with rheumatism, and came rather late; he came down with considerable difficulty.

A few minutes later Trustees Alff, Bailey and Millspaugh entered the court and took seats within the bar.

The reading of the minutes of the past two days was proceeded with. When Clerk Clarke reached the point regarding Judge Zane's withdrawal from the proceedings against Receiver Dyer, he read that the trustees had filed a "petition"——

"What is that?" interrupted Judge Judd.

"Presented a petition," said Mr. Clarke.

"Make it a paper writing," remarked Judge Judd, and the change was made.

At the conclusion of the reading, Judge Zane announced that three of the trustees were present, and that Mr. Colbath would be here tomorrow. He asked the privilege of appearing as counsel. This was granted.

Judge Zane—They would all prefer a postponement till tomorrow, that all may be present.

Judge Judd—Have you the answer of those present?

Judge Zane—Yes, sir.

Judge Judd—Then file that.

Judge Zane—I desire to be heard in their behalf——

Judge Sandford—We do not care to hear any argument now; we will hear it all together.

Judge Zane—Of course it would be an injustice to the trustees not to be heard——

Judge Sandford—We do not care to hear any argument.

The statement of the trustees was then filed as follows:

*In the Supreme Court of the Territory of Utah.*

The United States of America, plaintiff, vs. the late Corporation of the Church of Jesus Christ of Latter-day Saints, and others, defendants.

*To the Honorable the Supreme Court of the Territory of Utah:*

Your respondents, Rudolph Alff, J. F. Millspaugh, L. U. Colbath and T. C. Bailey, to whom notices have been issued requiring them to show cause why they should not be punished as for contempt, represent and show unto the court:

That they are now and ever since prior to the first day of November, 1888, have been trustees of schools of the school districts named in their petition herein, that commencing on or about the fourteenth day of November, 1888, an examination was held before E. T. Sprague, special commissioner of this court, to whom had been referred by order of this court, the taking of testimony in regard to the compensation to be allowed to the receiver and to his solicitors in the above case; that this examination before said referee showed aggregate claims against the fund in the hands of the receiver of over $52,000, of which $25,000 were for the receiver, $10,000 for each of his attorneys and over $7,000 for the expense account of said receiver; that no contest was made to the allowance of these claims against the fund on said examination; that on or about the twenty-second day of November the boards of trustees of the school districts named in the petition met and passed respectively a resolution authorizing and directing one of their members to employ counsel to contest the said claims of the said receiver and of his solicitors, and to represent the interests and defend the rights of the respective school districts in the above entitled case; that this action was taken by the said school boards because they deemed it to be their duty as school trustees to preserve as much of this fund as possible; that in so doing they were actuated solely by their duty as public officers to the public and for the benefit of the common schools, not only of their districts but of the whole Territory. They believed that they were taking an action that was laudable and necessary for the public welfare.

That in accordance with said resolutions your respondents did retain counsel, and on the twenty-eighth day of November, 1888, appeared by their solicitors and presented to this court a petition wherein they set forth the facts that gave them, as they supposed, the right to appear; that this petition was based upon the testimony taken before the said examiner, which is a record of this court, upon statements made in the public press, upon statements made by various persons, and upon information within the knowledge of the general public; that in their petition they prayed that they might be made parties to said proceeding, or that they might be allowed to appear by their solicitor or otherwise in order to defend and protect the interests of the common schools that they represented and preserve so much of the fund as might belong to said schools, and that such other trustees of district schools as might wish to come in might also be made parties or allowed to appear, and that your petitioners might be allowed to produce evidence to prove and substantiate the facts stated in the petition; that when the petition was presented the court made an order in which it was directed that said petition, if verified, be referred to Robert Harkness, Esq., to take such testimony as by the petitioners and by the said receiver and his solicitors might be produced touching the matters in said petition set out.

That your respondents thereupon, after consultation, being advised by their solicitors that under the order of reference they were in almost the same position as they would have been had they been made parties to the proceeding to fix compensation, determined to proceed; that they verified the petition and it was filed, and thereupon, and before, in preparing the evidence and in receiving the attendance of witnesses for the contemplated examination, they expended between four and five hundred dollars; that answer was made by the receiver and his solicitors, wherein every allegation of the petition was denied; that the examination was begun on the 10th day of December, 1888, and was suddenly closed by the defendant receiver, a witness, declining to answer, in defiance of the ruling of the said examiner; that thereupon the examination was closed and your respondents, at the first session of the court thereafter, applied for a rule against said witness requiring him to answer; that afterwards said receiver applied to the court for an order amending the order of reference; that the questions were argued before the court by solicitors for the respective parties, and thereupon the court allowed the amendment to the order of reference; that the order was directed to be settled by the respective solicitors; that the solicitor for the defendants proposed a draft of an order, to which the solicitors for your respondents objected, and in order that there might be no misunderstanding as to the meaning of the order, asked for the following insertion: "Also testimony as to whether $25,000 is an excessive, exorbitant and unconscionable charge for what said receiver has done, and in proof of such issue any evidence may be offered of what the receiver has done or of what he has not done that he should have done." This insertion the court declined to make, and made the order which is now of record.

That thereupon your respondents are advised by their solicitors that the amended order of reference confined the issues to charges of fraud, corruption, misconduct, fraudulent and unconscionable charges, and claims for compensation or professional misconduct, and that there were no allegations in their petition that were charges of fraud, corruption or misconduct except one, and none that were charges of fraudulent and unconscionable claims or professional misconduct; and that they would probably be permitted to offer no proof on any of the allegations of the petition except the single one of the receiver having failed to take possession of certain property that he could have taken possession of, and in view of the situation they declined to proceed; that they deemed it necessary in courtesy and deference to the court, and in justice to themselves, to state to the court their reasons for declining to proceed; that their statements made in the paper which they submitted to the court, so far as they are statements of legal conclusions, were made upon the advice given them by their solicitors; that they were advised by their solicitors that they could offer proof under this order only of a charge for compensation that was both fraudulent and unconscionable. They were further advised that the allegation that the claim of the receiver was grossly exorbitant, excessive and unconsionable was not a charge of a fraudulent and unconscionable claim, because there was a wide distinction between a fraudulent and unconscionable claim and an excessive, exorbitant and unconscionable claim, and that therefore they could offer no proof whatever on the subject of compensation.

Your petitioners further represent that they have acted in the best of faith throughout this whole proceed-