

IN THE
CIRCUIT COURT

OF THE UNITED STATES FOR THE
WESTERN DISTRICT OF MISSOURI;
WESTERN DIVISION AT KANSAS CITY.

THE REORGANIZED CHURCH OF JESUS CHRIST OF
LATTER DAY SAINTS, *Complainant.*

vs. } Equity.

THE CHURCH OF CHRIST, AT INDEPENDENCE,
MISSOURI, RICHARD HILL, *et al., Defendants.*

BRIEF AND ARGUMENT BY G. EDMUNDS,

On behalf of Complainant, one of its Solicitors,

LAMONI, IOWA:
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Of Carthage, Illinois, on behalf of Complainants, one of its Solicitors.

The court will pardon me for taking this mode of presenting my ideas of this case. Not having the advantage of consultation with associates engaged in the case, I must present it in my own way. In doing so I shall endeavor to present only such matters as impress me as bearing upon the vital points at issue.

ARTICLE I.

This is a question of property, not of religion. While questions relating to the organization, laws, rules, doctrines, and tenets of a religious society or set of religious societies must be considered in determining such property rights, let us, if possible, lay aside all our preconceived ideas of religion, or religious sects, or denominations, and examine the case upon the facts presented by the record, considered as a mere question of law, and the equitable rights of the parties. Doing so, the record in this case presents:—

1. That about 1830 at Palmyra, New York, a religious society was formed composed of Joseph Smith, Hyrum Smith, David Whitmer, Oliver Cowdery, *et al.*, and adopted a code for its government, *as to doctrine and tenets*, established upon the Holy Bible, Book of Mormon, and certain (claimed) revelations from God, afterwards compiled, with acts and resolutions of the religious society and published under the name of "*Doctrine and Covenants*" (about 1835, and an edition compiled prior to 1844, but published in 1845.)

The *doctrine and tenets* thus established presented, among oth-

ers, the following; viz., *Faith, Repentance, Baptism* for the remission of sins, *Laying on of Hands* for confirmation, *Industry, Sobriety, and Virtue*; gathering together for mutual aid, advice, and assistance; advising all to marry, but prohibiting POLYGAMY or having more than one wife; resurrection of the dead and eternal judgment. Upon the question of marriage, from its organization it was monogamic. After the death of Joseph Smith and the disintegration of the church the Utah Church and some other factions adopted polygamy. In its organization, a Presidency, a Twelve (apostles), High Priests, Seventies, Elders, Priests, Teachers, Deacons, a Bishop, and the body of the church. The Twelve, Seventies, and High Priests organized into quorums; one quorum of the Twelve, one of High Priests, and *seven* of Seventies.

2. From its organization down to June 27, 1844, (the date of the death of said Joseph Smith,) such remained and continued the organization, *doctrine, and tenets* of said church, variously called the "Church," "Church of Christ," "Church of Christ of Latter Day Saints," and "Church of Jesus Christ of Latter Day Saints;" but all meaning and standing as and for said organization of 1830, no changes having been made therein or additions thereto, except such as were by (purported) revelations from God, submitted to the several quorums, and then to the body of the church, and adopted by the church, and published in the edition of *Doctrine and Covenants* of 1845.

The government of the church was vested in a Presidency, consisting of a president and two counselors; a Quorum of Twelve Apostles, called *The Twelve*, having a president; a Quorum of High Priests, having a president; a Quorum or quorums of Seventies, each having a president, and when more than one Quorum of Seventies a president of the presidents of the quorums of Seventies, Elders, Priests, Teachers, Deacons, and a Bishopric, the Bishop being the financial officer of the church; then the rank and file, both at the central point and at its several stakes or branches, and together forming one complete whole and *comprising the church*.

3. At the time Joseph Smith was killed, he was and ever had been the president of the church. Hyrum Smith (who was killed at the same time) was one of his counselors, and Sidney Rigdon, the other. Rigdon was then on a mission East. The killing of the Smiths, left the church without a presidency. The absence of Rigdon East left no member of the presidency at Nauvoo, its then center or gathering point.

Upon the death of Joseph Smith, there at once arose contentions as to the presidency of the church. Many believing that the true successor to the president, was Joseph Smith, (the now president of the Plaintiff church,) based upon many grounds. Such as his being the firstborn of his father, the founder, prophet, seer, and revelator of the church, he was his heir and legitimate successor. Also that by *revelation* to the father, he had been appointed, and had been by

his father baptized and anointed, and declared his successor. Young Joseph being then only about twelve years of age, a regency was suggested.

This did not meet with favor from *Brigham Young*, the then president of the *Twelve*, nor his supporters, a majority of the church at Nauvoo. A majority of the *Twelve* being at Nauvoo, (the great center and head,) assumed that the *Twelve* was the head of the church, and that their president, *Young*, was its president; and in this they were upheld by a majority of the church at Nauvoo.

4. Then came a break or *disintegration* of the church. Sidney Rigdon, one of the counselors of Joseph Smith in the presidency, John E. Page, Lyman Wight, and William B. Smith, three of the *Twelve*, together with many high priests, seventies, elders, deacons, teachers, and thousands of the body, or rank and file of the church, refused to recognize the *Twelve*, with *Young* at its head as the head of the church—*the presidency*—and refused to fellowship them as such.

5. J. J. Strang, an old member, established headquarters in Wisconsin, and then on Beaver Island, Michigan, claiming to be the true head of the church. William B. Smith, one of the *Twelve*, established headquarters and claimed to be the head of the church, as did also Lyman Wight, Granville Hedrick, and probably others. Each faction claimed to be the true church, and each drew to himself certain followers, old members of the church, they each having been members prior to the death of Joseph and Hyrum Smith.

The church (the old members thereof) became scattered. A larger number following the lead of Brigham Young went first to Winter Quarters (now Omaha), and then to Salt Lake, and will hereafter be styled the "Utah Church."

6. The church and divers members thereof about 1831 and 1832 contributed money for the purchase of divers lands in the State of Missouri, and placed the same in the hands of Edward Partridge, the then Bishop of the church, to make purchases for the use and benefit of the church; and said Partridge, with the money so contributed, *purchased the lands in dispute in this cause*. There being no organization of said church in the State of Missouri at that time, said Partridge took title to said lands in his individual name, and held the same for the use and benefit of the church until about the year 1839.

The church located a *stake* or *branch* at Independence, Missouri, about 1831 or 1832, and occupied the grounds in question for meeting purposes, for religious worship, and denominated said premises as "TEMPLE GROUNDS" or TEMPLE LOT," to be used by the church at the proper time, on which to erect a *temple* for the worship of God.

From the time of such purchase to this, it has been known and

designated as "Temple Grounds" or "Temple Lot," and understood and recognized as such by the whole community.

7. The stake or branch of the church, established at Independence and who used said premises for divine worship, were, about 1833, driven from Independence and from Jackson county, Missouri, by mob violence, and for over forty years were not allowed to return; and about 1838 or 1839 the entire church, then commonly called MORMONS, was driven and expelled from the State of Missouri by mob violence, organized under the order of the then governor of Missouri, L. W. Boggs, and none were allowed to return for near or quite forty years, to assert the rights of the church in the lands in question.

8. In the meantime that body of the old church under the lead of Brigham Young located its headquarters at Salt Lake City, Utah, with stakes or branches at other places, commonly called the Utah Church.

Organizations were kept up by *Strang, W. B. Smith, Wight, Hedrick, and others*, at divers places.

In 1852 divers branches or stakes of the old church, that had refused to follow the lead of Brigham Young, called a conference at Beloit, Wisconsin, for consultation, at which divers representatives of such stakes or branches met and organized a church based upon the Holy Bible, the Book of Mormon, and the Book of Doctrine and Covenants, with the doctrines and tenets of the church as established in 1830, and as it continued and was publicly recognized and taught prior to June 27, 1844, the date of the death of Joseph Smith, the prophet, seer, and revelator, — the *founder of the church*.

This organization claimed to be the successor of the old church organized in 1830, as continued intact until June 27, 1844; to be completed and perfected by the proper establishment of all the officers of the old church when by *divine direction* and the action of the proper quorums and the rank and file, it should be fully organized and put in motion.

This organization believed that its present president, Joseph Smith, was the legitimate successor of his father and would at the proper time assume his proper duties and functions. In this belief they continued until at a convention of its members held at Amboy, Illinois, in April, 1860, Joseph Smith, then a mature man and member of the old church, by the unanimous concurrence of the organization gave his adhesion to the doctrines and tenets of said organization, and by unanimous consent and concurrence was made president of the church, and thereupon the church became fully organized, with a First Presidency (a president and two counselors), a Quorum of Twelve Apostles, High Priests, Seventies, Elders, Priests, Teachers, Deacons, a Bishop, and the body of the church, or rank and file; conforming in all respects to the organization of the old church, composed of members of the old church prior to 1844

who refused to follow the lead of Brigham Young, and have continued the same to this time. This organization adopted the name of "The Reorganized Church of Jesus Christ of Latter Day Saints," the Plaintiff in this suit.

It will be unnecessary to follow the destinies of the followers of *Strang*, *W. B. Smith*, *Wight*, and others, except *Hedrick*; but they will be mentioned, sufficiently to show they are not in the succession.

Hedrick organized in McLean county, Illinois, under the name of the "Church of Christ," and claimed the succession. His followers were and are usually called *Hedrickites*. The Defendant organization is the *Hedrick* organization; claiming as its doctrine and tenets, the teachings of the Bible, Book of Mormon, and Doctrine and Covenants, up to February, 1834; but *ignoring and denying all revelations, rules, doctrines, and tenets of the church*, regularly submitted to and adopted by the old church, between February, 1834, and the death of the Smiths in 1844. The officers of the Defendant church are a *president, high priests, priests, elders, deacons, teachers, and a bishop*. (P. 435, Ab. Rec. D. Ev. 725.) It has no Presidency consisting of president and counselors, no Twelve, no Seventies. In this it ignores these important parts or quorums of the original church.

ARTICLE II.

Plaintiff claims and thinks it has by proofs established the following:—

1. That the original church, prior to the split after the death of Joseph Smith, the prophet, etc., had not established, as a doctrine, tenet, rule, or law of the church, and had not as the act of the church taught, that a man could have more than one wife living at the same time, or that a woman could have more than one husband living at the same time, nor the right of concubinage; but on the contrary, the doctrine, tenets, and law of the church forbade the same.

2. That it, the original church, adhered to the doctrine, tenets, and law of the church as published and taught prior to 1844. (See Epitome of Faith, Rec. 53, 54, quoted from the *Times and Seasons*, Ex. L.) And no additions had been adopted by the church not published in the Book of Doctrine and Covenants in the edition of 1845.

3. That the Utah Church (under the lead of Brigham Young) after the death of Joseph Smith openly ignored the law of the church as to marriage, and in violation thereof taught the doctrine of *polygamy*, that a man might have more than one wife living at the same time, and that a woman might at the same time be the wife of two men.

That it adopted the doctrine of blood atonement, as set forth at page 616 of the P. record, Ab. 263, bottom of page.

It also adopted the doctrine of Adam-God worship, as set forth at said page 616 of P. record, Ab. 263, first quoted.

And allowed an unlimited number of quorums of Seventies, in lieu of seven as provided for by the original church.

Instead of recognizing the laws of the church regularly adopted by the quorums and body of the church and published in the Book of Doctrine and Covenants; that law is ignored as “*not worth the ashes of a rye straw*” or a “*last year’s almanac*,” and substituted in its stead “**THAT THE MEMBERS OF THE CHURCH SHOULD OBEY THE COUNSEL OF THE TWELVE IN ALL THINGS.**” The Counsel of the *Twelve considered supreme.* (P. R. 594, Ab. 254.)

The Utah Church depart in five important features above shown (at least), from the original church, hence are not the original church.

4. That the Defendent church, while claiming the succession, and to be the true original church, fails to conform to the organization of the church, as set out in the *Times and Seasons.* (Rec. pp. 53, 54.) It fails to provide for or contemplate a *Presidency, consisting of a president and two counselors, a Twelve, and Seventies.* It also ignores all laws, revelations, and acts of the church after February, 1834, however solemnly promulgated. It has no apostles (12) Rec. D. Ev. 763, Ab. 438; and has no prophet. Richard Hill is sole *trustee* and sole *Bishop.* Rec. D. Ev. 768, Ab. 439.

The Defendant church has a *president, high priests, priests, elders, deacons, teachers, and bishop.* (Ev. of R. Hill, D. R. 752, Ab. 435.) Its president is not prophet, seer, and revelator; that church does not claim any such power for its president. The president was made by vote. (D. R. 753, Ab. 435, Ev. of Hill.)

The Defendant church claims to be successors to the original church of 1830, (THOUGH DENIED IN ANSWER,) which is clearly proved by Hill and Owen its witnesses. Hill says, D. R. 757, Ab. 436: “I am trustee of the property in controversy; I hold it as trustee for the Church of Christ,—the Church of Christ organized the 6th day of April, 1830, of which Joseph Smith, Jr., the Seer was the President. We hold the property in trust for the church, we claim to be a part and parcel of that church and hold this property in trust for that church, *for the church that is in succession.*”

5. As to the organizations headed by *Strang* and *Wight*, it is sufficient to say that both adopted and taught as a doctrine of the church, *polygamy.* (P. R. Rec. 22, 30, 31 as to *Wight*, D. 673, 674 as to *Strang.*)

As to both, they are not in possession and do not claim the property in question.

As to the leadership of W. B. Smith; while acting as the head of a stake he advanced divers theories, (very little difference what,) as upon the Reorganization he abandoned all his teachings contrary to the original church, and adopted the Plaintiff as its true successor.

6. That Plaintiff church is the true successor to the original church, and is the original church, continued by members of the old

church in good standing, who (after the split, which occurred after the death of Joseph Smith the Seer, etc.) came together, adhering to all the doctrine, tenets, and laws of the original church, organized the church with all the officers, quorums, etc., of the original church, its president having been baptized and anointed by Joseph Smith, the Seer, to be his successor as president.

The record clearly shows its history, and that it, in all things conforms to the organization, doctrine, tenets, and laws of the original church from its organization in 1830 down to the death of Joseph Smith, and in fact until the usurpation of Brigham Young and the majority of the Twelve Apostles, and the consequent disruption and scattering of its members.

ARTICLE III.

All property held in trust for the original church is held in trust for the Plaintiff, its successor.

1. The evidence clearly shows that the property in question was purchased by Partridge, with money of the church, contributed by its members for its use; and that he took and held the property for the use of the church; recognized it as church property; CONVEYED IT TO THE COWDERY CHILDREN, for the use and benefit of the church. That the property was occupied by the church from its purchase (until the members of the church were driven from Independence) as a meeting place for religious worship. Was by all, both *Mormon and Gentile*, regarded and known as church property, set apart as a lot on which to erect a temple for the worship of God.

This property was not purchased for the use of a branch of the church, but for THE CHURCH.

2. Leaving out, for the present, the question of limitation, who under this record is entitled to the property as the legitimate successor of the original church for which the same was purchased and held by Partridge, and conveyed by him to Cowderys, thence by successive conveyance to the Plaintiff? The Utah Church is not in name or in fact before the court for the purpose of adjudicating its rights in this cause, yet, I regard the law of this case something as I do the law of ejectment, the Plaintiff must stand upon its own title, not on the weakness of the title of its adversary. And though the Defense has no title, yet it may show an outstanding title in another. Hence the attempted defense in this suit of the Utah Church having as its adherents a majority of the original church. We do not concede that a majority of the original church are adherents of the Utah Church. It is exceedingly doubtful; but suppose it to be true that the Utah Church has as its adherents a majority of the members of the original church, that does not prove it to be the original or successor to the original church. If the Utah Church has, as the proofs clearly show it has, departed from the original faith and doctrines, and taken to itself other doctrines prohibited by the original church, it is not the original or the successor to the original church, hence

the property is not held for it. It is not the church of 1830 to 1844, while its membership is to considerable extent the same. It denies the law of the original church, sets up in its stead the will of the leaders. It ignores the rule of *Monogamy* adopted by the original church and in its place and stead adopts *polygamy*. It teaches that Adam is God. It advises blood atonement, putting backsliders to the knife. And it organized an indefinite number of quorums of seventies, instead of restricting itself to seven as provided by the law of the old church.

3. The Defendant church in its pleading denies the original church, denies that it claims to be the old church or a branch of it—this is a matter of mere unsworn pleading.

The evidence clearly shows it claims to be the original church or a branch, hence successor and to be holding the property in trust for the true original church or its successor, *which it claims to be*. (Testimony of R. Hill, D. R. 757,758. Ab. 436.) Yet it does not pretend to have a prophet, seer, and revelator. Its president is appointed by election of the church, not by divine authority. It has no High Council, no Twelve Apostles, and no Seventies. It ignores all laws and revelations adopted by the original church, after February, 1834, however solemnly adopted, and constituting important elements in the organization, management, laws, rules, doctrines, and tenets of the original church.

The main claim of Defendant church is, that it is in possession and calls itself the church, but it in many very material things fails to adhere to the doctrines and government of the original church which it claims to be or to succeed.

4. The Plaintiff church is shown to be composed of and organized by a vast number of the members of the original church, adheres to and adopts all the doctrine, tenets, laws, and ordinances of the original church as recognized prior to the disintegration, and as found in the Holy Bible, Book of Mormon, and Book of Doctrine and Covenants as published in 1845.

It has a president appointed by divine direction, baptized and anointed (by his father) as the successor of Joseph Smith, the prophet, seer, and revelator, to be his successor, and recognized by the church. The president has two counselors, the three together forming the Presidency. It has a Quorum of Twelve Apostles, High Priests, a Quorum of High Priests, Seventies and Quorums of Seventies, Elders, Priests, Teachers, Deacons, a Bishopric, and the body of the church, each branch or department performing the same office as did the same in the original church.

This being true, the Plaintiff insists that it is a continuation or succession to the original church in all things, and that as such it is entitled to the property purchased and held for the use of such church.

That it has shown a paramount title and is entitled to recover upon the strength of its title. **THERE IS NO OUTSTANDING TITLE.**

ARTICLE IV.

Where a church or religious society has been organized and settled, holds property, or property is held for its use, and difficulties arise,—no matter from what cause or source,—and the church or congregation for whose use such property is held becomes divided, it is the province of a court of equity under its power to manage, control, and dispense charities, to assume jurisdiction, preserve and give direction to the charity.

If disruption arises from nondoctrinal causes, such as differences in filling official stations or the like, and one party expels another or holds the property to the exclusion of the other, both adhering to the same tenets and doctrines, the court will consider the matter with a view to healing the breach, and if need be, support the majority or divide the property as shall appear most equitable.—Mt. Zion Baptist ch. *et al v. Whitmore et al* 49 N. W. R. 81. *Smith et al v. Pedigo et al* 33 N. E. R. 777. *Ferraria et al v. Vasconcelles et al* 31 Ill. 25, 23, Ill. 403, 27 Ill. 237. *Niccolls et al v. Rugg et al* 47 Ill. 47, 49, 50.

If however the split is upon fundamental or doctrinal points, and one party, either majority or minority, adheres to the fundamental doctrine and tenets of the original church to which the charity was given, or which owned the property, and the other depart from it in such manner that the court can discover a material digression from the original faith and doctrine, the court will unhesitatingly give the property to that faction, branch, or portion of the church that adheres to and supports the doctrine and tenets of the original or mother church, regardless of from what particular person or party the property came, provided always, it belonged to the church or was held for its use and benefit.—Mt. Zion Baptist ch. *v. Whitmore* 49 N. W. R. 81, and case cited. *Smith v. Pedigo* 33 N. E. R. 777 and case cited. *Chase v. Cheny* 58 Ill. 509, 237, 8, 9. *Niccolls v. Rugg* 47 Ill. 47–49, 50.

ARTICLE V.

1. No argument or restatement of facts is necessary to satisfy the court that the religious society or church commonly known as MORMON was organized in New York, in 1830, by Joseph Smith, Jr., commonly called the prophet, seer, and revelator, under the name of the Church of Christ; that said society or church went by various names until it adopted the name of The Church of Jesus Christ of Latter Day Saints, by which it continued to be known until after the death of its founder in 1844.

That said church or society was organized upon the model of the church established by Jesus Christ, as described in the New Testament. The president and his counselors, in likeness of the *Father, Son* and *Holy Ghost*, and taking the place that James the brother of Jesus did (in Christ's Church after his ascension) when pre-

siding at Jerusalem in the presence of all the apostles; the Twelve representing the Twelve Apostles sent by Christ to preach the gospel to all the earth; the High Priests, Priests, Seventies, Elders, Teachers, Deacons, and Bishop the other officials of Christ's Church, and the body of members, together constituting a whole. The whole system and plan of salvation and government of the church based upon the teachings of the Holy Bible, Book of Mormon, and *divine revelations* first submitted to the several quorums, and if approved then to the body of the church, and if approved, then became a law of the church, a series of which revelations and acts and resolutions of the church were compiled and published as the Book of Doctrine and Covenants, one edition published in 1835, and another in 1845, recognized as the law of the church. The church established an *Epitome of Faith*, as follows:—

“We believe in God the eternal Father, and in his Son Jesus Christ, and in the Holy Ghost.

“We believe that men will be punished for their own sins, and not for Adam's transgression.

“We believe that through the atonement of Christ all mankind may be saved by obedience to the laws and ordinances of the Gospel.

“We believe that these ordinances are, 1st, Faith in the Lord Jesus Christ; 2d, Repentance; 3d, Baptism by immersion for the remission of sins; 4th, Laying on of hands for the gift of the Holy Ghost.

“We believe that a man must be called of God by ‘prophecy’, and by ‘laying on of hands’ by those who are in authority to preach the Gospel, and administer in the ordinances thereof.

“We believe in the same organization that existed in the primitive church; viz., apostles, prophets, pastors, teachers, evangelists, etc.

“We believe in the gift of tongues, prophecy, revelations, visions, healings, interpretation of tongues, etc.

“We believe the Bible to be the word of God as far as it is translated correctly; we also believe the Book of Mormon to be the word of God.

“We believe all that God has revealed, all that he does now reveal, and we believe that he will yet reveal many great and important things pertaining to the kingdom of God.

“We believe in the literal gathering of Israel and in the restoration of the ten tribes. That Zion will be built upon this continent. That Christ will reign personally upon the earth, and that the earth will be renewed and receive its paradisaic glory.

“We claim the privilege of worshiping Almighty God according to the dictates of our conscience, and allow all men the same privilege, let them worship how, where, or what they may.

“We believe in being subject to kings, presidents, rulers, and magistrates, in obeying, honoring and sustaining the law.

“We believe in being honest, true, chaste, benevolent, virtuous, and in doing good to all men; indeed, we may say that we follow the admonition of Paul, ‘we believe all things, we hope all things;’ we have endured many things, and hope to be able to endure all things. If there is anything virtuous, lovely, or of good report or praiseworthy, we seek after these things.”

Upon the question of marriage, the law of the church from its organization down to and after the death of its founder, Joseph Smith, the prophet, seer, and revelator, was that of the Book of

Mormon, (*Monogamic*), found in the second chapter of the Book of Jacob, as follows: "But the word of God burthens me because of your grosser crimes. For behold, thus saith the Lord; This people begin to wax in iniquity; they understand not the scriptures; for they seek to excuse themselves in committing *whoredoms*, because of the things which were written concerning David and Solomon his son. Behold, David and Solomon truly had many wives and concubines, which thing was abominable before me, saith the Lord. . . . Wherefore, I, the Lord God, will not suffer that this people shall do like unto them of old. Wherefore, my brethren, hear me, and hearken to the word of the Lord: FOR THERE SHALL NOT ANY MAN AMONG YOU HAVE SAVE IT BE ONE WIFE; AND CONCUBINES HE SHALL HAVE NONE: for I, the Lord God, delighteth in the *chastity of women*. And *whoredoms* are an abomination before me: thus saith the Lord of hosts."

Again the law is substantially reiterated in the Book of Doctrine and Covenants, editions of 1835, 1845, and 1852, as follows: (Ex. E. p. 251, s. 101; also par. 7, s. 13; also par. 3, s. 65. See also p. 45, Ab. middle page: "*We declare that we believe that one man should have one wife; and one woman but one husband, except in case of death, when either is at liberty to marry again.*")

This organization, mode of government, doctrine, and tenets, remained the law of the church from its organization until the death of Joseph Smith.

The Presidency was the executive head of the church, the Twelve *traveling, proselyting* APOSTLES having executive power under direction of the First Presidency.

The president designated by divine authority, and recognized and approved by the church, having power and gift of prophecy, etc., *as believed by the church*.

The whole record establishes the foregoing. Not a paragraph, line, sentence, or word in the record attempts to dispute it.

2. After the death of Joseph Smith, on June 27, 1844, a majority of the Twelve usurped and assumed the executive branch of the church—THE PRESIDENCY.

Thereupon the church split into factions.

At that time there was a considerable number of the church members residing at Nauvoo, and these were scattered in different parts of the country a large number of stakes or branches of the church.

Upon the usurpation of the executive power by a majority of the Twelve, a majority of the Nauvoo local church—then the great center—adhered to and supported the usurpation of the Twelve; but three of the Twelve and a large number of the members of the church then resident at Nauvoo, and the great mass of the stakes or branches, refused to support the usurpation of the Twelve, then led by Brigham Young its president, but adhered to the original organization of the church.

And divers persons, members of the church, set themselves up as leaders, some assuming they were successors of Joseph Smith, the deceased prophet, seer, and revelator, others assuming that the church would at some future day be organized in its *original purity* under the proper Presidency designated by *divine authority*, and who sought to keep the church in the line of its faith and doctrine until such time as it pleased *Divine Providence* to designate its head.

3. After the death of Joseph Smith, that part of the church which adhered to the Twelve under Brigham Young in violation of the law, doctrine, and tenets of the church, taught the doctrine of *polygamy*, and in other respects departed from the faith of the original church.

Two other portions of the church, one led by J. J. Strang and the other by Lyman Wight, also in violation of the law of the church, *taught polygamy* and other heresies.

Yet the great majority of the original members of the church, who refused to support the usurpation of the Twelve, and the *vicious teachings* of Brigham Young, Strang, and Wight, adhered to the law of the church as promulgated during the life of Joseph Smith and as found in the Holy Bible, Book of Mormon, and Book of Doctrine and Covenants in the editions of 1835 and 1845.

4. The land in question was purchased by Edward Partridge, Bishop of the original church, with money of the church, for the use of the church as a *Temple Site*.

Partridge conveyed it to Cowderys for the use of the church in 1839. In 1832 and 1833 it was occupied by the church for religious worship. The members worshipping at that place were driven from there by mob violence in 1833 and not allowed to return for over forty years.

The land is now held in trust for the church for whom the purchase was made (testimony of R. Hill, D. R. 757, 8, Ab. 436,) as before stated.

Now, to whom does the property belong? The answer is easy; it belongs to the church of 1830 to 1844. But which of the several organizations claiming to be such church, is in fact that church or, *if it disintegrated*, its successor?

Clearly, it is not the Utah Church—followers of Brigham Young and his teachings, for reasons heretofore set forth in Article II. s. 3; viz., *Teaching polygamy, blood atonement, Adam-God worship, organizing too many Seventies, and repudiating the law of the church and adopting in its stead the will and council of the Twelve*, a departure from the faith in five important and fundamental particulars.

It cannot be the followers of Strang, or Wight, for each, at least in one fundamental point, departed from the doctrine and tenets of the church; viz., adopted polygamy and ignored monogamy.

It cannot be the branch known as HEDRICKITES—the Defendants—because they ignore the organization of the church, which had and must have a *Presidency*, consisting of a president and two coun-

selors, the president to be a prophet, seer, and revelator, appointed by divine authority; a Twelve Apostles, and Seventies; all of which they ignore. (See Art. II. s. 4, above for reference to evidence.)

Is not the Plaintiff church the true original church *or its successor*? Does it not in all its details conform to the organization, doctrine, tenets, government, and laws of the original church? Was it not organized by members in good standing of the original church who during all their membership had adhered to the organization, doctrine, tenets, government, and laws of the original church as it existed from 1830 to 1844 and who refused to be led into the adoption, belief, or practice of false doctrine and heresies, and who had come together and united in a church having the original organization, doctrines, tenets, government, and laws of the original church?

The record answers all these questions, Yes.

Clearly the Plaintiff Church was organized in 1852 by officers and members in good standing of the original church, and who had been such members since before the death of Joseph Smith, who believed in the organization, doctrine, tenets, government, and laws of the original church; who regarded said church as scattered (*not abandoned*), to come together at the proper time; and who upon coming together at Beloit, in 1852, associated themselves together as a church, adhering to the original organization, doctrine, tenets, government, and laws of the original church, looking forward to the time when by the aid of Divine Providence it should be provided with the proper Presidency (with prophet, seer, and revelator as its president), Twelve Apostles, High Priests, Elders, Seventies, Teachers, Deacons, and a Bishopric; and continued such organization until 1860, at Amboy, it became and was fully organized, according to the organization, doctrine, tenets, government, and laws of the original church, believing in the Holy Bible, Book of Mormon, and Doctrine and Covenants as promulgated by the original church and published in the editions of 1835 and 1845, and adopted an epitome of faith under said *three great lights*, as follows:—

“We believe in God the eternal Father, and his Son Jesus Christ, and in the Holy Ghost.

“We believe that men will be punished for their own sins and not for Adam’s transgression.

“We believe that through the atonement of Christ all men may be saved by obedience to the laws and ordinances of the Gospel.

“We believe that these ordinances are,—

“1. Faith in God, and in the Lord Jesus Christ.

“2. Repentance.

“3. Baptism, by immersion, for the remission of sins.

“4. Laying on of hands for the gift of the Holy Ghost.

“5. We believe in the resurrection of the body; that the dead in Christ will rise first, and the rest of the dead will not live again until the thousand years are expired.

“6. We believe in the doctrine of Eternal Judgment, which provides that men shall be judged, rewarded, or punished, according to the degree of good or evil they shall have done.

“We believe that a man must be called of God and ordained by the laying on of hands of those who are in authority, to entitle him to preach the Gospel and administer in the ordinances thereof.

“We believe in the same kind of organization that existed in the primitive church; viz., apostles, prophets, pastors, teachers, evangelists, etc.

“We believe that in the Bible is contained the word of God so far as it is translated correctly. We believe that the canon of Scripture is not full, but that God by his Spirit will continue to reveal his word to man until the end of time.

“We believe in the powers and gifts of the everlasting gospel; viz., the gift of faith, discerning of spirits, prophecy, revelation, healing, visions, tongues, and the interpretation of tongues, wisdom, charity, brotherly love, etc.

“We believe that marriage is ordained of God, and that the law of God provides for but one companion in wedlock, for either man or woman, except in cases where the contract of marriage is broken by death or transgression.

“We believe that the doctrines of a plurality and a community of wives are heresies and are opposed to the law of God. The Book of Mormon says: ‘Wherefore, my brethren, hear me, and hearken to the word of the Lord; for there shall not any man among you have save it be one wife, and concubines he shall have none, for I, the Lord God delighteth in the chastity of women. And whoredoms are an abomination before me saith the Lord of Hosts.’

“We believe that in all matters of controversy upon the duty of man towards God, and in reference to preparation and fitness for the world to come, the word of God should be decisive and the end of dispute, and that when God directs, man should obey.

“We believe that the religion of Jesus Christ as taught in the New Testament Scriptures, will, if its precepts are accepted and obeyed, make men and women better in the domestic circle; better citizens of town, county, and State; and consequently better fitted for the change which cometh at death.

“We believe that men should worship God in spirit and in truth, and that such worship does not require a violation of the constitutional law of the land.

“We claim the privilege of worshiping Almighty God according to the dictates of our conscience, allow all men the same privilege, let them worship how, where, and what they may.”

They thereby became the successor of the original church, since which time it has continued such complete organization, holding to all the doctrines, tenets, organization, and laws of the original church, and claiming to be the original church—at least its successor—and as such entitled to the property of the original church or held for its use.

The Supreme Court of Kentucky, *Gibson v. Armstrong* 7 B. Monroe 481 says: “In case of division of the local society into two organized parts, though the individuals of each party might still answer to the general description of the beneficiaries described in the deed, it does not follow that each party would be entitled to the use of the house (property) of worship; *that the use belongs, in subordination to the rule of discipline, to the local society and to individual members of it.* The title to the use must . . . be determined by the question, *Which of the two contending bodies is entitled, according to the rules and discipline of church, to be regarded as the true society, by which and for whose use the lot was purchased . . . and held.*”

In *Ferraria v. Vasconcelles* 23 Ill. 403, 409: “The principles announced must and do cover a case where the smaller number

adhere to the usages, tenets, and discipline of the church, as fully as if they were the greater number.”

In the same case again in Supreme Court, 31 Ill. 25, Justice Caton, at pages 54, 55 says: “As a matter of law, as I understand the decisions, the rule is, *that where a church is erected for the use of a particular denomination, or religious persuasion, a majority of the members of the church cannot abandon the tenets and doctrines of the denomination and retain the right to the use of the property; but such secessionists forfeit all right to the property, even if but a single member adheres to the original faith and doctrine of the church.* This rule is founded in reason and justice”—. . . “church property is rarely paid for by those alone who there worship; and those who contribute to its purchase or erection, are presumed to do so with reference to a particular form of worship, or to promote the promulgation or teachings of particular doctrines or tenets of religion; . . . and to pervert the property to another purpose is an injustice.” “Hence it is, that *those who adhere to the original tenets and doctrines of the promulgation of which a church has been erected are the sole beneficiaries* designed by the donors; and *those who depart from and abandon those tenets and doctrines, cease to be beneficiaries,* and forfeit all claim to the title and use of such property.”

Tested by this rule can there be any question as to the Plaintiff's right to this property? I apprehend not.

In *Smith v. Pedigo* 33 N. E. R. 777, at page 778 the Court as to the reasons for listening to the evidence of doctrines and tenets of a church, in determining property rights says: “Religious doctrines and practices are listened to by the court solely as facts, upon which civil rights and rights to property are made to depend, regardless of the ultimate truth or soundness of such doctrines, practices, and beliefs.”

The citizen is left free to adopt or repudiate any doctrine, or having adopted one may repudiate it and adopt another.

The Court in this case at page 779 says: “But that is a very different thing from the claim of a right of a church member to repudiate the faith and doctrine upon which his church was founded, and at the same time insist on his right to exercise and enjoy the benefits and privileges of a member of such church contrary to the rules and laws upon which such church is established.”

The contest in this case was over certain articles of faith, all of which were originally recognized as the doctrine of the church; the split was mainly upon two articles the third and fifth, the third being, “We believe in the fall of man and that all of Adam's posterity are sinners by nature, and that they have neither will nor power to save themselves from their tempted and sinful state by their ability which they possess by nature.”

The fifth was: “We believe that sinners are justified by the righteousness of God, which is in Jesus Christ imputed to them by

divine and supernatural operation of the Spirit of God, and that they are kept by the power of God, through faith unto salvation.”

Shortly before the separation or division of the church a difference arose over those articles which related to the means of salvation and is expressed by the Court at page 781 as follows: “That difference related to the ‘Means’ by which sinners are to be made Christians. The majority, represented by Appellees, believe in the use of ‘Means’ for that purpose, while the minority, represented by the Appellants, do not believe in the use of ‘Means’ for that purpose, and are called the ‘Means’ and ‘Anti-means’ parties. The ‘Anti-means’ brethren ‘believe that sinners are regenerated by personal contact with the *Holy Spirit*; that persons are regenerated without ‘Means’ or any instruments whatever; that it is the sole original work of the Holy Spirit;’ while the ‘Means’ brethren ‘believe the work of regeneration, the power of quickening, is in every sense, by the Holy Spirit; yet that God uses the ministry of gospel, and Christian service, and prayers and intercession as a ‘Means’ of leading sinners to Christ; and hence that they are quickened, being penitent of their sins, by the Holy Spirit and the life that comes from God.’ The ‘Anti-means’ party ‘declare that just as many sinners of Adam’s race and of the different nations would be saved if there never had been a Bible written or sermon preached; while the ‘Means’ party believe that ministers are now working under the original commission that Christ gave the apostles, and that it is God’s wish and God’s plan that the gospel shall be preached.’ Or, stating the proposition in the language of another witness, ‘One party believes that the Holy Spirit acts independently, directly, and through no communication whatever except the immediate contact with the lifegiving Spirit, given to the sinner’s heart;’ the other ‘that God does sometimes communicate the same lifegiving power in some other way than directly and abstractly,’ witness adding: ‘I never limit Jehovah,—let him do just as he pleases,—but I don’t believe he needs any vehicle to convey his Spirit.’”

Upon this difference a church split which had submitted to the foregoing third and fifth articles of faith and the Court being called upon to decide the property rights held that “the ‘Anti-means’ party, the minority, the appellant, adhered to the articles of faith—were acting in harmony with the law of the church, and that they were entitled to the property.”

The same principle is recognized in *Roshi’s appeal* 69 Pa. St. 462, also in *Lamb v. Cain* 129 Ind. 486 (29 N. E. R. 13), in which the court says: “If such trust is confined to a religious denomination or congregation, it is not in the power of the majority of that denomination or congregation, however large the majority may be, by reason of a change of religious views, to carry the property thus dedicated to a new and different doctrine.” *Smith v. Pedigo*, supra. 782. The Court says: “We therefore do not think it was in the power of the majority, by reason of a change of religious views, to

carry the property thus dedicated to a new and different doctrine.” And cites approvingly, *Bouldin v. Alexander* 15 Wat. 131, and *Harrison v. Hoyle* 24 Ohio St. 254.

The case of *Mt. Zion Baptist Church* 49, N. W. R. 81, (Iowa,) fully sustains the case of *Smith v. Pedigo*, supra. In the Iowa case it was contended that the Baptist Church was independent, and that a majority could rule; could, if so disposed, carry the church and property into the MORMON Church. The Court says: “We are not adjudicating the right of any person to a religious belief or practice, nor are we to determine the truth or falsity of the doctrine of sanctification or sinless perfection. Upon authority so general as to be beyond question, it is held that *property given* or set apart to a church or religious association for its use in the enjoyment and promulgation of its adopted faith and teachings, is by said church or association held in trust for that purpose, and any members of the church or association, LESS THAN THE WHOLE, may not divert it therefrom,” citing a large number of authorities.

The Court further says: “The power to govern the church gives no power to change the church, or the faith and covenants, that fix its character. The property of the church is the common property of all its members, and each has such an interest therein that he may insist that it shall be devoted to the religious faith for which it was given. . . . But there is no delegation of authority to the majority to apply it to the advancement of a church of another faith, . . . or by changing the faith of the majority of the members of the church. . . . If by a majority a Baptist Church should determine, on scriptural authority their right to a plurality of wives and, against the protest of a minority, devote the property of the church to the advocacy and practice of such a doctrine—under the claim of appellees that the church owes no allegiance to any man or body of men, civil or ecclesiastical, except a majority of its members, the only redress of the minority would be to retire from the church, and leave the property to the majority for such a purpose. Such a surrender of civil rights is without support on any principle of natural justice, and we believe without the sanction of any judicial tribunal.”

The same conclusion was reached in Tennessee. *Nance v. Bushby* 18 S. W. R. 874. See also *Rottman v. Bartling* 35 N. W. R. 126. *Baker v. Ducher* 79 Cal. 365. (21 P. R. 764.) The Courts in many other cases sustain the doctrine of these cases—unnecessary here to repeat.

In view of these authorities, which I think present the law as it is, fairly, there can be but one conclusion in this case upon the facts developed in the record. Out of the WRECK of the original church, none but the Plaintiff and its members adhere to the original faith, doctrine, tenets, organization, government, and laws of the original church. All others, the Defendants, the Utah Church as all else, have departed from the faith. Unless barred by limitation the decree must be in Plaintiff's favor.

ARTICLE VI.

Is Plaintiff barred by the statute of limitation?

We answer, No. There had been no actual, adverse, open, hostile, exclusive, and continuous possession of the premises in question for ten successive years before the commencement of this suit. There had been a possession for about seven or eight years by parties claiming to hold for the use of the Church of Christ—the original Mormon Church organized by Joseph Smith, the prophet, seer, and revelator, and others in 1830 as the Church of Christ, the name of which from time to time was changed until it finally settled into the Church of Jesus Christ of Latter Day Saints, and now called the Reorganized Church of Jesus Christ of Latter Day Saints—the Plaintiff.

The original church of 1830 purchased the property for its use as a Temple Lot, and it was held as such until the church was expelled by mob violence from Missouri, after which an attempt was made to divert the title from the church, but probably without the parties knowing who was making the purchase the party making such attempt at diversion sold to representatives of the original church and it is now held by a trustee for said original church, or Plaintiff, its successor.

True it is, that trustee says Plaintiff is not that successor (that is his conclusion), but if Plaintiff is such successor or is the original church (revamped) the present trustee holds the property for it and cannot set up limitation against its principal.

The result is the statutes of limitation can cut no figure.

The only question is: Is the Plaintiff the original church or its successor? If so, then the Plaintiff should recover the possession and the trustee be required to convey to its bishop.

Hill, the trustee, swears he holds for the church of 1830 or its successor.

ARTICLE VII.

Defendant utterly failing to show that *it is the church of 1830* or its successor, attempts to show that the Utah Church is the church of 1830 or its successor, by attempting to show that Joseph Smith taught and practiced polygamy—*privately*. Suppose he did, it was in violation of the law of the church, which he had no more right to violate than had any other member. If he did, he was a transgressor, and should have been expelled, as he expelled others under the law. If Joseph Smith practiced polygamy with young women, where are the fruits of it? He was a vigorous man, the father, by Emma, his wife, of four vigorous boys. Why in his vigor of manhood with *fresh material* for wives did he not leave his mark? (He at his death left Emma *enceinte*.) Can it be as WOODRUFF once said, when that question was asked him, that the excuse given by the women, was, that “*owing to the peculiar circumstances by which they were surrounded they were so nervous and in such* CONSTANT

FEAR *they did not conceive.*” What, a MATURE, MARRIED WOMAN, MARRIED BY THE SANCTION OF ALMIGHTY GOD, in fear! IN FEAR OF WHAT? Ah, Your Honor, if those women were ever intimate with Smith, it was like the intimacy of Beecher and Mrs. Tilton; they had reason to fear; they were violating a known law; *were doing it in secret.* They feared EMMA the legal wife and public opinion, as Beecher and Mrs. T. feared Tilton. But there is no truth in it. The whole thing was an afterthought. After the death of Smith it was a great thing to be recognized as the wife of the *prophet*, in the opinion of the followers of Brigham Young.

But Defendants say it was not an afterthought, and to prove it produce an edition of the Book of Doctrine and Covenants published by the Utah Church in 1876, containing a PURPORTED revelation covering about eleven pages of that book, and attempt to prove that Joseph Smith on July 12, 1843, pretended to have such a revelation; but the witnesses who pretend to know anything of SMITH’S connection with it, who pretend to have seen it, say it was written on one to two pages of ordinary paper. (I predict there is not a man in that church who could write it on eleven pages.) There is no pretense that it was submitted to the quorums or body of the church, or was ever publicly proclaimed until in 1852, eight years after the death of Smith, when Young, at Utah, declared it to be the work of Joseph Smith, and ordered his church to adopt it, which no doubt was then done.

But Defendants say *Smith* privately taught it and practiced it; yet as late as February and April, 1844, he expelled a number for preaching *polygamy* in Michigan (P. R. R. 177 Ab. 500; also Ab. 498, 499), and otherwise by himself and the leaders of the church denounced polygamous teachings and practices.

The law of the church prior to his death prohibited polygamy. His practice of or teaching it in private did not change the law. Up to the time of the disintegration of the church, after the death of the Smiths, the faith, doctrine, and tenets of the church were monogamous, and absolutely prohibited polygamy. If secretly any members of the church indulged in the exercises of David and Solomon, which the Book of Mormon denounces, as before shown, such practice was in secret, in violation of the laws and principles of the church, and was of the *Beecher-Tilton style*, simple *whoredoms*, and, under the law, subjected the parties to expulsion.

The fact is, Your Honor would not, upon the evidence in this record offer to sustain that pretended revelation if it bore upon the loan of a five cent piece from one neighbor to another, deem it sufficient to sustain an action in favor of the lender.

Herein we say the Plaintiff has shown title in itself, and Defendants have wholly failed to show either title in itself or outstanding.

G. EDMUNDS, Solicitor.