

that these persons had no standing or right to intervene; and even if they had any interest, they were foreclosed and precluded from coming in now. They were in default for two years past. The court did not sit in these proceedings to allow individuals making claims to this property to come in up to the very hour of the trial and judgment. The property was seized; notice was given of the day fixed for the hearing, and those who had any claim originally came in and had prepared to go to trial. No individual member of the Church could appear in court and litigate this question.

Mr. Dickson submitted that any persons interested in this property had a right to intervene and be heard. Nobody was foreclosed or barred, and nobody was in default at all. The proceedings already had, and referred to by Mr. Varian, occurred before that gentleman came into the office of district attorney, and the record showed that proceedings had not been had in this case such as were necessary, requiring anybody to appear. Counsel reviewed the past history of these cases, and contended that any directly interested person who chose to come upon the scene now was entitled to be heard.

Mr. Rawlins supplemented the argument of Mr. Varian.

The matter was further discussed and Judge Zane said he was inclined to think that the point should be reached without the interposition of further parties. He did not see the necessity for the present intervention and therefore denied the application.

Mr. Dickson—I suppose it can be filed.

Judge Zane—Oh, yes, so that you can take any exceptions. You have a right to this.

Mr. Varian then sailed in and outlined what counsel on the government side proposed to do. Having read from the complaint in the cases before the court, he said they now proposed to offer the records of the suit in chancery brought in the Supreme court of the Territory to wind up the affairs of this Church corporation, dissolved by the act of 1887, also the agreed statement of facts in accordance with the decree and findings of the court, and other documents which he enumerated.

Messrs. J. R. Walker and H. W. Lawrence were called by Mr. Varian to testify as to the value of the Temple Block from 1867 to 1872. Both stated that it was of greater value than \$50,000 at that time. This closed the case for the government.

A petition for intervention was then presented and read by Mr. Dickson, and after objections on the other side and short arguments from both parties, the court permitted it to be filed.

Bishop John R. Winder was called as a witness by the defense. In reply to Hon. F. S. Richards he said he came to Salt Lake City in 1853 and had resided here ever since. He had been engaged in various kinds of business. Was acquainted with the Tithing Office property, Temple Block and the Historian's office.

Mr. Richards asked witness to state the value of each of these pieces of property in 1862, but Mr. Varian objected to the question as irrelevant.

The court ruled that it might be answered, and the witness said it was a difficult matter to fix the value of real estate in this city thirty years ago. At that time it had no fixed value, and very little changed hands. On being requested to answer the question, he valued the Tithing office property at \$10,000, the Temple block at \$35,000, and the Historian's office not to exceed \$1000.

Answering Mr. Richards' question, he said that the three pieces named did not exceed \$50,000 in value at that time.

This closed the case for the defense and the arguments were set for Monday morning.

TODAY'S PROCEEDINGS.

The argument this morning was opened by Mr. Varian, who briefly recapitulated the history of the cases. He referred to the filing of the general informations, on October 8th, 1888, against the three parcels of property embraced in this litigation, and to the subsequent steps had thereunder. The theory of the government, he said, was that these proceedings were had against the property and notice was given by taking possession thereof, as well as giving personal notice of the service of the monition to all persons known to claim an interest in such property, either by deeds upon record or by putting the actual occupants in possession. There was no rule at common law directing that the courts should give notice of future proceedings in any special newspaper; and his contention was that the seizure of this property by attachment was notice sufficient to the parties claiming an interest. The returns of the officers showed affirmatively that this property was seized and a copy of the monition filed and recorded in the recorder's office, a copy being served upon all persons claiming or in possession. The single question to be determined here was whether this property was acquired in violation of the law of 1862; whether the late corporation of the Church of Jesus Christ of Latter-day Saints which had acquired it had already acquired and held real estate of the value of, or exceeding in value, \$50,000. The law of 1862 prohibited any religious corporation or association from acquiring or holding real property under these circumstances. From the language of the act it was quite apparent that Congress contemplated that the violation of the law might be a continuing one. In regard to the prohibition, Congress was striking at what was supposed to be a menace to the institutions of the country, and the object was to limit this class of corporations, of aggregate bodies, from massing together real property in excess of a certain amount. The property itself was not made the offender, but the holding in certain hands of a surplus amount. Counsel quoted from the general statute of 1862, and instanced what he conceived to be the apparent object of the prohibitory provisions. Congress, having in mind the act of limitation prohibiting any suit or prosecution to enforce any penalty or forfeiture, inserted in the prohibitory provision of 1862 the words "or held," making it clear that the intention was that this violation or offense was to be in the nature of a continuing one, and that in the

case of any religious corporation or association holding from day to day, week to week, and year to year within the prohibitory clause, the government could at any time it thought proper enforce the prohibition. What the United States was now seeking to escheat was the title, the fee to the property in controversy. The sole object of inquiry here was to ascertain whether this property was obtained in violation of the law of 1862; incidentally connected with that the statute of limitations had to be considered. The defendants in these cases claimed as trustees for the benefit of all the members of the unincorporated association, which it had been all along conceded was practically the Church itself—the successor to the late corporation in one sense, but not in a legal sense, and therefore not entitled to hold this property. It was its successor only in Church matters. There was no pretense for saying that any of these defendants had any legal right as individuals in the property in dispute. There were no vested rights, he insisted, as to the Temple block, Historian's office, Gardo House, or Tithing yard property, because the rights possessed prior to these proceedings were simply those of licensees.

The Hon. F. S. Richards followed on the side of the defendants, and first referred to the importance of the matter in controversy. His contention was that the suit originally brought in the Supreme Court of the Territory was under a separate provision of the statute from that upon which the present proceedings were based, and for a different purpose; it involved issues and did not include any of the questions and matters that had been set up as a defense in these actions. That was a suit in equity; this was a proceeding at common law. At the very threshold of these proceedings, when a special appearance was made on the part of some of the persons who were now defendants in these cases, the point was then made that it was a common law proceeding, that the defendants had a right to trial by jury, and that the proceedings should be had, as they claimed, under the code. It was conceded by the government in that argument that the defendants were entitled to have these issues submitted to and tried by a jury, and they now come before this court to try the matter as a jury case. Counsel examined into the opinion of the Supreme Court of the United States, which he showed not only embraced the record, all the pleadings, and the complaint in the original suit, but the findings and decree. He quoted from the sections of the statute under which the present actions were instituted, and remarked that there were brought into the original case, during the progress of the trial, certain things which were not within the issues and which could not properly be tried in that suit. He insisted that the whole scope and object of the original suit was to obtain a decree declaring that the corporation of the Church of Jesus Christ of Latter-day Saints had been dissolved, determining what property the corporation possessed at the time of the dissolution, and placing the property in the hands of the Receiver. That was all the power the court had under the statute, all it could do and attempted to