

is taken on the matter contained in the document I desire simply to say a few words on—

Judge Judd (interrupting)—The paper is of such an extraordinary nature that we prefer to further consider it without argument by counsel.

The request was taken under advisement, and the court took a recess.

Ten o'clock a.m. Jan. 24 was the time set for the commencement of the second attempt to investigate the charges made against Receiver Dyer and his attorneys, by the petition submitted on behalf of certain school trustees by Messrs. Zane & Zane.

At the hour named, the Territorial Supreme Court convened, and as it was among the possibilities that action would be taken on the withdrawal of Messrs. Zane & Zane from the case, this event was awaited. The court, however, did not refer to the question, so a short time afterward, Judge Harkness announced that the investigation would proceed. Judge Powers was present on behalf of Mr. Dyer, but there was no one to represent the petitioners. It was of course understood that this meant that the latter did not intend to appear, as indicated by the fact that no witnesses had been summoned, and also by the notice of withdrawal submitted by Judge Zane yesterday.

Judge Harkness went into the court room, where Judge Zane was, and returned in a few moments, when he stated that he had received the amended order of the court, with directions to proceed with the examination.

Judge Powers—I suggest that an officer notify Judge Zane.

Judge Harkness—I notified him personally, yesterday, and again this morning. I called his attention to it just now.

Judge Powers—I appear for the respondents in this matter. Since the last session this case has been before the Supreme Court, which ruled that Mr. Dyer should answer the questions asked on the former occasion. He is now ready to do so.

Judge Harkness—Let Mr. Dyer take the stand. There being no counsel present for the petitioners, perhaps I had better act. On December 12th you refused to answer certain questions which were held to be proper. The Supreme Court ruled that you should answer. Are you now ready to do so?

Mr. Dyer—I am. There was never any intention of contempt. I will answer the questions.

Judge Harkness—That is all that is required. I will not ask the questions, as the petitioners are not represented here, having absented themselves. That is sufficient for the report.

Judge Powers—The examination for the petitioners was to commence today and last four days. The respondents were to commence on Wednesday, Jan. 30th. I take it that we will be compelled to proceed then. I ask that your honor will,

in the meantime, report to the court the facts regarding the failure of the accusers to appear. It seems to me to be a contempt of court.

Judge Harkness—My idea is this: On January 30th the respondents are to answer to the charges made against them. I construe that to mean to reply to any evidence brought out, and shall hold that no reply is necessary, as no testimony is offered in support of the charges. I shall close the examination and report to the court.

Judge Powers—The examination cannot close till the date set by the court.

Judge Harkness—I shall follow the order of the court; that is my text.

Judge Powers—These accusers have filed a paper withdrawing from the case; that document is now before the court. I apprehend that the court will want this investigation to go on. It is a prejudice against our side to let it stand as it is. I propose to aid the court all I can in having these charges fully investigated.

Judge Harkness—I see nothing in the opinion of the Chief Justice requiring me to hold over this examination to no purpose. I shall report at once to the court, and if that is not proper, the court may remand the case for further hearing. I shall close the examination now and report.

Judge Powers—I respectfully suggest a suspension.

Judge Harkness—I will close the examination and report all of the events to the court—everything that appears here relative to this matter.

Judge Powers—The court will note an exception to the order closing the examination.

Judge Harkness—If the court wants me to go on under the circumstances, they will so order.

With this the efforts at an examination were brought to a close.

In the afternoon Judge Harkness made the following report:

In the Supreme Court of the Territory of Utah.

The United States of America vs. The Church of Jesus Christ of Latter-day Saints, et al.

To the Supreme Court of Utah Territory:

I respectfully report that under the amended order of this court, certified and delivered to me on the 23d instant, and which I annex and refer to as a part of this report, the following proceedings have taken place, to-wit:

During the afternoon of the 23d instant, and as soon as practicable after receiving the order, I notified Messrs. Zane & Zane, attorneys for petitioners, and O. W. Powers, attorney for the respondents, that I had received the order, and that I should be present at the time mentioned in the order, to commence the hearing under it. I understand that neither R. N. Baskin (who was previously associated with Messrs. Zane & Zane as counsel for petitioners) nor J. R. McBride (formerly associated with counsel for respondents) is in the Territory of Utah.

In pursuance of said amended order and at the time named therein, I attended at the judges' chambers in the Wasatch Building, in Salt Lake City, Utah Territory, ready to proceed at the convenience of the parties and their counsel.

The receiver came personally and the respondents appeared by their attorney, O. W. Powers, who announced that the respondents were ready to proceed. On the 23rd instant, and when I notified Messrs. Zane & Zane of the order and hearing, they informed me their clients were unwilling to proceed with the hearing under the amended order, and therefore it was probable there would be no appearance for petitioners. About 10 a.m. on the 24th instant (the time set for hearing), I was informed by Messrs. Zane & Zane, in substance, that the petitioners would not proceed with the hearing, and that they did not request any delay on my part.

At about 10:30 on the 24th instant I called the case for hearing. There was no appearance and no request for a continuance or delay, on the part of the petitioners.

Counsel for respondents proffered Frank H. Dyer, the receiver, as a witness for further examination, in continuance of his former examination, and to answer the questions previously propounded, and which, under advice of counsel, he had refused to answer.

Frank H. Dyer then took the stand as a witness.

There being no one present to propound the questions in behalf of petitioners, I personally interrogated him as to his readiness to answer, and he answered he was ready, willing and anxious to answer each and all of said questions, and fully comply with the ruling of the examiner on the previous hearing, and with the opinion of this court in respect thereto.

Counsel for respondent offered to read the said questions to the witness and have his answers taken. I held it unnecessary, and that all I could properly require in behalf of the Supreme Court was the proffer to answer fully.

I then announced the examination under the order would be closed and a report made.

Counsel for respondents objected to closing the examination until after the time named in the order, and asked that it be held open by continuances, and for any further proceedings which might be required. I then closed the examination, subject to the opinion of the court as to the propriety of so doing.

To this ruling counsel for respondents excepted, and the exception is hereby certified.

I also refer to my former report, dated January 12, 1889, and make the same a part hereof, so far as necessary to explain the proceedings with the witness Frank H. Dyer, and for any matter to which it may be pertinent.

Respectfully submitted,
ROBERT HARKNESS, Examiner.
January 24, 1889.

Further developments will be looked for with interest.