It is in fact the broadest charity. It is directed in line with former uses of a considerable part of this fund. The application to the public schools is a use in the highest possible interests of the Mormon people.

This fund, supplementing the proceeds of the real estate, of which Con-