ZANE'S ARGUMENT IN CHURCH CASE.

Attorney for Plaintiffs Makes Reply in Defendants Demurrer.

IS TAKEN UNDER ADVISEMENT

Attorney Richards Closes for Defendants, Judge Young Not Participating.

Judge Morse new has the demurrer to the complaint in the case of Charles A. Smurthwaite et al against Joseph F. Smith, trustee of the Church of Jesus Christ of Latter-day Saints, et al, under advisement. The closing arguments on the demurrer were made yesterday afternoon. Judge C. S. Zane made the argument for plaintiff and was followed by Atty. F. S. Richards, who closed for the defendants. Judge Young did not make the closing argument for defendants as was at first intended and did not argue the matter at all. Judge Zane's argument follows in part:

JUDGE ZANE'S ARGUMENT.

The demurrer of the defendants raises two questions, speaking of them generally. One is that the facts alleged in the complaint do not constitute a cause of action and the second one is that the eighth paragraph is ambiguous, unintelligible and uncertain, and that it does not name the various persons or any of them who, it is alleged, have devised, bequeathed or donated real or personal property to the Church, and does not state the times or the places where such devises, bequests, donations were given or made.

Considering the objections in the order stated, it is necessary first to examine the complaint and ascertain what it does allege. It alleges that the Church of Jesus Christ of Latter-day Saints is a religious association for church purposes; that the plaintiffs are members of that Church, and that defendant Joseph F. Smith is the president of the Church and that he is also trustee-in-trust of the Church; that John R. Winder is his first counselor, Anton H. Lund his second counselor, and that William B. Preston is the presiding Bishop of the Church.

It alleges, further, that the membership of this Church consists of many thousands, and without going over the different allegations it alleges that the Church association exacts of its members tithing; that the Church is a religious association embracing all the members of said sect; that it exacts annually from its members one-tenth (1-10) of their gains or incomes as tithing; that said contributions are paid to said Church and said trustee for appropriation and expenditure by it exclusively for Church purposes, such as building and repairing temples, houses of worship, payment of officers, aiding its missionaries, and for the relief of its poor and toward charitable objects connected with said Church, but that the same cannot lawfully be used in secular business, to wit, mercantile, commercial, industrial or business enterprises, or speculation.

That said Church and its said trustee, as plaintiffs, are informed and believe and allege, receive and have received for many years past tithing from the members of the Church for Church purposes aggregating large sums of money, and also tithing in kind belonging to various species and classes of property of great value; that said tithing received each year for several years past has amounted in value to more than $1,000,000 annually. If he is a trustee, and counsel does not deny that he is the trustee-in-trust of the Church, nor do they deny that he has received these tithings and donations as trustee—that being so, we insist it is his duty to devote those funds to Church purposes. But I will speak of that further on.

DISPOSITION OF FUNDS.

The complaint alleges that plaintiffs are informed and believe, and upon such information and belief allege, that said Joseph F. Smith, as aforesaid, has from time to time each year since his appointment in November, 1901, as president and trustee-in-trust, as aforesaid, invested, with the advice and sanction of the other defendants, except as aforesaid, a large portion of said funds arising from tithing so in the hands of said Church and its said trustee for Church purposes, to wit, as much as $500,000 per annum.

With respect to this fund the law characterizes their position and their responsibilities as those of trustees. They are trustees. This fund is not received by them for their own purposes. Behind these trustees is this association consisting of this large membership scattered throughout this state and other states and in foreign lands.

It is alleged that said Joseph F. Smith as president and trustee, with the advice and sanction of other defendants except as aforesaid, has invested a large portion of said fund arising from tithing so in the hands of said Church and its said trustee for Church purposes, to-wit, as much as $500,000 per annum, and that said investments were made in various kinds of secular business, industries, enterprises, speculations and ventures for profit and subject to hopes and hazards.

These facts are alleged. The court will not presume that those investments were made in writing. It is sufficient to allege that they were made, particularly in a complaint in equity. Your honor is aware that more latitude is allowed in allegations of bills in chancery and in equitable complaints than in law complaints. Said investments were made in various kinds of secular business, industries, enterprises, speculations and ventures for profit and subject of lapses and hazards; that he has invested a large part of the same in the stocks and business of the following corporations or companies, to-wit: The Idaho Sugar company, Salt Lake Knitting company, the Utah National bank, the Lewiston Sugar company, the Utah Light & Railway company, the First National Bank of Logan, the Home Fire Insurance company of Utah, the Consolidated Wagon & Machine Co., the Ogden Woolen Mills, the Provo Woolen Mills, the Deseret News building and the annex thereto, the Cache Knitting Works, the Logan Knitting factory, the Provo Knitting factory, the Rocky Mountain Bell Telephone company, the ownership and renting of improved real estate and the purchase of large tracts of land in Canada and Mexico for speculation and to provide estates and residences for the Church officials and leaders and others.

Now, if we show that this fund should be confined to church purposes, as we expect to later on in the argument, it cannot be said that making salt is a religious purpose; it cannot be said that making sugar is a religious purpose; it cannot be said that the erection of a pavilion and the running of a railroad, which is among other kinds of business, which this money has been appropriated to, it cannot be said that these are religious purposes; that as president and trustee aforesaid, said Joseph F. Smith still continues to invest said tithings; that plaintiffs are not able to name the exact amount of said tithing fund so invested in said corporations or companies, and therefore prays the court to require defendants to state the respective amounts invested in each. That is the usual procedure in complaints in equity where sums of money are referred to and the presumption is that the defendant has the amount within his knowledge and that the plaintiff has not.

Don't work harder than necessary in hot weather.

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Makes Good Bread, Too.

ALLEGED INVESTMENTS.

Plaintiffs further aver that they are informed and believe and upon such information and belief allege that a large fund which had arisen from tithing as aforesaid, to-wit, more than $1,000,000, was, at the time said Joseph F. Smith became President and trustee, as aforesaid, invested, or has since been invested by him, with the advice and sanction of the other defendants, in various temporal and secular enterprises, stocks, ventures, speculations and undertakings, among which are the following, to-wit: Zion's Cooperative Mercantile Institution, the State Bank of Utah, Zion's Savings Bank & Trust company, the Utah Sugar company, the Salt Lake & Los Angeles Railway company, the Saltair Beach company, the Inland Crystal salt company, the Salt Lake Dramatic association, the Union Pacific Railway company, the Bullion-Beck & Champion Mining company, the Deseret News book store, that said Joseph F. Smith, President as aforesaid and trustee in trust thereof, has from November, 1901, and from thence hitherto continued the unlawful investments aforesaid, and will so continue the said investments unless he is restrained from so doing by the injunction of this court.

Then comes the eighth paragraph, which I will call attention to later. Then comes the final allegation, that plaintiffs are informed and believe and allege that defendants, unless restrained by the injunction of this court, will continue to risk and invest the said tithing and other contributions and donations in the hands of said Church and said trustee for church purposes, unlawfully and without authority, in various enterprises, ventures, speculations and various classes of business, purely of a secular and temporal nature, for profits and subject to lapses.

Inasmuch, therefore, as the plaintiffs are without any adequate remedy at law, they ask first that a temporary injunction be issued restraining this trustee in trust from misappropriating the funds, from diverting it from the purpose for which it was given, to secular business.

This is an unincorporated association. It is a religious association unincorporated, but it is an association for certain purposes. It is religious. The purpose of it is that various members of it may cooperate for certain ends. They have certain beliefs. I presume, certain beliefs as to the infinite God. They have certain beliefs as to His will concerning the human race. They have certain beliefs as to the modes that they shall adopt and they unite for the purpose of worshipping God according, as they undoubtedly claim, to the dictates of their own conscience. In doing so it is necessary for them to have temples, tabernacles and meetinghouses, as they are commonly called.

DEFINES RELIGION.

All of these expenditures are necessary in order that they may spread, as they claim, the true religion to the world. Hence they have their missionaries in many quarters of the globe, but it is all for church purposes. That is not an institution for business. It cannot be degraded, according to their views, down to making salt and making sugar and running mines. There is not religion in that; it is material.

It is not a partnership, this association; it is an association for certain purposes. This church was once a corporation; it was an association once; they associated together as a religious organization. Then they incorporated, undertook to incorporate under the state of Deseret; I suppose they never had any regular existence, but they passed some laws and organized under what were called the laws of the state of Deseret. Afterward they re-enacted their charter and in 1887 the Congress of the United States repealed the charter so far as it had any existence and disincorporated the church association. But its purposes are just as plain and just as binding upon the trustee as they would have been had they been put in a charter, in a court of equity. The purposes are expressed in the professions of the members cooperating, and they are religious; they are not temporal; they are not secular.

Now here we have in this case an association organized for religious purposes. Counsel do not deny; counsel have not denied that it is a religious association; though I believe he has not said that it is. Another difference between a corporation and an association is that a corporation is authorized to take property and to hold the title to it, but that corporation holds it in trust for the stockholders, and where there are no stockholders, and where there are no stockholders. In this case there are no stockholders; there are no stockholders in the Church; they hold it for the members, but in this case there being no corporation, it is held by a trustee.

If Mr. Richards is correct, this church may engage in all kinds of business; it may engage in all these classes of business that are mentioned in the complaint. It may be a mining institution if you please; it may own a farm and run a farm; it may own commercial houses, mercantile establishments; it may do all these and if it does all these and has its religion mixed up with the temporal matters, when it comes to competing with natural persons and other corporations for profits, I insist that these corporations do not compete on equal terms with it in a state where there is so large a population consisting of members of this Church.

FORMER CASE CITED.

In the United States vs. Church of Jesus Christ (8 Utah, p. 313) the court said in its opinion "that the property in question be vested in the head of said Church and his counselors and their successors in office in trust, to invest the same and apply the proceeds thereof to the relief and assistance of the poor and distressed members of said Church and their families, and to the building and repairing of necessary places of worship for the members of said Church (that the proportion of the income of said fund to be devoted to each of these uses be determined by the master and embodied in the report); and that said trustees be required to report to the court annually an account of their administration of such trust; and we asked the master to adopt and report such a scheme."

That was their language then, of the counselors of that Church at that time, saying how this should be appropriated. Now, as I understand it, they take a different view of it; think that it may go out into these various secular businesses, be employed in innumerable kinds of business.

"In the light of the evidence reported by the master we can distinguish the good from the bad, the worthy from the unworthy, and understand to which and in what proportions the Church authorities had applied the fund before it was taken out of their hands. It appears from the evidence reported by the master that George Q. Cannon testified that he was first counselor to Wilford Woodruff, president of the Church, and that he was familiar with the purposes for which contributions creating the fund were made for many years; that they were voluntarily made for religious and charitable purposes, that appropriation and distribution of it was left to the first presidency, and the proceeds were expended on temples and places of worship, and for the poor, and such charitable objects as arose; that the first presidency, in their appropriation of the fund, were limited to Church purposes."

After the schemes were reported the court considered them. Page 340: "We will now consider the scheme for the application of this fund presented by the defendants. Their plan would vest this property in the first presidency, now consisting of Wilford Woodruff, its president, and George Q. Cannon and Joseph F. Smith, his counselors, and their successors in office, in trust, to apply the proceeds thereof and to limit its use to the relief and assistance of the poor of the church, and to the building and repair of convenient and necessary places of worship for its members."

A majority of the court held that the Church property should be vested in a trustee selected by the court, and in his successor or successors, to be appointed by the court, to be devoted exclusively to the support and aid of the poor of the Church and to the building and repairing of its houses of worship.

It is a similar fund. It arises from tithing and from the same sources. And if it was lawful to control the other fund, if you consider it another fund, why, it is lawful to control this.

THEIR AUTHORITIES.

I will now refer to other authorities in support of the complaint under consideration. I will read section 304, First High on Injunctions:

"The aid of equity is frequently invoked for the protection of religious charities and for the enforcement of trusts created by donations of money or property for religious purposes. The jurisdiction in this class of cases rests upon the foundation of trusts, and may be regarded as ancillary to the general jurisdiction of equity over that subject. In all such charities the courts will, if possible, give effect to the intention of the donor, provided such intention is legal, and the object of the trust being ascertained, and perversion thereof or departure therefrom may be prevented by injunction."

I will also read an extract from section 305: "Indeed, a religious society is regarded in a certain sense as the trustee of a charity, and as such peculiarly within the jurisdiction of equity for the purpose of preventing a diversion of the church property from the purpose of the original endowment."

And I will refer to a note or citation on page 234 at the foot of section 305 of the same volume. This is an opinion delivered by Chief Justice Roberts of Kentucky, one of the most eminent jurists this country has produced: "As the conveyance from Chittendea was to the use of the Baptist church, as an organized body of professing Christians in Frankfort, every member of that church has a beneficial interest in the property thus conveyed, so long as he or she shall continue to be a member, but no longer."

That lays down the doctrine that every member of a church has an interest in its property. I will now cite the case of Bowden vs. McLeod, 1 Edwards, chapter 583. The first paragraph of the syllabus says: "The jurisdiction which chancery has ever trusts may be exercised over the property or temporalities of religious society (whether incorporated or not) as being trust property, and equity will see the trusts faithfully performed." So that it makes no difference whether the society is incorporated or is not.

The vice chancellor (page 590, 1 Edwards) says: "Before I proceed to examine the grounds upon which the injunction is asked for in this case, I deem is necessary how far the court in chancery can take cognizance of a case relating to a religious corporate body, and to show upon what principles and to what end its jurisdiction can be invoked.

"The Reformed Presbyterian church or congregation in Chambers street is a corporate body. It was originally founded for religious and charitable purposes, and incorporated by a law of the state. The property or temporalities are to be managed by persons constituting the consistory, who are also trustees. Now, over them and the property, considering it as a trust estate, this court has jurisdiction. It will interfere to prevent any abuse of the trust; will preserve the temporalities and appropriate them to the original object of the institution—in short, see that the trusts are faithfully performed and executed. Except in connection with the property and temporalities of a religious society, whether incorporated or not, and upon the principle just stated, this court has no jurisdiction and cannot interfere.

"It is not in the power of the trustees of the congregation to depart from what is declared to be the object of the foundation or teach new doctrines and act up a new mode of worship there. At least this cannot be done without the consent of all the members of the church or congregation, because it would be an infraction of the will of the founder, be contrary to the spirit of the deed or act of incorporation and a perversion of the original object and design of its institution."

The case of Thompson vs. West, 30 Nebraska, page 681, was cited. In this case certain of the trustees of a church in Lincoln, Neb., purchased a number of vacant and unimproved lots for the purpose of speculation, or with the view of being resold at an advance over the cost price. It is set forth in the opinion that the power of a corporation to purchase real property is limited by the objects of its creation; that even where there are no express restrictions it cannot purchase for a purpose foreign to these objects, and a very pointed paragraph of the opinion reads:

"If the mode of the application of the income is the factor that determines whether it is legitimate for the church to take part in a certain business, then a church corporation could secure a license and run a saloon or a billiard hall, or buy a circus outfit and tour the country, or trade horses, or construct a race track and pocket the receipts, provided only that the money so realized was applied to the payment of church obligations.

"It has never been held that the innumerable avenues of the business world are thrown open to a church board to enter in and glean a profit for the church. It would be against public policy for the churches of the land to enter into the bitter competition of the market place. Religion, as exemplified by ecclesiastical bodies under such a regime, would become a byword and a by-word, and public and private morals would suffer thereby."

TWENTY YEARS AGO TODAY.

(DO YOU REMEMBER?)

The Duke of Cumberland was denied the right of succession to the throne of Brunswick.

In a runaway at Sugar House, a son of John Westburg was killed and the father was badly injured.

TEN YEARS AGO TODAY.

Dr. Buchanan, the New York wife murderer, was electrocuted at Sing Sing.

John Trick, a Salt Lake painter, died from an overdose of opium taken to relieve painter's colic.

FIVE YEARS AGO TODAY.

It was found that more than 200 lives were lost in the fire at the German Lloyd company's pier, New York.

There was almost a riot at Calder's park. Guns were freely used, and many fights occurred.

PUPILS PLAY PIANO.

Those of Miss Gleason and Mrs. Carlson Delight Their Hearers.

Miss Nora Gleason's pupils gave a successful and well attended piano recital last evening in Unity hall. The decorations in the way of flowers and potted plants were quite elaborate, and a large picture of St. Cecelia adorned the center of the stage. Miss Gleason was assisted by Miss Lettie Owens and Miss Corinne Harris as vocalists, and Miss Mulvey as violinist. The program was carried out as advertised, and Miss Gleason and the young performers were congratulated on their progress and abilities at the close of the evening.

There was an excellent attendance last night in Beesley's Music hall on the occasion of the piano recital given by the pupils of Mrs. Lulabel Eldredge Carlson. A number of the youthful performers appeared in public for the first time, and they did well. Refreshments followed the program on which appeared Virginia L. Hayden, Lucille Tootle Thomas, Fay Putnam, Vera Eldredge, Beth Larson, Louis Wrathall, Eva Beman, Clara Leffler, Vera Kimball, Claire Kelly, Bessie Leffler, Irma Sims, Irene Kelly.

SOUTH TEMPLE PAVING.

Contractor Moran and Street Railway Management Pushing Things.

Contractor Moran continues to push the paving on east South Temple street. The north roadway was completed early in the week, through to Seventh East street, and the concrete bedding for the south roadway has been completed beyond south Second East street. The street railway management keeps ahead of the pavers with the new south track, and ties are laid over two blocks beyond them. The first attempt at adding the new sidewalk border additions was made yesterday, at the Alta club; and the neatness with which the job is done shows that this new feature of the street can be made very attractive.

Sickening Shivering Fits

of Ague and Malaria, can be relieved and cured with Electric Bitters. This is a pure, tonic medicine; of especial benefit in malaria, for it exerts a true curative influence on the disease, driving it entirely out of the system. It is much to be preferred to Quinine, having none of this drug's bad after-effects. E. S. Munday, of Henrietta, Tex., writes: "My brother was very low with malarial fever and jaundice, till he took Electric Bitters, which saved his life. A. Z. C. M. I. Drug department; price 50c, guaranteed.

KIND PUBLIC.

Mr. Anderson, the well known blind man, who was in the great explosion at Price some years ago, and now a newsboy in this city, is trying his uttermost to make a living for his wife and family by selling papers, but it seems at present to be a complete failure on account of the rumors circulating among the public regarding his wealth, which has absolutely no foundation. His object is to get enough to start his wife (who has very poor health) in a little business in a town out of this county.

He is usually at the "busy corner," Second South and Main, except in the heat of the afternoon, near the old clock corner.

Kindly remember him to this end when you want a paper.

Yours truly,

A FRIEND.

Half Of a Good Shave

Rests with the quality of the razor strop. We have them in the finest leather and horse shell for the luxurious shaver, as high as $2 the strop for the finest ones. Of course we have every grade, selling down as low as 25 cents, but the best ones are perfect and last forever

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Where The Cars Stop.

The Great Prescription Drug Store.

MILL MEN.

C. I. W. IMPACT SCREENS

Will Interest You.

The New Bartlett Simplex Concentrating Table.

Has capacity, does clean work, weighs 900 pounds. Price, only $300.00. See it work at EXHIBITION ROOM, 151 WEST SECOND SOUTH ST., CITY.

Colorado Iron Works Co. of Denver

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TEA

Good tea: a few top leaves of the bush.

What becomes of the rest?

GOOD HEALTH IS THE PRICE OF BEAUTY.

Pelvic Catarrh Destroys the Health of a Multitude of the Fair Sex---Pe-ru-na Is Their Only Remedy and Safeguard.

Mrs. E. R. Olsen, 553 Orange St., Newark, N. J., member Good Templar Lodge, writes:

"I used Peruna for five months, after I had spent much money in the vain endeavor to get well.

"My life forces were being sapped away and I was daily losing my vitality with bearing down pains.

Peruna Cured.

"Fourteen bottles of Peruna cured me. I am today enjoying the very best of health and am only too pleased to recommend your fine medicine."

Household Remedy Eight Years.

Mrs. Mattie King, 1527 Polk street, San Francisco, Cal., Recording Secretary Native Daughters of California, writes:

"I have used Peruna myself and in my family for the past eight years and am free to admit that it has proven itself to be a most decided household blessing.

Health Replaces Weakness.

"It cured me of inflammation of the bladder and made me a strong and happy woman, where before I had been weak and worn-out.

"I find it of special value for my little daughter, as one dose cures cramps and pains, and colds are soon driven from the system.

Doctor Bills Reduced.

"I consider it of special value in keeping the body in such healthy condition that it throws off disease, thus saving doctor bills and the annoyances incident to sickness in the home."

A Valuable Restorative.

Mrs. Sadie E. Walker, 2246½ Larimer street, Denver, Col., Recording Secretary Art Students League, writes:

"I used Peruna nearly four months and as a result experienced almost painless confinement.

"I continued its use for some time and found it a most valuable aid in restoring my strength.

"It tones up my system so that in a short time I could take care of all my household duties without weariness.

Peruna a Family Medicine.

"My husband has used Peruna for colds and stomach disorders and found it most valuable.

"We keep it constantly in the house and consider it the finest family remedy we know."

Poor Health.

Mrs. Lena Smith, North Cherry St., corner Line, Nashville, Tenn., writes:

"I have had poor health for the past four years, pains in the back and groins and dull, sick headaches, with bearing down pains.

"At times my pains would increase and I did not expect ever to be perfectly well again;

"A friend who was very enthusiastic about Peruna, insisted that I try it.

Ten Years Younger.

"I took it for ten days and was surprised to find that I had so little pain. I therefore continued to use it and at the end of two months my pains had totally disappeared.

"I have been in the best of health since and feel ten years younger. I am very grateful to you."

Address Dr. S. B. Hartman, President of The Hartman Sanitarium, Columbus, Ohio.

All correspondence held strictly confidential.

PELVIC CATARRH A COMMON DISEASE.

"My life forces were being sapped away by constant internal irritation and weakening drains." This sentence is repeated, in substance, almost every day.

The many pelvic diseases to which women are liable give rise to exactly this state of affairs.

A constant nagging pain, a continuous loss of strength through excessive mucous secretions finally undermine the nervous system entirely and leave the woman a complete physical wreck.

Local treatment is of little avail. It acts as a temporary palliative, but does not reach the root of the difficulty. Catarrh is at the root of the trouble—catarrh of the pelvic organs.

As soon as the patient begins to take Peruna, she discovers that she is taking the correct remedy.

Peruna is not a palliative. It is a radical cure for such cases. Catarrh is the cause of the difficulty. Peruna cures the catarrh, when the symptoms disappear.

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$1.85

Women's Oxfords

Over 35 styles at this price, worth regular up to $3.00. In all leathers and white and brown canvas. All styles lasts and heels. An extraordinary Saturday Special.

Snappiest and prettiest styles ever made

BOYS' OXFORDS.

$1.95 Any pair in our immense stock.

VALUES, $2.50 TO $3.50.

MISSES' AND CHILDREN'S SLIPPERS.

$1.45 Values, $1.75 to $2.50.

95 cents for all values up to $1.50.

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Summer Shirts, Negligee Shirts, Fancy Hosiery, Belts, Neckwear, Straw Hats, Panamas, and all other Summer Wearables. Here's the place to get them and AT SALE PRICES.

BARTON & CO., 47 Main St.