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THE DECISION AND DISSENT.

WE present in this issue the decision of the Supreme Court of the Territory on the matter of the application of the Receiver in the suits planted by the United States against the Church for an order for certain personal property alleged to belong to it.

The dissenting opinion of Chief Justice Zane also appears. Upon the question at issue the latter is clearly right. The main point made by him is invincible and invulnerable. It is a plain statement of a constitutional principle of law universally acknowledged and established.

The property in question is in the hands of an incorporation not a party to the suit and which lays claim to it by right The remedy of the Receiver was a suit against the party in possession and asserting the claim. The peremptory order authorizes the seizure of the property without the holder of it being given an opportunity to be heard in court. This is simply confiscation, and must be illegal. It is as plain an infringement of a constitutional principle as ever was perpetrated under legal color. It is depriving the citizen of property "without due process of law."

That is the point in a nutshell, and no amount of judicial sophistry can place it in any other shape.

We look upon the escheating provisions of the law under which the whole proceedings have been brought as so much machinery for the purpose of perpetrating a legal robbery upon an unpopular religious community. The granting of such an order as that given to the Receiver yesterday goes outside of the bounds even of that or any other law on the statute books of the United States. No authorization for such a proceeding could exist on the face of any law, for the reason that a statement that would give it would be directly in conflict on its face with a fundamental provision of the Constitution. That safeguard was placed there for the very purpose of preventing the citizen from being plundered by summary process, in place of the process of the law.

Chief Justice Zane has, on many questions, exhibited an understanding of legal principles that has done him credit. In such instances he goes beyond the surface, probing the phases presented with incisive and analytical perception. The occasion under consideration is a case in point.

FRENCH AFFAIRS.

WHILE it is true that, aside from such demonstrations as street disturbances, no sensational occurrences attended, or have thus far followed, the election of Boulanger to the Chamber of Deputies, he has, seemingly, found it necessary to write a reassuring letter, protesting that he is opposed to the schemes of aggression which the Republic of France has been charged with entertaining. The main object of this epistle was doubtless to deny that he, Boulanger, was in favor of war, or was seeking to bring one about.

Were a bank cashier, to rush into print for the purpose of disclaiming any intention to embezzle the funds in his charge, the suspicion which he was seeking to avoid or forestall, would very likely be created by such action In some quarters Boulanger's letter will have a similar effect. If Boulanger would not be in favor of attempting to retrive Alsace and Loraine should Germany become sufficiently distracted at home, or so embroiled with Russia as to make such a move feasible and safe, then he is not the man his countrymen want and have supposed him to be.

The French nation is just now considerably exercised over the proposed changes in its constitution, but the dispatches have failed to state distinctly the nature of the amendments which are being urged. One thing seems apparent: The political condition of the republic is in a confused condition. It is reported that the present ministry will be likely to resign shortly, and that it is impossible to foresee what may then occur. The question is anxiously asked, Is Boulanger the man to create order and confidence out of this state of chaos and uncertainty?

A SINGULAR DISCUSSION.

A PECULIAR discussion took place in yesterday's session of the General Conference of the Methodist Church, now being held in New York. The question was on the admission of certain ladies as lay delegates to seats on the floor of the assembly. The committee to which the subject was referred reported adversely to the proposition, and a lively debate ensued. The position taken by the committee prevailed.

We have nothing to say with regard to the manner in which the Methodist Church conducts its business. That is its own affair. The public outside of its own pale have nothing to do with it. It would be well if this attitude was assumed with regard to the Church of Jesus Christ of Latter-day Saints, with whose internal business every busy-body, religious and otherwise, considers it his prerogative to interfere.

It is interesting as a fact, however, that the question is likely to cause not only a good deal of feeling in the ranks of the Methodists, but perhaps no small degree of defection. It appears that at a District meeting of the Woman Suffrage Association a resolution was adopted to the effect that it is the duty of every woman to withdraw from any church whose pastor resists the action, on this subject, of the General Conference of the Methodist denomination.

This resolution appears to be based upon the presumption that Methodism has an exceedingly slight hold upon those who have accepted it as the religion of their choice. It seems at this distance that if the ladies desire a reversal of the action of which they complain, this could hardly be done by belting from the denomination. An inside influence is infinitely more potential in the generality of things than an outside pressure.

THE INDIANS' LANDS ARE WANTED.

A FEW days ago, a press dispatch from Great Falls, Montana, described the eagerness with which the opening of the Blackfoot reservation was awaited at that place and throughout Northern Montana. A bill had passed both houses of Congress, providing that the reservation should be thrown open to settlers, and was awaiting the signature of the President. A large number of persons had gone upon it to locate ranches, mines and townsites. Desirable valleys on the reservation were fairly covered with tents, occupied by both soldiers and civilians, who were awaiting news that the bill had been signed, on the receipt of which there was to be a grand scramble for the lands which were being taken from the Indians.

There now seems to be a probability that similar proceedings will be witnessed in Uintah Valley in the eastern part of this Territory, before many months. For two or three years machinations have been in progress, looking to the robbing of the Uintah Indians of a portion of the rich, fertile and beautiful country embraced within their reservation. Such a degree of success has attended this wire-pulling, that a bill to revert to the public domain a portion of the Uintah Reservation has passed the House and been placed upon the Senate calendar.

Stock men in Eastern Utah and Western Colorado are believed to be the prime movers in this scheme for despoiling the Indians. The latter have made considerable progress in the art of agriculture, and many of them raise crops on farms which they cultivate with a degree of industry. True, in respect to this virtue, they bear no comparison with the white settlers, but when it is remembered they existed in the very depths of barbarism but a few years ago, the progress they have made is very encouraging. They have engaged in stock raising more readily and extensively than in farming, and many of them own large numbers of both horses and cattle, which is an additional reason why their reservation should be preserved intact, for it is none too large for their present and prospective needs.

Uintah Valley is probably the most beautiful and desirable section of country within a radius of hundreds of miles. It has an even, balmy climate, which is delightful in the extreme. It is well watered by the Uintah and Duchesne rivers and their numerous tributaries, which are generally large brooks, flowing through a rich prairie country, and which could easily be diverted for purposes of irrigation. The land is very rich and fertile, and mile after mile of it is natural meadow. Timber is abundant and easily accessible, and the region abounds in resources well calculated to tempt the cupidity of would-be settlers.

But it is a shame that the avarice of the white man should forever be permitted to triumph over the rights of the Indian; and if the lands of the Uintahs shall be given to the schemers who are now seeking to gain possession of them, a glaring wrong of the most shameful character will be perpetrated; unless, indeed, the Indians shall be amply remunerated, a thing not at all likely to be done. The whites who want the Indian's lands have no difficulty in reaching the ears of congressmen with their pleas and arguments; but the red man has no lobby operating in his behalf. He has no means of presenting his side of the case, to the lawmaking power of the country. In his ignorance and poverty he falls an easy prey to the avaricious frontiersman who covets his fertile lands and fine stock ranges.

DISPOSAL OF THE SEWAGE.

THE disposal of sewage, that great problem of modern times, in large cities, has not by any means been solved in this city yet. The plan to run the sewage into the Jordan, to be thence conveyed to the lake, is meeting with serious impediments. The people dwelling upon the banks of the stream, who are dependent upon it for water for domestic purposes, loudly and naturally protest against its being made a conduit for the filth of this city. In number the persons protesting are not great, but in the legal bulwarks behind which they stand entrenched, they are likely to be found strong enough to make a good fight against what they regard as encroachments upon rights which are vital to their welfare.

Since the year 1850 a new common law upon the subject of water, or riparian rights, has been slowly crystalizing in the western part of the United States to which part of the world it is peculiar. This law had its origin in local customs which became established with the settlement of the region named, and those customs in turn were founded in the vital necessities of the settlers. Summed up into a few words, the law referred to may be thus expressed: The first appropriator of the waters of a natural stream to any useful purpose is the owner of those waters to the extent of his appropriation. No matter to what purpose the water is applied, so long as it is a useful or necessary one. It may be hydraulic mining, manufacturing, or the supplying of the residence for domestic use, as well as irrigation.

So firmly has this law become established upon the Pacific Coast that the courts of California have set aside legislative enactments which conflicted with it, thus giving to it the strength and enduring character of organic law. A brief argument only would be required to show that a sound public policy demands the preservation and perpetuation of this rule. Viewed from this standpoint, the position of the settlers upon the banks of the Jordan will appear to be a strongly fortified one, from which it will be difficult to dislodge them.

In addition to this common law of water rights, there are statutory provisions in this Territory which still further strengthen the position of the settlers along the Jordan. Among these are the sections of the penal code relating to nuisances, and the following section of the fish and game law:

"Sec. 6. Every person who puts into the waters of this Territory any poisonous or explosive substance, or anything that is injurious to fish, or that renders the water unfit for household purposes, is guilty of a misdemeanor."

A number of persons and firms have invested capital in the business of manufacturing salt, and some of them have established their works near enough to the mouth of the Jordan to strongly suggest the probability of sewage impurities being mixed with the salt they produce. If the latter were designed exclusively for mining purposes this would not matter, but the fact that vast quantities of table salt, and of the coarse article used for preserving meat, etc., are produced from establishments not very far from the mouth of the Jordan, makes it evident that to transform that stream into a channel for sewage would work disaster to the business of those establishments. Would not a court of equity be bound to protect the latter against such injury to or the possible destruction of their business?

Unquestionably the salt consuming public will insist upon having their seasoning and sewage separate; and the faintest suggestion that a given brand of table salt has imbibed any extra qualities by reason of having been manufactured near the mouth of a stream with whose waters is mingled the sewage of a large city, would be likely to drive that brand out of the market. In such a case would its proprietors have no recourse? A business which has been lawfully established cannot be lawfully destroyed without compensation to its owners. Such at least would seem to be a sound rule of law and equity.

The number of people who would be affected in regard to their domestic water supply by the fouling of the Jordan is stated to be between 75 and 100, and the number of persons engaged in the manufacture of salt on the shores of the lake who would be damaged by turning the sewage of the city into that stream are still fewer. But the rights of this handful of citizens is just as sacred as are those of the whole community; and any sentiment which sanctions the subversion of the rights, even of the few, for no other reason than that the convenience of the many seems to require it, is un-American, and repulsive to every citizen who has reverence for constitutional methods, or the principles of a free government.

Reverting again to the law of water rights, there is no law or precedent for condemning an individual's right to the waters of a natural stream, for the benefit of the public. Real estate may be treated in this way, but such property as a water right cannot. It appears, therefore, that, in order to make the river Jordan a conduit for sewage, the city council will require to obtain control of the stream from the point where the sewage flows into it, to its mouth, much in the same manner in which the corporation obtained possession of City Creek. This, however, would leave the salt manufacturing problem still unsolved.

If it be granted that the laws of man, involved in this sewerage question, as above set forth, can be set aside, evaded, overridden, or otherwise disposed of, there are laws of nature also involved in it which threaten to be insuperable. In high water time the Jordan river rises from six to seven feet, spreading all over extensive tracts of the flat lands lying along its eastern shore west of the city. It fills the canal on Seventh West Street so that for weeks at a time there is no current in it. A similar statement may to some extent be relatively made though not so forcibly regarding the canals on Ninth and Sixth South Streets. This state of facts gives rise to the suggestion that, at a certain season of the year, instead of the contents of the sewer pipes flowing into the Jordan, the latter will flow into the sewer pipes, the fall being in favor of the high water in place of the emptying point of the pipe.

The above is not written in a captious spirit, nor for the purpose of discouraging the project to provide a sewerage system for this city, which must be established. Beyond question, we should have sewerage. But we have deemed it proper to present some of the obstacles to some of the plans for disposing of the sewage, which have been proposed.

SEIZURE OF PROPERTY.

Chief Justice Zane Says it is Without Due Process of Law.

BUT JUSTICE BOREMAN AND HENDERSON ARE A MAJORITY OF THE COURT.

PROPERTY OF THE CHURCH ASSOCIATION OF THE SALT LAKE STAKE TO BE SEIZED.

The following is the full text of the decision of the majority of the Territorial Supreme Court, in the application of Marshal Dyer, as Receiver, to have turned over to him $12,000 worth of personal property, belonging to the Church Association of the Salt Lake Stake of Zion, and in the hands of Presiding Bishop Wm. B. Preston:

In the matter of the application of the Receiver to have certain personal property turned over to him. Opinion being by Associate Justice Boreman, Associate Justice Henderson concurring:

In this suit, brought to wind up the affairs of the late corporation of the Church of Jesus Christ of Latter-day Saints, a Receiver was appointed of the property and effects of said late corporation, and the Receiver has filed his petition herein, alleging that certain personal property of said late corporation is in the possession of certain of the defendants, namely, John R. Winder, Robert T. Burton and William B. Preston, and prays that an order be made commanding said defendants to deliver the property to the Receiver. Said defendants, Winder, Burton, and Preston, answer to said petition, denying that Winder or Burton has possession of said property and denying that Preston has possession of it in the capacity of agent for said Church, or for any of the defendants, and they allege, as further and separate answer, that on the 28th of February, 1887, John Taylor was Trustee in-Trust for the said Church, and was in possession of said property, and assigned and delivered the same to another corporation called the "Church Association of the Salt Lake Stake of Zion," and that said Association, on the 12th day of March, 1887, assigned, transferred, conveyed and delivered said property to Wm. B. Preston, Presiding Bishop of said Church, in trust, to be used and employed in the

CONSTRUCTION OF THE SALT LAKE TEMPLE,

said temple being owned by the said Church of Jesus Christ of Latter-day Saints, and at all times used exclusively for religious purposes; that said Preston, Presiding Bishop, then took possession of said personal property, except such as had been expended in the use and construction of the Temple, and that such property now in his possession is being used for said designated purpose and none other. Upon the issues thus raised a large amount of testimony has been taken, from which it appears that this property had come into the possession of John Taylor as Trustee-in-Trust for the Church of Jesus Christ of Latter-day Saints, that the purpose of the members of that Church in donating the property was that it be used to aid in the construction of the Salt Lake Temple; that said Taylor, as such Trustee-in-Trust, executed a transfer of said property to the Church Association of Salt Lake Stake of Zion, a corporation within the said Church, and in said transfer, the conveyance was treated as creating a trust in the association, for the purposes therein specified and amongst such purposes was the construction of the temples; and after this association had acted a few days in the matter, it in turn, conveyed the property to William B. Preston, Presiding Bishop of said church, in trust to aid in the construction of the Temple, it being understood, as the witnesses state, that the property

WAS ORIGINALLY DONATED

for that purpose. The purpose for which the property was to be used was not changed by any of the transferees. It was used by each holder or possessor for aiding in the construction of the Temple.

The defendants contend that the Receiver's power is confined and limited to the rights of the corporation of the Church of Jesus Christ of Latter-day Saints, at the date of its dissolution. The Receiver's power is no doubt confined and limited to such property as the corporation owned at the date of its dissolution, but it would not follow that the Receiver's power is confined and limited to the rights of the corporation at the date of the dissolution. The late corporation, or John Taylor its Trustee-in-Trust, might not have had the authority to impeach the assignment or transfer to the church association, yet it would not follow that the Receiver might not have that power. It is urged that he can have no such power, because he simply represents the Court, and that the Court's authority is in the nature of that of an administrator, and it represents only the deceased person. If the statement were correct that the Receiver represents only the late corporation, perhaps he could not attack the transfer to the Church Association; but the fact is that the Receiver

REPRESENTS OTHER INTERESTS

than those of the late corporation—it represents the government, and it represents all who have interests in the property. The Receiver does not come in as the appointee or the successor of the late corporation. He comes by the authority of the law, to act for the Court in holding and possessing the property of the late corporation, subject thereafter to distribution or disposal, according to law and the rights of parties. The Court is in no sense the representative of the late corporation. The Court takes charge of the affairs of the late corporation under an act of Congress, for the purpose of winding them up, the corporation itself having become defunct. The Receiver acts for the Court, and although the assignment to the Church Association may be good between the parties, yet if the assignment or transfer were illegal, the Receiver can impeach it by reason of its representing other interests than those of the dead corporation. It must be legal and valid against all parties, to preclude the attack

Porter vs. Williams, 9 N. Y. 142. The assignment is in the nature of a gift for certain trust purposes.

The matter for our consideration then at this point seems to be, as to the

ASSIGNMENT OR TRANSFER

made by Taylor, Trustee-In-Trust to the Church Association, illegal? The transfer is dated the 28th day of February, 1887, but no delivery or notice thereof to the assignee took place, or is claimed to have taken place until the 2d day of March following. Whether there was any delivery of the transfer or assignment on the 2d day of March is not clear from the evidence, yet if it took place on the 2d of March, the further inquiry arises as to whether there was a delivery of the property on that day. A delivery at any subsequent time could not have taken place, as with the 2d day of March, the life of the assignor corporation went out, and its existence ceased. No single witness swears positively that there was a delivery of the property on that day. Some attempt so to do, but before closing their testimony, the inconsistencies and indefiniteness of their statements leave the question in doubt. Mr. A. M. Cannon, who seemed to act as the representative of the Church Association in the matter,

REFUSED TO ACCEPT

the possession of the property until it was listed to him, and that was not done for several days after the 2d of March. He took control in the office on the 2d of March, but nothing further was done on that day. He claimed to have taken possession on the morning of the 2d of March, but was not positive. He was positive that he took possession in the morning of some day. If such was the fact, it would follow that the accounts should have begun on that day, and that the workmen who were operating under him should have had their pay for that day. But as appears from the pay rolls in evidence their pay began on the 2d of March. The inference from this is that he took charge of the office on the 3d of March. The evidence taken as a whole, does not show that Mr. Cannon took possession on the 2d of March, but rather at a subsequent day. No one could deliver the property to him at any subsequent day. The corporation itself having gone out of existence, no one had authority to act for it. But at a subsequent day he did undoubtedly have possession as the president of the Church Association, and retained it for several days. The transfer to the Church Association did not purport to give an absolute title to the association, but a title for certain purposes. The association was to hold the property in trust with the privilege of appropriating it

FOR TEMPLE PURPOSES

or other specified purposes. It was authorized under the transfer to use the property for the erection or to aid in the erection of the Salt Lake Temple, a piece of property belonging to the late corporation. It did so appropriate it by transferring and assigning it to William B. Preston, presiding