

has comprised that body of individuals who formerly composed the membership of the corporation, and that the doctrines and the tenets of the voluntary religious sect have been and now are substantially the same as those of the late corporation of the Church of Jesus Christ of Latter-day Saints. In other words, that the personal property had been used for spreading and propagating the doctrines of the Church, including the doctrine of polygamy.

Now, it cannot be denied that this doctrine of polygamy and its practice, as carried on by a portion of the members of the voluntary religious association, who were the same as the members of the corporation before its alleged dissolution, was, in the mind of the court, the illegal purpose to which this property was dedicated at the time of its acquisition, and that therefore it became escheated to, and was the property of, the United States; and the finding of the court is to the effect that this doctrine was always preached and always practiced by some of the members of the corporation, as well as by some of the members of the voluntary organization known by the same name, after the alleged dissolution of the corporation, and yet it is perfectly clear that by the provisions of the act of Congress of July 1, 1862, property which had been acquired by this same corporation before that date, and which had been used for these illegal purposes, was left in the possession and under the control of the corporation, and that vested rights in real estate acquired before the passage of that act by said corporation were not impaired by its provisions, but were permitted still to remain the property of the corporation; and it further appears that, by the provisions of the 13th and 17th sections of the act of 1887, as well as by the provisions of the 26th section of that act, all religious societies, sects, and congregations—including, of course, the society, sect, and congregation known as the Church of Jesus Christ of Latter-day Saints—shall have the right to hold, through trustees appointed by the court, so much real property for the erection and use of houses of worship, parsonages and burial grounds as shall be necessary for the convenience and use of the several congregations of such religious society, sect or congregation; and the court below in its final decree, in pursuance of the provisions of that act, sets apart all of block 87, plat A, of Salt Lake City to the voluntary religious worshippers and unincorporated sect and body known as the Church of Jesus Christ of Latter-day Saints, to be held, managed and controlled by certain trustees therein named for the benefit of said voluntary religious worshippers, as an unincorporated sect and body, for the erection and use by them of houses of worship according to the tenets of said sect and body. Upon the premises so set aside are situated their temple and tabernacle, the latter building being the place where the doctrines of the Church are promulgated from week to week, and where large numbers of worshippers meet for the pur-

pose of listening to the teachings, and hearing promulgated the tenets of the Church by its leading members. These provisions of the law and this decree of the court would seem, to any one of ordinary understanding, to admit that the promulgation of these tenets and doctrines is not an illegal act, such as ought to subject the property of the church to escheat and forfeiture. And there can certainly be nothing more illegal or immoral in acquiring and holding personal property to be devoted to the doctrines, tenets and practices of the church than in holding real estate for the same purpose. The provisions of the act of 1862, as well as, of the act of 1887, both recognize the legality and propriety of holding both personal and real property, for the very object and purpose of which the court in this case decrees that the personal property should escheat to the government, because those purposes were illegal. Congress, it is true, has passed laws declaring polygamy to be illegal, and providing for the punishment of its practice as a crime. But at the very time when the law-making power so declared against polygamy and, as appears from the declarations contained in those acts, knew it was practiced, while recognizing that fact, it not only failed to provide for the forfeiture or escheat of any property held by the organization which sanctioned that doctrine and practice, but it declared in the very same act of July 1, 1862, that personal property acquired by that organization should be held sacred, and by the act of March 3, 1887, it directed that real estate should be set apart for the purpose of enabling the organization to propagate the very doctrines and practices which are pronounced by the court below to be illegal.

Heretofore it has always been thought sufficient to provide penalties against the individuals who violate the law without undertaking, in addition thereto, to invoke the powers of a court of chancery to confiscate the property, not only of those individuals who may be punished for the violation of the law, but also of those members of the organization who are not amenable to the charge of having violated the law; and yet the court below in this case not only undertakes to escheat the property of those who might be charged with having violated the laws of Congress prohibiting the practice of polygamy, but also the property of that large class of members who are not amenable to that charge, and who never did engage in the practice of polygamy.

In the case of *Jackson v. Phillips*, 98 Mass., 555, it was held that gifts, for the purposes prohibited by or opposed to the existing laws, cannot be upheld as charitable even for objects which would otherwise be deemed such. When, however, the scope and purpose of the gift embrace objects some of which are lawful, or are broad enough to allow of the fund being applied either in a lawful or unlawful manner, the Court held that the gift would be

supported, and its application restrained within the bounds of law. See pages 555, 557, 568 and 569, and authorities there cited.

Now it is found by the court below, as a fact in this case, that the appellant corporation was a religious and charitable corporation for the purpose of promulgating, spreading and upholding the principles, practices, teachings and tenets of the church, and for the purpose of dispensing charity according to its principles, practices, tenets and teachings, and that one of the doctrines, tenets, teachings and practices of the church was the doctrine of polygamy or plurality of wives. It follows, therefore, that there were doctrines and teachings, other than the doctrine of polygamy, which it is not pretended were illegal or illegitimate.

A court of equity should not confound the innocent with the guilty, and deprive all the members of a congregation of property acquired by them because the practices of some who had an interest in that property were illegal or immoral. Such a decree is not in consonance with the principles of either law or equity.

#### Seventh.

Prior to July 1st, 1862, the Church had such a vested right in the Temple Block, the Tithing Office property, and the Historian's Office and grounds as could not be impaired, even if the provisions of the act of Congress of that date are valid which limit the amount of real property to be thereafter acquired and held by the Church. Because its claim to this property dates back to the first settlement and location of Salt Lake City in 1848, and it is such a claim and right as this Court has held to be valid in law and equity.

If both the acts of Congress referred to should be held constitutional and valid, and it should be declared that any real estate belonging to the corporation can be legally forfeited and escheated to the United States by any legal proceedings, then we claim that the following described real estate cannot be held as forfeited and escheated to the United States.

First—All real estate in which the Church held vested rights, either legal or equitable, on the 1st day of July, 1862.

Second—Real estate of the value of Fifty Thousand Dollars at the time of its acquisition acquired after the 1st of July, 1862.

Third—All real estate held or occupied by the corporation at the date of its dissolution, for the purpose of the worship of God, or parsonage connected therewith, or burial ground, and property appurtenant to such real estate as may have buildings erected thereon for any of these purposes.

The claim of the bill in this case in regard to real estate is, that of the property held by the corporation on the 19th day of February, 1887, more than Fifty Thousand Dollars in value thereof has been acquired and held since the 1st day of July, 1862, which is not held or occupied as a building or ground appurtenant