would vest, and it would not be divested by a void condition. So that it is important to determine whether the conditions mentioned are precedent or subsequent; in other words, whether the remainder of these heirs is a contigent remainder or a vested one. The provision is that after the life estate shall cease, he wills and bequeaths to his children who may then be living this remainder. The time referred to there is the termination of the life estate. There is a difference of opinion as to whether this time refers to the time that the will took effect, or to the time of the termination of the life estate. Some courts have held that, in view of this condition, the remainder vests, subject to be determined upon the death of any one of the devisees named before the termination of the life estate. That is based upon the fact that the courts favor the vesting of estates at once, without deferring them unless it is necessary to do so. But this is coupled with another provision: "Provided always, that if any of my said heirs shall not be members of the Church of Jesus Christ of Latter-day Saints in good standing at the time the distribution shall be made, the share that should be coming to them shall go to the trustee-in-trust," etc. There the testator indicates an understanding and intention on his part that before the interest should vest in the devisee in the language of the will, "that the share that should be coming to them shall go to the trustee-in-trust." He did not understand that the share was to go to them before this distribution that he speaks of. It is said that that should be construed to mean that the right to the actual possession and use should not go to them until then; that it did not mean to say that the remainder should not vest at once; but the language is that if they should not be members of the Church of Jesus Christ of Latter-day Saints in good standing at the time the distribution shall be made, then the share that should come to them shall go to the Church.

The general rule is that where the event in which the remainder is to vest is one that must certainly happen, that the title vests at once; but if it is an uncertain one, if it is contingent, then the remainder does not vest until the contingency happens. What a child's religion will be when he comes to form his religious beliefs, if he ever forms any, is a matter of conjecture. There is a great uncertainty about it. A great many follow the religion of their fathers, others do not, and some do not have any religion at all, in an orthodox sense; some have a natural religion, as they term it. This would seem to be an uncertain fact, and that, taken with the language used, leads the court to the conclusion that this remainder should not vest until the time the distribution occurs, and that the testator understood by the term distribution the time that the contingent remainder should vest in the devisees mentioned.

The question then arises, is this a void condition? Reference has been made to the Constitution of the United States, first amendment, which provides that Congress shall make no law respecting the establishment of religion, or prohibit the free exercise thereof. That of course was a prohibition upon Congress. It indicated the belief and the convictions of the American people with respect to the right of the government to establish religion, and to interfere with the free exercise of it. They had in view the oppression and cruelty and barbarity that had been practiced by governments in past times in attempting to form and shape the religious convictions of the people, and hence this provision is placed in the Constitution. They believed that the best interests of the American people required such a provision in their fundamental law. This can only have a bearing as indicating to some extent the public policy, and what is right with respect to individual belief and worship. It indicated the conviction that every man should be at liberty to form his religious beliefs and convictions without interference by any one, except by moral teaching and persuasion, which is tolerated of course. It indicated that no law at least should be adopted on the subject, and to some extent it is an indication that no individual should, by violence at least, or by intimidation, undertake to regulate the religious beliefs of others, or that he should not, by bribes or rewards or punishment, interfere with them. Now, if this provision amounts to anything, it is this: This man said to his children, "If you will join the Church of Jesus Christ of Latter-day Saints, and so conduct yourself with respect to that Church as to be considered members in good standing of it, when this estate is distributed, you can have all of this land; that is your reward. If you do not, you are disinherited, and it shall go to another." Such an offer as that would be a powerful inducement with some people; with others it would not be, probably. The tendency of such provisions is to make the heirs, or the children, confess at least that they are members of the Church mentioned, and it also, with some, might have a tendency to actually shape their convictions; because some people are so constituted that they believe what it is to their interest to believe; and this influence is a powerful one in that direction with some.

It would seem to me that the government through its court, which is the instrumentality it employs to interpret, construe and apply the law, should not sanction such a provision. While of course it is by making the law, yet it is saying to the man who makes it the will, that he may make the law and the government will enforce it; that he may impose such a condition, such a rule, such a restriction upon his children, and that the government will give it all the force and effect of a law of the land as to him and to all others. That would seem to be contrary to the public policy of this country, and particularly as to this territory, with respect to the particular Church to which this property was to go in case the devisee could not take it, and the Church to which these persons were required to belong. If there is any one public policy that is established in this territory by the government of the United States it is that polygamy and unlawful cohabitation are wrong, and that they should be rooted out, and cut out like a cancer, as an enemy to society, an enemy to humanity, an enemy to one of the most important institutions upon which the social fabric stands, the strongest pillar in the great fabric that shelters and protects us all, that protects virtue and chastity among men and women.

This Church, at the time this will was made, recognized polygamy as right, and held that in certain contingencies, and under certain conditions, that it was the duty of some to practice it. The public policy of the government of the United States, and of the laws relating to this Territory enacted by Congress, is against inducing anyone to embrace such a faith. It has by an act of Congress forfeited several hundred thousand of dollars worth of property in order to suppress polygamy and unlawful cohabitation, and to take away from the Church that recognized and taught such a doctrine the power and means to extend the dominion of the Church, and to make proselytes in this and other lands. That being so, it certainly would be contrary to the public policy for the court to sanction a will, and all wills by which inducements of this kind were given to persons to embrace that faith. It is directly opposed to the public policy of this Territory as indicated by the laws of Congress and by the actions of the courts.

I am of the opinion that this provision is void.

These plaintiffs claim under a deed or deeds executed by the mayor of Salt Lake city, the testator, John H. Blazzard, appointed Mary Ison Blizzard his executrix, and she, in pursuance of the act of the territorial legislature and the townsite law of Congress, filed a claim with the probate court as administratrix of the estate of the late John Blazzard for and in behalf of the heirs of said estate; and in it she represented herself as administratrix of the estate and not executrix. The hearing was set down for a certain time; time given for persons to file counter-claims; and at the time mentioned, this order was made: "Mary I. Blazzard, administratrix of the estate of J. H. Blazzard, claims all that part of lot 6, in block 69, etc.," describing the property. It further states that she appeared on the 31st day of June, 1872, and showed to the satisfaction of the court that she is in trust the rightful owner and occupant of said lands, and there being no adverse claims, it is ordered and adjudged that she as administratrix, is entitled to a deed to fee simple, in trust, however, for the heirs of the estate