

to be disposed of according to the objects for which it was given. If any of these objects are impossible or illegal, then there are two doctrines which the court of chancery will invoke; that is, if there is no indication of any other use to which the charitable funds shall be appropriated, then they invoke the doctrine of approximation or the doctrine of *cy-pres*—and perhaps you are all familiar with it—which says the chancellor should appropriate the property to some charitable use as nearly approximating the object of the donor as possible.

If, however, there are several charities embraced in the use, or rather several uses are embraced in the same charity, the charity never dies, and if several of the uses of the same charity are legal and others illegal, then the court of chancery—and the books are full of authority upon that subject—the court of chancery will devote the fund to the legitimate use for which it was given; it will destroy or ignore the illegal use, but will devote the object of the charity to the legal uses. If the trustee dies, then the State becomes the trustee, and acting through the chancellor, it disposes of the fund according to the intention of the donor. The death of the trustee, as you all know, never defeats a charity; it is perpetual, and it is the only thing which is perpetual. Charities are perpetual because they are not devoted to any particular individual, but they are devoted to the purposes which are for the use of all individuals, either in the public community to which use is granted or to a particular church, denomination or sect, or whatever it may be to which use is granted, so the charity itself never dies. The court of chancery never permits a charity to die.

Now my objection to this bill, if you please, is this: It is an attempt on the part of the Congress of the United States to divert a charitable use to other than that to which the use was intended. Now the subject of education, and the relief of the poor, and the subject of hospitals, and the relief of the disabled and sick, infirm or aged—all these are legitimate subjects of charity we all know. Where a particular fund has been donated by the members of a particular church, or a particular class of persons to support the poor, and relieve the distressed, and educate the children, and build churches, and build school-houses, it cannot be diverted to some other use, or for the benefit of some other person. A charity given to the inhabitants of the city of Washington to support the poor of the city of Washington cannot be used to support the poor of the city of Washington and the poor of the city of Philadelphia. The object of the donor must be carried out; property intended for one purpose cannot be diverted to another. In other words, the object sought to be established by the Senate bill is the same in principle as if the legislative department would undertake to give the property of A to B for some good reason as they suppose, or to make a

will after the death of the testator, which has been undertaken as you know by some legislatures of some States, and all such cases have been pronounced unconstitutional and void. The property was given to a corporation which has been in existence for thirty odd years, and it was given to them for religious and charitable uses. The religious uses have been pronounced illegal and void. The corporation is abolished, but the charitable uses remain.

The Chairman—Are the charities specified?

Mr. Broadhead.—No, sir; there is the difficulty here. The question was not raised before the Supreme Court; if the charities or uses had been specified in the case which is before the Supreme Court, then the Supreme Court would doubtless have made some provision in regard to them, because Judge Bradley's opinion justifies this conclusion, and I will read from his opinion.

The Chairman—Do I understand you to concede that legal education is a matter of charity?

Mr. Broadhead—Yes, sir, unquestionably; I presume that there is no question about that; but the object of the donor's intention has to be taken into consideration.

The Chairman—One thing more. Is there any evidence of that donation in writing?

Mr. Broadhead—Oh, no sir; not at all.

Mr. Wilson—These were simply given to the Mormon Church as a corporation.

Mr. Broadhead—These were given from time to time and year to year, according to the findings of the court in this case, and the question was whether the court had the power to dissolve the corporation and whether it had power to divert its funds from the charitable uses intended. I may mention, in this case, brought by the Government of the United States against the Church of Jesus Christ of Latter-day Saints for the purpose of dissolving this corporation, there was an intervening petition filed by a large number of the members of the Mormon Church, praying that if the corporation should be dissolved the fund should be devoted to the members of the Mormon Church for the charitable uses for which it had been donated. They come in and pay tithes; for example, some pay in money, some in wheat, some in corn, some in stock, sheep, cattle, etc., so much every year, which goes into the common fund. This is sold and dispensed to the poor from time to time, and that is the way this charity originated, and it is held for the purpose for which it was originally intended.

Mr. Rogers—I am entirely in the dark about this, except as you go along, and, if you will pardon me, I would like to ask you a few questions now and then for the sake of information. Did this intervening petition to which you have just alluded, and applying in this case, show or prove whether or not this fund, which became a common fund, was devoted from year to year to these specific purposes to which you

have alluded—to the schools and charities, etc.?

Mr. Broadhead—It did not, because these questions were not necessarily involved in the issues then before the court.

The Chairman—What is the fact in regard to that?

Mr. Broadhead—Here is the fact in regard to it. I requested them to send me a statement of the disposition of the fund during the last year, 1889, and here I have it under oath and seal:

*Statement of disbursements made by the Church of Jesus Christ of Latter-day Saints during the year 1889, to the following accounts, viz:*

Poor (whites and Indians).....	\$129,000
Temples.....	116,000
Meeting-houses.....	24,000
Schools.....	51,000

\$320,000

TERRITORY OF UTAH,  
County of Salt Lake, ss.

Personally appeared before me, the undersigned, a notary public in and for the county of Salt Lake, Utah Territory, James Jack, chief clerk for the First Presidency of the Church of Jesus Christ of Latter-day Saints, and being by me first duly sworn, deposes and says: The foregoing statement of disbursements of funds for the year 1889 to the several accounts therein named by the Church of Jesus Christ of Latter-day Saints is true and correct, as shown by the books in my possession.

JAMES JACK,  
Chief Clerk.

Subscribed and sworn to before me this eighth day of July, A. D. 1889.

[SEAL] L. MOTIL IVERSEN,  
Notary Public.

Mr. Rogers—Then under that statement all things are declared illegal except disbursements for poor whites and Indians?

Mr. Broadhead—No, sir.

Mr. Rogers—Would not the churches, temples, and what are the others—

Mr. Broadhead—I will read the act and show the basis of the suit brought by the Government of the United States; it is found in sections 13, 17, and 26 of the act of March 3, 1887, which I have printed in the brief I had before the Supreme Court and which will explain it. Section 13 is as follows:

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 first day of July, eighteen hundred and sixty-two, entitled "An act to punish and prevent the practice of polygamy in the Territories of the United States and other places, and disapproving and annulling certain acts of the legislative assembly of the Territory of Utah," or in violation of section eighteen hundred and ninety of the Revised Statutes of the United States; and all such property so 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 ground appurtenant thereto, which is held and occupied exclusively for purposes of the worship of God, or personage connected therewith, or burial ground shall be forfeited.

Now, that refers to real estate alone and it provides for the forfeiture of real estate for any violation of the provisions of the act of 1862. Proceedings have already been instituted before the Territorial courts to forfeit that real estate on the ground they held more than authorized under that act of 1862.

Now, I want to call your attention to the distinction between per-