

presented for approval to, or had approved by, or filed with, the County Treasurer of said County of Weber, any official bond as Probate Judge, or any oath of office attached to an official bond, and the said County Treasurer has not acted upon, or refused or consented to approve any such official bond. And the Defendant denies that said County Treasurer returned to his home or office on the 28th day of September A. D., 1882, but on the contrary alleges that he was temporarily absent from his home and office, and did not return thereto until the 29th day of September, 1882.

The Defendant alleges that since the 30th day of June 1882, he has not at any time or place married or entered into any marriage relations with any woman; and the Defendant on his information and belief denies that on the first Monday in August, A. D., 1882, or at any other time he was, or now is, a polygamist within the purview of any law of the United States or of the Territory of Utah. And the Defendant denies that the term for which he was elected Probate Judge in August, 1880, commenced on the first Monday of August, 1880.

And the defendant alleges that in August, 1878, he was elected to said office of Probate Judge for two years, and until his successor should be elected and qualified, and that at the election held on the first Monday in August 1880, he was again elected to said office for two years and until his successor should be duly elected and qualified, and at the time of his election in August, 1880, he was holding, and until his qualification and commission under the last named election he continued to hold under his prior term. That prior to the month of August, 1878, he was a male citizen of the United States, over the age of 21 years, and a taxpayer in said county and had constantly resided in the Territory of Utah, and in said County of Weber more than one year, and has ever since constantly resided in said County and Territory, and has been a tax-payer in said County. That after his election to said office in August, 1880, and after he had qualified for said office by making and filing the official bond and oath required by law, the Governor of said Territory issued and caused to be delivered to defendant a commission as follows:

"The United States of America, Territory of Utah.

To all who shall see these presents greeting:

Know ye that whereas, F. D. Richards was, on the second day of August, A. D. 1880, duly elected a Probate Judge in and for Weber County, and he having duly qualified as such, as appears by the proper evidence on file in the office of the Secretary of the Territory. Therefore, I, Eli H. Murray, Governor of said Territory do hereby commission him a Judge of Probate and authorize and empower him to discharge the duties of said office according to law, and enjoy the rights and emoluments thereto legally appertaining, for the term prescribed by law, and until his successor shall be elected and qualified to office.

In testimony whereof, I have hereunto set my hand and caused the Great Seal of said Territory to be affixed. Done at Salt Lake City, this first day of September, A. D. 1880, and of the Independence of the United States the one hundred and fifth.

[SEAL.] ELI H. MURRAY,
Governor.

By the Governor:
ARTHUR L. THOMAS,
Sec'y of Utah Territory.

That after receiving said commission the defendant, on or about the tenth day of September, 1880, entered into and upon the discharge of the duties of said office and term, by virtue of said election, qualification and commission, and has ever since held and now holds the said office, and has not resigned or in any way vacated the same, and as he is informed and believes his official term has not expired, and said office has not become vacant by reason of a failure to elect his successor on the first Monday in August 1882, or otherwise, that no legal successor to said office has been or could be appointed, and that the pretended commission mentioned in plaintiff's affidavit confers on him no legal title to said office. That by virtue of said office and in accordance with his duties, the defendant holds and retains the custody of the books, records, and all property pertaining thereto, and not

otherwise, and he denies that plaintiff ever was or now is entitled to the custody of the same.

And the defendant alleges that by the laws of Utah Territory no election can be held for a successor to defendant in said office until the first Monday in August, 1884, and that the defendant's said office and the franchise thereof are worth more than one thousand dollars, and the income thereof for said term is more than one thousand dollars.

And the defendant denies that the plaintiff has no plain, speedy, or adequate remedy at law for the wrongs alleged by him and supposed.

Wherefore defendant prays to be dismissed hence with his costs herein expended.

F. S. RICHARDS and
R. K. WILLIAMS,
Attorneys for Defendant.

Territory of Utah,
Salt Lake County, ss.

Franklin D. Richards being duly sworn says that he is the defendant in the above entitled action; that he has heard read the foregoing answer and knows the contents thereof, and that the same is true of his own knowledge, except as to the matters which are therein stated on his information or belief, and as to those matters that he believes it to be true.

FRANKLIN D. RICHARDS.

Subscribed and sworn to before me this 9th day of October, A. D., 1882.

[SEAL.] ROBT. HARKNESS,
Notary Public,
Salt Lake Co., Utah.

DEMURRER.

In the District Court for the First
Judicial District of the Territory
of Utah, County of Weber.

James N. Kimball,
Plaintiff,
vs.
Franklin D. Richards,
Defendant.

And now comes the said defendant, Franklin D. Richards, and demurs to the affidavit of said James N. Kimball, upon which the alternative writ herein is based, and demurs to and also moves to quash said alternative writ on the following grounds:

1. The court has no jurisdiction to hear or determine the subject matter in controversy on proceedings for a writ of mandate.

2. Proceedings for a writ of mandate are not a lawful method of trying defendant's title to the office in question.

3. Neither the affidavit of the relator, nor the alternative writ herein, states facts sufficient to constitute a cause of action against the defendant for a writ of mandate or any judgment or relief. Dated Oct. 9, 1882.

F. S. RICHARDS and
R. K. WILLIAMS,
Attorneys for Defendant.

Territory of Utah,
Salt Lake County, ss.

Franklin S. Richards, being duly sworn, says that he is one of the attorneys for the defendant in this action, and that the foregoing demurrer of the defendant is not interposed for delay merely.

FRANKLIN S. RICHARDS.

Subscribed and sworn to before me this 9th day of October, 1882.

[SEAL.] ROBT. HARKNESS,
Notary Public,
Salt Lake Co., Utah.

ESTRAY NOTICE.

I HAVE IN MY POSSESSION:

One 5 year old light roan COW, slit in the left ear and crop off right ear, no brands visible.

One 8 year old yellow OX, branded M on the right hip, two upperblits in the right ear and two underblits in left ear.

One 7 year old red lineback OX, branded J C on the right shoulder, both ears cropped short.

One 7 year old red brockleface COW, branded JR combined on the left side, she has an eighteen months old roan heifer calf.

One 4 year old black COW, eligible brand on left hip, right ear cut off, underbit and upper slope in left ear.

One 8 year old roan COW, branded something like HB combined on left side of body, crop off both ears, and upperbit and underbit in the right ear, she has a white heifer calf.

If the above animals are not claimed within ten days, they will be sold in the estray pound in this city, at 9 o'clock a. m., October 18th, 1882.

RICHARD PALMER,
District Poundkeeper.
Cedar City, Oct. 7, 1882.

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