

CHURCH SCORES THE HILTON CASE

Judge Morse Sustains a Demurrer in
Smurthwaite Suit.

HAVE NO CAUSE OF ACTION

COURT HOLDS THAT COMPLAINT
IS NOT DEFINITE ENOUGH.

Judge C. W. Morse yesterday sustained the demurrer of President Joseph P. Smith of the Mormon church to the suit brought against him by Don Carlos W. Smurthwaite and Charles A. Smurthwaite to restrain him from investing church money in any but religious enterprises.

The complaint alleged that President Smith, as trustee in trust of the Mormon church, collected in per cent of the earnings of the Mormon people, and that he did not use the money for church purposes exclusively, such as sustaining missionaries, building and repairing houses of worship, etc., but invested large amounts in other business enterprises and used the church funds, which were estimated at not less than \$10,000 a year for speculation in stocks, bonds, etc.

In his demurrer President Smith alleged that the complaint was so defective that it was not a cause of action; that it was not alleged that the acts complained of were unauthorized or unwarranted, and that it was not alleged that the trust reposed in President Smith is being violated or is about to be violated.

Plaintiffs Have Twenty Days.

Messrs. Smurthwaite and Charles A. Smurthwaite are allowed twenty days in which to amend their complaint.

Judge Morse's decision is as follows: "It is well settled by the authorities that the broken line of decisions that the civil courts will take jurisdiction of suits to prevent misapplication of church funds, or property, or of any attempted application of the same, not warranted by the terms upon which the property was created, or the property acquired, or of the rules and regulations of the society. But before the court will interfere to exercise a visitatorial control over the management, disposal, or investment of such property, or funds, it must clearly appear from the averments of the bill that the acts complained of are unauthorized or unwarranted, or that the trust reposed in the management and control of such property or fund has been committed to the management and control of the defendant, or that the society is a corporation, having been incorporated under the laws for the incorporation of religious societies, and (2) where the society is unincorporated, being merely a voluntary association.

No Unlawful Acts.

"As appears from the averments of the bill in this case, the church of Jesus Christ of Latter-day Saints belongs to the second class. It is not alleged and was not contended by the plaintiff that the acts of the defendants complained of were unlawful in the sense that they are in violation of any laws of this state. Neither was it alleged, nor was it contended, that any of the trust property was being, or had been, appropriated by the defendants, or either of them, to their own use, or that either of the defendants had been guilty of any fraud with relation to such property, but the contention was that the investment and use of the funds in the manner complained of were unauthorized and unwarranted, constituting a violation on the part of the defendants of their duties as trustees. What those duties are and what the powers and limitations of authority on the part of such trustees are, can only be determined by a reference to the constitution, rules and regulations of the society and the terms of the trust.

A Case in Point.

"As was aptly said by the learned chancellor in the case of *Pendle v. Skinner*, 11 Ct. 257: 'If jurisdiction is entertained over them (voluntary associations for charitable purposes) by a court of chancery, it appears to me that it will become necessary to examine their constitutions or by-laws, or articles of association, in order to discover the object for which they were formed, and the duties and contributions and every one receiving donations, whether they are styled as officers or not, must be considered having regard to the articles of association, whether they are called constitution, or by-laws, and must proceed accordingly.' And as was said by Judge Strong in the *African M. E. church case* (18 Pa. St. 269): 'Of course, whether the complaint of omission or commission is a breach of duty, or the failure to perform an obligation, or how the funds are used, or whether the duty or obligation be clearly set forth and defined.

No Cause of Action.

"It is not sufficient to allege that certain acts are unauthorized, or that they are not lawfully or legally done, but the facts from which such deductions and conclusions may be reached must be set forth.

"Applying these rules to the complaint in this case, I am of opinion that it does not state a cause of action.

"It is alleged that the defendant, Joseph P. Smith, as president and trustee-in-trust, 'transacts the business of said church in Salt Lake City.' What the nature or character of the business in which said church, under the policy or plan of its organization, may engage in through its trustees, is not set forth.

"It is alleged that said church receives annually from its members one-tenth of their gains, or income, as stated. Such exactions must necessarily be made through some collection, or how the funds promulgated by some persons or body having authority to act in such matters, the complaint, however, is silent as to the character or terms of any such rule or regulation, with reference to the object of such exaction, or how the funds created thereby shall be managed and applied, and with whom, if anyone, rests the discretion of determining or directing such management or expenditure.

Complaint is Vague.

"It is alleged that such contributions are paid to said church and said trustees for appropriation and expenditure by it exclusively for church purposes, etc. But whether such deduction is to be drawn from the fact that the persons contributing are presumed to have done so with regard to the terms of the regulations relating to such contributions, or the son of express directions and limitations made by the donors at the time of making the contributions, does not appear. If the former, then, the substance of the terms and the conditions of such regulations should be pleaded, and if the latter, the directions and limitations as expressed by the contributors should be set forth.

"With reference to the eighth paragraph, which refers to the wills and bequests, the special demurrer to this paragraph, upon the ground that it is ambiguous and uncertain, is sustained, and the general demurrer to the entire complaint is sustained, and the plaintiffs are given twenty days to amend, if they so desire."

MRS. HILTON LOSES POINT.

Court Sustains Demurrer in Fight
Over Park Estate.

Because Mrs. Annie F. A. Hilton's petition for \$10,000 from the Park estate contained the phrase, "Said plaintiff is the owner of and entitled to one-third of the said estate," the court yesterday sustained the demurrer of the Park estate.

At first glance, it may seem difficult to get down to a practical basis in handling such a subject as this, but I believe that a good many practical ideas will be presented for consideration.

Portland Man's Views on "See America First" Idea.

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estate, was sustained by Judge Armstrong yesterday.

Mrs. Hilton set out in her complaint that she had the wife of Mr. Park, who died in 1872, until his death, Sept. 29, 1900. She then enumerated certain sales of real estate made by Mr. Park during his lifetime and in which she claimed a one-third interest. The total value of the property thus sold was set at \$11,250 by Mrs. Hilton, who also alleged damages in the sum of \$2,000 because the executor refused to recognize her as Park's lawful wife, although the supreme court had held that the marriage was valid.

By alleging that she was the owner of one-third of the property involved, Mrs. Hilton put an element of ambiguity into the case. The intention of the executor was that if Mrs. Hilton was an owner in the property sold by Mr. Park during his lifetime she had no claim against the estate, but that her claim, if any existed, lay against the purchasers of the property.

Judge Armstrong allowed Mrs. Hilton ten days in which to amend her petition.

DAMAGE SUIT DISMISSED.

One is Settled Out of Court and Other
May Be Renewed.

The damage suit of James F. Turner against the Bingham Gold Mining company for \$100,000 for alleged damages to crops caused by smelter smoke was dismissed in the federal court yesterday. It was settled out of court.

The suit of Edward Wannebo against the Western Utah Telegraph company was dismissed without prejudice on motion of the plaintiff, and may be continued against Wannebo, alleges that while he was in Sunnyside, Utah, in February, 1905, his wife sent him a telegram from Salt Lake notifying him of the serious illness of his son. The telegram failed to deliver the telegram to him.

At the time, Wannebo charges, there was great public excitement and violence at Sunnyside, caused by the coal strike, and when he failed to return to Salt Lake in response to the telegram, his wife feared that he had met with an accident or fatality. Her mental sufferings and anguish he values at \$3,000.

It is understood that the case was dismissed because the plaintiff is not ready for trial. He will probably institute a new action.

SEVIER WATER RIGHT CASE.

Judge Morse Will Leave for Richfield
Today to Try It.

Judge C. W. Morse leaves today for Richfield to begin the trial of the complicated water suit involving rights to the waters of the Sevier river. The case there is said to be the most intricate bit of litigation in the history of the state. It will probably occupy Judge Morse until well along in January.

The case of James Young against William Gordon and others, involving the right to still creek, which has been tried before Judge Morse in Salt Lake for two weeks, will be continued until his return from Sevier country.

WILL TRY D. B. DAVIES.

Judge Howell of Ogden Will Sit in
County Court Case.

D. Beynon Davies, former deputy county clerk, will be placed on trial in the district court tomorrow morning on a charge of conspiracy in connection with the county funds. The case will be tried by Judge J. A. Howell, county clerk.

Lyon Pleads Not Guilty.

Oscar P. Lyon, who, as postmaster at Pecos, Utah, accused of using postage stamps to pay his private debts and of padding his cancelled stamp account to the government, was arraigned in the federal court yesterday and entered a plea of not guilty. He will be tried at the April term of court.

Court Notes.

Edward G. Elmer, a bartender, was given his final discharge in bankruptcy yesterday.

The "smelter smoke" damage suits of Turner & Bird against the Utah Consolidated Mining company, were dismissed in the district court yesterday, following a settlement between the parties.

THISTLE CLUB ELECTION.

Nicol Hood Chosen Again as Head of
Organization.

Nicol Hood was re-elected president of the Thistle club at the annual meeting held Friday evening. The other officers chosen are: W. J. Gracie, first vice president; Robert Stevens, second vice president; David Henderson, secretary; Mary Hamilton, assistant secretary; Simon Gracie, treasurer; Robert Willis, sergeant-at-arms; W. T. Hopkins, chaplain.

WANTS GREEN RIVER WATER

James M. Shaffer Would Irrigate
2,040 Acres of Land in Wasatch County.

James M. Shaffer et al. made application yesterday in the state engineer's office for the appropriation of thirty-five second feet of water to be diverted from the Green river, in Wasatch county, for irrigating purposes. The diverting channel is to be 20,000 feet in length, six feet in width and three feet in depth. Under the filling there is 2,040 acres of land to be irrigated.

John P. Gilman et al. of Vernal, Utah, filed a similar application for twenty-eight second feet to be taken from the Green river in Utah county. The diverting channel is to be 20,000 feet in length, eight feet in width and three feet in depth. There is 1,960 acres of land to be irrigated under the filling.

RAISE BERRIES IN UTAH.

S. March of Michigan Thinks It Can
Be Done Here.

S. March, a prominent fruit grower of Michigan, addressed the members of the Salt Lake County Horticultural society at their regular meeting yesterday afternoon. Mr. March discussed the problems of fruit-growing in his state. John P. Sorenson presided. The society approved the action of its committee in paying the bill of \$5 presented by the D. A. & M. society for bunting used in decorating the Salt Lake county exhibit at the state fair.

WINTER IS HERE

But is your system strong enough to withstand the severe cold and inclement weather. If not, you're liable to attacks of Chills, Cold, Grippe, or Pneumonia. Strengthen the entire system by taking

HOMESTETTER'S
STOMACH BITTERS

before it is too late. It also cures Heartburn, Bloating, Belching, Indigestion, Dyspepsia, Insomnia, and Malaria. Get a bottle today, also ask your druggist for a free copy of our 1906 Illustrated Almanac. It's well worth having.

TURN SCENERY INTO AN ASSET

Portland Man's Views on "See Amer-
ica First" Idea.

WOULD USE NOTED WRITER

TO CREATE AN APPETITE FOR
KNOWING COUNTRY BETTER.

"At first glance, it may seem difficult to get down to a practical basis in handling such a subject as this, but I believe that a good many practical ideas will be presented for consideration."

says Tom Richardson, manager of the Portland Commercial club, in an interview in the Portland Oregonian on "The See America First" idea to be considered at the meeting in Salt Lake, Jan. 25.

"Now, I know a number of cities on the Pacific coast would join others equally interested in gathering together say thirty of the best-known descriptive writers in America and have them make a tour covering perhaps sixty days, or even more, viewing the more attractive features of scenic America. Take a syndicate composed of 100 of the leading newspapers and magazines of the country (one of course, in each city) who would subscribe for these articles—a combined fund subscribed by the advertising departments of the different railroads—let the commercial, real estate and financial interests of the different cities and sections as represented through their commercial bodies also contribute, and at the same time look out for the comfort and convenience of the correspondents. As a result, it would soon be the proper thing not only to describe but to publish matters of interest relative to American scenes worthy a visit. The natural rivalry between the different newspapers and magazines of the country would create an appetite for knowing more about America, and I can see no reason why it should not be a matter worthy of consideration in the president's message.

"If hundreds of millions of dollars are going out of this country to be spent in Europe, while we have a more advantageous climate and grander scenery, isn't it worth while for the United States government to adopt a plan which will make American scenery an American asset?

Make American Tour Fashionable.

"Can you imagine Mrs. Astor, who is probably the most powerful factor in American society, coming out in favor of knowing America better, and then making the country with its scenery fashionable by taking an extended tour herself just for the purpose of becoming acquainted with the innumerable attractive features of her native land? She would find glaciers larger than those of all Switzerland, an extinct volcano in whose crater Vesuvius could be lost, forests that have no parallel, lakes even more beautiful than those of Switzerland, mountains that look like solid cones of snow, others that have canyons and waterfalls too numerous even to count.

"I believe it is worth while for every governor in the Trans-Mississippi region to attend the Salt Lake meeting. I feel that the great railroad interests should be represented there by their most capable men. All of us know that there will come a time when American scenery will be her greatest asset, bringing to us not only the most progressive and prosperous nation on earth, but a portion of the world which acknowledges no rival in its gifts."

BAY, MISTLETOE AND HOLLY

Merchants Are Laying in Supply of
Decorations for Christmas Season.

A midseason quiet prevails in the local markets, both wholesale and retail. Small shipments of California vegetables are received daily, but nothing new is shown. The wholesale houses have ordered for Dec. 13 several carloads of bay, mistletoe and holly, and evergreen wreaths.

Last year the decorations were shipped from the south. This stock was found to be of poor quality, creating no great appointment to those with a heart for the "home beautiful." The consignments for the coming holidays in the local stock procurable. Prices will be about as follows: Holly, per case, 50; holly wreaths, evergreen, 25; bay, 15; mistletoe, 15; per strip of twenty yards.

The retail market is firm, business keeping up to the top notch and prices unwavering. Bananas are selling from 25 cents per dozen up. Good solid bunches of celery are 5 cents and bunches of celery are 5 cents and bunches of celery are 5 cents.

The demand for turkeys is light. A few birds are offered at 20 cents. California grapes are still on the market, but no shipments have been received for a week. The fruit keeps well and the berries are offered for 75 cents each. The fish and meat markets are well supplied. No changes were noted yesterday.

COLONEL TRUMBO SUED.

San Francisco Livery Stable Wants
to Collect \$250.

Suit for \$250 was filed in San Francisco Wednesday against Colonel Isaac Trumbo, formerly of Salt Lake, by the proprietor of the Lurline stable. According to Attorney G. W. Hollister, the suit is intended to hurry up Colonel Trumbo in the payment of a bill for the keep of the livery stable. There was an intimation that Colonel Trumbo was not satisfied with the services rendered, but also in payment, and as a consequence had not been using the carriage and pair of late.

Colonel Trumbo is known as a man of many peculiar and kind ways, one being to give the members of a party good times and dinner at his own expense at Christmas eve. Years ago before he became a prosperous livery man, he was in the candy business in a small way. Now that Dame Fortune has smiled on him he still is loyal to his trade and never passes a candy store that is small and unassuming that he does not drop in to buy some candy.

TO MAKE STEAM TURBINES

New Company Is Incorporated in Salt
Lake With Capital of
\$100,000.

The Shepherd Steam Turbine company, which proposes to manufacture machines under the patent for steam turbines secured by Frank D. Shepherd, was incorporated yesterday. The company is capitalized for \$100,000 in shares of a par value of \$1. Frank D. Shepherd is president, and C. B. Chandler, vice president, and C. B. Jack, secretary and treasurer.

LAND FRAUD CASES

Partial Report of the Federal Grand
Jury at Topeka, Kan.

COUNTY OFFICIALS CAUGHT

QUICK WORK OF SPECIAL AGENT
GREEN.

Topeka, Kan., Dec. 9.—After submitting a partial report containing twenty-four indictments against cattlemen, the United States grand jury, which has been in session here for the past week, investigating Kansas land fraud cases, adjourned until Thursday of next week at 6 o'clock this evening. Three of the indictments charge conspiracy to defraud the United States government out of a portion of its public domain and subornation of perjury in the securing of fraudulent homestead entries. The other twenty-one indictments charge the unlawful enclosure of public lands.

The grand jury adjourned until next Thursday to give the officers time to secure additional witnesses for the most important land fraud case yet to be considered in this case. The jury will make its complete report and adjourn sine die one week from tomorrow.

The Men Indicted.

The complete list of indictments returned in the period of the case, submitted tonight is as follows:

For conspiracy to defraud the United States government out of a portion of its public domain and subornation of perjury in securing fraudulent homestead entries: John E. Bilby, Russell, Kas.; J. H. Drinn, Russell, Kas.; L. C. Jenkins, Russell, Kas.

For the unlawful enclosure of public lands: J. A. Kelly, Hubert, Kas.; R. M. Crawford, Hubert, Kas.; Woodford Hubert, Hubert, Kas.; B. L. Hubert, Hubert, Kas.; Robert Merton, Grand Bend, Kas.; H. S. Boice, Kansas City, Mo.; E. Lehmann, New York; George W. Morland, New York; Thomas Porter, Richfield, Kas.; W. E. Moore, Richfield, Kas.; J. W. McLean, Richfield, Kas.; M. C. Combs, Richfield, Kas.; M. J. Allen, Richfield, Kas.; E. M. Dean, Richfield, Kas.; A. M. Dean, Richfield, Kas.; John E. Bilby, Russell, Kas.; J. M. Drinn, Russell, Kas.; L. C. Jenkins, Russell, Kas.; J. H. Drinn, Russell, Kas.; L. C. Jenkins, Russell, Kas.; J. H. Drinn, Russell, Kas.; L. C. Jenkins, Russell, Kas.

Officials Caught in Net.

Of the above, R. M. Crawford is county treasurer of Stevens county; M. J. Allen is county attorney of Morton county; and J. H. Drinn is a member of the United States land office, all in this state.

J. S. Bilby is reputed to be one of the wealthiest men in this state of Missouri. He is indicted for illegal land fencing, but his son, John E. Bilby, must answer the more serious charge of conspiracy to defraud and subornation of perjury. All of the men indicted are wealthy cattle barons.

The twenty-four indictments are the result of less than two months' work by Colonel A. L. Green, special agent of the United States land office. Colonel Green stated tonight that he had barely commenced his work and would not stop until every case of land fraud in Kansas had been thoroughly investigated.

The total amount of land held under fence by the indicted cattlemen is 493,409 acres, of which 133,990 acres is government land.

MUSIC IN CITY CHURCHES.

Programmes Arranged for Services in
Salt Lake Today.

R. C. Dunbar and J. W. Curtis will sing an "Ecce Panis" by Donizetti at St. Mary's cathedral today.

Miss Woolfing will sing "O Paradise" by J. Lewis Brown, at the First Presbyterian church this morning.

Miss Judith Anderson will sing the offertory solo at the morning service in St. Mark's cathedral.

Professor Charles Kent, assisted by the church choir, will deliver a number of selections at the sixteenth ward chapel, beginning at 6:30 o'clock this evening. Rabbi Charles J. Freund will deliver a lecture on "The Jews in Russia."

MONUMENT TO PROPHET.

Work on Shaft at Sharon, Vt., Is
Completed.

A telegram to President Joseph F. Smith from Julius F. Wells announces that the monument to the Prophet Joseph Smith, at his birthplace in Sharon, Vt., has been completed. Mr. Wells' telegram says the monument is the largest polished shaft shaft in the country.

GIVE YOUR STOMACH
A NICE VACATION

Don't Do It by Starving It, Either—
Let a Substitute Do the Work.

The old adage, "All work and no play makes Jack a dull boy," applies just as well to the stomach, one of the most important organs of the human system, as it does to the mind.

If your stomach is worn out and rebels against being taxed beyond its limit, the only way to give it a rest is to give it a rest. Employ a substitute for a short time and see if it will not more than repay you in the long run.

Stuart's Dyspepsia Tablets are a willing and efficient substitute for food in the stomach in just the same way that the stomach itself would do it. They contain all the essential elements that the gastric juice and other digestive juices of the stomach contain and actually act just the same and do just the same work as the natural fluids would do, were the stomach well and sound. They, therefore, relieve the stomach, just as one would relieve a man who has been overworked and exhausted, and enable him to rest and recuperate and regain his normal health and strength.

This "vacation" idea was suggested by the letter of a prominent lawyer in Chicago. He said that he was "tired" and "suffering" in the most momentous undertaking in his life in bringing about the coalition of the great powers of the world to make peace. He said that he was "tired" and "suffering" in the most momentous undertaking in his life in bringing about the coalition of the great powers of the world to make peace. He said that he was "tired" and "suffering" in the most momentous undertaking in his life in bringing about the coalition of the great powers of the world to make peace.

Stuart's Dyspepsia Tablets are for sale by all druggists at 25 cents a box.

FACTORY SALE

OF HIGH GRADE WATCHES, JEWELRY AND SILVERWARE

WE HAVE PURCHASED THE ENTIRE MANUFACTURING LINE OF BUSEMAN, DAVIS MANUFACTURING CO., AT A DISCOUNT OF FROM TEN TO FORTY PER CENT FROM THE REGULAR WHOLESALE PRICES. THERE IS NOT AN OLD ARTICLE AMONG THE STOCK. THE SAMPLES ARE AMONG THE BEST DISPLAYED AND THE PRICES WILL SOON CLEAR THEM AWAY. COME EARLY WHILE THE SELECTIONS ARE BEST. OUR ABSOLUTE GUARANTEE, WHICH HAS STOOD THE TEST FOR 43 YEARS IS BACK OF EVERY ARTICLE.

26 MAIN ST.

NUT CRACKERS
and six picks in a box, worth 75c, at

25c

ESTABLISHED 1862

SILVER-PLATED SALT AND PEPPERS, in box, worth 50c, at

20c

Large Mantel Eight-Day Clock, hour and half hour, worth \$10.00, at

\$6.50

Elgin or Waltham Watch worth \$8.00, at

\$5.00

Pretty Little Gold Plated Clock—WALTHAM or ELGIN, in thin model, Gold Plated Case, warranted 20 years, worth

\$8.75

SMALL LADIES' WATCHES, Elgin or American movements, cases gold filled, warranted 20 years, worth

\$9.50

GOOD AMERICAN MADE WATCHES, we sell from

\$1.00 to \$5.00

WATCHES that will last a lifetime from—

\$18 to \$100

Sterling Silver Hat Pins, worth 50c, at

25c

Solid Gold Cuff Buttons per pair,

\$1 to \$25

Toilet Set, from

75c to \$25

STERLING SILVER TEASPOONS, six in a case, worth

\$5.00, at

\$3.50

BUTTER KNIFE AND SUGAR SPOON, best quality, worth \$1.75, at

\$1.25

CHILD'S KNIFE, FORK and SPOON, 25c per set and up.

\$3 to \$10

JOHN DAYNES & SONS,

Utah's Oldest Jewelry Store, 26 Main St.

PLAN ANNUAL BANQUET

Commercial Club Will Invite Many Distinguished Guests of Honor This Year.

The fourth annual banquet of the Commercial club will be held on the evening of Dec. 23. The committee to arrange for it held its preliminary meeting yesterday afternoon. Other meetings will be held this week, and the program will be announced shortly. Among the guests of honor who will be invited to the banquet are George J. Gould, E. T. Jeffery, E. H. Harrison, Joseph H. Young, Charles H. Schlack, George W. Vallery, David H. Morland, Edwin T. Hawley, Senator A. Clark of Montana, J. Ross Clark; H. M. Calk, president of the Portland (Ore.) Commercial club; George W. Cook, president of the Denver Board of Men's League, and J. O. Koepf and Frank Wiggins, respectively president and secretary of the Los Angeles chamber of commerce.

The committee which is arranging the banquet is composed of Charles A. Quigley, chairman; M. H. Walker, Jay T. Harris, Robert W. Sloan, Joseph E. O'Brien and Louis Cohen.

Each of the 500 members of the club will be entitled to bring one guest to the banquet.

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