COURT FINDINGS IN BIRDSALL CASE.

The Accuser Was a Gentile and The Accused Was a Member Of the Church.

OFFENSE A BROKEN CONTRACT.

Conclusion Shows That Action of Local Church Authorities Was Correct-The Case Reviewed.

As the notorious Birdsall case in Sevier County has been so grossly misrepresented in public print and before the committee on Privileges and Elections in the U.S. Senate, we publish in full the decision rendered by the District court of the Sixth Judicial District of this State, September 25, 1905. As the court has revived the entire case, both as the matter was presented before the Church tribunals and in a civil suit, we need not recapitulate the story of the contention, except to show that the case before the Church courts was simply a charge of un-Christianlike conduct against Cora Birdsul, which was decided against

her.
The accuser was a "Gentile" and she
was a member of the "Mormon"
Churea. Her offense consisted of refusing to fulfill an agreement to con-yev to the complainant, a piece of land which he had purchased and cultivatwhich was included in a home-icy, afterwards filed upon by Miss Birdsall. The only equitable She was required to do this or be excommunicated from the father she refused to comply and was cut off the Church. Realizing her folly and wrong, she subsequently conveyed the land on receipt of \$100 from Mr. Leavitt, and was received into the Church by baptism. Her mind after-wards became unlinged, and her fa-ther, whose actions, it will be seen, summented upon by the court, sun for the recovery of the and on the ground that she was in-ompsient to make the deed. The evi-ence before the court showed clearly the rourt refused to comply with the

The chief point in this contention is that the Church did not interfere in any way with the courts or the laws of the land. It dealt with a Church member on Church discipline. It ren-dered judgment against a "Mormon" in favor of a "Gentile." As we have in favor of a "Gentile." As we have explained before, the entertainment of a complaint by a non-member against a member of the Church was out of the regular order of Church discipline. But is was simply a question of un-Christianlike conduct of which the accused was clearly guilty. The district court declares the deed of conveyance walld, and all attempts to present the valid, and all attempts to present the unweithy of any decent journal or in-dividual, but fully in accord with the course of those who are engaged in

In the district court of the Sixth ju-

Cora Birdsall, at incompetent, by Isaac Birdsall, her quardian, plaintiff, vs. James E. Leavitt and Hulda Leavitt, defendants.

In deciding this case, in order that

parties may have a clear under-inding of the position that the court kes, if is necessary to go into the story of the case as presented here court by both the plaintiff and the

have looked over the complaint as amended, as well as the amended answer and I thoroughly understand the issues in the case. I have scanned carefully the festimony as presented endeavored to weigh it is a careful and considerate manner, giv-ing due weight to that part which. I think entitled to weight, and leaving out all that I think is immaterial and

HISTORY OF THE CASE.

The history of the case, as I understated 0. is substantially this: Away back as for as the year 1883, or perhaps a little before that time, it appears from the evidence that this defendant was making some sort of claim to the ying a foundation for a clair sing improvements of parties whom he seemed to recognize as having same sort of squatter's right. Abou that time the father of Cora, who brings this suit, settled upon the land and it appears from all that can be gleaned from the evidence that they recognized nome port of right, although I believe having recognized the defendant to the land or

RHEUMATISM COMMON IN SUMMER

The time to get rid of Rheumatism in Summer while the blood is endeavo ing to purge itself of all poisons and in purities, and the skin is active, with a the pores and glands open and able, is this way, to assist in the elimination,

Columbus, O., 1355 Mt. Vernon, Ave Columbus, O., 1355 Mt. Vernon, Ave. Six years ago I had a severe attack of Indammatory Rheumatism, and the doctors I had did menogood. They changed medicine every week and nothing they prescribed seemed to help me. Finally I loft off their medicins and began the use of 8. 8. My knee and elbow joints were swellen terribly, and at one time my hands were so swellen and painful that I could not close them when opened. I was getting discouraged, you may be sure, when I began S. S. S., but as I saw it was helping me I continued it, and today I am a sound, well man and have asyer had a return of the disease.

R. H. CHAPMAN.

The inactivity of the Liver, Kidneys and Rowels causes the refuse matter to remain in the system, which, coming in contact with the different acids of the body, orms uric acid to be absorbed by the blood and distributed to the different oints and muscles, producing the pains, aflammation and other distressing symp-Rheumatism. The wandering as of the disease remind the suffere that the poison is still in the blood and he should lose no time in getting it out. neutralizes the acid and makes the blood rich and pure. It tones up every organ and cures the disease perma-

contains no harmful miner PURELY VEGETABLE.

als to disagreeably affect the system, but while curing the disease builds the every part of the body by its fine tonic ook on Rheumatism and any medical advice desired without charge. THE SWIFT SPECIFIC CO., Atlanta, Ga. PILES.

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one box will frequently effect a permanent
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cure.

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pense.

After using the free trial package, which we mail in a perfectly plain wrapper, you can secure regular full-size packages from druggists at 50 cents each, or we will mail direct in plain package upon receipt of price. Pyramid Drug Co., 3264 Pyramid Building Marshall, Mich.

to the improvements. As time went on it seems to ripen, however, into what was recognized there as some sort of right, and Mr. Birdsall, the father of Cora, made an entry. He relinquished finally in facor of his daughter Cora, who was a single and unmarried weman of the proper age to make an entry, and she filed a homestead entry upon the land. There was some dispute, as it appears, between Cora and the defendant, Mr. Leavitt, which, after she had proved up, grew to such an extent that Mr. Leavitt determined to settle that dispute by taking it into the Church courts. It must be remembered, however, that Mr. Leavitt was not at however, that Mr. Leavitt was not at that time nor at any time since, a member of the Mormon Church, but was a non-member. The defendant Leavitt finally prefers a charge against Cora in the Bishop's court of the Monroe ward, charging her with un-Christian-like conduct, and as the complaint that ward, charging her with un-Christianlike conduct, and as the complaint that
was filed in the Bishop's court has
been introduced as evidence in this
case by the plaintiff, I shall refer to
it, as it becomes a part of the record
in this case, and a part of the evidence. In that complaint Mr. Leavitt claims sixty acres of meadow and
pasture land. Claims that he bought
it of Frank W. Farnsworth, and that
it was in the Birdsall entry, known as
the Jericho pasture, for which he alleges that he had paid out money; and
he also claims that he had fenced and
improved it, and possessed a large part
of the land from 1882 to 1885, and sets
out that by reason of Cora's action he
has been damaged to the amount of
\$500 by being deprived of the use of the
land. He, therefore, asks that the
Bishop's court adjudicate the matter
between them and deal out such equitles in the case as they see fit.

DIVIDING ISSUES.

DIVIDING ISSUES.

Later on the issues between them were joined in the Bishop's court, the evidence was taken, and the Bishop's court decided that Miss Cora Birdsall court decided that Miss Cora Birdsall was in effect guilty of un-Christianlike conduct, and that she should turn over to Mr. Leavitt the land in dispute between them, or that she would be handled in the Church for her fellowship. Miss Birdsall, not being satisfied with the Bishop's decision, appealed the case to the High Council of the Sovier stake. The cream in due time cause on for trial to the High Council of the Sovier stake. The case, in due time, came on for trial before that body. The High Council sustained the decision of the Bishop's court, and heid that Cora Birdsall in effect was guilty of un-Christianlike conduct towards Mr. Leavitt, and she was duly not ded of the decision. She pressed her suit in both of these courts, it appears from the evidence, quite vigorously, and she was still dissatisfied and sought to reverse the decision of the High Council by taking an appeal from the High Council to the First. Presidency of the Church of Jesus esidency of the Church of Jesus Christ of Latter-day Saints. The case was reviewed by them and later on she was notified by Joseph F. Smith, John R. Winder, and Anthon H. Lund, who constitute the First Presidency of the Church of Jesus Christ of Latter-day Saints, that the decision of the High Council, and that of the Bishop's court and been sustained, and that there was no reason for her to refuse to obey the decision of the Bishop's court. That de-rision was to the effect that she should deed unto James E. Leavitt the north-west 40 acres of the southeast fourth of section 1, township 25 south, range 4 west, Sult Lake meridian, which is the and in dispute here.

WOMAN EXCOMMUNICATED. That, I take it, is the history of this case so far as the Church courts have been concerned, except that on June 18, 1903, Cora Birdsall was excommunicated from the Church of Jesus Christ of Latter-day Saints for failure to comply with the decision of the First Presy of the Church in the case refer

red to.

Later on, I think the 11th day of June, 1995. Cora Birdsall executed a warranty deed, conveying the land in controversy to James E. Leavitt. The deed was delivered to James E. Leavitt by the sister of Cora Birdsall, and \$100 in cash was paid by the defendant in this case. accorodance with the decision of the was decided that upon delivery of ne deed to the land in question by Miss ora Birdsall, Mr. Leavitt should pay to The \$100 was paid by Mr

will be remembered that since at his took place, and on the 3rd day of August, 1905, Miss Birdsall was declarto be insone by this court, and was nt to the State Mental hospital at vo, in this state, for treatment, and there at this time. Isaac Birdsall ho is her legal representative, brings his action, and asks this court to de-lare the deed referred to void, and clare the deed referred to void, and that she recover the premises in question, and that the defendant be required to render an accounting to the court and the plaintiff for the rents, issues and profits of said property, while in their possession, and the cost of suit, and such other relief as to the court seems just and equitable.

THE COMPLAINT. The complaint sets out that at the ime the deed was executed. Cora Bird-

ill was wholly incompetent and inca-actuated to care for herself or propert

nd that fact was at all times therein nentioned well known to the defendant nd that notwithstanding said knowlof plaintiff's insanity on the pare defendants, said defendant fraud ently taking advantage of the plain-ff's incapacity procured her sign the deed in ques-on, and that Cora Birdsall was ways incompetent and incapable of aking said deed or ratifying the same r binding herself by the same, the laintiff also alleges that she was made incompetient and Insane, by the laintiff to be disfellowshipped from he "Mormon" Church, and that by eason of such severance from the Mormon" Church, undue influence was esorted to by the defendant, James Leavitt and his agents to inductioning to so deed the said land to the plaintiff to so deed the said land to the defendant, representing to plaintiff that if she would deed said land to defendant, she, the said plaintiff, would be re-instated in the "Mormon" Chruch, and would regain her health and happiness that by reason of said promise and inducement and on others, plaintiff was induced to sign said deed which had been previously drafted without her knowledge or consent, and which was so signed by her while she was unconscious of the act done and unable to give legal consent thereto; and.

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tory symptoms of having taken coldt this time you act quickly—take a doses of Dr. Humphreys' Specific few doses of Dr. Humphreys' Specific "Seventy-seven" it will restore the checked circulation, start the blood coursing through the veins and break up the cold. "77" also breaks up colds that hang on. "77" cures Grip, Influenza, Catarrh, Coughs, Bronchitis and Sore Throat. At Druggists 25c, or malled, Write for Medical Book sent free.

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all that done by means of the fraudulent misrepresentations and undue in-fluence practised and exerted as aforesaid.

It appears from the pleadings that there are three grounds upon which they ask to have this deed cancelled. One is that undue influence was used by the defendant in which Cora Birdsall was induced to sign the deed. Ausail was induced to sign the deed. Auother is that there was no consideration; and the other is that she was insane and incompenient to make the
ded at the time the deed was executed.
There was no demurrer filed setting
up that two or more causes of action were improperly united. Therefore I shall take the complaint as it
stands and consider it. stands and consider it.

ABOUT UNDUE INFLUENCE.

I shall consider first the question of undue influence. There was not one word of testimony that I van find in this record that even intimates that Mr. Leavitt himself ever used any influence whatever with Cora Birdsail to get her to sign the deed. The contents to get her to sign the deed. The con-tention, however, is that the Elders of the "Mormon" Church who were called in to see Cora when she was sick used an undue influence over her to get her to abide by the decision. The witness Elsie M. Taylor testified that soe herself went after the Elders; that they came and administered to Cora, and that afterwards she was somewhat better. She and her father, who is the legal representative of Core Birdsall at this time, and her motaer Birdsall at this time, and her motaer, testified that in their judgment Cora was insane and gidn't know what she was doing at the time the deed was signed. As against that testimony there is the testimony of Mr. Bean, Bishop Coons, Jno. W. Coons, Simon Christensen, and S. G. Clark of Richfield, Utah, who visited Cora on the day the deed was signed and who conversed with her about it; and from their testimony it appears that the their testimony it appears that the thing that most troubled her was that she could not get back into the Church without going to the Twelve Apostles, and it seemed to be her greatest anxlety to comply with the decision of the Church courts and deed to Mr. Leavitt the land, but as she understood that she could not do it without going to the Twelve Apostles, she consulted with these men in regard to it. They sim-ply pointed out to her that it was not necessary for her to see the Twelve Apostles, but that she could comply with the decision if she so desired without going to them and when it was made plain that she could do that, she seemed willing to deed the land; and it seems to me from all the evidence in this case that if Cova Birdsall had been left bounded. had been left to herself to do as she pleased she would have deeded the land in question to defendant long before she did: but it appears that if there was any influence used with her whatever in this case it was used by her parents to prevent her from deeding Neither is testimony in this case to show that the

VISIT OF THE ELDERS. Elders who visited her the day the Elders who visited her the day the deed was signed used any influence whatever to get her to sign the deed. Whatever they did was in a way to assist her in carrying out her own desires, and the only way that the court could possibly hold in this case that that he research of the Church hold that he research of the Church hold that by reason of the Church courts dealing with the case it was un-due influence per se. Therefore if it were held by this court, to be undue in-fluence per se it simply means that any compliance by parties to requirement made upon them by any organization order or church would be hull and void, and as parties who belong to orders organizations and churches as not compeled to obey any discipline of the respective organizations—it is matter of option with them—and if they do so they do it voluntarily unless the order, organization or church by its of ficers uses some undue influence wi parties against their will to comp parties against their will to comply with any requirement of such order or organization, which was not done in this case. All churches, orders, and fraternal organizations have a right to discipline their members and when any member of said order or church organization does any act that is unbecoming and against the regulation and bylaws of their order or church they have a right to handle such person so far as their fellowship in such order far as their fellowship in such order or church is concerned. The members however, are under no legal obligations to obey such regulation or decision of their respective orders or church ortheir respective orders or church or-ganizations, and if they do so volun-tarily, the fact that they did it by rea-son of such adjudication of such order could not, I take it, be considered undue influence per se; and if the plain-tiff's theory in this case should prevail in this state under the testimony as in this state under the testimony as it stands it would mean that many transactions that have been made in this state would be null and void and there would be not not litigation over such matters. There is no contention by the plaintiffs in this case that Mr. Leavitt himself took any part in planetony Miss Blodsall. Their part in influencing Miss Birdsall. Their contention is that the "Mormon" Church by reason of its entertaining this case in its church courts acted a the agents of Mr. Leavitt and by reason the agents of Mr. Leavitt and by reason of its decision, which was against her, compelled her to comply and therefore it was the same as if Mr. Leavitt had done it himself. But as the evidence shows that it used no persuasion as before stated, that contention cannot be sustained.

be sustained. AS TO INSANITY.

As to the question of insanity, the burden of proof is to the effect that when she signed the deed she know what she was doing. She talked over the consideration, which was to be \$100. the consideration, which was to be \$100. However, according to the testimony that has been introduced in this case, that \$100 was not all of the consideration. Mr. Leavitt's first claim was more than 40 acres of land, and it appears that a concession was made on his part. Some improvements were made and such like and to some extent must have been recognized at least by must have been recognized at least by Mr. Birdsali, the legal representative of Cora; and the testimony of Virginius Bean, who had been a schoolmate with her, Simon Christensen, John W. Coons, G. W. Coons, who were all personally G. W. Coons, who were all personally acquainted with her, was to the effect that she knew what she was doing at the time the deed was signed—under-stood fully what she was doing—so that as to the question of insanity and the want of consideration it has not been sustained by the evidence in this case. It appears that Mr. Birdsall, able to give legal consent thereto; and I the representative of Cora who is now

and his wife accepted a deed from Cora made a day or two later than the Cora made a day or two later than the deed in question, which they never have returned. They hold it at the present time and have been occupying the land. It weakens materially their testimony; for certainly if she was competent to give a deed to them a day or so later than the deed made that is in controversy, she was competent at the time she signed the deed in question. There sems to be some motive on the part of Mr. Birdsall, the legal representative of Cora in this matter. The fact that he himself has stood in the way, preventing Cora from deeding this land to Mr. Leavitt the defendant and working to get a deed for some of the rest of the land, looks rather bad on his part. Therefore the issues in this case are for the defendant and the attorneys will prepare, findings in accordance

for the defendant and the attorneys will prepare, findings in accordance with the views that I have expressed.

State of Utah, County of Sevier, ss.

I. George M. Cope, official stenographer in and for the Sixth judicial district of the State of Utah, do hereby certify that the foregoing is a full and correct copy of the official record in the above entitled case and that the above decision was taken down by me as official stenographer as it was reneated. above decision was taken down by me as official stenographer as it was rendered by Judge Chidester at the termination of the above named case.

GEO, M. COPE.

Official stenographer in and for the Sixth Judicial District. State of Utah.

Grave Trouble Foreseen.

needs but little foresight, to tell, that when your stormach and liver are badly affected, grave trouble is ahead, unless you take the proper medicine for your disease, as Mrs. John A. Young, of Clay. N. Y., did. She says: "I had neuralgia of the liver and stom-"I had neuralgia of the liver and stomach, my heart was weakened, and I could not eat. I was very bad for a long time, but in Electric Bitters, I found just what I needed, for they quickly relieved and cured me," Best medicine for weak women. Sold under guarantee by Z. C. M. I. Drug Dept., at 50c a bottle.

Old Dutch china at Z. C. M. I. See it OCTOBER WEATHER.

What it Has Been in Salt Lake for the Last Thirty-one Years.

United States department of agriculture weather bureau. The following dain, covering a period of 31 years, have been com-Salt Lake City. Utah. They are issued to show the conditions that have prevailed, during the month in question, for the above period of years, but must not be construed as a forecast of the weather conditions for the coming month. Month of October for 31 years:

TEMPERATURE. Mean or normal temperature, 53 de-

Mean or normal temperature, 53 degrees.

The warmest month was that of 1875, with an average of 55 degrees.

The coldest month was that of 1883, with an average of 15 degrees.

The highest temperature was 36 degrees, on Oct. 6, 1889.

The lowest temperature was 22 degrees on October 25, 1878.

The earliest date on which first "killing" frost occurred in autumn, Sept. 22. Average date on which first "killing" frost occurred in autumn, Oct. 18.

Average date on which last "killing" frost occurred in spring, April 23.

The latest date on which last "killing" frost occurred in spring, April 23.

The latest date on which last "killing" frost occurred in spring, June 18.

PRECIPATION—(RAIN_OR_MELITED) PRECIPATION—(RAIN OR MELTED SNOW.)

Average for the month, 1,50 inch.
Average number of days with .01 of an och or more, six.
The greatest monthly precipitation was .55 inches in 1889,
The least monthly precipitation was .24 ich in 1895. inch in 1895.

The greatest amount of precipitation recorded in any 24 consecutive hours was
1.01 inch on Get. 18 and 19, 1890.

The greatest amount of snowfall recorded in any 24 consecutive hours (record
extending to winter of 1884-85 only) was
6.3 inches on Oct. 29, 1800.

CLOUDS AND WEATHER.

WIND. The prevailing winds have been from average hourly velocity of the wind s 5.5. The highest velocity of the wind was from noythwest on Oct. 11, 1877, also on The highest values of Oct. 11, 1877, also on Oct. 19, 1909.
Station: Salt Lake City, Utab.
Date of Issue: Sept. 29, 1908.
Local Forecaster, Weather Bureau.

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cured. If your case is beyond the power of Medical science to cure, brs. Shores will advise you free but will not accept your case for restment. DRS. SHORES FOR MANY YEARS HAVE MADE IT A FIXED ITULE TO TAKE NO INCURABLE CASES.

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merely a symptom of chronic inflammation in the prostate dand, brought on by early disdand, brought on by early dissipation or by the improper
treatment of some contracted
disease. A complete and radical
cure is, therefore, a question of
restoring the prostate gland to
its normal state, and this we
accomplish promptly and completely without the use of internal remedies. Our treatment
is a local one entirely. It is
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been proven absolutely effective
by thousands of tests. We are
convinced that by no other
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restoration of strength and vigor he accomplished.

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WE MENTION A FEW OF OUR SPECIAL PRICES:

is, special ts, special ts, special ts, special ts, special ts, special ts, special	at\$1,95 at\$2,35 at\$2,75 at\$3,15 at\$2,55 at\$2,95 ut\$4,35	1 1 1 1 2 5 c 2 5 c 2 5 c 5 0 c 5 0 c 5 0 c	Linen Collars at		15c Handkerchiefs
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OUR DEPARTMENT

We are ready to serve our patrons with the best Clothing, Hats and Furnishings the country affords. We've made great preparations for Fall and Winter trade and are prepared to offer great inducements.

> Sults \$7.50 to \$35.00 Overcoats \$7.50 to \$35 Hats \$1.50 to \$5.00

Shirts 50c to \$5.00 Underwear 50c to \$5.00 Sweaters 50c to \$8.00

We ask for your trade because we say frankly that we expect to do better by you than other stores will do.

Barton & Co.

TWENTY YEARS AGO TODAY. Dr. J. B. KEYSOR

(DO YOU REMEMBER?)

Floods at False Point, near Calcutta, destroyed the lives of 300 persons. Two hundred Peigan Indians left their reservation in the northwest and started on a plundering expedition

TEN YEARS AGO TODAY.

Gen. John M. Schoffeld, of the U.S. army, was placed on the retired st, having passed the age limit. Eight men were killed by an explosion, eight miles from Independence,

Z. C. M. L reincorporated for a term of 50 years. It was ascertained that Louis Price, a 17 year old boy of Nephl, had been murdered in the mountains, instead of having met with an accident, as sup-FIVE YEARS AGO TODAY.

Dr. John R. Park, state superintendent of public instruction, passed from mortality Lord Roberts succeeded Lord Wolseley as commander in chief of the



240 S. Main Street. Over Davis Good Sat of Teeth

Crown and Bridge Work a Specialty.