ministration shows the continual like abuse of trust by these executors.

Although a court of chancery is slow to take the control of property out of the hands of executors or administrators, yet it is frequently done, and it is the duty of the court to do so when the mismanagement is so glaring and the waste so enormous as appears in this case. Otherwise the whole estate may soon be frittered away and lost to the heirs. The appointment of receivers is the Court's manner of taking control of the property, and the receivers are not appointed to hold the property for either plaintiffs or defendants, but simply to preserve it until all contests as to the ownership and proper disposal thereof are settled. In the appointment of a receiver the Court has not said that the property belonged to the one side or the other, but simply that there is a well grounded dispute as to the ownership and proper disposal thereof. When property goes into the hands of executors or other trustees, it does not become the property of the executors or trustees, to be disposed of as they may will, but it is to be kept with most scrupulous care, as sacred from illegal disposal or use, and when not so kept the Court must act.

It is objected that the executors could not turn over the property, unless thereby they admitted that the property was that of the testator. They could hardly be serious in such a position. They had already inventoried most of the property as that of the testator, and they had likewise received their 3 per cent. for transferring it. They were not entitled to this percentage, except upon the presumption that the property belonged to the testator. But aside from this, they are presumed to know what property came into their hands as executors. Generally, no property could come into their hands as executors and be so listed except that of the testator. If they had, through mistake, inventoried the property of somebody else, they should have gone into court and had their inventories corrected, and they would then have to refund the excess of per centage.

But their plea is not valid for this other reason, viz: that the property received by them as executors, and to be delivered to the receivers under orders of the Court, was not voluntarily delivered, and therefore it could not be said that they had made any admission. Any admission is not such as is made under compulsion of order of court, but to be binding it must be voluntary.

Nor do I think that it was necessary that the property sought to be turned over should have been specified in the order by giving description thereof in detail.

Philips vs. Welch 12 Nev.

The general order to turn over the assets of the estate was sufficient. Their inventories showed what these assets consisted of, and these inventories were made by them and continually accessible to them. Besides, it would have been impracticable to have detailed the whole vast inventories in such orders. The estate was valued at nearly $2,500,000, and the full lists of the property would fill a book.

It is claimed that no time was fixed within which the property was to be delivered. The time for the delivery was when the demand was made and that is sufficiently certain. The parties knew when the demand was made. But of what avail would it have been to have fixed a date within which the property should have been delivered? Certainly none, for the defendants do not claim that they even could or would have delivered it, but signify that they could not do so at any time, because as we have seen it would have been an admission of their liability. They do not set up any claim that they would have delivered the property if they had had time to do so, but they simply object to delivering it at all.

It is said that some of the property has been paid out, some sold and some tranferred, and that therefore these defendants could not deliver the same to the receivers.

The heirs are in the position of *cestui que trust*, and can hold the trustees responsible for any breach of trust. If they have applied the money or invested it in a manner not authorized, they will be ordered to bring it into court. This is the general doctrine of the books. (Perry on Trusts, §. 827,844

If, therefore, these parties have applied the property, or invested it in a manner not authorized, they should bring it into court, and the fact that it has gone out of their hands by payment or investment is no excuse, when such tranfer was without authority. They cannot plead their own wrong as a reason for not complying with the order of court.

Dean vs. Cozzens, 7 Robt. (N.Y.), 178.

Rynes vs. Rynes, 54 N. H., 201.

Belknap vs. Belknap, 5 Allen, 468.

Perry on Trusts, § 827.

2 Dan, Ch. Pr. 1770, etc., (4 e).

Rothwell vs. Rothwell, 2 § St. 218.

Utah Civil, Pr. act, § 144.

The simple questions, therefore, for the court to consider are whether these executors acted without authority, and if so, in what respects, and to what extent are they able now to comply with the order of the court to deliver over the property to the receivers.

These executors have taken commissions to the amount of $50,677 37, whilst the law says that when they abuse their trust they shall have no commissions whatever. Upon the evidence now before the Court they have most shamefully abused the trust reposed in them by the will of Brigham Young, deceased, as I have already noted. As they are not entitled therefore to such commissions as the case now stands, the amount should be paid into Court until the whole dispute respecting the same shall be settled.

Robinson vs. Pitt, 2 Lead. Ca. in Eq., 426 and 473.

Tiff. and Bull on Trusts, 852.

Palis vs. Tice, 28 N. J. Eq, 432.

McNight vs. Walsh, 24 N. J. Eq., 498.

Beside the general reasons of abuse of trust, there are special reasons why the executors should pay over parts of their commissions, viz:

(1) They received $10,835 as commissions on property assigned to Taylor. If that property was the property of the testator, they should not have transferred it, and if it was the property of the Church, the estate should not be charged with commissions for its transfer.

(2) The executors, without any authority under the will, took out of the estate as commissions, $24,460 for distributing $882,000 *in property*, to devisees. They are entitled to commissions. if on anything, upon the money which passes through their hands, but the will nowhere says that they shall have commissions on the property conveyed to devisees.

The executors have also retained nearly $11,000 for interest on loans which they were not authorized to make. Such amount should therefore be put into the receivers' hand until it be decided whether they are entitled to the same or not.

They retain over $31,000, which in violation of statute they paid on claims borrowed. The allowance of such claims was void, and being so, the property is deemed still to be in the hands of the executors.

Rogers vs. Rogers 3 Wad. 517.

Peters vs. Peters, 8 cash 841.

Beckett vs. Silver, 7 Col. 241.

Matter of Est. of Hidden, 23 Col. 342.

Est. of Schouder, 46 Col. 319.

32 Conn.

40 Wis.

The executors paid for debts of John W. Young after deducting $53,682 22 without authority, and the same was never allowed by Probate Court nor by the Executors themselves.

Com. Law p. 304-6, § 120-5.

The amount paid to Margaret Joe Young ($566) was unauthorized as she was not provided for in the will, and it does not appear that she was entitled thereto.

They paid L. S. Hills $500 for work which they should have done themselves, or deducted the charge out of their commissions.

These various sums aggregate about $142,995 52.

There seems to be other sums that probably should be turned over, but so far the evidence all warrants the court in ordering the amounts named to be turned over, and by future action the court, upon proper evidence, could compel the delivery of the residue, to ascertain which, a referee would have to be appointed.

The law is well settled, also that the *cestui que trust* can follow the estate into the hands of third persons, and especially into the hands of those taking with full knowledge of the trust.

Perry on Trusts, § 821.

John Taylor took the property with full notice of the trust, and of course took it subject to the same.

Taylor admits in his answer the receipt of the following personal property now asked to be transferred, namely—

1. $60,000, proceeds of Washington factory notes.

2. $118,000 capital Z. C. M. I. stock (pledged to Savings Bank and to defendant Hunter for $31,000).

3. Gas stock, $80,000, (converted into money to pay a Church debt).

4. 16 U. S. R. R. bonds (pledged for debt).

5. $21,000 rents and profits on the assigned property, and which has not been paid out.

As we have already seen, it is no defense in a trustee to say that he had spent the money or disposed of the property, if he did so without authority. John Taylor took the property, knowing its condition and how it was affected by the trust, and cannot plead his own wrong as a reason for not complying with the order of the Court.

No showing has been made to the Court as to the want of ability of these defendants to comply with the order of Court, except that some of the executors say that they were not able to comply. That simply leaves the matter to their judgment, and not to the judgment of the Court. If they are too poor, or for any other reason, are unable to comply with the order, it was their place to have shown it.

If the defendants had seriously thought that any particular part of the property was not required to be delivered over under the order, it was very easy for them to have asked the advice of the Court in the matter, and saved all of this troublesome investigation. But they have not shown such willingness to obey the order of the Court, and as the matter now stands, the Court has no recourse but to compel obedience to the order.

The personal property delivered over to defendant Brigham Young is controlled by the same law as that as to commissions, and should be delivered over.

Belknap vs. Belknap, 5 Allen.

The order of the Court will be, in general terms, that the property designated remains in the defendants' hands, and was not delivered to the receivers in accordance with the orders of Court heretofore made, therefore it is ordered and adjudged that the said George Q. Cannon, Brigham Young and Albert Carrington be committed to prison until they comply with said order so far as it applies to them, and that said John Taylor be committed to prison until he complies with the order so far as it applies to him.

Correspondence.

BAGLEY, A. T., July, 1879.

Editors Deseret News:

We are still over 500 miles from railroad conveniences. Our crops in this region look well but were put in late, as the water had to be brought out and fences put up before we could in any way calculate on a crop, and should the frost come early much of our corn and beans will be cut off, while at Snowflake their crops are much safer, being in in good time, also at Brigham City and Sunset, also St. Joseph, all look promising, and already they are harvesting the fall wheat at the three latter places. I hope sufficient will be raised to supply the wants of those who are here, and those who may come from Utah should bring to exchange for grain, good plows, the Oliver chilled, with extras, points, harrow teeth, seed droppers, bolts of all sizes ready for use, iron, nails, glass, butts, screws, door locks, finishing nails, leather, shoe findings, boots and shoes, sheet iron, steel and powder stone hammers, in fact, all those articles are much wanted, and many others that reflection would suggest, such as copper rivets, harness, leather, etc. A supply of carpenter tools, turning tools, paint, varnish, etc., soda, concentrated lye, soap and candles, lamp chimneys, burners, and cases of coal oil, well secured or much loss will occur. Several good molasses mills are wanted. I hope this may answer the questions so often repeated, what shall we bring? If you were to buy any of these articles a great advance in price is expected, and the want of these articles is a great drawback to our prosperity. Groceries are high, calico, cotton cloth and all kinds of merchandise; good brood mares and improved Utah heifers are the best stock to bring; ox and mule teams are of great service, but the oxen are the best for poor men to bring. God helps those who help themselves and do their duty to him and their fellow beings. Come with the spirit of our holy religion and you may have no fears, and the sterile lands will become fruitful and the deserts blossom beneath our feet and the former and latter rains will fall gently on our dedicated fields.

At our recent conference several home missionaries were called who are duly awake to the importance of having every family take the DESERET NEWS, *Juvenile Instructor*, *Woman's Exponent* and a good supply of Church works. Several missionaries to Lehi's children have been called and set apart and a good spirit is with the remnants of the covenant people of former days. President J. N. Smith and Bishop Hunt have gone to New Mexico fully inspired with the good spirit of wise and safe counsel.

Prest. Lot Smith and counselors are doing a good and great work, union of effort accomplishes wonders. Excuse this long detail. God bless his servants and kingdom. Your brother in the gospel of peace.

L. H. HATCH.

Domestic Surgery.

We have just come into possession of the facts of a remarkable circumstance which occurred in this vicinity some time since. A middle-aged lady, who resides near Wellers, Pa., a few miles from this city, whose name is omitted by request of friends, was afflicted by that terrible disease, scrofula, the seat of the disorder being in her head. She suffered terrible agony from the pressure of the diseased cranium upon the brain, and her physician decided that the only means of relief was the removal of the top of her skull. He never attempted the operation, however, fearing she might die from its effects. The woman continued to suffer, and her son, who was afflicted with the same disease, determined to take the risk and perform the operation. He was considerably of a mechanical genius, and he soon constructed a fine saw for the purpose, the material used being wire from an old hoop skirt. After he had finished the instrument, although he had no surgical knowledge, he began the operation of sawing through the skull at a point about two inches below the summit of the cranium.

After working some time at the operation the young man was taken ill and died. After his death the lady's daughter, a young lady of 19 or 20, decided to continue the work, and did so, succeeding in removing the top of her mother's head, relieving the terrible pain, and probably saving her life. She was occupied several days in the operation, which was a delicate and dangerous one, ordinarily only to be performed by the most skillful surgeon. If the improvised instrument had been driven too deep and penetrated the delicate covering of the brain, instant death would have resulted, and that some accident of the sort did not occur is one of the most astonishing facts about the matter. She undertook the operation as a desperate resort, and the exercise of nerve which sustained her was wonderful. Once while working she fainted, and frequently she would throw down the saw, declaring she would go no further. Her mother, whose enormous will-power was not less wonderful, always urged her to proceed, saying: "If I can stand it, you should do the same, as it is the only way of saving my life." No anæsthetic was used, and the afflicted woman carefully watched and directed the operation.

As stated, instantaneous relief followed the removal of the diseased bone, although the disease was not eradicated. The removed bone was replaced by a silken cap, carefully fitted. The operation was performed over six months ago, and the lady, was at last accounts alive and cheerful, though, of course confined to a limited sphere of action. She took a very philosophical view of the affair, and seems grateful that relief was afforded, although she will remain an invalid for life. The case is certainly a remarkable one, and if the facts were met with in a work of fiction, the story would probably be regarded as a clever but far-fetched fabrication "out of the whole cloth." But the case is well authenticated, and we have stated the facts without addition or change as we obtained them from a reliable source. — *Cumberlnnd, Pa., News.*

A Legend.

A day or two since a stranger in the city was making inquiries about the "Pontiac Elm" at Bloody Run, and finally accepted the offer of a bootblack to go up Jefferson Avenue and point out the historic relic. When the tree had been looked over and the ravine explored, the stranger asked:

"Boy, are there any legends connected with this spot?"

"I guess there's one," replied the lad.

"What is it?"

"Well, as near as I kin remember, a feller got a boy to come up here with him and look around and answer questions, and when they got back down town he never paid the boy a cent—not a red?'

"He didn't? And what happened him?" asked the stranger as he lifted his left eye.

"He got drowned the same night, while the boy is rich and high-toned and wears a velvet vest!"

"Hum!" mused the stranger, as he passed out a quarter without further delay.—*Detroit Free Press.*