

deal with it, another corporation organized to aid in the affairs of the appellants, known as the Emigrant's Aid Society, is dissolved, and its property, after the settlement of its affairs, is confiscated and applied to the support of common schools within the Territory, but with respect to the personal property of the Church the law does not seek in any manner to confiscate or appropriate it, being content to deprive the Church of the aid of the corporation in its administration. This lingering regard for religious liberty, as guaranteed by the Constitution of the United States, which Congress evinced was totally disregarded by the court below in the decree entered in this case by sweeping all of the personal property of the Church into the ownership and possession of the United States, except what was necessary to pay court costs and receiver's fees.

The ground upon which this declaration of forfeiture is made, as stated in the decree, is that there did not exist after the dissolution of said corporation of the "Church of Jesus Christ of Latter-day Saints" any natural person or any body, association or corporation, who were legally entitled to any portion of said personalty as successors in interest to said corporation of the "Church of Jesus Christ of Latter-day Saints." "Nor had their been, nor was their now, any trust of a definite or legal character upon which the said court, sitting as a court of chancery, can administer the personal property hereinbefore set put." Thus the decree vests this personal property in the United States absolutely and not as trustee for the execution of some "kindred trust."

The statement of the decree that there did not exist at the date of the dissolution of said corporation any natural persons or any body, association, or corporation who were legally entitled to any portion of said personalty as successors in interest of the "Church of Jesus Christ of Latter-day Saints" is contradicted by the findings of fact, and also by that part of the decree by which the so-called Temple Block is "set apart to the voluntary religious worshipers and unincorporated sect and body known as the 'Church of Jesus Christ of Latter-day Saints,'" and confirmed to the trustees of said church in said decree named for the benefit "of said voluntary religious worshipers and unincorporated sect and body, and for the erection and use of houses of worship, and for their use and convenience in the lawful exercise of worship according to the tenets of said sect and body," and thus recognizing the right of succession of the church in the real estate held by the corporation for its use as far as the same may be necessary for purposes of public worship, but denying to the same church the use and benefit of any portion of its personal property on the assumption that it has no right as successor in interest to such property. The "Church of Jesus Christ of Latter-day Saints," is recognized as a voluntary

religious unincorporated sect, entitled to enjoy the use of real estate in connection with their worship, but denied the right of holding personal property that may be essential for that purpose. In other words, this same church may hold and enjoy real property upon which to erect houses of worship, and teach therein the doctrines and tenets of their church, but cannot hold or enjoy personal property donated by its members for religious and charitable purposes, dispensed by it in accordance with the same doctrine and tenets of the church thus taught in its house of public worship.

In this respect the decree goes very far beyond the scope or purpose of the Act of Congress under which it is claimed to have been entered, and is, in our judgment, violative of that provision of the Constitution which declares that Congress shall make no law respecting the establishment of religion or prohibiting the free exercise thereof.

Disguise it as you may, the decree in this case by confirming to the "Church of Jesus Christ of Latter-day Saints" their real property used for church purposes, but confiscating their personal property, intended for similar use, is a confiscation of property on account of the religious belief of the parties who contributed it to the church for religious and charitable uses connected with the said doctrines and tenets of their church.

The decree which confiscated all of the personal property held by the church corporation at the time of its dissolution for the use and benefit of the "Church of Jesus Christ of Latter-day Saints," and vests the title thereof absolutely in the United States, would authorize the seizure and confiscation of any property subsequently acquired by the church.

THIRD.

The petitioners regret that they have been unable to obtain a copy of the opinion of the court in time to enable them to give it that careful consideration to which it is entitled and the importance of the case demands, although they have been aided in this respect by Mr. Justice Bradley, who had prepared and delivered the opinion, as far as it was in his power to do so. It was not until eight o'clock on the evening of the 22nd that the same was received with the injunction that it must be returned to Mr. Justice Bradley within five hours.

We shall not now do more than restate our objections as contained in the briefs filed on behalf of the appellants to the validity of the legislation in question. So far as we have been able to examine the opinion rendered, it has failed to convince us that the positions then assumed were not correct.

With respect to so much of the opinion as attempts to justify the decree rendered in this case on the ground that the personal property seized and confiscated by that decree is subject to the doctrine of charities, and to be administered, not for the charitable purposes for which its donors intended it, but for kindred charities, has no foundation what-

ever to rest upon in the facts found or decree rendered in this case.

The opinion admits that the personal property has not been declared forfeited by the act of March 3, 1887, or by any other act, and treats the present condition of that property, as shown in the decree, as the result of the dissolution of the Church corporation and awaiting final disposition of the court, while the decree, as we have already shown, declared it "to be the property of the United States of America," subject only to the costs and expenses of this proceeding and of the receivership, and an order for its sale would necessarily result in covering its proceeds into the Treasury of the United States as a part of its general fund.

The objection the petitioners have to this decree, assuming that the act above referred to dissolved the corporation, is that while it recognizes that the corporation was but the trustee of the "Church of Jesus Christ of Latter-day Saints," and held its property in trust, it fails to recognize the principle that the dissolution of that corporation for any cause, necessarily and legally reinvested the church with the property, there is nothing in this act to the contrary, or to show that it was the intent of the act that a contrary result should take place, and, therefore, we have insisted that the decree was unauthorized by the law under which it was claimed to have been entered.

The opinion affirming this decree seems to us to be at variance with the decree itself. The learned justice, in speaking of this branch of the case, uses the following language:

"The rights of the church members will necessarily be taken into consideration in the final disposition of the case. There is no ground for granting their present application. The property is in the custody of the law awaiting the judgment of the court as to its final disposition."

Whereas the decree has already vested it absolutely in the United States of America, and on the affirmance of this decree the United States becomes the absolute owner of the personal property, and this is also the effect of the decree in respect to the real property about which suits are still pending on the law side of the Third District Court of Utah. The opinion of the learned justice in speaking of this proceeding says:

"In the proceedings which have been instituted in the District Court of the Territory it will be determined whether the property of the corporation, which has been seized, has or has not escheated or become forfeited to the United States."

Whereas the decree adjudged that the legal title to all of the real estate had been acquired since the passage of the Act of July 1, 1862, relating to the ownership of real estate by church corporations in the Territories of the United States, and that such real estate was in excess of the sum of fifty thousand dollars.

The petitioners therefore, insist that the unqualified affirmance of the decree, without modification or