1862. The real question is whether or not this act manifests an intention on the part of Congress to preserve or ignore that right such as it was. We seriously doubt whether Congress had that unlimited control over the property rights of persons upon the public domain, which counsel for the government insists upon. The city of Salt Lake was founded in 1847. In 1850 the territorial government was organized. Congress passed the Organic act and thereby extend an invitation to the citizens of the government to establish their homes in the Territory. Under this invitation citizens took up their abode here in great numbers prior to the passage of the act of 1862. It was of course undisputably necessary that these settlers should found cities and villages at once and enter into possession of portions of the public domain, cultivate, build upon and otherwise improve the same, notwithstanding that neither the townsite law, nor the public surveys had yet been extended over the Territory. In 1862 Salt Lake City was a town of several thousand families, and large sums had already been expended in buildings and other improvements by the inhabitants within the corporate limits of the city. Now it is claimed that Congress had the power in 1862 to have withdrawn all land within the city from sale, and to have driven the inhabitants of the city therefrom. We think it may well be questioned whether such action on the part of the government would not be in violation of that provision of the Constitution which ordains that no one shall be deprived of his life, liberty or property save by due process of law, but it is not necessary for us to decide this question. In our view of this case, if it be conceded that Congress has the authority under the Constitution to perpetrate such an act of cruelty and oppression towards its citizens as that above indicated, it is certainly not to be lightly presumed that the government contemplated any such wrong or injustice.

This brings us to the question of what is the meaning of the proviso "that existing vested rights in real estate shall not be impaired by the provisions of this section."

In Cooley's Constitutional Limitations, page 438, the author says: "But as a shield of protection the term vested rights is not used in any narrow or technical sense, or as imparting legal power or control merely, but rather as impairing a vested interest which it is right and equitable that the government should recognize and protect, and of which the individual cannot be deprived arbitrarily without injustice." It is clear by the decisions of the Supreme Court of the United States that the Church had at the time of the passage of the act of 1862 an interest in the lands in controversy in this action which the law recognized and such as the courts of the government would enforce and protect. It had a right of possession which the court would have enforced against any one who disturbed it in its possession. It had an interest such as it could encumber by way of mortgage, and the Federal courts would have enforced the mortgage. It had an interest such as it could contract to sell and convey, and specific performance of such contract would have been enforced by the courts.

See Stringfellow vs Caine, 99 United States 610.

Hussey vs Smith, 99 United States page 20.

Lamb vs. Davenport, 18 Wal. 307.

An examination of these cases will show that according to the rule established in the Supreme Court of the United States, if in 1861 the Church had entered into a contract with one then an occupant of the tithing house property for the purchase thereof, upon a proper tender being made, the vendor had refused to convey, the courts of the United States would have compelled a conveyance, or had the Church refused to accept a conveyance and make payment according to contract, the vendor could have had a decree enforcing payment. Suppose the Church had acquired the interest which it had in the tithing house property at the time of the passage of the act of 1862 in the manner just suggested, it is clear that it would have had no better or greater interest or right than it in fact had at that time. And yet if the contention of counsel for the Government is correct, the same court which rendered the decree enforcing such contract against the Church would be compelled also to hold that the Church had no estate or interest in the property vested or otherwise. In the case of Lamb vs. Davenport, 18 Wal. 307, the defendant Davenport had acquired possession by purchase of certain lots upon public lands of the United States in the city of Portland, Oregon. After the title had been perfected the owner of the title undertook to recover the property, Davenport defended upon the ground that he was the equitable owner. Mr. Justice Miller in delivering the opinion of the court says: "The equity which Davenport sets up in his cross bill arises from transactions antecedent to the issue of the patent certificate of Lownsdale, and indeed antecedent to the enactment of the Donation law of Congress, under which Lownsdale's title originated. It is not necessary to recite in this opinion all of those transactions. It is sufficient here to say that several years before any act of Congress existed by which title to the land could be acquired, settlement on and cultivation of a large tract of lands, which includes the lots in controversy, had been made and a town laid off into lots and lots sold, and that these are a part of the present city of Portland. Of course no legal title vested in any one by these proceedings, for that remained in the United States, all of which was well known and undisputed, but it was equally well known that these possessory rights and improvements placed on the soil were by the policy of the government generally protected, so far at least as to give priority of the right to purchase whenever the land was offered for sale and where no special reason existed to the contrary. And though these rights or claims rested on no statute or any positive promise the general recognition of them in the end by the government and its disposition to protect the meritorious actual settlers who were the pioneers of emigration in the new territories, gave a decided and well understood value to these claims." And so we find here; the possessory rights of the several occupants, including the Church, of lots in the city of Salt Lake, together with the improvements thereon at the time of the passage of the act of 1862, had a well understood value. And it was this valuable estate or interest which Congress intended to preserve unimpaired by the proviso of section 3 of the act of July 1st. It is evident that it was not the intention of the government by its legislation to disturb or in any manner interfere with any interest, whatever the nature thereof might be, which had been acquired prior to the passage of the act. The act looked to the future only; this much is apparent from the face of it. If we look to the debates in Congress upon the passage of the law, we find that such was unquestionably the general purpose of the framers of this act. Section 3 of the act was an amendment reported by the judiciary committee of the Senate to the House bill. In the Congressional Globe of 1862, page 2506, will be found the statement of Senator Bayard of that committee. In reporting this section without quoting his language it is sufficient to say that he declares clearly the purpose of Congress is to prevent the Church from acquiring any other or further property than that it then possessed, except it be within the limitation of the section. We are aware of the fact that the arguments of legislators in debate on the passage of a law cannot be resorted to for the purpose of giving a meaning to the terms found in the statute, but they may be resorted to in ascertaining the general object of the legislative enactment.

See opinion of Justice Field in Ah Kow vs Noonan, 5 Sawyer, 560.

Again, this is a penal statute, and according to a fundamental rule of interpretation it is to be strictly construed against the government, and it is to be liberally construed in favor of the person or corporation sought to be charged with its penalties. As was said in Chase vs. N. Y. Central R. R. Co., 26 N. Y. 525: "In statutes giving a penalty, if there be reasonable doubt of the case made upon the trial or in the pleadings coming within the statutes, the party of whom the penalty is claimed is to have the benefit of such doubt." Now if this proviso is not intended to preserve and protect just such a right as the Church had in this parcel of land, it is entirely clear that there is nothing which it could preserve or protect, and this must have been known to Congress. While the language of the section is general, it is a matter of common knowledge that it was aimed at the Mormon Church in Utah. As was said by Mr. Justice Field in the case just cited in the 5th Sawyer, "The class character of this legislation is none the less manifest because of the general terms in which it is expressed. We cannot shut our eyes to matters of public notoriety and general cognizance. When we take our seat upon the bench we are not struck with blindness and forbidden to know as judges what we see as men, and when an ordinance so general in its terms only operates upon a special race, sect or class, it being universally understood that it is to be enforced against that race, sect or class, we may justly conclude that it was the