THE CHURCH CASES.

The following important opinion was handed down from the bench of the Territorial Supreme Court at this morning's session in regard to the Church cases:

United States of America respondent, vs certain real estate known as the Tithing yard and offices and William B. Preston et al, appellants.

Justice Smith said—This is an action begun by the United States against certain real estate belonging to the late corporation of the Church of Jesus Christ of Latter-day Saints, to forfeit and escheat the property. The property involved in this particular action is part of Lots three (3), four (4), five (5) and six (6), block eighty-eight (88), plat A, Salt Lake City survey, commonly known as and called the Tithing yard and offices. The defendants, William B. Preston, Robert T. Burton and John R. Winder, are alleged to be claimants as trustees of the property for the voluntary religious association known as the Church of Jesus Christ of Latter-day Saints. James P. Freeze and Spencer Clawson intervened in behalf of themselves and all other members of the religious association known as the Church of Jesus Christ of Latter-day Saints, claiming that the property belonged to that religious body. The defendants Preston, Burton and Winder answered the complaint. Freeze and Clawson, by their petition in intervention, set up substantially the same facts as alleged in the answer of the trustees. The case was tried by the court without a jury. Findings of fact and conclusions of law were made and judgment entered in favor of the United States, escheating and forfeiting the property. The defendants and intervenors appeal. Two assignments of error are made which we deem it necessary to consider upon this appeal.

First, that the court erred in deciding that the property was subject to forfeiture or escheat, for the reason that upon the facts found it appeared the Church of Jesus Christ of Latter-day Saints had a vested interest in said property on or before July 1st, 1862.

Second, the court erred in deciding that the property was subject to forfeiture or escheat, for the reason that upon the facts found all proceedings to forfeit or escheat the property were barred by section 1047 of the Revised Statutes of the United States.

This section of the Revised Statutes was pleaded both by the defendants and the intervenors in bar of the action. We will consider these objections in the inverse order in which they are stated. Section 1047 relied upon is as follows: "No suit or prosecution for any penalty or forfeiture pecuniary or otherwise, accruing under the laws of the United States, shall be maintained except in cases where it is otherwise specially provided, unless the same is commenced within five years from the time when the penalty or forfeiture accrued." The forfeiture claimed in this case arises under section 3 of the Act of July 1st, 1862, which is as follows: "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 a 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 the existing vested rights in real estate shall not be impaired by the provisions of this section." The title to the land in controversy was acquired by the Mayor of Salt Lake City in November, 1871. In 1872 it was conveyed to the trustees of the corporation of the Church of Jesus Christ of Latter-day Saints for the use and benefit of said church. Title remained in said trustees until the third of March, 1887. It is claimed by the appellants that more than five years having elapsed since the perfect title to the property was acquired by the Church, that no action can now be prosecuted by the United States to forfeit or escheat the property. We have been cited to no case upon this question exactly like the one at bar. Several cases have been cited in which it is held that section 1047 applied to debts and civil actions and forfeitures as well as to criminal ones. It was so held in the case of Adams vs Woods, 2 Cranch, 336, which was a suit to enforce a penalty founded on the act of the 22nd of March, 1794, First statutes at large 347 prohibiting the slave trade. It was held that the action was barred, not having been begun within the period prescribed by the statute. Marshall C. J., discussing the question, says: "It is pretended that the prosecutions limited by this law are those only which are carried on in the form of an indictment or information, and not those where the penalty is demanded by action of debt. But if the words of the act be examined they will be found to apply not only to any particular mode of proceeding, but generally to any prosecution, trial or punishment for the offense, and the court held that the action of debt for the penalty was a prosecution and was barred by the Statute of Limitations. We think Section 1047 includes civil as well as criminal proceedings. But the difficulty in the case at bar is that the language of section three of the act of July 1st, 1862, is that all real estate acquired or held by any such corporation or association shall be forfeited, etc. Counsel for appellant do not deny but that the property in question was held in violation of this statute within five years preceding the commencement of this suit. The cases most nearly in point, it seems to us, are those arising under the internal revenue laws, where proceedings in rem for forfeiting real estate are repeatedly provided for. For instance, land becomes forfeited for being used for the purpose of distillery, where the required bond has not been given. Section 3260-3281 Revised Statutes of the United States. Under such statutes it has been frequently held that the property is subject to forfeiture on account of continued use of it, notwithstanding the use may have begun more than five years before the commencement of the action. In contemplation of law the land itself is guilty, and it is the guilt of the land that makes it forfeitable by reason of its being employed in an unlawful use.

Waples proceedings in rem section 178 says: "Lands are forfeited for use in contravention of law. The violation of law by the use of the land is in some instances by the owner, but not necessarily so. It is not the owner's guilt but the land's guilt by its use that renders it forfeit. There is an offending person and an offending thing, but the proceedings are against the latter." At section 182, the same author analyzing section 3 of the act of July 1st, 1862, above cited, says: "The thing to be seized and condemned is Territorial real estate worth more that $50,000.00. The offense of the thing is being acquired or held by the religious or charitable association to the amount forbidden. The jus in re arises from the contravention of law." We believe this to be a proper construction of the statute before us, that the property either acquired or held in violation of the law within five years before the commencement of the action is subject to forfeiture.

The remaining question which we deem it necessary to consider is whether or not the property involved in this action comes within the proviso found in section 3 of the act of July 1, 1862.

The proviso is as follows: "That existing vested rights in real estate shall not be impaired by the provisions of this section." The findings of fact in this case show that the land in controversy in this action was first laid out in 1848; then taken possession of by the representatives of the Church known as the Church of Jesus Christ of Latter-day Saints. This Church was a voluntary sect until January, 19, 1855, when it was incorporated, and that the corporation subsequently possessed it up to and including July 1, 1862; that buildings and other improvements of considerable value were built thereon by the Church, and that the Church was in the actual possession and use of the property and the improvements thereon until the 1st day of July, 1862. That in November, 1871, the land was entered under the townsite act by the mayor of Salt Lake City. That Brigham Young, who was then President of the Church, claimed the land under the townsite law, and it was conveyed to him by the mayor of said city, as trustee for the Church aforesaid; that it afterwards passed by mesne conveyance to Robert T. Burton, who held the title on the 3rd day of March, 1887, as trustee for the Church. The question arises whether or not this parcel of land is forfeitable to the Government of the United States, under section 3 of the Act of Congress of July 1st, 1862, which we have already quoted at length in this opinion. It is claimed by counsel for the government that inasmuch as the townsite law had not been extended over the Territory of Utah at the time of the passage of this act, nor had the public surveys been extended over the lands in controversy, that the Church had not nor was it possible for it to have acquired any vested interest in the lands in controversy at or prior to the time this act took effect. That it had no interest which the government was bound to respect. We do not deem it necessary to decide whether or not Congress had authority under the Constitution to ignore a right such as the Church had in these lands in July,