He opened up communication with the heavens in his youth. He brought forth the Book of Mormon, which contains the fulness of the Gospel; and the revelations contained in the Book of Doctrine and Covenants; restored the holy Priesthood unto man; established and organized the Church of Jesus Christ of Latter-day Saints, an organization that has no parallel in all the world, and which all the cunning and wisdom of men for ages has failed to discover or produce and never could have done. He founded colonies in the States of New York, Ohio, Missouri and Illinois, and pointed the way for the gathering of the Saints into the Rocky Mountains; Sent the Gospel into Europe and to the islands of the sea; founded the town of Kirtland, Ohio, and there built a temple that cost about quarter of a million of dollars; he founded the city of Nauvoo in the midst of persecution; gathered into Nauvoo and vicinity some 20,000 people, and commenced the building of the temple there which when completed cost one million dollars; and in doing all this he had to contend against the prejudices of the age, against, relentless persecution, mobocracy and vile calumny and slander that were heaped upon him from all quarters without stint or measure. In a word, he did more in from 14 to 20 years for the salvation of man than any other man save Jesus only that ever lived and yet he was accused by his enemies of being an indolent ,and worthless man! Where shall we go to find another man that has accomplished the one thousandth part of the good that Joseph Smith accomplished? Shall we go to the Rev. Mr. Beecher or Talmage or any of the great preachers of the day? What have they done for the world with all their boated intelligence, influence, wealth and the popular voice of the world in their favor! Joseph Smith had none of their advantages, if there are advantages. And yet no man in the nineteenth century, except Joseph Smith, has discovered to the world a ray of light upon the the keys and power of the Holy Priesthood or the ordinances of the Gospel either for the living or the dead. Through Joseph Smith, God has revealed many things which were kept hid from the foundation of the world in fulfillment of the prophets — and at no time since Enoch walked the earth has the church of God been organized as pfaefectly as it is to-day, not excepting the dispensation of Jesus and His Disciples, or if it was we have no record of it. And this is strictly in keeping with the objects and character of this great latter-day work, destined to consummate the great purposes and designs of God concerning the dispensation of the fullness of times. The principle of baptism for the redemption of the dead, with the ordinances appertaining thereto, for the complete salvation and exaltation of those who have died without the Gospel, as revealed through Joseph Smith, is alone worth more than *all the dogmas* of the so-called Christian world combined. Joseph Smith is accused of being a false prophet. It is, however, beyond the power of the world to prove that he was a false Prophet. They may do charge him, but you who have received the testimony of Jesus Christ by the spirit of prophecy through his administrations are my witnesses that they have not the power to prove him false, and that is why they are so vexed about it. In my humble opinion many of our enemies know that they lie before God, angels and men, when they make this charge, and they would only be too glad to produce proof to sustain their accusations, but they cannot. Joseph Smith was a true prophet of God. He lived and died a true prophet, and his words and works will yet demonstrate the divinity of his mission to millions of the inhabitants of this globe. Perhaps not to so many that are now living, for they have in a great measure rejected the Gospel and the testimony which the Elders of this Church have borne to them; but their children after them and generations to come will receive with delight the name of the Prophet Joseph Smith, and the Gospel which their fathers rejected. Amen.

THE MANDAMUS CASE.

THE Supreme Court of the Territory of Utah, in accordance with agreement made at the last sitting, met on Saturday last for the purpose of hearing arguments on the right of appeal to the Supreme Court of the United States, in the case of Kimball *vs.* Richards, in which is involved the title to and possession of the office of Probate Judge of Weber County.

It will be remembered, from what has already been published in reference to this case, that the Supreme Court, (Chief Justice Hunter, dissenting) decided that Mr. Kimball was entitled to the office. When this desision was rendered, notice was given of an appeal to the Supreme Court of the United States, and this Court was asked to state what would be a sufficient bond in the premises. Thereupon, an informal discussion arose as to the right of the Court either to grant the appeal or fix the amount of the bond. There being considerable diversity of opinion upon the subject, the Court then decided to adjourn the case until to-day, when it would hear arguments on the points in question.

Accordingly on Saturday morning at 10 o'clock, Chief Justice Hunter and Associate Judges Emerson and Twiss on the bench, a large representation of the bar of Utah were present, and it was evident that considerable interest was being taken in the case. Prior to the opening of the court, it was currently reported that the case would assume a new aspect, that, in fact, it was going to be argued by Mr. Kimball and his counsel that this was not an appealable case.

After the court had been declared open, the Clerk (Mr. Sprague) read the minutes of the last sitting of the court, and was about to hand the book to the Judges for signature, when

Mr. Kimball arose to make an amendment to the minutes' to the effect that a motion which had been made at the last session of the court by the respondent—a motion for a remittitur in the case—did not appear on the minutes.

Mr. Arthur Brown: Did'nt you withdraw it?

Mr. Kimball: No, there was to be a hearing on that question at this session.

Judge R. K. Williams: There was some talk about such a motion, but—

Chief Justice Hunter: There was a verbal motion made, and the argument upon that motion was deferred until to-day.

Mr. Kimball: We so understand, but the record does not show the making of the motion, though it was made in open court.

The Clerk: I have added to the minutes: "A motion for a remittitur forthwith was made by the respondent, and hearing thereon fixed for the same time."

The Court: We will now hear the motion, allowing three hours for the argument—one hour and a half to each side.

Mr. Brown: Your Honor says there was a motion here; but there were so many motions that I would like to enquire what that motion is. We asked the Court to fix the amount of supersedeas bond, which we supposed it was the Court's duty to do. So on the strength of that Judge Sutherland moved for a remittitur, but I ultimately understood that he backed out of it. Still I don't care. Gentlemen say they made this motion. Now is it a motion for the remittitur that is to be discussed, or whether the Court will fix a bond? What is it that we are to argue? That is what I want to know beforehand.

The Court: There was a motion made for the Court to fix the amount of supersedeas bond. A conversation took place among the various members of the bar, during which Judge Sutherland moved for a remittitur, and the understanding was that everything was to stand over until to-day, and we meet to-day, as I understand it, for the purpose of discussing whether or not the supersedeas bond is to be granted.

Judge McBride contended that the only motion involved in the argument was whether the Court would send down a remittitur to the court below. That of course lay at the foundation of the proceedings. It was not a question as to the amount of bond. They did not dispute the right of the Court to fix the bond, nor the amount.

Mr. Brown: Do you think $2,000 would be enough?

Judge McBride: The Court can determine that.

Mr. Brown: That is the only question we have asked this Court. We do not leave it to this Court to say whether we shall appeal or not.

Mr. McBride: So we understand, and that is the reason why we made our motion, so that the question which was necessary to be determined should come legitimately before the Court. The Court has a right to determine whether it will carry its own process into effect; in other words the remittitur is the process of this Court.

Judge Williams: After the judgment was affirmed, the question came up about fixing the amount of bond. That was the first motion made. We announced we wanted to take an appeal, and we asked the court to grant the appeal. While we were discussing that, Judge Sutherland moved for a remittitur, but the other motion comes first in order.

Mr. Kimball claimed the right to a remittitur in this case whatever bond might be filed, and he he took it that as remittitar was the process of that court, they had a right to ask for it. They asked that the process of the court be issued so that they might have the benefit of the judgment. So far as fixing the bond was concerned or appoving it he took it that they were not particularly interested in that matter. He supposed the Court wound follow the rule in the matter.

Judge Emerson: At the last session of the Court the question came up as to fixing the supersedeas bond, and upon that the Court said they would hear arguments of counsel. Then counsel made a motion for a remittitur.

Mr. Brown: Notwithstanding we file this bond, what is the effect of it?

Judge Twiss: Suppose you file a supersedeas bond, what effect will that have on the remittitur?

Mr. Brown: Not the slightest, unless it is a case that the law provides for. In that case it will have every effect; but that is a question for the Supreme Court to decide.

Mr. Kimball claimed that they had a right to the first hearing on the motion for a remittitur, as a decision on that point would decide the whole thing.

Mr. Brown: We want first of all the bond fixed, although we do not claim anything from that.

The Court: So far as the amount of the bond is concerned, if a bond is to be given, the Court has a right to fix the amount of that bond.

Mr. Brown: Your Honors are not asked to give the bond. We simply ask you to fix the amount. We ask you to say what will be a sufficient sum for a supersedeas bond. We ask no other determination.

The Court: Gentlemen, we will hear your arguments on the general proposition and reserve what we have to say.

Mr. Brown: We want to be heard on our motion if your Honors are not prepared to decide. We think our motion is first in order.

Judge Emerson: The Court is satisfied with the amount.

Mr. Brown: We have a bond here endorsed by Mr. Wm. Rossiter and Mr. John Sharp. We ask your Honors to decide as to the sufficiency of the amount and upon the two sureties.

Judge McBride objected to it being allowed asa supersedeas bond. They were satisfied as to the amount, but did not wish the Court to place itself on the record as granting it as a supersedeas bond.

Mr. Brown: We ask your Honors to say whether these are good and sufficient sureties for $2,500, and whether $2,500 is sufficient if a supersedeas bond is proper.

Judge McBride suggested that the Court withhold its judgment on the question of the bond until it heard the whole discussion. Their position was that it was not an appealable case; and there was no doubt as to that Court having the right to control its own process.

Mr. Brown: I have no objection to you taking all the processes you want. I do not ask any Court for an appeal. That is a question which the Supreme Court of the United States alone can determine. I simply ask whether Mr. Sharp and Mr. Rossiter are sufficient sureties, and whether the amount is sufficient.

The Court: I understand the object is, on all these matters, where a bond is offered, that it is simply for the purpose of satisfying the Supreme Court of the United States that the amount is satisfactory to this Court, and that the sureties are good.

Mr. Brown: That is my position exactly.

The Court: We decide that $2,500 is an amount sufficient for bond in this case, and that the sureties of the bond are good if a supersedeas bond is granted.

Mr. Brown: That will satisfy us.

Mr. Kimball: If the Court please—

Judge Williams (interrupting): Which motion is now to be discussed?

Mr. Kimball: There is a motion for a remittitur, and—

Judge Williams: Does the Court approve of the bond?

The Court: We have stated that the amount of $2,500 is sufficient and that the sureties named in the bond are good if supersedeas lies.

Mr. Kimball contended that his motion had precedence. He asked the Court to issue its process, and there was no question as to its having the right to control its own process, and it seemed to be the only one the Court had a right to act upon.

The Court: We will hear both your motions together. It is immaterial to us which you argue.

Judge Williams claimed their side had precedence, and he insisted upon having the opening and closing argument.

The Court ultimately decided that the parties moving for supersedeas had the affirmative in the discussion.

The arguments in the case then proceeded.

JUDGE R. K. WILLIAMS,

In opening the argument on the motion for the appellant, said: The question to be decided by the Court was the approval of the bond tendered to operate as a supersedeas. The Court had already decided that the penalty was sufficiently large and the sureties amply good, hence, the only remaining question was to determine whether appellant was entitled to a supersedeas. If the value of the thing in dispute was over $1,000, the right to appeal to the United States Supreme Court and have a superdeas was secured by Section 702, Revised Statutes of the United States.

The first question to be decided is as to what was in controversy; the second question is as to whether it was of money value, and if so, was its value over $1,000.

Then how is it to be ascertained what was in controversy? As early as 1798, in Wilson vs. Daniel, 3 Dallas, Reports, the United States Supreme Court decided that the Court will "not regard the verdict or judgment as the rule for ascertaining the value of the matter in dispute between the parties. * * * To ascertain, then, the matter in dispute, we must recur to the foundation of the original controversy—to the matter in dispute when the action was instituted." And the Court adjudged that the penalty of the bond being over the necessary amount, although the judgment was under it, gave jurisdiction. And where the value does not appear in the pleadings, its value may be subsequently proved by the affidavit of the party or other competent evidence, and these rules have been followed in numerous subsequent cases, 4 Dallas, [illegible]; Williamson vs. Kincaid; 5 Cranch, 216; the U. S. vs. Brig. Union, etc. Now to recur to the pleading, the thing in controversy or dispute will be ascertained.

On the 4th day of October, 1882, the respondent, Kimball, filed before the Judge of the First District Court, an affidavit called a complaint in mandamus, setting out that the appellant had been elected Probate Judge, at the August election in 1880, and that his successor should have been elected in August, 1882, but that there was no such election held, and that September 28, 1882, the Governor of Utah had commissioned him, Kimball, as such Probate Judge, and that he had given bond, taken the oath of office, but that he could not find the County Treasurer and had left the bond at his office, and on Oct. 2, '82, had presented his commission to Judge Richards, and demanded that he deliver to him (Kimball) the papers, books, etc., appertaining to said office, but "notwithstanding plaintiff's appointment aforesaid, he (Richards) refused to deliver all or any of said books, papers, records or property to said plaintiff, and still does so refuse, and claims that he is entitled to retain the custody of the same until a successor to him is elected by the people." Thus showing in his own affidavit or complaint, that the very foundation for his claim to the books was whether he or Judge Richards was the legal Probate Judge of Weber County.

But the defendants filed a demurrer and answer at the same time, and in his answer he sets out that by virtue of an election to said office in August, 1880, the same Governor of Utah had commissioned him to fill said office "for the term prescribed by law, and until his successor shall be elected and qualified," dated September 1st, 1880, and alleges: "That his official term has not expired and said office has not become vacant by reason of a failure to elect his successor on the first Monday in August, 1882, or otherwise;" and "that by virtue of said office, and in accordance with his duties, the defendant holds and retains the custody of the books, records and all property pertaining thereto, and not otherwise."

Could a more direct and square issue be made as to the right to the office? By what authority could any Court take from the legal incumbent, or one holding the office and claiming to be the legal incumbent, the papers and records pertaining to the office, and giving them to any one not legally the Probate Judge? And could any Court take from such an incumbent the papers, books, etc., without first determining that the claimant was the legal Probate Judge, and entitled to the custody of the papers? Was it not essential for Kimball to set out by what right and title he claimed the right to have possession of the books, etc.?

Had he filed an affidavit or complaint simply claiming the right to have the custody, without showing his claim to the office, would any Court have failed to dismiss it on demurrer? His right to the custody of the papers depended solely on his right to the office. If he had no right to the office it would be a legal outrage and a high-handed usurpation in any Court, to take from the *de facto* officer claiming the right to hold the office and custody of the books, papers, etc., and giving them up to one without right, or claim of right.

Not only the pleadings of both parties show that the right to the office was involved, but his own printed brief, filed in this case and now part of the record in this Court, written by himself, with his name as a member of the firm of Kimball & Heywood attached to it, shows that he claimed the right to the office in this Court. I quote from page 5, section 5: "In this case there is no question of fact to be determined. The title of respondent, as well as that of appellant, depends on a question of law, to-wit: The construction to be given to section 8 of an Act to amend Section 5,352 of the Revised Statutes of the United States, commonly called the Edmunds bill, and the act of the United States Congress empowering the Governor to appoint officers to fill vacancies, commonly called the Hoar Amendment."

The Chief Justice dissented from a majority of the court mainly because he did not believe there was any vacancy for the Governor to fill by his commission to the respondent. The community therefore know that the right to this office was in controversy and determined, the Court that originally decided knows it was in dispute, and this Court knows it was in dispute, and now to permit the respondent to change his ground and to deny that it was in dispute or has been decided, in order to prevent an appeal to the United States Supreme Court, would be a stupendous fraud recognized and sanctioned by the Court; besides respondent is precluded by his own pleading and brief and conduct from setting up any such objection. The right to the office having been in dispute and having been determined, the next inquiry is, was it of money value? The law and Governor's commission gave to Judge Richards "the rights and emoluments thereunto legally appertaining." Not only does the law prescribe fees but allows the County Court to attach salary thereto. Ever since the celebrated case of Marberry vs. Madison, decided by the United States Supreme Court in 1803, adjudging that to withhold a commission from one entitled thereto was an illegal act and "violative of a vested legal right," it has been universally conceded in the American States that an incumbent of an office has a property in it. Since then there have been before the Supreme Court three cases of public officers, one as to Supreme Judge of Nebraska Territory, one as to the mayoralty of Georgetown, and one as Assessor and Collector of Boise City, Idaho, and no suggestion in either that such was not the case. 6 Wallace, 296 U. S. vs. Addison.

19 Wallace 663, Board of Com-