the Territory of Utah to set it apart for such use, but the prayer of the petition was denied, and the decree of the court has made no provision for a parsonage or a burial-ground for the Church. The Temple Block was set apart for houses of worship. Under the act of Congress the members of the congregation are entitled to a parsonage and burial-ground. The Gardo House is property which had been used as a parsonage and place of residence for the head of the Church. Is there any reason in law or justice why it should not be retained as such, if the corporation should be dissolved?

The last clause of section 13 of the act of Congress of 1887 declares that no building, or the ground 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.

This clearly was an exception to and qualification of the act of July 1, 1862. The Gardo House, at the time of the passage of the act of 1887, was held and occupied by John Taylor, the head and President of the Church, as a parsonage, and as such it was connected with, although not adjoining, the property which was occupied exclusively for the purpose of the worship of God. As the law expressly declares that the Church shall be entitled to a parsonage, it does not matter when or how this property was acquired.

The court below finds that proceedings have been instituted, by and with the advice and consent of that court, by information in the district court of Utah, for the purpose of having this property adjudged forfeited to the United States. It would not undertake to forfeit the property by its own decree, but turned the property over to the district court and advised that proceedings be instituted in that court to decree a forfeiture. This is certainly a very singular proceeding, which is wholly unauthorized by law and without the sanction of equity.

Ninth.

While the appellants insist that, whether the church corporation is dissolved or not, either the members of the unincorporated sect, or the corporation, as the case may be, are entitled to all the property in the hands of the receiver, whether real or personal, and that no part thereof is subject to forfeit or escheat to the United States, yet if it should be held that any part thereof is subject to forfeit or escheat, the forfeiture could only apply to so much of the church farm and Summit county land as might be found to be in excess of the fifty thousand dollars in value at the time of their acquisition, which the church had the legal right to acquire and hold after the passage of the act of July 1, 1862.

The remainder of the real property, found to have been acquired since the passage of the act of July 1, 1862, consists of the church farm and the undivided half of a tract of land in Summit county, Utah. And even if the act of July 1, 1862, should be held valid and constitutional, these are the only pieces of real estate which are subject to forfeiture under the letter of the act, after deducting $50,000 from their value at the time the property was acquired.

It will be observed that the court below, in finding the value of each parcel of the real estate, finds that the property is of a certain value in money. The church farm, for example, is referred to as follows: "Said property is known as the church farm, and is of the value of $110,000." That is to say, its present value is $110,000; and so substantially with the Summit County property, which is valued at $30,000.

It does not appear from the findings of the court when either of these pieces of property were acquired, nor their value when acquired. The law was violated, if at all, at the time the property was acquired. It will not do to say that if real property had been acquired in 1863, or later, in Salt Lake City or adjoining the city, of the value at that time of $10,000, and said property had afterwards, and before the institution of this suit, by reason of the increase of population and the progress of improvements, increased in value to $110,000, that the whole or any part of the property over $10,000 in value should be forfeited. This would be to make the holder of the property criminally liable because of the increase of value, brought about by causes over which he had no control.

Bogardus vs. Trinity Church, 4 Sand 785. Harvard College vs. The Aldermen of Boston, 104 Mass. 488.

Tenth.

The appointment of the receiver was erroneous, because it did not appear to the court, either from the bill of complaint or from the proofs, that there was any property subject to escheat to the United States, or that any of the property of the corporation was liable to injury or loss if it remained in the possession of those who then held it during the pendency of the suit, and because the corporation did not hold the title to any of the Church property, it being at the time of the pretended dissolution of the corporation in the possession of certain trustees, who had been duly appointed to hold the titles for the Church, and who were as capable of managing and controlling the property of the members of the unincorporated sect as for the corporation itself.

Under the averments of the bill and the proofs taken there was no authority to appoint a receiver because:

1. The bill does not describe any property that the government claims has been escheated, or is subject to escheat or forfeiture.

2. There is no averment or claim that any of the personal property is subject to escheat or forfeiture to the government.

3. There is no averment in the bill, or proof, that any of the property referred to was in danger of being lost or injured, or that it was not safe in the hands of the persons who are alleged to be in the possession of the same—it is only claimed to be illegally in their possession, and that they have no right to hold it.

A receiver could only be legally appointed when it appeared to the court that there was property which was subject to forfeiture or escheat to the United States, and that there was manifest danger of loss or injury to the property if it should remain in the possession of those who held it during the pendency of the litigation. No such showing as this was made or even attempted. The bill does not describe any property as being subject to escheat or forfeiture, nor does it aver that injury or loss would be sustained if it remained in possession of the trustees of the corporation.

Fosdick v. Schall, 99 U. S., 253, (and other authorities).

If it be contended that the action of the court in the appointment of a receiver was proper because the corporation was dissolved, and therefore there was no one to hold the property, we answer that it appears from the record, and is found a fact by the court, that no part of the property in controversy was held by the corporation itself. The title was vested in trustees, who were just as capable of holding, managing, and preserving it for the members of the Church as an unincorporated religious sect, as they had been to hold it for the corporation. The record shows that at the time this suit was brought the titles to the real estate were held by trustees duly appointed by the probate court, in pursuance of the act of Congress of March 3d, 1887, and that the personal property was in the possession of William B. Preston, the presiding bishop of the Church. So that the reason for the rule which justifies the appointment of a receiver in the case of a dissolved corporation did not exist in this case, and the appointment was without precedent or legal authority.

The court in its decree specially finds that all the property described in the findings of the court was, at the time of the institution of the suit, held in trust for the corporation. These proceedings are extraordinary, to say the least of them. The act of Congress assumes that it not only has the power to disapprove the act by which the corporation was chartered, but to declare that the property may be seized by the government officers without any evidence that the corporation has in any respect violated the provisions of its charter, that it may be held in the hands of a receiver and finally distributed in such manner as the court might think proper.

Can such proceedings be justified except upon the ground that the Government of the United States, its legislators, its courts and their officers, are not bound to regard that provision of the fundamental law of all free governments, that no person shall be deprived of life, liberty, or property, without due process of law? We think not. Here is a judgment without a hearing, a seizure without a cause, and an escheat without the pretense of any authority of law. The decree appealed from must certainly be reversed.

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For Appellants.