

Judge Judd—There is not any doubt about his success. [Laughter, in which the judges on the bench joined.]

Judge Zane—So far as I am concerned, I trust I shall ever respect the courts of my country. They represent a portion of that power which has been termed the sovereignty of a great and glorious people, and whose majesty and power and honor is respected far and wide in this land. I trust that I shall always respect the courts of my country. I say, and have no doubt whatever, that these petitioners are all imbued with the same wish; because they, as far as I know, have been law-abiding men through their whole life thus far. The purpose of their petition was changed by the court, and became charges against the receiver and his attorneys. As trustees they were not interested in the prosecution of public officers or of the receiver. The scope of the investigation was greatly narrowed, and excluded the very point they were interested in investigating.

Judge Zane then went on to explain that from the standpoint of the trustees, and their understanding of the order, there were no misstatements in their paper of withdrawal. He said that the original petition did not charge fraud, but only alleged negligence and lack of due diligence on the part of the receiver. The government had said it did not believe in tithing, but the receiver had rented the tithing property to the Church, thus virtually saying that the rent satisfied the conscience of the government in that respect. As to the compromise of the real estate there is no charge of intentional wrong on the part of the receiver. It may be mistake, or lack of judgment, or want of business ability, but it is not fraud. The same is applicable to the sheep transaction; the failure to take Church property; the expenses of the receiver's office, and the other allegations. There is a statement that Mr. Peters is not entitled to anything, and I think the charge is well founded.

Judge Judd—Judge, you may save yourself any argument on that part, the court will settle that.

Judge Zane presented authorities on the subject of a receiver engaging as his counsel an attorney employed by one of the parties to the suit, and condemning such an action. He then turned his attention to the paper adjudged contemptuous, and admitted that the language suggesting that the order was cramped and would hamper them, was gratuitous.

Judge Judd—That's just it.

Judge Zane—No doubt they felt that they were justified in taking the view they did. But this language is not their language, only as they signed it. Men express themselves differently, and sometimes when they get a pen they snap and bite. It seems to be the fashion nowadays.

Judge Judd—It is a fashion, Judge Zane, that cannot be too soon dishonored by the discontinuance of the practice.

Judge Zane—Yes, sir. I believe that a great judge—probably one of the greatest judges that ever lived, and in my estimation I think one of the most judicious—Lord Mansfield, once said to a jury, "For inasmuch as we expect God to have mercy on our souls, let us not hang men for fashion's sake." So with respect to mere forms and sentiment, I suppose that these men will not be punished for mere style. If men were to be found guilty for breach of style, some of us would spend a great portion of our lives in the penitentiary. I am inclined to think I could have written that without irritating anyone. I suppose the mere style of the writing, and the mere language, will not subject these persons to punishment for contempt, if intention to show contempt there was not on their part. I do not think they should be held responsible for the style.

The statements contained in that paper I understood to be true, everyone of them. I say here, and expect to say it as long as I live, that I believe those statements were true. Of course the courts of this country must be respected, because they represent this portion of the authority collected together and given to this court. As to those functions and powers they represent the sovereignty and judgment of the greatest people on the face of the globe. But we are a free people, and these powers are to be administered and applied amongst American lawyers and American freemen, and they must be allowed some honest criticism, even of courts. I believe (continued Judge Zane, wildly gesticulating, and with tremulous voice) that the integrity, the moral courage, the learning and the independence of the lawyers throughout the civilized world is the bulwark of human liberty today. They ever stand up in defense of the rights of men and human liberty, and they, in turn, must be permitted to have some latitude. They must not lay aside their manhood when they appear at the bar. It is said that every American citizen is a chartered king; he is a freeman, and, in a respectful manner, he has a right to be heard. But he has of course no right to insult a court, no right to treat a court with disrespect, no right intentionally to bring the court into disrespect. At the same time, he has a right on all proper occasions, and under all proper circumstances, to tell the truth either in court or out of it.

With regard to my clients here, I have to say that so far as I have known them, for the last four years, they are men of integrity, men of principle, men of truth, men who respect the rights of other people. Indeed I hardly know where to find, for instance, more careful-speaking men to their fellow men than Captain Bailey or any of these other gentlemen.

Now I trust the court will consider this matter carefully, and remember that this court is the party against whom the injury is said to

have been committed, and that the parties to be punished are really on the other side of this matter. The punishment for contempt is out of the usual way, and the offense is followed by fine and imprisonment. Offenses of that kind are usually tried by a jury, who have not made up their minds on the case, or a court chosen under like circumstances. I ask, in view of these facts, that this court will be careful how it proceeds against these men, and do what seems to be right under all the circumstances.

Judge Judd—Before you take your seat, Judge Zane. This court has in its opinion, after very full and careful consideration adjudged these people to be in contempt of court. With that judgment this court is satisfied. Now this discussion has taken a very broad field—probably a little broader than the facts altogether justified; but still, as was remarked by counsel in opening, contempt is always a broad question, and it is very desirable on the part of the court that these people should have a chance of setting themselves right before the court. It is likewise stated by counsel at the bar—and of course the court always respects the statements of counsel in such matters—that these men are men of high character and of integrity before the community; that they have respect for the government and for the courts that the government has organized here, and are not wilfully in contempt. The question was put to the counsel who opened the argument if he did not think it would have been a more respectful thing for these people to have come into the court and asked to be allowed to withdraw the petition. I again put that suggestion to you; do you not think it would have put your clients into a better position with this court? Think of that now.

Mr. Baskin—If the withdrawal of that paper will do it, we here ask to withdraw it.

Judge Zane—Of course we do that.

Judge Judd—Hand up the papers then.

The court adjourned at this stage.

In the Supreme Court March 2, the trustees contempt matter was taken up and disposed of, Judge Judd delivering the opinion of the court, as follows:

Upon a former day of this court, T. C. Bailey, Rudolph Alff, J. F. Millsbaugh and L. U. Colbath came into this court with a paper writing, which was read to the court by their counsel, and which at that time was taken under advisement by the court, said paper writing purporting upon their part to be a withdrawal from the investigation which they had instituted under a petition heretofore filed by them in this cause.

After full consideration by the court at a subsequent day, an opinion was delivered which held that the paper referred to was a contemptuous proceeding, and that the parties who signed the same were guilty of contempt in the