

Judge Powers—Can you recall anything else?

Judge Zane—I know there was "considerable" said, but I would not now undertake to say what it was. That may be about the substance.

Judge Powers—Do you recall, Judge, that anybody represented there that day to the court orally that the figures in this petition represented the value of that property?

Judge Zane—Under the circumstances of the case I understood so.

Judge Powers—The circumstances of the case, I suppose, being that it was in litigation, and it was questionable whether they could recover, and therefore it would be fair.

Judge Zane—I did not understand that there would be much question about the title. Really the legal title was between the parties, but the equitable right, as I supposed, was in the Church of Jesus Christ of Latter-day Saints, or some of their agents.

Judge Powers—That was, however, a question to be located?

Judge Zane—Oh, yes.

Judge Powers—And that could not be determined until it was located?

Judge Zane—No.

Judge Powers—I would like to have you state in substance—I do not expect the exact language—what was said about this property that was not covered by the petition itself, by anyone.

Judge Zane (making a pause before answering)—Well, after the petition was read, as I stated before, an explanation was made by the solicitors, and I am inclined to think—my best recollection is now—that it was somewhat important the matter should be settled, and that an order should be obtained at that time; and that in view of the circumstances of the case the solicitors for the receiver considered this a fair compromise of the controversy in these suits, and that these amounts specified \$84,000 some odd dollars for the whole of these tracts was a fair consideration for the property under the circumstances of the case. I suppose that is the substance of what was said; I cannot remember clearly at this distant time, nor undertake to tell accurately.

Judge Powers—But you have had no reason to believe that the court was intentionally misled by any statement then made?

Judge Zane—Oh, no. I suppose what they said, if it was wrong, was said without their being sufficiently informed, as the court probably was not sufficiently informed before giving its order—assuming this property is worth what a number of gentlemen have told me since, assuming that is worth over \$100,000.

Judge Powers—That assumption would be based, of course, on good title?

Judge Zane—Assuming it worth that, I certainly was misled as to the amount—I do not claim intentionally, of course.

Judge Powers—Now, Judge, I will ask you one further question, and then I think I am through: Taking into consideration the fact that this property was in litigation, and there was at least some question about the title, would you as a mem-

ber of the court, under the circumstances stated in the petition, have been willing to have ratified the compromise for less than the actual value of the property?

Judge Zane (reflectively)—Oh, I suppose something less. When a compromise is made there is always some concession on both sides. A compromise means that, really, both parties are to give up something.

Judge Powers—I think that is all.

Judge Marshall (to the witness)—Did you understand at that time that the United States was making any great concession to those parties?

Judge Zane—Well, no; I did not suppose they were making much concession.

Judge Marshall—Was anything said at that time to lead you or the court to suppose that the value of the property was not approximately as stated in the petition?

Judge Zane—No, I supposed both sides were giving up something that they might possibly claim. I quite understood it was a compromise.

Judge Marshall—Do you remember whether there was anything more stated orally before the court than was stated in the petition as to the apparent or real difficulty to maintain these suits?

Judge Zane—I do not remember that there was; I don't recollect.

Judge Marshall—Do you remember whether your attention was particularly called to the fact that there were no really serious difficulties about maintaining the suits?

Judge Zane—I did not understand that there were any real difficulties in the way. I supposed the transactions were colorable, or else the parties were holding the property in trust for the Church.

Judge Marshall—If these sums mentioned in this petition were not approximately the real value of the property, was anything said before the court at that time by which it could be informed as to the amount of concession the United States was making in this matter?

Judge Zane—Not that I remember of.

Judge Powers—This was not a suit by the United States, but brought, I believe, by the receiver of the court?

Judge Zane—Yes, I understood the suits, all of them, were brought in the name of the receiver.

Judge Marshall—The receiver in this matter was appointed, was he not, in the case in which the United States of America was the plaintiff and the Church corporation the defendant; and it was for the purpose of carrying out the order of the court in that particular case that he brought these suits?

Judge Zane—That was my understanding, and still is.

Judge Powers—I observe there is in the petition a statement by the petitioner that the defendant claimed to have purchased the pieces of property in good faith, and for a *bona fide* consideration. Did you give any credence to that statement?

Judge Zane—I did not give much credence to it, under the facts and circumstances within my knowledge, when I did hear about it. I

attached some importance to it, of course. It was sufficient, at least, to make a basis of compromise.

Judge Powers—Did that in any way suggest to your mind that there was a substantial and stubborn defense to the suits?

Judge Zane—Well, I did not know as to how stubborn the defense might be. Substantially, of course, I did not; but I had my own impressions on that point.

Judge Powers—Do you recall having spoken to Mr. Peters after the court adjourned?

Judge Zane—No, I do not now.

Judge Powers—Do you not remember, when stepping off the bench, going up to Mr. Peters and, speaking of this compromise, saying to him in substance, "Well, I think you have made a pretty good compromise?"

Judge Zane—No, I do not remember that; I might have said so, though. Assuming the statements here to be correct, I think it would have been a very good and fair compromise. I may have said so to Mr. Peters.

Mr. Critchelow—Do you say the attorneys for the receiver gave any credence to these claims on the part of the various defendants, that they had purchased in good faith. Was there anything to indicate that the attorneys for the receiver placed any reliance thereon?

Judge Zane—Oh, I do not remember now on that point, further than the statements they made.

Mr. Critchelow—At any rate they were not dwelt upon as being any great barrier to the suits.

Judge Zane—No, I believe not.

Judge Powers—Did you say anything from the bench that day to indicate to the counsel for the receiver that the defense was colorable?

Judge Zane—I do not remember that I did.

JUDGE BOREMAN

was next called to the stand. His examination did not, however, occupy more than a quarter of an hour.

Judge Marshall asked—What official position did you hold in Utah Territory during the month of July, 1888?

Judge Boreman—Associate Justice of the Supreme Court and Judge of the Second District.

Judge Marshall—Do you remember the fact of a petition having been filed in the Supreme Court asking for the advice of the court as to a proposed settlement of certain suits instituted by Frank H. Dyer, as receiver?

Judge Boreman—Yes. I heard the petition read then, but I do not remember to have read it since. I do not know all the particulars of it.

Judge Marshall—Do you remember if anything took place at that time as to oral representations to the court by the attorneys of Frank H. Dyer, or anyone else in his presence?

Judge Boreman—Not very distinctly. I remember Mr. Peters, I think it was, read the petition, and several attorneys made remarks, but who they were I do not recollect,