practice of polygamy, or in the right to indulge in it, is a religious belief, and, therefore, under the protection of the constitutional guaranty of religious freedom. This is altogether a sophistical plea. No doubt the Thugs of India imagined that their belief in the right of assassination was a religious belief; but their thinking so did not make it so. The practice of suttee by the Hindu widows may have sprung from a supposed religious conviction. The offering of human sacrifices by our own ancestors in Britain was no doubt sanctioned by an equally conscientious impulse. But no one, on that account, would hesitate to brand these practices, now, as crimes against society, and obnoxious to condemnation and punishment by the civil authority.

The State has a perfect right to prohibit polygamy, and all other open offenses against the enlightened sentiment of mankind, notwithstanding the pretence of religious conviction by which they may be advocated and practiced. (Davis vs. Beason, 133 U. S. 333.) And since polygamy has been forbidden by the laws of the United States, under severe penalties, and since the Church of Jesus Christ of Latter-day Saints has persistently used and claimed the right to use, and the unincorporated community still claims the same right to use, the funds with which the late corporation was endowed for the purpose of promoting and propagating the unlawful practice as an integral part of their religious usages, the question arises whether the government, finding these funds without legal ownership, has or has not the right, through its courts, and in due course of administration, to cause them to be seized and devoted to objects of undoubted charity and usefulness—such for example as the maintenance of schools—for the benefit of the community whose leaders are now misusing them in the unlawful manner above described; setting apart, however, for the exclusive possession and use of the Church, sufficient and suitable portions of the property for the purposes of public worship, parsonage buildings, and burying grounds, as provided in the law.

The property in question has been dedicated to public and charitable uses. It matters not whether it is the product of private contributions, made during the course of half a century, or of taxes imposed upon the people, or of gains arising from fortunate operations in business, or appreciation in values, the charitable uses for which it was held are stamped upon it by charter, by ordinance, by regulation and by usage, in such an indelible manner that there can be no mistake as to their character, purpose, or object.

The law respecting property held for charitable uses of course depends upon the legislation and jurisprudence of the country in which the property is situated and the uses are carried out; and when the positive law affords no pacific provision for actual cases that arise, the subject must necessarily be governed by those principles of reason and public policy which prevail in all civilized and enlightened communities.

The principles of the law of charities are not confined to a particular people or nation, but prevail in all civilized countries pervaded by the spirit of Christianity. They are found imbedded in the civil law of Rome, in the laws of European nations, and especially in the laws of that nation from which our institutions are derived. A leading and prominent principle prevailing in them all is, that property devoted to a charitable and worthy object, promotive of the public good, shall be applied to the purposes of its dedication, and protected from spoliation and from diversion to other objects. Though devoted to a particular use, it is considered as given to the public, and is, therefore, taken under the guardianship of the laws. If it cannot be applied to the particular use for which it was intended, either because the objects to be subserved have failed, or because they have become unlawful and repugnant to the public policy of the State, it will be applied to some object of kindred character so as to fulfil in substance, if not in manner and form, the purposes of its consecration.

The manner in which the due administration and application of charitable estates is secured depends upon the judicial institutions and machinery of the particular government to which they are subject. In England, the court of chancery is the ordinary tribunal to which this class of cases is delegated, and there are comparatively few which it is not competent to administer. Where there is a failure of trustees, it can appoint new ones; and where a modification of uses is necessary in order to avoid a violation of the laws, it has power to make the change. There are some cases, however, which are beyond its jurisdiction; as where, by statute, a gift to certain uses is declared void and the property goes to the king; and in some other cases of failure of the charity. In such cases the king as *parens patriæ*, under his sign manual, disposes of the fund to such uses, analogous to those intended, as seems to him expedient and wise.

These general principles are laid down in all the principal treatises on the subject, and are the result of numerous cases and authorities. (See Duke on Char. Uses, c. X, sects. 4, 5, 6; Boyle on Charities, c. III, IV; 2 Story's Eq. Jur. §§ 1167 *et seq.*; Atty. Gen. v. Guise, 2 Vern. 266; Moggridge v. Thackwell, 7 Ves. 36, 77; De Themmines v. De Bonneval 5 Russ. 289; Town of Pawlet v. Clark, 9 Cranch, 292, 335, 336; Beatty v. Kurtz, 2 Pet. 566; Vidal v. Girard's Ex'rs, 2 How. 127; Jackson v. Phillips, 14 Allen, 539; Ould v. Washington Hospital, 95 U. S. 303; Jones v. Habersham, 107 U. S. 174.

The individual cases cited are but *indicia* of the general principle underlying them. As such they are authoritative, though often in themselves of minor importance. Bearing this in mind, it is interesting to see how far back the principle is recognized. In the Pandects of Justinia we find cases to the same effect as those referred to, antedating the adoption of Christianity as the religion of the Empire. Amongst others, in the Digest, lib. 33, tit. 2, law 16, a case is reported which occurred in the early part of the third century, in which a legacy was left to a city in order that from the yearly revenues games might be celebrated for the purpose of preserving the memory of the deceased. It was not lawful at that time to celebrate these games. The question was, what was to be done with this legacy. Modestinus, a celebrated jurist of authority, replied, "Since the testator wished games to be celebrated which were not permitted, it would be unjust that the amount which he had destined to that end should go back to the heirs. Therefore let the heirs and magnates of the city be cited, and let an examination be made to ascertain how the trust may be employed so that the memory of the deceased may be preserved in some other and lawful manner." Here is the doctrine of charitable uses in a nutshell.

Domat, the French jurist, writing on the civil law, after explaining the nature of pious and charitable uses, and the favor with which they are treated in the law, says, "If a pious legacy were destined to some use which could not have its effect, as if a testator had left a legacy for building a church for a parish, or an apartment in a hospital, and it happened, either that before his death the said church, or the said apartment had been built out of some other fund, or that it was noways necessary or useful, the legacy would not for all that remain without any use; but it would be laid out on other works of piety for that parish, or for that hospital, according to the directions that should be given in this matter by the persons to whom this function should belong." And for this principle he cites a passage from the Pandects. (Domat's Civil Law, book 4, title 2, section 6, par. 6.)

By the Spanish law, whatever was given to the service of God became incapable of private ownership, being held by the clergy as guardians or trustees; and any part not required for their own support, and the repairs, books and furniture of the church, was devoted to works of piety, such as feeding and clothing the poor, supporting orphans, marrying poor virgins, redeeming captives and the like. (Partida III, tit. 28, ll. 12-15.) When property was given for a particular object, as a church, a hospital, a convent, or a community, etc., and the object failed, the property did not revert to the donor, or his heirs, but devolved to the crown, the church or other convent or community, unless the donation contained an express condition in writing to the contrary. (Tapia, Febrero Novisimo, lib. 2, tit. 4, cap. 22, §§ 24-26.)

A case came before Lord Bacon in 1619, Bloomfield vs. Stowe Market, (Duke, 624,) in which lands had been given before the Reforma-