THE NEW EDMUNDS BILL.

SPEECH OF SENATOR VEST.

NO PARALLEL TO SUCH LEGISTATION.

In the United States Senate January 7th, Mr. Vest made the following remarks on the subject of the Government trustees for the "Mormon" Church corporation:

Mr. Vest—I move to strike out all of section 16 after the word "law" in line 5. This section as it reads now is:

SEC. 16. That it shall be the duty of the Attorney-General of the United States to cause such proceedings to be taken in the Supreme Court of the Territory of Utah as shall be proper to dissolve the said corporation and pay the debts and to dispose of the property and assets thereof according to law.

The remainder, which I propose to strike out, is in these words:

Said property and assets, in excess of the debts and the amount of any lawful claims established by the court against the same, shall escheat to the United States, and shall be taken, invested, and disposed of by the Secretary of the Interior, under the direction of the President of the United States, for the benefit of common schools in said Territory.

I have no disposition to continue the discussion of the bill. It seems to me, as a lawyer, that when the Senate enacts that this property shall be disposed of according to law, that accomplishes all that can be demanded of the most extreme and inveterate enemy of polygamy or of any other institution in this Territory. That leaves the question to the courts, and I cannot, as a lawyer, give my assent to this extraordinary legislation which takes the property of any corporation that has a legal existence and disposes of it, and takes the money and puts it into the Treasury of the United States and applies it to any purpose that Congress may designate.

If there is any parallel to this legislation on the statute-books of the United States I am utterly ignorant of it, and I should be obliged to any lawyer who would point me to anything like it.

A great deal has been said here about the common law of England. The ancient rule in England was that when a corporation ceased to exist its real estate escheated to the Crown and its personal property, after paying off the debts, went back to the donors. But that is not the law in the United States, as I understand it. The Senator from Vermont, I take it, will hardly say that that obtains in any of the States of the Union or in any of the Territories of the Union.

If this property is disposed of according to law by the courts, that is sufficient. But you go further than that in this legislation, and after paying the debts of the corporation the balance of the money is arbitrarily seized by Congress and perverted to an object never contemplated by the original purpose of the corporation itself.

One question in the case is, Has this corporation a legal existence? It was incorporated under the laws of the Territory of Utah, there being a provision in the enabling act which that said all legislation of the Territory should remain valid until disapproved by Congress. This act has stood without any disapproval by Congress, and these people have acquired certain rights under it.

Mr. Conger. Allow me to say that I think in regard to Utah the Senator is mistaken. That provision, that the Territorial laws should not have force in certain Territories until approved by Congress, was in several acts, and within a very short time, a few years, the restriction has been removed from some of the other Territories and left in regard to Utah, the others making it the duty of Congress to disapprove by a positive act and this requiring an approval. If I am not mistaken that is the condition of the law in regard to Utah.

Mr. Vest. Mr. President——

Mr. Edmunds. If the Senator will pardon me, I think I can state to the Senator from Michigan what the law about Utah is. According to the organic act, as I read it, the laws of the Territorial Assembly in Utah are valid until disapproved by Congress, and we propose in the fifteenth section to annul and disapprove of the Territorial law creating this emigrating corporation.

Mr. Vest. I believe I stated it correctly. I have the book before me, but I have lost the place.

Mr. Edmunds. That is the law.

Mr. Vest. Then this corporation has had a legal existence. The Senator from Vermont states that there are no stockholders. What may be the meaning exactly of a stockholder, do not know, but this corporation was established for the church and the church is the sole stockholder. The language of the act of incorporation shows that. It is exactly on a par with the creation of this sort of commission on the part of the denominations in the United States. The Methodist Episcopal Church meets and creates certain commissions to take charge of certain property which is put into the hands of agents; they manage it, but the real owner is the church. In this act of incorporation to which no assent of Congress was necessary, this Church of Jesus Christ of Latter-day Saints in Utah were recognized, and they appointed certain commissioners to take charge of the property, manage it, pay the taxes and control it for the benefit of the church.

Until disapproved by Congress that is as valid a corporation as any in the United States. If that is not a vested right, I know not how a vested right can be created. If we provide that whatever remains after paying the debts shall be distributed according to law, we do simple justice. On the other hand, if we adopt the latter part of the section, I undertake to say it is anomalous, without a parallel, in violation of the jurisprudence of this country. How a lawyer can look upon it with anything else than distrust, is beyond my comprehension.

Mr. Edmunds. If my friend from Missouri were correct in his estimate of the nature of this section, I should be inclined to agree with him; but I think he has not studied it with his usual care. First, I may say I think he is mistaken about the act incorporating this emigrant company, as it is called, but the statute-book is gone out, and I cannot refer to it at this moment; but I am pretty sure in what I say, that the Church is not a stockholder, nor is anybody else; it is an entirely independent concern. It is true that the First President of the Church, the one-man despot there, controls this corporation.

Now, coming to the precise point of striking out this last clause, if you stop where the Senator wishes to stop, "dispose of the property and assets thereof according to law," then you will have given back, it is true, to the donor the real estate if he turns out to be entitled to it, and to the United States the personal estate of it turns out to be entitled to it, after payment of debts, and there you will have stopped, and whatever there is to which private persons are not entitled, or corporations or anybody else are not entitled, shall go into the treasury of the United States, into its general funds. The Committee on the Judiciary did not wish it to go into the United States treasury. They wished to devote it to the promotion of education in that Territory. So we say that—

Said property and assets—

That is what the Senator wishes to strike out—

in excess of the debts and the amount of any lawful claims established by the court against the same, shall escheat to the United States.

And be devoted to the use of schools in that Territory. The last part of the section is essential to dispose of any residue, after all claims of every kind are disposed of, of this property that may be left. Striking this out, it goes into the Treasury. Leaving it in, it goes to the use of common schools in that Territory.

The President *pro tempore*. The question is on the amendment of the Senator from Missouri [Mr. Vest].

Mr. Vest. I want to settle one question. I have before me the act of incorporation. This is the amendatory act under which it is now operating, in the compiled laws of Utah. This act says:

Be it ordained by the General Assembly of the State of Deseret—

Approved by the Territorial Legislature afterwards—

That a general conference of the Church of Jesus Christ of Latter-day Saints, or a special conference of said church, to be called at such time and place as the first presidency of said church shall appoint, is hereby authorized to elect, by a majority, a company of not less than thirteen men, one of whom shall be designated as their president, and the others as assistants.

SEC. 2. This company is hereby made and constituted a body corporate, under the name and style of "The Perpetual Emigrating Fund Company;" and shall have perpetual succession, and may have and use a common seal which they may alter at pleasure."

Then it goes on with general provisions of a corporation that they shall defend and be defended, plead and be impleaded, hold property, and so forth. This is as lawful a corporation now as exists on the soil of the United States, and Senators need not disguise from themselves the simple fact that we are asked now to take possession of a corporation which was organized for a legal purpose so far as appears, which the Congress of the United States has permitted to exist, under which rights of property have been acquired; we are asked to take possession of that corporation and administer upon its effects and take what is left out of the possession of these parties, and say that the courts shall have nothing to do with it, but put it into the Treasury of the United States or give it to the common schools or anything else.

Mr. President, as a lawyer I will never agree to any proposition upon this or any other subject which says that the courts of this country shall not determine the rights of corporations or individuals.

Mr. Edmunds. That is precisely what this part that the Senator wishes to strike out says, that the court is to establish the rights of the claimants and if there is anything left it is to be devoted to schools.

Mr. Vest. Let me read the first part of the sixteenth section of the bill. It says:

That it shall be the duty of the Attorney-General of the United States to cause such proceedings to be taken in the supreme court of the Territory of Utah as shall be proper to dissolve the said corporation mentioned in the preceding section and pay the debts and to dispose of the property and assets thereof according to law.

There is a proceeding by due process of law in the courts of the country, which is the only mode, in my judgment, known to the Constitution of the United States or to our jurisprudence by which property rights can be settled. But this provision goes further than that. That would seem to be enough for a lawyer, but it goes further and says.

Said property and assets, in excess of the debts and the amount of any lawful claims established by the court against the same, shall escheat to the United States.

There it is taken out of the courts. There Congress steps in arbitrarily and after saying that the court shall determine according to law that matter, says that the surplus after paying the debts shall go into the Treasury.

Mr. Hoar. May I ask the Senator a question? What does he understand would become of it if his proposition prevailed?

Mr. Vest. That is a question which the law will determine. If the Senator wants my opinion as a lawyer I can give it to him. My judgment is that it would not go to the Treasury of the United States.

Mr. Hoar. The question is not where it would not go, but where would it go? The Senator will pardon me; I understand that this section remits to the courts just as he says it ought to be remitted, the question of every claim whatever against that property, the right of the creditor, the right of the donor, the right of the sovereign; but if the court finds after all claims against it are established that there is property in the corporation which would be left derelict after the disposition of it under the law as provided to anybody who has a legal claim to it, then that is to be put into the treasury of the United States, and by a sort of rude doctrine of *cy pres* used for common schools and not for the general public purposes of the country.

Mr. Vest. I do not understand how the doctrine of *cy pres* applies to it. I do not understand that any trust has been created here for common schools by anybody. The doctrine of *cy pres* simply steps in and furnishes a trustee where the first objects of the trust have failed. There is no such trust certainly for common schools. It is nothing else but an arbitrary seizure of the property of this corporation, taking it out of the courts and disposing of it as Congress sees proper; and if it can be done in this case it can be done as to any Baptist, Methodist or Presbyterian church in any of the Territories if a majority of Congress thinks it ought to be done.

Mr. Hoar. The Senator does not answer my question, if he will permit me to interrupt him. I do not want to interrupt him improperly.

Mr. Vest. Certainly; I yield to the Senator.

Mr. Hoar. Suppose it were a Baptist church, or a Methodist, or a Unitarian church, to which last denomination I have the honor to belong, and it were within the jurisdiction of the legislation of Congress relative to the Territories. The corporation is dissolved and its property is taken possession of by the court by a receiver or other judicial officer, by a proper process, and the court having established every possible lawful claim, if there were no other legislation on the subject if there were anything left, that would have to remain in the treasury of the court forever, and when Congress found it out they would then come in and do something with it.

Here is a fund which belongs to nobody as far as the court knows. We should undoubtedly do something with it, and instead of waiting for that occasion to arise this simply provides for it in advance, and says that when every possible lawful claim against that fund is established by the court and satisfied, if there is anything which otherwise would be left derelict or left in the treasury of the court to abide there forever, we provide now what shall be done with it; that is all.

Mr. Vest. Mr. President, it is remarkable legislation—I confess I know of no parallel to it—where Congress assumes a certain state of facts in advance of the finding of a court. The Senator from Massachusetts says "assuming that nobody owns this property." That is a question of law. That is a question which every American citizen and corporation has a right to have determined by the law of the land.

Mr. Hoar. The bill says the court shall decide, in the first part, according to law.

Mr. Vest. The bill says in the first part according to law, and then goes on and takes the court by the throat and says, "You shall do so and so." In other words, it declares an escheat when an escheat may not exist according to the facts. It says in advance of the facts that it shall escheat. The doctrine of escheats is a well settled one. I understand that the sovereignty of a country is entitled in certain contingencies to take possession of property, and not before; but they must be declared, they must exist, they must be judicially determined; and whenever Congress steps in and declares in advance that property shall escheat, it is not due process of law, it is not the law of the land as I understand it.

THE NEW EDMUNDS BILL.

SPEECH OF SENATOR BROWN.

BREAKING DOWN A SACRED RULE.

In the United States Senate, on January 8th, Mr. Brown, of Georgia, replied as follows on the question of compelling legal wives to give evidence against their husbands:

Mr. Brown. Mr. President, I cannot agree with the Senator from Vermont that the rule in reference to the protection of the wife or husband from giving testimony against the other in a criminal prosecution is a rule founded in public policy for the punishment of crime. It was a rule intended to protect the wife and the husband. It was for the peace and quiet and good order of the family. The rule as laid down by Greenleaf is as follows:

SEC. 334. The rule, by which parties are excluded from being witnesses for themselves, applies to the case of husband and wife, neither of them being admissible as a witness in a cause, civil or criminal, in which the other is a party. This exclusion is founded partly on the identity of their legal rights and interests, and partly on principles of public policy, which lie at the basis of civil society. For it is essential to the happiness of social life that the confidence subsisting between husband and wife should be sacredly protected and cherished in its most unlimited extent; and to break down or impair the great principles which protect the sanctities of that relation would be to destroy the best solace of human existence.

The exceptions to the rule are laid down as follows by the same author:

SEC. 343. To this general rule, excluding the husband and wife as witnesses, there are some exceptions, which are allowed from the necessity of the case, partly for the protection of the wife in her life and liberty, and partly for the sake of public justice. But the necessity which calls for this exception for the wife's security is described to mean not a general necessity, as where no other witnesses can be had, but a particular necessity, as where, for instance, the wife would otherwise be exposed, without remedy, to personal injury. Thus, a woman is a competent witness against a man indicted for forcible abduction and marriage, if the force were continuing upon her until the marriage; of which fact she is also a competent witness; and this, by the weight of the authorities, notwithstanding her subsequent assent and voluntary cohabitation; for otherwise the offender would take advantage of his wrong. So, she is a competent witness against him on an indictment for a rape committed on her own person; or, for an assault and battery upon her; or for maliciously shooting her. She may also exhibit articles of peace against him, in which case her affidavit shall not be allowed to be controlled and overthrown by his own.

So that the exceptions to the rule really are all for the protection of the wife against personal injuries or personal violence.

Mr. Edmunds. And for public justice, as the Senator read.

Mr. Brown. That is not the rule generally. Public justice is one of the objects, but it is the public justice that applies to her, and it is to protect her where she could not otherwise be protected.

Mr. Edmunds. If the Senator will allow me to interrupt him, I wish to ask him the plain and straight question whether he does not think that a man having one lawful wife and going and marrying another commits a personal injury against the lawful wife?

Mr. Brown. I think he commits a crime against society.

Mr. Edmunds. But that is not my question.

Mr. Brown. It is not simply a personal injury against her.

Mr. Edmunds. Not simply, out is it not a personal injury?

Mr. Brown. It is a wrong, but it is a wrong that a common law gives her a right to testify about.

Mr. Edmunds. Very likely, and that is why we wish to pass this statute. But my question is, is it not a wrong, a moral and religious public crime against her as well as against society?

Mr. Brown. It is a public crime against the wife but not one of the character that the great authors of the law, those who gave us the common law, considered a proper one for her to be called as a witness.

Mr. Edmunds. But the Senator ought to remember that at the common law there was not any punishment for polygamy or bigamy at all, or for adultery, and therefore the common law never had any such cases to deal with.

Mr. Brown. In most of the States of the Union even up to this day the common law has not been enlarged to the extent that the Senator proposes to extend it. In fact, if such law has passed in any of the States I am not aware of it. In the multiplicity of legislation in the thirty-eight States there may have been some instances, but I am not aware of it, and I do not think the Senator has shown it. I think there has been no instance where any one of the thirty-eight States has enacted a law making the wife a competent witness in a case of bigamy or polygamy. We are proposing, therefore, to go beyond what any State or probably any other civilized state in the world has done. I cannot speak for all of them, but I am not aware of any instance, and as the Senator's search has been thorough in this matter, I presume there is none, because he has produced none.

Again, so far as the execution of the the law is concerned, the Senator certainly does not need this additional legislation. As matters now stand in Utah it is only necessary to make a *prima facie* case, and a very light one at that, to convict a Mormon. If you arraign him and put him on trial his conviction follows almost as a certainty. The judge is nominated to the Senate and confirmed and sent there to convict in such cases, and if we notice their rulings it generally results in that way. The district attorney is sent there to take every advantage of every technicality he can for conviction. The juror is put upon the stand and required to swear that he dones not believe polygamy is right—not in that language, but that is the substance—before he can serve.

It is said that that is necessary to impartiality, and yet the effect of it is that he swears he does not believe that it is right, showing that he is partial on the other side. If he were to swear that he did not believe it was right he would be partial on that side. In other words, in either case if he is an honest man he would hear the evidence and decide according to the evidence and the law as given him by the court; but he is bound to take an oath that he does not believe in polygamy before he can sit on the jury. I have been informed by one whom I belive to be a reliable, truthful gentleman who has heard some of those trials that the prosecuting attorney goes one step further occasionally and asks, "Are your sympathies with the prosecution?" and if the juror answers in the affirmative there is very little trouble about taking him. In other words, the courts are organized there to convict.

Hence the present legislation which bears the name of the honorable Senator from Vermont is ample on this question to break up polygamy. There is no use for enacting laws which are in violation of the common law and which are very questionable at least as to their propriety on principle, to suppress polygamy in Utah. The heads of the church, the president of it, and the leading men of it, I am told, are fugitives and can not be found. The penitentiaries and jails are being filled with those convicted of polygamy. It is obliged to be suppressed and especially with the machinery we have now appointed for that purpose, and that sole purpose, for they seem to have very little else to do, and they do their work well and thoroughly. Whether it is exactly well in the sense of a just trial I will not say, but they are certainly carrying out the objects of the legislation. If reports be true, they are giving every doubt against the criminal instead of giving the doubt in his favor. They are certainly not giving him a very fair trial according to the mode of trial in most of the States and Territories.

Therefore I do not think, and I trust the Senate will not think, that it is necessary to break down long and well-established rules of law that have been considered by our ancestry as necessary to the preservation of peace and harmony for the purpose of making the laws more stringent in Utah. They are ample on this question; there is no difficulty about that: and by the way as they are now being enforced polygamy will very soon be a thing of the past there. If it is practised it will have to be practised in a manner that nobody knows it, and that no officer of the law and no detective and no spy can find it out. So I do not see the necessity of breaking down a sacred rule of so long standing for the purpose of adding to the legislation which we already have on that subject.

THE NEW EDMUNDS BILL.

SPEECH OF SENATOR BLAIR.

MR. EDMUNDS' CLAIM REFUTED.

In the U. S. Senate on January 7th, Mr. Blair of New Hampshire, replying to the statement of Mr. Edmunds that the provision in his bill compelling the legal wife to testify against her husband was the same as in several States, made the following remarks:

Mr. Blair. Mr. President, there has been somewhat frequent allusion made to the statutes of the States upon this point. I think that the Senator from Vermont almost misconceives the force and effect of those statutes where they exist.

What the Senator says is true, that the common law has been relaxed and modified to some extent by the statutes of various States, but there are no statutes of any State, so far as I have been enabled to examine them, where the great leading principle which led to the original prohibition of husband and wife being witnesses for or against each other is not carefully preserved. Wherever there is any infringement upon marital confidence, as the legal expression made use of is, wherever there is likely by the testifying of the husband or wife for or against each other to be any infringement upon this great principle founded in justice and essential to the preservation of society, there it is prohibited.

In most of the statutes particular instances are specially mentioned and the prohibition is made specific; and in all of them, so far as I know, where there is any substantial relaxation whatever, the general expression is made use of that in the discretion of the court there shall never be the testimony of the wife allowed as against the husband, nor of the husband as against the wife, if it leads to any infringement upon marital confidence. Now, what is that? It is not that information which may be given to the husband or to the wife in express terms; it is not simply that which may come from conversation; it is not simply that which may be included in the term "communication," which is the one made use of in this proposed statute; but it is such information as comes from one party to the other by reason of the existence of the marriage relation; and whenever the testimony of the party may be a revelation of knowledge which comes by virtue of the fact that the parties are married and are associated together, that information which passes interchangeably from one to the other and which would not be likely to be the case if that were not the relation, the statute expressly prohibits it.

I have not the bill here; but the language made use of by the Senator excepts nothing but confidental communications from one party to the