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THE REPORT ON THE CHURCH CASE.

JUDGE LOFFBOROW, the Master in Chancery, appointed by the Supreme Court of the Territory, to examine into the Church personal property case and make findings, has filed his report which will be found in this issue of the DESERET NEWS. It is not different in any essential respects from what we anticipated.

The petitions of the local organizations for portions of the property are treated in a rational manner, and we think the logic and the law of the findings in relation to them are sound. But in the conclusions concerning the claims of the unincorporated Church of Jesus Christ of Latter-day Saints, we think the reasoning faulty and the recommendation unsound and not warranted by the premises.

It is true that the uses to which the fund was originally put were various. Also that the donors did not select any particular charity or religious purpose to which their donations should be applied. The fund was to be under the direction of the Presidency of the Church, to be expended for such purposes as might be necessary for the good of the religious organization known as the Church of Jesus Christ of Latter-day Saints.

But among those uses and purposes, it is clear that the support of the common schools in which children of people of all persuasions and denominations were educated, and which were under the control of the Territory and entirely disconnected with the Church, was not included nor intended. It must be evident to every fair and impartial mind that the legal disincorporation of the Church, seeing that the Church organization continued intact and without actual change of form or persons, did not on any just principle deprive that body of its property rights. It simply ceased to be a corporation under the law.

What follows? Why that the Church alone had a natural right to the personal property which belonged to it before the corporation was dissolved. Also that no lawful uses could be so near akin to those to which the fund was originally put, as the purposes to which it would be applied if the petition of the Church should be granted.

It is undeniable that the donors intended their donations for Church uses. That is, for the benefit of persons and charities and institutions under the immediate auspices of the Church and its Presidency. They did not intend that they should be applied to any purpose or person that was not under that direction and Presidency. They did not give their money to support schools for the children of other denominations. The educational purposes, mentioned, then, were not such educational purposes as the Master in Chancery recommends they shall now be devoted to.

Further. Take away the use of "the support of polygamy," alleged to be one of the original purposes of the fund, and what other of the original uses can be claimed unlawful? There is no pretence that if the petition of the Church be granted any portion of the fund would be devoted to the support of the practice of polygamy. It is admitted by the Master that it is only the practice of polygamy and not belief in it that is criminal. So that no valid objection is advanced against the actual owner of the property—the unincorporated Church, being permitted to use its own fund for lawful purposes.

The only reason(?) advanced why the funds should not be thus devoted is, that though the practice of polygamy has been abandoned by the Church it is still retained as one of its tenets. Is not this set forth in a manner that is scarcely accurate? Is the practice of polygamy still held as a tenet of faith? Is not simple belief in the principle all that can be truthfully alleged, now, as retained by some of the Latter-day Saints, while the practice being forbidden it is not a "cardinal point of its faith?"

But the whole argument is narrowed down to this point: The Church is to be prevented from having its own funds, for lawful uses, because some of its members believe that polygamy would be proper under certain circumstances which do not now exist. That is the logic of the report. If it is law, it is very bad law, and the justice that cries aloud for its own in every unprejudiced soul, revolts at it and denounces it in such terms as seem most fitting.

The findings will have to be considered by the Supreme Court of Utah, and will then no doubt go up to the court of last resort. There is yet a faint hope that right and equity will prevail, and that the Latter-day Saints will not be robbed of their property right because of their alleged belief in an abstract doctrine which is contrary to public opinion.

"WELL DONE."

THE Chamber of Commerce has been faithfully served by President Fred Simon. His report will be found in another part of this paper. He will be succeeded by Col. John W. Donnellan, who will no doubt bring to bear all his well known ability, energy and experience in the work that lies before him. The public are indebted to Mr. Simon for the fidelity and devotion which he has exhibited to their commercial interests. He has a vigorous mind, and earnestly desires the business and social prosperity of Utah which has long been his permanent home. Although he retires from the position of President, the Chamber of Commerce will still have the benefit of his counsels and influence, and we have no doubt that they will be duly appreciated. "Well done, good and faithful servant."

PALTRY AND OUT OF ORDER.

THE report of Master in Chancery Loofbourow, in the Church case, was not filed in court until 10 a. m. today; yet it appeared in the morning papers. It was thus placed before the public before being submitted to the court. A representative of this journal made an attempt to see the Master with a view to obtaining an explanation, but was unable to get near him. His clerk was applied to for the information desired, and that person said that it had been deemed advisable by the parties interested to give the document to the morning papers before giving it to the Court. This is evidently untrue, as Hon. F. S. Richards and Mr. W. H. Dickson both states today that they were not and could not be made a party to anything of the kind. The evident purpose of the transaction was to get ahead of the evening papers, and is exceedingly paltry. It is likewise an invasion of the domain and rights of the Supreme Court of the Territory.

THE CHURCH CASE.

Master in Chancery Loofbourow Files His Report.

HIS RECOMMENDATION IS

That the Fund Be Decided to the Benefit of Public Schools.

In the Supreme Court of Utah Territory, The United States of America vs. The Late Corporation of the Church of Jesus Christ of Latter-day Saints et al:

To the Honorable the Supreme Court:

The undersigned having been duly appointed and commissioned by the honorable court on the 1st day of July, 1891, as its Master in Chancery, to receive and report a scheme for the application of the personal property first mentioned in the final decree of this court entered in this cause on the 8th day of October, 1889, submits the following report:

I proceeded, beginning on the 10th day of October, 1891, to hear not only the parties to the record in this cause, but all others who appeared, to present such schemes as they and each of them chose to present for the application of the said fund. The several schemes so presented, together with the evidence in full in support of each, accompany this report.

First—The defendants Wilford Woodruff, Lorenzo Snow, Franklin D. Richards, Brigham Young, Moses Thatcher, Francis M. Lyman, John Henry Smith, George Teasdale, Heber J. Grant, John W. Taylor, William B. Preston, Robert T. Burton, John R. Winder, Francis A. Armstrong, Jesse W. Fox and Theodore McEwan, on behalf of themselves and all other members of the voluntary religious association known as the Church of Jesus Christ of Latter-day Saints, represented by their attorneys, F. S. Richards, Le Grand Young and W. Dickson, have presented a scheme, which leaves the vesting of all of said fund in the First Presidency of said Church in trust to invest the same and apply the proceeds thereof to the relief of the poor of said Church, according to the judgment and discretion of said First Presidency, and to the building and maintenance and repair of places of worship for the members of said Church.

It is alleged amongst other things in their said application, that ever since the organization of said Church the members thereof were accustomed to make, and from time to time did make voluntary contributions to the fund of said Church. That the fund now in hand applied by the court was made up of such contributions made by the members of said Church exclusively, prior to March 3, 1887.

That ever since the organization of said Church, and down to the time when said fund was taken possession of by the receiver herein, the said fund has been managed, controlled and disbursed by and under the direction of the First Presidency of said Church, and was devoted and applied solely to the religious and charitable uses in which the said Church and the members thereof were interested. That, although the larger part of said fund had, prior to March 3, 1887, been devoted to the building of Temples, meeting houses and other places of worship for the members of said Church, and to the relief of the poor and distressed members of said Church, their families, and to the support and education of such members who were in needy and distressed circumstances.

These allegations are in the main supported by the evidence adduced before me.

It is apparent from the foregoing statement, that the scheme proposed by these defendants involves the placing of the fund in the identical same hands, and to be devoted to some of the identical same uses, to which it was being applied at and before the dissolution of the corporation, and at and before the time when the decree in this cause was entered.

The decree in this case, in its findings of fact, recites among other things "that any dedication or setting aside of any of the personal property by the inhabitants set out as having belonged to the late corporation, to the uses and purposes of, or in trust for the members of the late corporation, or of the Church of Jesus Christ of Latter-day Saints or any of them would practically and in effect be a dedication and setting aside of said personal property to the uses and for the purposes of and in trust for the unincorporated religious sect known as the Church of Jesus Christ of Latter-day Saints."

This decree further recites: "And the court does further adjudge and decree that the late corporation of the Church of Jesus Christ of Latter-day Saints, having by law become dissolved and ceased to exist and act as an incorporation, and at the time of its dissolution, and do not now exist any trusts or purposes within the object and purposes for which said personal property was originally acquired as hereinbefore set out,

to or for which said personality or any part thereof could be used, or to which it could be dedicated, that were and are not in whole or in part opposed to public policy, good morals and contrary to the laws of the United States,

and not being lawfully applicable to the purposes for which it was originally dedicated or acquired and to which at the commencement of this suit it was being devoted by the said corporation and the trustees thereof, and the same ought to be limited and appointed to such charitable uses, lawful in their character as may most nearly correspond with the uses to which it was originally destined, etc."

My understanding is, that all the uses to which this property was being applied by the Church and the controlling authorities at and before the commencement of this suit rests under the condemnation of this decree. It is my opinion that the property cannot go back to any of those uses.

The direction of the Supreme Court of the United States, if I read it aright, is that a Master be appointed to ascertain some other scheme, some other use to which the property may be applied.

An effort has been made to ascertain what measure of success it is not material now to inquire) to show that conditions have changed since the adjudication of the Supreme Court.

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

To adopt the scheme suggested by these defendants would in my judgment not be to practically submit or disregard in 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 in 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 as attorney, has proposed a scheme to be 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 in 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, in religious matters, in the principles of the gospel as taught by the Church of Jesus Christ of Latter-day Saints, and for latter-day Saints, which, according to the evidence adduced before me, still embraces the doctrine of polygamy or plural marriage.

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

Q. Mr. Woodruff, is this article A, annexed to this paper, the original manifesto or announcement by you, or by and with the consent of the Church, which is known by subsequent appearing in the telegraphic dispatches to be the press of this country?

A. I never made but one that I remember.

Q. Did you understand by this declaration a cessation or rejection of both of the Church over which you presided was inspired to do so?

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

Q. Then, understanding the matter in your place of faith and responsibility before the Bible, the Book of Mormon, of doctrines and Covenants and the revelations of Almighty God?

A. Yes, sir.

Q. You have practiced or taught the principle of plural or polygamous 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 marriage still a tenet of the faith of your Church?

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

Q. Would it not have to be changed by the same power and authority from which it was received originally?

A. Yes, sir. I may remark that a principle may be believed in by the people and yet those principle and still not be practiced.

Q. You don't understand, then, that the declaration of the manifesto, by any power or authority, changes the principle involved in the revelation known as the celestial marriage? Do you understand that they were willing to follow your advice in submitting to the conditions that are therein stated?

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

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

But 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.

The 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 placed and applied in such a way as to be safe from future question. If these sectarian schools are imbued with the church which fosters and supports them, it is not unreasonable nor unnecessary to assume that belief.

It can only be when the Church ceases to exist as well as its practice, that these schools can be safe depositories of such funds.

The work done by the higher institutions of learning might not be unobjectionable.

But the great mistake growing out of a wrong system of public schools has in the last year it comes to the very doors of all the people and the fruit and pain which may enjoy its benefits are universal today.

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

The placing of the 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 citizens 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 would be a violation of the intention of the donors. That it will not be a "limiting and appointing it to such charitable use as may most nearly correspond with the uses to which it was originally destined, etc."

My understanding is, that all the uses to which this property was being applied by the Church and the controlling authorities at and before the commencement of this suit rests under the condemnation of this decree. It is my judgment that the property cannot go back to any of those uses.

A—They were donated for religious and charitable purposes and the disposition of it as I know it should be to expended, would be to be authorized by the Presidency of the Church. I know that to be the feeling of a great many of the donors apparent.

Q. What, as you have acknowledged, was that the intention of all?

A. Yes, sir.

The assets which this fund was in fact, put to the First Presidency and the organization of the Church and position to be under the receiver took possession of it, were numerous and varied.

They included 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 herds of horses and herds of sheep, they contributed to the support of the first presidency, they assisted to the Indians, they colonized settlements of Indians who desired to serve their tribal customs, furnished them seeds, tools, machinery, wagons, etc., they contributed to their church schools, and in fact made such disposition of the funds 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 have all matters relating to the use which should be made of the fund so vested in the discretion of the leaders of the Church. When the sources from which it was collected and the uses to which it was applied are considered together, the fund is impressed with the character of a religious and sectarian 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 proper application of the fund is not, in my judgment, confined in 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 the 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.

Schemes, presently directed, to a legitimate charity, it is in fact the broadest sense, should be considered.

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