

1887, the school board, on motion of Call, made the following entry: "It is voted to rent the schoolhouse at a nominal sum for church purposes, the trustees to fix the price; proceeds to go to the school fund."

The defendant Call is one of the witnesses for the defendant who has testified in this case that the house was built as a place of worship, and that the Bishop had always controlled it. Bryson, who was then a member, is also another witness who has testified to the same thing. In their explanation in their testimony given here, as to how they came to make this record, they say that "They thought it was best, that it might allay any further trouble." Soon after the new trustees were installed the complainant presented to the board a statement of these facts, and demanded that they take some proceedings to obtain the title. Trustee Frazier was in favor of taking these steps; Call, who was the member that held over, was much opposed to taking any steps, and utterly and absolutely refused to do so. Brown, the other trustee, who had just been selected, and who was a member of the Church, declared at that time that he was not prepared to give an answer as to whether he would or would not; and consequently nothing was done by the board. Plaintiff and Crawford, before mentioned, demanded in writing of Lee and the defendant corporation that said land be deeded to the district, which was refused. At this time it is plain from the evidence that many members of the Church were opposed to the Bishop holding the title of this property or to its resting in the defendant corporation. The defendant Eastman himself, shortly after the demand had been made upon the trustees, went to Evanston with the complainant, and they together went to an attorney's office and stated the facts about as above stated, the complainant making the statement and asking Eastman to correct him if any misstatements were made, and it was written down for the purpose of taking the advice of attorneys in Salt Lake; and in that statement it was stated that this schoolhouse had been built as and for a schoolhouse for the district, but that contrary to that understanding it had been deeded to the Bishop, and by the Bishop to the church. Not long after that this bill was filed. After it was filed, making the defendant Brown a defendant, he announced publicly that he desired to accede to said demand and be admitted into this case as a plaintiff to further the objects of this bill, and he accordingly made an affidavit setting forth that at the time that the demand was to be made he was in doubt as to what was his duty, but that he now believed that all the facts stated in the bill were true, and the decree asked for should be made, and asked in the affidavit that he might be made a party complainant instead of a party defendant.

The defendant Lee, and Bryson and Call and some other members of the Church, have appeared as wit-

nesses in this case, and they testified that it was understood all the time that the house was to be built as a place of worship for the Church. They admit, however, that it was talked about as a schoolhouse. The defendant Lee claims that he has had the entire supervision and control of the house ever since it was erected, and claims that when Mr. Eastman got his title to the land that he paid him between four and five dollars for it; that thereupon it was deeded to him; that it was in pursuance of an original understanding; and that after the organization of the defendant corporation he deeded it over to that corporation, and they claim that it now belongs to that corporation. They also testified that they have offered to repay to the persons not members of the church whatever amount they have put into it. The further fact should be stated in this connection, that when this schoolhouse was being built the old schoolhouse was sold for fifty dollars and the money was expended in building the new one.

It will be seen from this statement of facts that in 1881 it was the almost unanimous desire of the inhabitants of the district to build a schoolhouse, and it was their desire to build it in the regular and legal way, by levying a tax for that purpose. Of course if such a house had been built, there could be no question but what it would belong to the district and be its property. But for some reason the defendant, Lee and others, objected to this manner of building it, and the school board, in violation of their duty was, at the instigation of somebody, prevented from taking the steps that they ought to have taken in levying this tax. When the second meeting was called, it was found that the sentiment, as to a large number of the people, had changed. It is evident that the defendant Lee and his counselors had been very active in making this sentiment; indeed, it is hardly denied; and they were then determined to build the house by contribution. I cannot avoid the impression from all this testimony that there was a design in this to keep it from the proper public authorities and to control it by somebody else. But it is apparent that at least those persons residing in the district, who were not members of the Church, were led to believe and made to understand that this was to take the place of a house built by taxation, and was to be such a schoolhouse as the former would have been. And the meeting called by the bishop a short time after that, of his own Church members, in which he assumed to appoint a committee to select a location, and to take subscriptions, and to carry out the project, to my mind shows that the reason for defeating the tax was the one before stated. As this committee he appointed one of the school board, and the inhabitants of the district had a right to suppose, when they saw that one of the school board was taking active steps to carry out what the meeting had directed, that

it was being done in furtherance of that object, and that he was acting in their interest as trustee. But as soon as Mr. Eastman got his title to the land it was deeded over to the bishop. It is true that this was done in trust for all the inhabitants of the ward; but the ward and school district were identical. It was a matter of interest and necessity to the schools, and if it was a school object there can be no good reason why the trustees of the school district were not the proper persons to hold the title in trust for the inhabitants. It will be seen that at the time that this schoolhouse was built, and these contributions made for that purpose, that there was no such thing in existence as the defendant corporation. That corporation was organized in 1885, and as defendant Lee himself testifies, it was never thought of until within a year before that time. This was in pursuance of a general policy of the Church of Jesus Christ of Latter-day Saints, when their Church organization was about to be dissolved by legislation in Congress. Local Stake organizations were incorporated, and when this was incorporated it included only the Mormon residents of Woodruff; and this property was deeded over to them. The testimony shows that schoolhouses in settlements of this kind are used for all kinds of public social gatherings. This schoolhouse was so used, and it was used for the district school; public moneys were drawn and taxes were levied upon the inhabitants of the district for the purpose of supporting a school carried on in it; and yet the title to it rested in this Church organization, and defendant Lee, as presiding bishop, had full authority and control over it.

It is argued by attorneys for the defendants that, while the statutes provide that school districts shall have the title to their property, that they have no right nor title to other property than that which belongs to them, and that schools may be conducted in rented buildings. This is all undoubtedly true. But when a school that is conducted under the civil authorities of the Territory, is conducted in a rented building, it is or should be rented for a stated period. It is wholly against public school policy, not only of the Territory, but of the entire country, that a church organization or single person should have the constant control of the school buildings. According to the claim set forth by the defendants here, the presiding bishop of the ward had the right to close that school house as against the district school at any hour. He had the right to say whether a social gathering, which was to be held there, was in accordance with his views, and if not, to prevent it. And, indeed, in one instance in this case, it transpires that the house was sought for a perfectly proper use and refused. It was the only place for public gatherings in the settlement; and it certainly is against public policy, and especially public school policy, that anybody shall exercise so absolute a control over the public school property belonging to all the in-