poration or a partnership, nor giving the names of the parties—that that association had a record and had appointed a certain person as an agent, to hold that record; and that by virtue of that appointment he sought to recover it from some other person who held possession, he would state no case coming within the jurisdiction of the court. The complaint set forth that Duke was a member of the committee before mentioned, but it was not claimed that the committee owned these two books, or that they ever had possession of them. But it was alleged that Duke, in the year 1888, was appointed agent, or secretary, of this nonentity, and that, as such, he was entitled to all books and records pertaining to the records of that committee, except the two books which the committee itself sought to recover. That was a clear and explicit statement, showing that Duke himself was not entitled to these books if it meant anything. Duke, so far as the appointment went was nothing. It seemd to counsel simply idle to waste time now in considering whether Duke had a right of action to recover these books. Mr. Rawlins quoted from 59th American decisions, page 711, pointing out that in equity, in view of the embarrassments which grew out of the difficulty of bringing in many parties, when numerous, to an action, and by virtue of the equitable principle where property rights were involved—as in the case of charitable associations—a court of equity would permit one or more persons to come in and sue on behalf of all others. But that could not be done in a voluntary association, as in this instance. The 32nd and 38th, pages 85 and 270 respectively, American decisions, were next cited, and counsel said that our statutes in no way modified those rules. If there was any right in this case as to the Territorial Central Democratic committee or the Territorial Democratic party, then this action could not be brought by one person. It was in substance, an action of detinue of those books, because it was not alleged that Duke ever had possession of them; "but that they were wrongfully detained." It was a well settled principle of detinue that one tenant in common could not maintain judgment; he must be entitled to the entire interest. One member of a party could not recover property maintained by another member who had an interest in it; nor could one member of a committee recover property from another which was simply detained by that committee under the rule. He must show that he was entitled to exclusive possession. For these reasons counsel asked that the demurrer be sustained.

Attorney Ogden Hiles, for the plaintiff, said this was the first time that the defendants had set up the ground upon which they claimed that the complaint did not state facts sufficient to constitute a cause of action. He supposed it made no difference what the object of this suit was; whether it was in aid of one political party as against another, it would not weigh here. If there were anything in this matter which was fit to be considered and discussed by lawyers, the feeling of partisanship and contest would not and ought not to have any effect in that court. The authorities which Mr. Rawlins had cited were in cases where associations of persons which were not corporations, who were not legal entities had sued. This was, however, an action of claim and delivery of personal property; and it was a proposition about which there could be no dispute that these reform codes of procedure were exclusive of all the equity and common law methods of procedure. This action of claim and deliverance was a substitution for both common law actions of replevin and detinue. The question here was—who is the real party in interest? In order to determine this at common law in a suit of detinue they would ask, "Is this plaintiff the owner or is he the bailee?" In either case, if he be an owner he was a real party in interest; if he be the bailee of another he was a real party in interest, provided always the bailee of goods could claim replevin or detinue at common law. The allegations made that the committee was the owner, or was in possession of these books was a mere matter of "inducement" that could have been left out of the complaint entirely, and Mr. Duke could merely have said that he was entitled to them, they being "wrongfully detained." All these matters introduced about who were the Democratic committee was simply "evidenciary."

Mr. Rawlins—If you regarded them as merely "evidenciary," why were they inserted in the complaint?

Mr. Hiles (with a thoughtful expression)—They were inserted because the pleader did not know how to plead. (Loud laughter in which the court could not refrain from joining). But, anyway, those are matters of inducement which this court cannot consider upon demurrer to the complaint.

Mr. Rawlins was about to interject "a suggestion," as he termed it, but Ogden Hiles showed signs of anger and requested counsel to wait till he was done. He could then have his reply.

Mr. Rawlins (good humoredly)—But I want to give you a fair chance to consider matters that I may raise.

Mr. Hiles—I don't care what you raise. I'll hear you, but I don't like to be interrupted. I suppose there is no question but what a bill of goods could, at common law, maintain replevin or detinue?

Mr. Rawlins (again rising and speaking in dulcet tones)—Mr. Hiles, let me ask you a question. Is not this case brought and are not these allegations inserted in the complaint in order simply to use the court for the determination of a matter which does not pertain to it in any way? Not to get the value of these two books, but simply to get the court's opinion, and so advance the interests of a political party?

Ogden Hiles' face took on a sort of crimson hue, and again he requested Mr. Rawlins to cease his interruptions.

Mr. Rawlins said he should base his application to the court to dismiss this action altogether on the ground he had shadowed forth. Again he contended that an attempt had been made to use the court for an "improper purpose."

Mr. Hiles—There is no such evidence here. "No, sir," (addressing Mr. Rawlins) the Democratic committee of this Territory would like to have possession of these records. That's all about it. It is not for us to consider here what contention there may be between politicians. If there is anything here to be discussed by lawyers that's all we have to do; and hope we shall keep these political contentions far from our minds and hearts when discussing the legal questions before the court. Counsel quoted various authorities, among them from Kent's Commentaries, with regard to the rights of bailees, and certain California cases.

Judge Zane—Mr. Rawlins, as I understand, holds that the Democratic central committee, in law is nobody? (Counsel nodded assent.)

Mr. Hiles—But that is a mere matter of fact, or otherwise. But upon this question I will ask leave of the court to amend as to the proposition that Mr. Duke is entitled, in his own right, as a bailee, to the possession of these books. Counsel for the defendants had asked the court to "take notice of the political parties" in this Territory. The Territorial statute provides what the court would take notice of, and it did not include "these various political organizations which vex and disturb the community in this Territory, or any other political parties."

Mr. Rawlins made the closing argument, contending that there was no bailment alleged in this complaint at all. The allegation was that at a particular time the plaintiff was the agent. There could be no bailee without a "bailor," and in this case the party in question never had a position. The source of authority was wanting, as appeared affirmatively on the face of the complaint. He thought the pleader *did* know what he intended to plead, and the object plainly was to use the courts for an ulterior and improper purpose. This and nothing more. That object appeared the more distinct when they read the opinion which Justice Lochrie delivered in overruling the demurrer, and in which the books were subordinate entirely to a formal legal declaration that certain men constituted the Democratic party in the Territory of Utah. They had a right to assume that that declaration was made at the instance and request of the plaintiff, who brought the action, and whenever the court was satisfied that an action was attempted to be used for such purposes, it would not suffer it to be done. The pleading here was a sham; it was irrelevant; it stated no case. In his opinion the court had clearly but one duty here—to dismiss the suit at the cost of the party bringing it.

Judge Zane briefly reviewed the circumstances of the case from the time of the bringing of the action in Justice Lochrie's court.

Plaintiff claimed these books as agent, he said, having been appointed secretary by an order of the Territorial Democratic central committee. By virtue of this he claimed that he was entitled to these books. But in all actions of this character the plaintiff must show a legal right of possession. If he claimed property which belongs to another person he must show by an averment of facts that he is legally entitled to recover. Plaintiff in this case did not allege that he, individually, had a right to the books; he had a right to them by virtue of his