

this decree the defendant and the intervenors, George Romney and others on behalf of themselves and all other members of the late corporation appealed to the Supreme Court of the United States. The latter court affirmed the decree appealed from except the part relating to the personal property; and held that the personal property could not be appropriated to the purpose to which it had been dedicated because the same was, in whole, or in part, contrary to law or opposed to public policy; that there did not exist any person or persons, natural or legal, legally entitled to any portion of it as successors in interest to the Church, and that it had devolved on the United States, and not being lawfully applicable to the purposes to which it was originally dedicated or for which it had been acquired, and to which at the commencement of this suit it was being devoted by the corporation and its controlling authorities, the same ought to be limited and appointed to such charitable uses, lawful in their character, as should most nearly correspond to those to which it was originally destined, to be ascertained and defined * * * by reference to a master for due examination, enquiry and report thereon, subject to the approval of the court, and to be established, administered and carried out in such manner and according to such scheme as may be approved by the court."

The case was remanded to this court with directions to modify its decree as above directed "and to take such further proceedings as to law and justice may appertain in conformity with the opinion."

In conformity with this opinion of the Supreme Court of the United States and its decree, this case was referred to the Master. And two schemes were presented to him. One by the defendant's solicitors proposing to vest such personal property in the First Presidency of the Church, in trust for the relief and assistance of its poor members needing pecuniary aid, and for the erection, repair and maintenance of houses of worship of people of that faith and limiting the use to these two purposes.

The other scheme proposed by the solicitors of the United States would vest this property in a commissioner appointed by the court to be used by him for the benefit of the public schools of the Territory.

The Master has reported this last plan and recommends its approval by the court. To which the defendant's solicitors object and ask us to approve their scheme, and plaintiff's solicitors insist upon the one recommended by the Master.

Behind the legal title to the funds in controversy in the late corporation, lie beneficial rights belonging to natural persons. Out of the confidence reposed in the church officials who controlled them, an obligation that they would faithfully apply these funds according to the general understanding of their contributors. The Supreme Court of the United States in its opinion directing these proceedings said: "The property in question has been dedicated to public and charitable uses. It matters not whether it is the product of private contributions made during the course of half a

century, or of taxes imposed upon the people or of gains arising from fortunate operations in business or appreciation in value; the charitable uses for which it is held are stamped upon it by charter, by ordinance, by regulation and by usage in such an indelible manner that there can be no mistake as to their character, purpose or object."

Mormon Church vs. United States, 156 U. S. p. 50.

In its opinion the court does not distinguish and consider singly and separately the various charitable objects to which the property in controversy was dedicated. In fact the inquiry by the trial court had not gone that far; they were considered in a lump (so to speak) and the whole lump appears to have been regarded as tainted with polygamy. The court, on appeal, could not look at the merits of each object of charity separately, because the findings of the evidence did not disclose the object singly or their peculiar merits.

In his inquiry the Master advanced, and we are permitted to see the objects to which the fund had been devoted. In the light of the evidence reported by him we can distinguish the good from the bad, the worthy from the unworthy, and understand to which, and in what proportions the Church authorities had applied the fund before it was taken out of their hands.

It appears from the evidence reported by the Master that George Q. Cannon testified, "That he was first counselor to Wilford Woodruff, President of the Church, and that he was familiar with the purposes for which contributions creating the fund were made for many years; that they were voluntarily made for religious and charitable purposes; that appropriation and distribution of it was left to the First Presidency, and the proceeds were expended on temples and places of worship and for the poor and such charitable objects as arose; that the First Presidency in their appropriations of this fund were limited to Church purposes; that the custom has been for the First Presidency to submit to the semi-annual conference of the Church a report showing the appropriations and their purposes, and such reports were approved by that body." This testimony was corroborated by the testimony of other officers of the Church and there was no evidence contradicting it.

The Master in his report states that the "allegations that ever since the organization of the Church and down to the time when the fund was taken possession of by the receiver herein, the fund has been managed, controlled and disbursed by and under the direction of the First Presidency of the Church, and was devoted and applied solely to the religious and charitable uses in which the Church and the members thereof were interested; that much the larger part of the fund had prior to March 3rd, 1887, been devoted to the building of temples, meeting houses and other places of worship for the members of the Church and for the relief of its poor and distressed members, their families, and to the widows and orphans of such members who were in needy and distressed circumstances, were in the main

supported by the evidence adduced before him."

It also appears from the testimony that about \$75,000 per annum had been appropriated out of this fund to assist the poor previous to the time it was placed in the hands of the receiver, and about \$50,000 per annum to the erection and repair of places of worship, and that as much will be required in the future.

The money and personal property in the hands of the receiver and to be disposed of by the court is about \$400,000. The money donated to assist and relieve the poor and erect places of worship and maintain and repair them are for charitable uses.

The St. of 43 Eliz. c. 4, is regarded as the highest standard by which to determine charitable uses and purposes.

Among the objects mentioned in that act as charitable is "relief for the aged, impotent and poor people;" donations for "schools of learning, free schools, repair of churches;" and for "aid or ease of any poor inhabitants;" and for "house of correction;" many other purposes and objects are mentioned as charitable in this statute.

The statute has been liberally construed by the courts.

In the case of Jackson vs. Phillips and others, 14 Allen, 554, the court said: "Charities are not confined at the present day to those which were permitted by law in England in the reign of Elizabeth. A gift for the advancement of religion or other charitable purpose in a manner permitted by existing laws is not the less valid by reason of having such an object as would not have been legal at the time of the passage of the Statute of Charitable Uses. For example, charitable trusts for dissenters from the established church have been uniformly upheld in England since the Toleration Act of 1 W. & M. c. 18, removed the legal disabilities under which such sects previously labored."

Attorney General vs. Hickman, 2 Eq. Cas. Ab. 193.

Loyd vs. Spillet, 3 P. W. 344.
S. C. 2 Atk. 148.

Attorney General vs. Cock, 2 Ves. Sen. 278.

And in this country since the Revolution no distinction has been made between charitable gifts for the benefit of different religious sects."

While the Master finds in substance that the fund was devoted and applied by the Church solely to the religious uses of the Church, and much the larger part of it to places of worship for its members, and to the relief of its poor and distressed members and their families and to widows and orphans of such members in needy and distressed circumstances, he reached the conclusion "That all the uses to which this property had been applied rested under the condemnation of the decree of the Supreme Court of the United States; that it had been adjudicated that the property cannot go back to any of such uses." If this conclusion as to the effect of that decree is correct, then the scheme proposed by which the fund would be devoted alone to assist poor, distressed and needy members of the Church, its widows and orphans and to aid in the construction and repair of its houses of worship must be denied.

The court having found in its decree