

tion of the complaint, on the grounds, substantially, that defendant Clinton, the Alderman who issued the warrant, had no jurisdiction or authority to issue the same, and that the warrant was void upon its face.

Mr. Maxwell and Mr. Baskin for the demurrer.

Messrs. Snow and Hoge and Mr. Miner opposed.

MCKEAN C. J. The code provides that "the answers of the defendants shall contain: First,—If the complaint be verified, a specific denial to each allegation of the complaint controverted by the defendant &c.," "Second.—A statement of any new matter or counter claim constituting a defense, in ordinary and concise language." (Sec. 46.) It also provides that "the defendant may set forth by answer as many defenses and counter claims as he may have." (Sec. 49.) It further provides that, "the plaintiff may within the number of days," etc., "demur to the same for insufficiency, stating in his demurrer the grounds thereof." (Sec. 50.)

"Sham and irrelevant answers and defenses, and so much of any answer as may be irrelevant, redundant, or immaterial, may be stricken out on motion, and upon such terms as the Court, in its discretion, may impose." (Secs 50 & 57.) A motion, not a demurrer, is the remedy for these last named defects.

The counsel for the plaintiffs claim that the judgement rendered by defendant Clinton, the Alderman, was clearly without jurisdiction; that the warrant issued thereon to the City Marshal, McAllister, was clearly void upon its face; that they are no protection to any of the defendants, and that those portions of the answers in which the judgment and warrant are set up as defenses, are demurrable and should be stricken out for "insufficiency."

Few principles are better settled than that if a Court act without authority its judgments are not merely voidable—they are void; and the magistrate who renders the judgments, and all officers and persons who aid in executing them, are liable as trespassers; and any person aggrieved thereby may sue and recover the full amount of the damages sustained by him. (2 *Hilliard on Torts*, 186, 192, note A., 193-4-5; *Hurd on Habeas Corpus*, 168, 182-3; 1 *Chitty on Pleading*, 78, 182; *Blood vs. Sayre*, 17 *Verm.*, 609; *Cable vs. Cooper*, 15 *Johns.*, 157; *Snydam vs. Keys*, 13 *Johns.*, 44; *Pratt vs. Gardner*, 2 *Cushing*, 63; *Dyget vs. Schenck*, 23; *Wend.*, 448; *Sufford vs. Low*, 20, Sec. 152; *Slomer vs. the People*, 25, Sec. 70.

If this action had been brought to recover only the value of the goods destroyed, and if the judgment and warrant were void, and the defendants trespassers, as claimed by the plaintiffs,—upon which question it is not necessary now to express an opinion,—the plaintiffs' demurrer must inevitably have been sustained; for, in that event, no matter how innocent might have been the intentions of the defendants, neither a void judgment, nor a void warrant, nor both together, could protect them.

But the plaintiffs have chosen to bring an action to recover a statute penalty, and demand a judgment in a sum equal to three times the value of the goods destroyed. In such an action it is not sufficient to allege that the act complained of was unlawful; it is necessary to allege, and the plaintiffs do allege, that the act was "wilfully" and "maliciously" done. This brings directly in issue the intent of the defendants; and any defense which they may have against the charge of wilful and malicious intent, may be set forth in their answers. (Code, Secs. 46 and 49.) Even though the defendants were now to admit that the judgment and warrant in question were void, and hence no protection to them if they were sued in trespass for the value of the goods, still, may they not plead in this action for the statute penalty, and prove before the jury, as bearing upon the question of intent, that they acted by mistake under a void judgment and warrant? I think they may. The defendants insist, however, that the judgment and warrant were valid. If in this they are right, they may make the most of them as a defense, on the merits, to the action; if in this they are wrong, still they may make the most of them as a defense against the charge of wilful malice.

The warrant was issued only against Englebrecht and his property, and it is alleged that the property destroyed belonged to all the plaintiffs as partners. But all the plaintiffs rely upon the same charge of wilful and malicious intent, and the defendants may rely upon whatever defense they may have to

meet this charge. If the defense is good in law, the Court may so hold; if it is good in fact the jury may so find. The converse of the proposition is true. Without passing upon the question of the validity of the judgment and the warrant, it is sufficient to say, that they may be relied upon for whatever they may be worth, at least upon the question of wilful and malicious intent. The demurrer must be overruled.

#### THE AFRICAN DIAMOND FIELDS.

The *Grahamstown* (Cape of Good Hope) *Journal* of the 12th of August, in an article on the diamond discoveries in South Africa, says:

"There certainly never has been such a stir in this colony before, excepting at the time of war. Every town and district in the colony has sent its contingent to the army of workers at the Vaal Fields, and still the movement goes on. In May there were about one hundred men at the diggings. Before the end of June there were seven hundred. At the close of July there were over one thousand; and at present it is estimated that there are at the Klip Drift, Pniel, Hebron and Kleskamma Fields no less than two thousand men. When it is remembered that the European population in the colony is scattered over a large surface and at the best but small, and that distances here are very great, it will be understood that pretty strong motives must have been at work to occasion so large a movement. The discovery of the 'Star of South Africa,' now known at home, has been followed by that of other stones, which, if not so valuable as that superb gem, are of great excellence and in large numbers. As the fields are in a country owned by no one who can substantiate his claim there is no organization of labor and there are no means of ascertaining the actual discoveries. Some keep their good fortune to themselves, and again there are cases in which a diamond is talked about until it becomes several diamonds. The customs returns will, after a while, give trustworthy statistics. At present it is estimated that the Natal Company has sent home diamonds to the value of £12,000; that Mosenthal & Co. shipped £4,500 by the *Roman*; that the *Norseman* took away £450 and the *Northam* £2,800, while it is said that the *Cambridge* will now receive £80,000. If to these sums be added the price of the Star of South Africa a sum of £60,000 is reached, and these shipments leave a large number of gems in the colony and in the possession of diggers at the fields. Some parties are known to have been very successful. The Natal and King Williamstown parties may be especially mentioned. They have divided about £20,000 between them. As a matter of course, out of so large a number of diggers many have been greatly disappointed; and in making the above statement we do so only in our office as reporters of news, and not at all with a desire to excite to rash adventure.

"As to the position of the fields, it may be as well to say that they are within one hundred miles west of Bloemfontein and one hundred miles north of Fauresmith. Let any one who has one of Hall's maps of South Africa follow the twenty-eighth line of latitude until it crosses the Vaal. Immediately below the point of intersection he will see a great bend in the river. The fields are on both sides of the river, at the lowest secondary curve of that great bend. On the southeastern side is the Pniel Field, and on the north-western side is the Klip Drift Field. Port Alfred is the nearest colonial port to the diamond fields, and Capetown is the most distant. From Grahamstown, whether by Cradock or Queenstown, the distance is by no means formidable. A party from the city accomplished the journey in a bullock wagon in eighteen days. We do not advise any one who lives 'at home at ease' to rush to the diamond diggings; but should the lottery prove as attractive at home as it has shown itself to be here, then it should be remembered that the nearest seaport to the fields is neither Capetown or Port Natal, but that Port Alfred and Port Elizabeth are much nearer, and that at either of these ports good accommodation is to be obtained."

THE TWO DAYS' MEETINGS.—The question is asked by many as to the nature of the meetings to be held on Saturday and Sunday next. We believe they will be preaching meetings, which the people generally will have the privilege of attending, and will be expected to do so.

#### REMARKS

By President BRIGHAM YOUNG, delivered in the New Tabernacle, Salt Lake City, October 6th, 1870,

REPORTED BY DAVID W. EVANS.

As we have met in the capacity of a General Conference we shall expect to hear instructions from the elders pertaining to the building up of the Kingdom of God on the earth. This is our calling, this is the labor devolving upon us, and it should occupy our attention day by day from morning until evening and from week to week; in fact we have no other calling or business, and if we are humble and faithful, God will strengthen us and increase our ability and give us power sufficient to accomplish the tasks devolving upon us in the performance of His work.

The oracles of truth are delivered; men have been called and ordained; the gifts and graces of the gospel are restored; the Kingdom is organized; it is committed to the servants of the Lord, and if we are faithful we shall bear it off; we will establish it and make it firm in the earth, no more to be interrupted or removed, and the teachings that we shall hear will be pertaining to our spiritual and temporal labors in this Kingdom. With God, and also with those who understand the principles of life and salvation, the priesthood, the oracles of truth and the gifts and callings of God to the children of men, there is no difference in spiritual and temporal labors—all are one. If I am in the line of my duty, I am doing the will of God whether I am preaching, praying, laboring with my hands for an honorable support; whether I am in the field, mechanic's shop or following mercantile business, or wherever duty calls, I am serving God as much in one place as another; and so it is with all, each in his place, turn and time. Consequently our teachings during Conference will be to instruct the people how to live and order their lives before the Lord and each other; how to accomplish the work devolving upon them in building up Zion on the earth. To accomplish this will require steady faith and firm determination, and we come together in this capacity that our faith and determination may be increased and strengthened. When we have spent three, four or five days together in giving instruction, we shall only just have commenced to instruct the people; and when we have spent a lifetime in learning and dispensing what we do learn to our fellow beings, we have only commenced in the career of intelligence. Our faith and prayers, the ordinances that we attend to, our assembling ourselves together, our dispersing after attending to the business of life, in our schools, all our educational pursuits are in the service of God, for all these labors are to establish truth on the earth, and that we may increase in knowledge, wisdom, understanding in the power of faith and in the wisdom of God, that we may become fit subjects to dwell in a higher state of existence and intelligence than we now enjoy. We can attain to this only by adding faith to faith, knowledge to knowledge, temperance to temperance, patience to patience and godliness to godliness, and so increasing in the principles of happiness and salvation.

We shall call upon the elders to speak to the congregation as they assemble here from day to day, and I hope and trust that the brethren and sisters will treasure up in their hearts the instructions that they receive, and that they will carry them out in their lives. This Sunday religion that a great many of our Christian brethren believe in and practice, when their everyday life is spent in selfishness and for self-aggrandisement, will not do for the Latter-day Saints; with us Monday, Tuesday, Wednesday, Thursday, Friday and Saturday must be spent to the glory of God as much as Sunday, or we shall come short of the object of our pursuit. Consequently we must pay attention to the things that we hear, and to the principles of the religion that we have embraced in our faith, and seek diligently to break up the prejudices and prepossessed notions and feelings that have woven themselves around us through the traditions of the fathers, and endeavor to know and understand as God knows, that we may do His will. Our traditions are so firmly fixed in our feelings that it is almost impossible to rise above, over-ride, or get rid of them; they cling to us like the affections of tender friends. But we must learn to know the will of God and do it, and let our traditions go, then we shall be blessed.

There are many things that we should understand with regard to ourselves and our children; and when the mind opens upon the vision of life by the spirit of revelation, there is not a person but what can see the eternity of teaching yet to be imparted to the Saints.

I trust that we shall be edified and rejoice together, and shall return from this place strengthened and confirmed in our faith and hopes, feeling that steadiness of nerve, by the spirit of revelation, that we shall not be wadded to and fro, imagining a thousand things incorrect, and pass by those doctrines and truths that are calculated to exalt the human family.

#### REMARKS

By President BRIGHAM YOUNG, delivered in the Tabernacle, Salt Lake City, October 16th, 1870.

REPORTED BY DAVID W. EVANS.

I have a request to make of the door keepers and of those brethren who seat the congregation, as also of our sisters, some of whom, I see, are occupying a few of the seats that we usually reserve for strangers. We should be very much pleased if the sisters would fill up other parts of the house first, and we would like the brethren who seat the congregation, to see that the seats generally occupied by strangers are held in reserve to-day until the meeting commences; then, if those for whom they are reserved do not come to fill them, they may be used by the sisters. I hope this will be recollected and observed.

As our brethren of the Twelve will address us during the Conference, I feel like giving them a few texts to preach upon if they choose to do so. I should have no objection to hear them discourse upon union of action, or concentration of faith and action, or, as some call it, co-operation. That is one item. I would also like to hear them give instruction with regard to our traditions; instruction on this subject is necessary all the time. We must overcome them and adopt the rules laid down in revelation for the guidance of man's life here on the earth. If any of our brethren feel to speak upon this subject we should be very pleased to hear them; if they are not disposed to preach to the text, they may preach from it, as most ministers do. I have heard very few ministers preach to their texts, they generally preach from them.

The education of our children is worthy of our attention, and the instruction of the elders from this stand. It is a subject that should be thoroughly impressed upon the minds of parents and the rising generation; and those who wish to preach from this text may do so. And if they do not feel to preach to the text, they may preach from it.

The subject of the building of the Temple is a very good one for occupying a portion of the time. The ordinances of the House of God are for the salvation of the human family. We are the only ones on the earth at the present time, that we have any knowledge of, who hold the keys of salvation committed to the children of men from the heavens by the Lord Almighty; and inasmuch as there are those who hold these keys, it is important that they should be acted upon for the salvation of the human family. The building of Temples, places in which the ordinances of salvation are administered, is necessary to carry out the plan of redemption, and it is a glorious subject upon which to address the Saints.

The gathering of the House of Israel is another text upon which the brethren might address the Saints with profit. We are in the midst of Israel; they are also scattered among the nations of the earth. They are mixed with all nations, especially the tribe of Ephraim. These are to be gathered out. We have Israel in our midst; we live upon their land; we have communion with them and we are under the necessity of feeding and clothing them to a certain extent, and to preserve peace with them at present, until they come to a knowledge of the truth. I mean the Lamanites, the aborigines of our country. They are of the House of Israel.

Not least nor last, but one subject that I would as soon hear treated upon in this house as in any other place, is the union of the sexes. We cannot go into any town or little village in the Territory but we find quite a large number of young people who have arrived at a marriageable age and still they remain single. But this can be accounted for to some extent. The young man says, "I dare not marry a wife, the fashions and customs of the world prevail among the ladies here to such a degree that I should need a fortune to maintain one." The young lady says, "I don't wish to marry unless I can find a husband who can take care of me and support me according to my idle wishes." By their acts only can people be judged, and from observing them we must conclude that the ideas of the young men are too true, they are founded in fact. This should be done away. Such feelings, views and influences should be dispelled from, and broken up in the midst of the people. Our young men and women should consider their obligations to each other, to God, the earth, their parents and to future generations for their salvation and exaltation among the Gods and for the glory of Him whom we serve. These are not idle tales, they are not fictions, but facts; and for a community, believing as we do, to live like the gentile nations in these things is very incorrect. It is not according to our faith; we should put our faith into practice, and be willing to sustain ourselves, each and every one of us. Our young folks who have arrived at years of maturity should think and act for themselves. They are citizens of the earth; they have a share here, and have a part to bear,—a character to form and frame and present to the world, or they will sink into oblivion and forgetfulness. These things are of importance to us at least, and especially in this nation, where many of the people are wasting away their lives, bartering away their very existence, and