

THE POWER OF CONGRESS

The dissolution of the corporation styled the Church of Jesus Christ of Latter-day Saints necessarily follows the right to annul its charter, which we have said could be done. This disposes of the question raised upon the first clause of the seventeenth section of the act.

The last clause of that section should be considered in connection with sections thirteen and twenty-six of the same act. They are as follows:

SEC. 13. That it shall be the duty of the Attorney-General of the United States to institute and prosecute proceedings to forfeit and escheat to the United States the property of corporations obtained or held in violation of section three of the act of Congress approved the 1st day of July, 1862, entitled, "An act to punish and prevent the practice of polygamy in the Territories of the United States and other places, and to approve and annul certain acts of the Legislative Assembly of the Territory of Utah," or in violation of section eighteen and nineteen of the Revised Statutes of the United States; and all such property forfeited and escheated to the United States shall be disposed of by the Secretary of the Interior, and the proceeds thereof applied to the use and benefit of the common schools in the Territory in which such property may be; *Provided*, That no building or the grounds appurtenant thereto, which is held and occupied exclusively for the purposes of the worship of God, or persons connected therewith, or burial ground, shall be forfeited.

SEC. 26. That all religious societies, sects, and congregations shall have the right to acquire and to hold, through trustees appointed by any court exercising probate powers in the Territory, only on the nomination of the authorities of such society, sect, or congregation, so much real property for erection or use of houses of worship, and for such parsonages and burial grounds as shall be necessary for the convenience and use of the several congregations of any religious society, sect, or congregation.

The second clause of the seventeenth section quoted makes it the duty of the Attorney-General of the United States to institute proceedings in this court to wind up the affairs of the corporation.

DISSOLVED BY THE FIRST CLAUSE

The same section and gives the court power to make such decree as may be proper to transfer the title to all property held and used by the corporation for places of worship and parsonages connected therewith, and burial grounds, as mentioned in the proviso to section thirteen, and in section twenty-six of the same act. For the purpose of such proceeding the court is given all the powers of a court of equity. The proviso of section thirteen exempts such property as is last described from forfeiture, with no limitation on value as in the act of 1862; and section twenty-six gives to all religious societies, sects and congregations the right to hold through trustees nominated and appointed as therein provided, so much real property for the use of houses of worship, parsonages and burial grounds as shall be necessary; and is the value in this section limited. By the first part of section thirteen it is made the duty of the Attorney-General to institute proceedings to forfeit and escheat to the United States the property of the corporation obtained or held in violation of section three of the act of 1862, or of section 1890 of the Revised Statutes of the United States (which two sections are substantially the same). The property so

FORFEITED AND ESCHATED

of the United States and the proceeds thereof are to be applied to the use and benefit of the common schools in the Territory in which such property may be.

Section three of the act of 1862 is as follows:

SEC. 3. And be it further enacted: That it shall not be lawful for any corporation or association for religious or charitable purposes to acquire or hold real estate in any Territory of the United States during the existence of the Territorial government of greater value than \$50,000; and all real estate acquired or held by any such corporation or association contrary to the provisions of this act shall be forfeited and escheated to the United States; *Provided*, that existing vested rights in real estate shall not be impaired by the provisions of this section.

It will be seen that section thirteen of the act of March 3d, 1867, authorizes the forfeiture only of the property obtained or held in violation of section three of the act which took effect July 1st, 1862; that is to say, property acquired after the act took effect and in violation of it. And we may here remark that the policy of limiting the amount of land which religious corporations may hold is not new, but it is a practice that has obtained for ages.

It was announced in Magna, Charta more than six hundred years ago, and continued by many enactments of Parliament designed to meet the evasions and contrivances of the church for evading the laws. It has been the settled policy in this country, as shown by the statutes of various States, and a charter of a century ago Congress limited the amount of real estate that any church might hold in any of the Territories. It has been the settled design of such statutes to

CONFINE CHURCH HOLDINGS

the amount that is necessary simply for church purposes, and the observance of such laws has been secured by forfeiture, which seems the most appropriate and effectual method.

We are unable to discover that any of the provisions of the act of Congress of March 3d, 1867, relating to the corporation of the Church of Jesus Christ of Latter-day Saints interferes

with vested rights or is in conflict with any provision of the Constitution of the United States.

This brings us to the question whether the allegations of the bill are sufficient to authorize the appointment of a receiver. The following facts with others are alleged in the bill: That the Church of Jesus Christ of Latter-day Saints was incorporated under the act of the Territorial Legislature quoted, and did buy and hold large amounts of real estate and personal property of great value in the Territory of Utah, after the first day of July, 1862, the precise amount, value, or description thereof, the plaintiff was unable to state, but asked leave to prove, and on information and belief alleged the

VALUE OF THE REAL ESTATE

to be about two millions of dollars, and the personal property to be about one million dollars:

That the corporation of the Church of Jesus Christ of Latter-day Saints and the successor of John Taylor (whose name is to this plaintiff unknown) as Trustee-in-Trust, and Wilford Woodruff, Lorenzo Snow, Erasmus Snow, Franklin D. Richards, Brigham Young, Moses Thatcher, Francis M. Lyman, John Henry Smith, George Teasdale Heber J. Grant and John W. Taylor, Assistant Trustees, the defendants, wrongfully, and in violation of the laws of the United States, still claim to hold and do exercise the powers which were held and exercised by the said corporation of the Church of Jesus Christ of Latter-day Saints, and are unlawfully possessing and using the real estate mentioned above, and are receiving and unlawfully applying to its and their own use the rents, issues and profits thereof, and falsely and wrongfully claim the right to sell, use and dispose of the same.

Tenth—That since the 19th day of February, 1867, there has been and is no person lawfully authorized to take charge of, manage, preserve or control the property, real and personal, which on or before the day and year last aforesaid was held, owned, possessed and used by the corporation of the Church of Jesus Christ of Latter-day Saints, and by reason thereof all the said property as referred to in the third paragraph of this bill is subject to irreparable and irretrievable loss and destruction.

The reason for the statement of facts in terms so general are sufficiently apparent.

When the corporation was dissolved its officers and agents no longer had any legal right to the possession of its property, to its use, to the rents and profits thereof.

It further appears from the allegations of the bills that the respondents are receiving and applying to their own use the rents and profits of the property, and claiming the right to sell, use and dispose of it.

Assuming the facts to be as alleged in the bill, a portion of the property must be forfeited, and must

ESCHEAT TO THE UNITED STATES

to be applied to the use and benefit of the common schools of the Territory of Utah.

"The modern English practice allowing the appointment of a receiver before answer in cases of emergency was adopted by the English Court of Chancery, and has been generally followed in this country. And it may now be regarded as the uniform and well-established practice to entertain the application and to grant the relief before answer where plaintiff can satisfy the court that he has an equitable claim to the property in controversy, and that a receiver is necessary to preserve it from loss, or where a clear case is shown of fraud and imminent danger unless the relief is granted." High on Receivers, 2d Ed., § 145.

"In all such cases a court of equity necessarily exercises a large discretion as to whether it will or will not take possession of the property by its receiver, and this discretion is governed by a consideration of all the circumstances of the case. It is, therefore, difficult to establish any fixed rule in such cases, although it may be said generally that if the case is presented when the application for a receiver is clearly in favor of plaintiff, indicating that he will probably be entitled to a final recovery, the risk of injury to defendant is very small, and the Court does not hesitate to interfere. If there be more doubt as to plaintiff's right, there is of course more difficulty in passing upon the application, the question being of one degree, as to which it is impossible to lay down any precise rule." (1d 3, 19. Also note 1, under this section.) "Where, indeed, the property is as it were in medio, in the enjoyment of no one, the Court can hardly do wrong in taking possession. It is the common interest of all parties that the courts should prevent a scramble."

As to the general doctrine to the same effect is Kerr on Receivers, p. 1, 3, 4 and 5. We are of the opinion that the facts alleged in the bill are sufficient to authorize the appointment of a receiver according to the prayer.

A further question arises upon the stipulation of facts upon which the motion is submitted; whether these facts are sufficient to authorize the appointment of a receiver.

THE STIPULATION

on which this motion is submitted are the following:

On the 28th day of February, 1867, John Taylor, who was then Trustee-in-Trust for the Church of Jesus Christ of Latter-day Saints, held in trust certain personal property, goods and chattels of the aggregate value of \$268,982.39, which it is claimed by the defendants and denied by the plaintiff, had theretofore been contributed by the individual members of said Church for the purpose of building temples, and for other charitable and religious purposes. On said last-named date the said John Taylor, as Trustee-in-Trust, executed an instrument in writing, a copy of which is hereto attached and made part hereof, marked "Exhibit A." That in pursuance of the provisions of the instrument aforesaid, certain property of the value approximately as set out below was delivered to the following named ecclesiastical Church corporations created and existing under the laws of the Territory of Utah:

To the Church Association of Cache State of Zion.....	45,038.90
To the Church Association of Box Elder State of Zion.....	16,745.18
To the Church Association of Weber State of Zion.....	11,480.06
To the Church Association of Morgan State of Zion.....	2,716.57
To the Church Association of Summit State of Zion.....	3,153.20
To the Church Association of Wasatch State of Zion.....	6,044.90
To the Church Association of Salt Lake State of Zion.....	32,702.70
To the Church Association of Tooele State of Zion.....	4,591.10 1/2
To the Church Association of Juab State of Zion.....	3,049.03
To the Church Association of Utah State of Zion.....	25,000.00
To the Church Association of Sanpete State of Zion.....	6,992.13
To the Church Association of Sevier State of Zion.....	12,415.50
To the Church Association of Millard State of Zion.....	14,083.89
To the Church Association of Beaver State of Zion.....	6,980.34
To the Church Association of Panguitch State of Zion.....	8,137.50
To the Church Association of St George State of Zion.....	28,638.41
To the Church Association of Kanab State of Zion.....	38,185.77

Total..... \$268,982.39 1/2

The members of the said Stake Corporations are members of the Church of Jesus Christ of Latter-day Saints, and it is claimed by the defendants and denied by plaintiffs that they were substantially the original donors of said property in their respective stakes.

The Church of Jesus Christ of Latter-day Saints was a corporation for the purposes set out in the act incorporating said Church at the time the act of Congress of 1867, hereinafter set out, took effect and has claimed to exist as a corporation ever since that time.

The tithing house and grounds as hereinbefore set out are not and have never been used as a place of worship or parsonage connected therewith, or as burial ground, nor are they appurtenant to any thereof.

The portion of the third tract of land set out in the first part of this agreement as the Gardo House and grounds and the Historian's Office and grounds, which is known as the Historian's Office and grounds, comprises a tract about 8x10 rods. The building thereon is a three-story adobe building about 35 by 45 feet. The grounds of the Gardo House and the grounds of the Historian's Office are separated by a terrace and for a part of the way by an evergreen hedge.

The Historian's Office and tract has been used as the office and residence of the historian of said Church and as a depository for the records of said Church and for library purposes, and has been so used since prior to 1862.

For the purpose of this motion the probable value of the real estate herein described, is estimated as follows:

1. The Temple and Tabernacle block, one hundred and fifty thousand dollars.
2. The Tithing House and grounds, twenty-five thousand dollars.
3. The portion of tract three, known as the Gardo House and grounds, fifty thousand dollars.
4. The portion of tract three, known as the Historian's Office and grounds, ten thousand dollars.

From these facts it sufficiently appears that the defendant corporation has in its possession real property in value far exceeding fifty thousand dollars, the limit fixed by the Act of Congress of 1862, and that a portion of it is not a building or the grounds appurtenant thereto held for the purpose of the worship of God or parsonages connected therewith or burial ground, and that the title to a large portion of the same property was acquired subsequently to the time the act of 1862 took effect.

In deciding this motion we are not called upon to finally determine the rights of the parties with respect to the property involved in this case. Such rights will be decided as they ultimately appear. And if the receiver appointed shall claim a right to the possession of any property as receiver, to which third parties also claim a right, the issue will then be determined. We are of the opinion that the complainant's motion for the appointment of a receiver should be allowed.

An order will be made to that effect in accordance with the prayer of the bill.

BOREMAN, Justice, concurs.

HENDERSON, A. J., concurs.

After the conclusion of the reading, Col. Broadhead said he supposed a bond would be required from the receiver under the order of the court. It was the universal practice, and he supposed the court would follow it in this instance, to hear suggestions from both sides as to the proper person to occupy such an important position.

Judge Zane—Well, we are ready to hear such suggestions as you have to make.

Col. Broadhead—We have just heard the decision of your honors, and not knowing what it would be, are not prepared to make any suggestions at present. We would like to take a little time to consider.

Mr. Peters.—Perhaps we can agree on some one if the matter is postponed till Monday morning.

Judge Zane.—The court will probably adjourn to Monday evening, to give Judges Henderson and Boreman opportunity to attend to their court business.

Mr. Richards.—I would suggest to your honors that the hearing of the demurrer in this case was set for Monday morning at 10 o'clock.

The Court held a short consultation and inquired of Mr. Peters whether he was ready to make the arguments on the demurrer.

Mr. Peters.—We do not know; that will depend largely on the other side.

Col. Broadhead.—All of the points raised have been substantially passed on in the question that has been before the court. We are willing to submit the demurrer. I do not see any neces-

sity of making any further arguments before this court.

Judge Zane then announced that the court would adjourn to Monday evening, at 7 o'clock.

F. S. Richards moved the admission of Mrs. Marilla M. Ricker to the bar of the Supreme Court. An order was made admitting her. She tendered the oath now required, but it was not administered, the old form being used.

The court then adjourned.

TELEGRAPHIC NEWS.

CHICAGO, Nov. 3.—Fire was discovered early this morning in the Chicago Club, directly opposite the Palmer House, on Monroe Street. A general alarm was quickly turned on and the arrival of a score of engines caused a wild panic among the guests of the Palmer House and Clifton House, which adjoins the club on the east. Scores of guests sprang out of bed and rushed in terror to the street with the impression that the hotels were on fire. Fifty streams of water were soon playing on the fire, and a torrent of water soon poured down the stairways and elevator shafts, extinguishing the fire but completely ruining the furniture, pictures and everything in the clubhouse. The building cost \$130,000, and the furniture \$25,000, both fully insured. The Chicago Club is the most noted of all the clubs in the city.

WINN, I. T., Nov. 3.—A special messenger from Tahalaquan reports that the greatest excitement prevails at the capital of the Cherokee Nation. Half of the inhabitants of the city have fled to the timber for refuge from the impending war, which will probably begin on Monday. The dispute is over the election of a chief of the Cherokee Nation.

LONDON, Nov. 3.—An explosion of dynamite occurred this morning in a lead mine at Matlock, county of Derby. Twenty-five men were in the pit at the time. Five dead bodies have already been removed.

DUBLIN, Nov. 3.—United Ireland asserts that a secret circular was issued by the police authorities to the forces at Mitchellstown before the meeting on September 9th, at which the police fired on the people, urging the vigorous suppression of all nationalist meetings and instructing the police not to give way to or compromise with the leaguers.

O'Brien has given warning to the governor of Tullamore jail that he will refuse to do menial offices, wear prison garb or associate with criminals.

NEW ORLEANS, Nov. 3.—At present over ten thousand negro laborers are on a strike. White men are working on sugar plantations, holding that their demands were unjust and refusing to join them. As the negroes are in a large majority everywhere throughout the sugar district and as they are determined neither to work themselves at present prices nor allow others to work, further trouble is looked for. The planters are determined to introduce new laborers and a large number of warrants for the eviction of strikers have been served. Several companies of state militia are under arms at the principal points throughout the district, and will go to the assistance of the sheriff's officers if they are resisted when serving the warrants. The evictions will begin to-day.

VIENNA, Nov. 3.—A dispatch from St. Petersburg to the *Politische Correspondent*, says: Another nihilist plot has been discovered. The headquarters of the conspirators are in the house of an apothecary named Schnapin Jeketermerhof. The police raided the house and made several arrests. They also found a number of bombs.

PUEBLO, Col., Nov. 3.—About 1 o'clock this morning several masked men stopped the east-bound Salt Lake express on the D. & R. G. road a few miles east of Grand Junction and compelled the engineer, fireman and express messenger to leave the train, and while they were being guarded by three of their number the others passed through the train, relieving the passengers of money and valuables. The robbers then entered the express car, but failed to open the safe. The mail pouches were cut and the registered packages and letters opened. The train was allowed to proceed after being detained over an hour, and the robbers took to the mountains. It is not yet learned how much money they secured.

A SHOOTING AFFRAY.

EAU CLAIRE, Wis., Nov. 3.—A shooting affray occurred here tonight between Edward Richardson of St. Paul and Fred Hanson, the proprietor of the Galloway House, in which Richardson was killed and Hanson fatally wounded. The cause is supposed to be jealousy. Richardson was formerly steward at the Galloway House, but after his wife, for some reason, got a divorce from him he left the city. Hanson then married his divorced wife.

HELD TO ANSWER.

LOS ANGELES, Nov. 3.—The preliminary examination of Hattie Weinstein, charged with murdering Doctor Harland, dentist and sporting man, and afterwards burning the body, closed today and the girl was held to await the action of the grand jury.

GROUND TO DEATH.

PITTSBURG, Nov. 3.—The engine of a Fort Wayne Railroad train struck a street car on the Federal Street crossing in Allegheny City this evening and two passengers jumping from the car

were caught under the wheels of the engine and ground to death. Those remaining on the car were not injured.

ST. LOUIS, Nov. 3.—In the freight yard near the Union Depot to-day, two cars of a circus train were derailed and some of the cages shattered. A Bengal tiger, two lions, a leopard and a jaguar escaped to various parts of the yard. The wildest commotion followed. The depot officials and policemen ran frantically about shouting a warning and there was a general and quick stampede from the yards to the streets beyond. A leopard was found crouched under a freight car and an attempt was made to lasso him, but it failed and the animal rushed from its cover, bit a man severely in the leg on his way out, bounded into the ticket office and then jumped through a transom in the superintendent's office. He was besieged, covered with a tarpaulin and secured. One by one the other animals were found and after more or less trouble were captured and returned to their cages. One of the circus men was killed and two injured in the smashup of the cars.

BOULOGNE, Nov. 3.—Fifty-nine fishermen have been missing since the gale. Seven bodies lashed together have been washed ashore at Etaples.

CHICAGO, Nov. 3.—At the jail this morning a long conference was held between Captain Black, L. S. Oliver, of the Amnesty Association, and the seven condemned men. After the conclusion of the conference Captain Black refused to make public the matter under discussion. He said he expected to leave for Springfield with the petition for amnesty Monday night. To an inquiry whether he hoped for clemency, he replied: "I am always a hopeful man. I will hope until there is no longer any ground for it."

It has been suggested by several attorneys that the attorneys for the defense for the purpose of delay, if nothing else, could apply for a writ of *de lunatico inquirendo* to determine the mental condition of the condemned men. Captain Black said of this: "It might be done, but those brave fellows would never consent to it. I wouldn't give it a second thought."

Mrs. Lucy Parsons appeared on the street with an armful of pamphlets, which a small boy tried to sell yesterday. An enormous crowd soon collected about her and the officers compelled her to move on. The chief of police, however, ordered that she be allowed to sell the pamphlets, but not to create a blockade on the streets. She admitted the justice of this, but soon after took up her stand on Government Square, she having been advised by her friends that the city police could not molest her there. Soon, however, another tremendous crowd congregated around her, and a deputy United States marshal made her move on. She then walked up and down the street selling the pamphlets until she was exhausted. The person who furnished the pamphlets says she sold fully 4,000 copies, at five cents a copy.

August Spies, Samuel Fielden and Michael Schwab signed a petition this afternoon humbly begging the governor to commute their sentences. Those three have not written letters to the governor that they would not accept a commutation. The signatures of Fielden and Schwab were secured by Captain Black and L. S. Oliver in the morning conference, but Spies was obdurate at that time, and would not sign the paper. Late this evening, however, he was called on by Dr. Schmidt, ex-Alderman Frank Stauber and George Schilling, who labored with him until the signature was secured. The other four nothing could be done with, but a committee of friends will call on them again tomorrow and endeavor to induce them to reconsider their determination not to ask for mercy.

The *Arbeiter Zeitung*, the organ of the anarchists, has a long editorial in today's issue on the action of the Supreme Court, in which it says:

"For a hundred years the United States enjoyed the reputation of being a free country, and up to a short time ago such a reputation was most justifiable. But lately a few possessors of colossal riches, produced by the common people, usurped a criminal power to prevent and misinterpret the laws created by the fathers of this republic in good faith and a progressive spirit. They spatter with mud the name of the republic. Justice, which is being distributed under the auspices of Jay Gould, Vanderbilt, et al., wears not only a bandage over her eyes, but also a watchword on her breast which reads: 'The public be damned.'"

The editorial further accuses the justices of having been led more by the desire of setting a horrible example to the working classes to keep them easier in submission. It warns the justices that he who sows the wind must reap the whirlwind, and adds: "Our comrades will seal with their blood the truth that liberty and justice can hardly raise their heads in this country."

Chairman Oliver, of the Amnesty Association, wore out his patience and a good horse today in the unavailing effort to secure a hall for Saturday night's mass meeting. No owners of places of public assemblage can be prevailed upon to rent for even one night for the purpose.

ST. LOUIS, Nov. 4.—The remains of an exploded dynamite bomb were found last night in some ruins at the Fourteenth Street explosion, but the detectives believe it was placed there yesterday by some of the sensationalists who have been writing the newspapers claiming that they were agents of horrible crimes.