

JUDGE ZANE'S DECISION IN THE CHURCH CASES.

November 11th, Chief Justice Zane gave judgment in the three Church cases, which were argued by counsel on Saturday and Monday last.

His Honor said—In the cases of the United States against certain real estate claimed by the Church of Jesus Christ of Latter-day Saints, the three of these actions were submitted together. They are instituted under section 13 of the act of Congress, approved March 3rd, 1887, and it reads as follows:

Sec. 13. That it shall be the duty of the attorney general of the United States to institute and prosecute proceedings to forfeit and escheat to the United States the property of corporations obtained or held in violation of section three of the act of Congress approved the first day of July, eighteen hundred and sixty-two, entitled "An act to punish and prevent the practice of polygamy in the Territories of the United States and other places, and disapproving and annulling certain acts of the legislative assembly of the Territory of Utah," or in violation of section eighteen hundred and ninety of the Revised statutes of the United States; and all such property so forfeited and escheated to the United States shall be disposed of by the secretary of the Interior, and the proceeds thereof applied to the use and benefit of the common schools in the Territory in which such property may be provided, that no building, or the grounds appurtenant thereto, which is held and occupied exclusively for purposes of the worship of God, or parsonage connected therewith, or burial ground shall be forfeited.

Section 3 of the act of July 1st, 1862, reads as follows: "And be it further enacted, that it shall not be lawful for any corporation or association for religious or charitable purposes to acquire or hold real estate in any Territory of the United States during the existence of the Territorial government, of a greater value than \$50,000; and all real estate acquired or held by any such corporation or association contrary to the provisions of this act shall be forfeited and escheated to the United States; Provided, that existing vested rights in real estate shall not be impaired by the provision of this section."

Two of the tracts, it appears, were taken possession of before the act of 1862 took effect and were held by the Church through its agents at that time, and had been for some years previous. The right of occupants upon the public lands that were conveyed to towns and cities under the townsite law up to the time that the same were entered by the mayor or probate judges in these cases—where the latter made entry—was permissive as far as the government of the United States was concerned, and they could have been excluded from the property by the United States at any time. Therefore it could not be said that the right of the occupant was a vested right. The entry by the mayor of the city of Salt Lake was made, I believe, Nov. 21, 1871, and up to that time the title of the lands included in the townsite was in the government of the United States, subject to its control.

Section 13 has also a provision which sets forth—"that no building, or the grounds appurtenant thereto, which is held and occupied exclusively for purposes of the worship of God, or parsonage connected therewith, or burial ground shall be forfeited."

It appears that the Gardo House property had been occupied up to the time the receiver took possession under a decree of the Supreme court of the Territory, by the president of the Church; and it appears, I think, that he, among other duties, performed those which are usually performed by a parson. The question therefore is should the Gardo House and the property on which the Historian's office is located, which adjoins it and is so connected with it so to be a part of it—If it should be held to be a parsonage—should that be forfeited and escheated under the law? Counsel for the government rely upon a decree of the Supreme court under section 17 of the act of March 3rd, as containing an adjudication to the effect that the Gardo House and all the other property involved in these actions were not occupied and used exclusively for the worship of God, or for a parsonage connected therewith, or burial grounds. But it is insisted that in that action the court did not acquire jurisdiction to determine the fact.

Section 17 is this:

Sec. 17. That the acts of the legislative assembly of the Territory of Utah incorporating, continuing, or providing for the corporation known as the Church of Jesus Christ of Latter-day Saints and the ordinance of the so-called general assembly of the State of Deseret incorporating the Church of Jesus Christ of Latter-day Saints, so far as the same may now have legal force and validity, are hereby disapproved and annulled, and the said corporation, in so far as it may now have or pretend to have any legal existence, is hereby dissolved; that it shall be the duty of the Attorney-General of the United States to cause such proceedings to be taken in the Supreme Court of the Territory of Utah as shall be proper to execute the foregoing provisions of this section and to wind up the affairs of said corporation conformably to law; and in such proceedings the court shall have power and it shall be its duty to make such decree or decrees as shall be proper to effectuate the transfer of the title to real property now held and used by said corporation for places of worship and parsonages connected therewith and burial grounds and of the description mentioned in the proviso to section thirteen of this act and in section twenty-six of this act to the respective trustees mentioned in section twenty-six of this act, and for the purpose of this section said court shall have all the powers of a court of equity.

The 28th section is referred to as follows:

Sec. 26. That all religious societies, sects, and congregations shall have the right to have and to hold, through trustees appointed by any court exercising probate powers in a Territory, only on the nomination of the authorities of such society, sect, or congregation, so much real property for the erection or use of houses of worship and for such parsonages and burial

grounds as shall be necessary for the convenience and use of the several congregations of such religious society, sect, or congregation.

It appears, then, that in pursuance of this latter section trustees had been appointed for the Church; and the section provides that it shall be the duty of the Attorney General to cause such proceedings to be taken in the Supreme Court of the Territory of Utah as shall be proper to execute the foregoing provisions of this section and to wind up the affairs of said corporation conformably to law. The winding up is confined to the law as laid down in this particular section—conformable to the law regulating the rights of persons to the property that had been held by the corporation. In order to wind up the affairs of this corporation and to transfer and make such decree or decrees as should be proper to effectuate a transfer of the title to the property of the description in section 13, under which the three suits now before the court are prosecuted, it would be necessary to ascertain the description and character of this property—to ascertain whether it was occupied and used exclusively for the worship of God or for a parsonage or burial ground. And for that purpose, to that end, the court had jurisdiction in the suit instituted under section 17. That was instituted, I believe, July 31st, 1887. The decree was entered October 26th, 1888. I am disposed to hold that this finding of the Supreme Court in that decree which has been affirmed by the Supreme Court of the United States was so authorized by the law, and the court had the authority to make it. If I were not bound by this decree I should be disposed to hold that inasmuch as the President of the Church exercises the powers and performs the duties of a parson, that the Church for which he performs them ought to be permitted to have a parsonage—a house in which to live; and I have no hesitation in saying that I should set aside this Gardo House as a parsonage, if it were not concluded by the decree. It is further claimed that the statute of limitations limiting the forfeit of property under the laws of the United States applies to this property and is a bar to these proceedings. If the right to forfeit should be held to arise upon the acquisition of the property, then there would be great force in the argument on that point. But the law is, that it shall not be lawful for any corporation or association to acquire or hold the estate while the right of action for acquiring arises at the time the property is acquired; the right of forfeiture for holding is a continuing right under this section. The Court is not disposed to say that the word "hold" here means the same as acquire in the connection in which it is used.

Another question which it is necessary to pass upon is as to the value of the property. The question is whether the Church, without this property, had acquired and did hold property to the amount of \$50,000. By the decree of the Supreme Court of the United States the Temple Block was set off or was transferred to the trustees representing the organization. I think the evidence shows that ever since this property was acquired that block was worth at least \$50,000; certainly it was