

judicial proceeding. This is the only provision that can apply to this case. The acts of the trustees were neither disorderly, contemptuous nor insolent. They properly made a statement of their reasons for withdrawal, therefore it was not gratuitous. There had been changes which induced them to withdraw, and they had the legal right to do so.

Judge Judd—But don't you think, as the court think, that they might have done it in a little more respectful language?

Mr. Baskin—If you know anything about the standing of these gentlemen, their disclaimer—

Judge Judd—Undoubtedly. But after all the construction is a matter of law for this court, and not for them.

Mr. Baskin—It becomes the duty of their attorneys to construe the law at times, and if they make a mistake their clients should not be responsible. If this had been manifestly contemptuous, the court could take it up, and it could not be explained away. But that is not so in the language of this statement. Its language is respectful, and the contempt grows out of the construction put on the whole language. The trustees had been advised that they could become parties to the case, by presenting a petition to the court. This they did, and by the evidence taken before the referee, it is shown that they had grounds on which to act. The argument of the counsel appointed by the court shows that they took this view. The government attorney asserted that the claim of the receiver and his attorneys was exorbitant. The respondents were acting upon what they believed to be their legal right. The question is, Did they act in good faith? I must say, with all due respect, that they did. I have been greatly embarrassed by the declaration that the withdrawal was scurrilous and untrue. The points thus designated are not named. There are no specifications. It does not show what part is scurrilous, or what part is untrue. That statement simply showed that the trustees withdrew because they could not offer testimony on the compensation.

Judge Judd—You see the opinion of the court here very plainly adjudged that paper to be contemptuous?

Mr. Baskin—I do.

Judge Judd—Then why spend your time on the question of specifications?

Mr. Baskin—You say they are in contempt for filing that paper?

Judge Judd—That is it.

Mr. Baskin—The respondents say they were advised by their counsel that the statements in the paper filed were prudent. They were informed by their counsel as to the construction of the order of the court, and relied on that information. By reference to the subsequent proceedings, it will be seen that the receiver's attorneys and the examiner took the same view. If we made a mistake, so did they. But did we intentionally make a mistake? If it was an honest mistake, it contains no elements of contempt. But sup-

pose their counsel made a mistake, should the respondents be held responsible therefore? Certainly not.

It is alleged that there are false statements here. That is, the construction is that they were false. If it is susceptible of a construction excluding the idea of contempt, in view of the emphatic disclaimer, it should be given. One of the members of this court dissented from the view as to the contempt. I ask the court to give these respondents the benefit of any doubt. I hope the court will find it possible to acquit the gentlemen of contempt, for I am satisfied they did not mean it. They have made a disclaimer under oath, and it takes away whatever sting there is.

Judge Judd—Then it would have been more graceful on the part of your clients to have come to the court and asked leave to withdraw the paper.

Mr. Baskin—Well, that view did not occur to me. We did not understand that it was equivalent to change the thing. Really we are in that attitude. If they have done anything improperly in that paper they have apologized for it by their disclaimer, and I do not see that it would make the case any different whether we came into court that way or explained it away. In either case we did not intend any contempt.

Judge Judd—As you remark, however, their disclaimer is a very material thing when it comes to the question of punishment. Of course you will understand, as an attorney, that the court would never have allowed to go upon its file a paper which it conceives to be contemptible. It can be brought into court to be read.

Mr. Baskin—Not only that, there is no dispute about the facts.

Judge Judd—I want to ask you, Judge Baskin, one question before you take your seat. What explanation have you to give to the court for the conduct of that fourth man, who had never been any party to any proceedings herein before? Why should he have come in here and throw himself into that attitude?

Judge Baskin—Of course I do not know the facts connected with that.

Judge Zane—I can answer that. This fourth man, you mean Mr. Colbath.

Judge Judd—Yes, that is the man.

Judge Zane—The fourth man, Mr. Colbath, was chairman of trustees of 12th school district and was authorized to sign original petition; on that day the funeral of his father-in-law occurred, and he could not come to sign it. He authorized the secretary, Prof. Millspaugh, to do so. When the withdrawal was prepared, he thought, as he had assumed responsibility as to the petition, it was proper to sign it. He is known as a man of courage, and did not wish to shirk any responsibility. He did not intend any contempt whatever.

JUDGE ZANE

then proceeded with his argument. He said that in the answer to the rule requiring the trustees to show cause why they should not be pun-

ished for contempt, they set forth their justification and excuse. They disclaim any intention to insult the court or defy its authority. In view of the facts stated there, I think it proper to mention the circumstances under which the withdrawal was presented to the court. In the first place I was asked to appear. This was about the 22d of November. I told them I would bring the matter to the attention of the court. I did so, and was directed to put the matter in writing. This was done, and the petition was presented at the next session of the court. The statements in their petition were made after investigation. Its form and language were not theirs. It possibly was not as well chosen as it might have been. I express my regret at my weakness in that regard. The court ruled that the trustees could not be made a party, and gave to the petition a construction that was not intended. The trustees did not want to prosecute the charges of fraud and corruption, but wanted to examine as to the compensation.

Judge Judd—Now, Judge Zane, there is where your clients started wrong. The opinion of the court, which was written by Justice Henderson, should have been examined, and it would at once have been seen that that order was not in accordance therewith. Then your clients should have halted at that point until they had taken the further advice of this court; for it would then have been evident that the order was wrongly written. I suppose that grew out of what seems to be a very careless practice here—leaving the drawing of orders to the clerk, without their being superintended by the attorneys in the case.

Judge Sandford—If you remember, attention was called to that fact, that the order would be submitted to both sides. I myself called attention to it.

Judge Zane—I suppose I have been delinquent in the matter, as I probably have been in many others.

Judge Zane went on to explain that the idea was that the compensation could be contested, and it was that view under which they proceeded. That effort was abortive. The matter again came before this court, which excluded testimony concerning the amount of compensation. When this was done, I asked that we might offer evidence to show that the claim for \$25,000 was exorbitant. This was not granted, and I consulted with my clients. They said they had nothing personal against Mr. Dyer, and did not want to assume the position of prosecutors. They simply wanted to protect the fund. They were trustees, and the duty of prosecuting under the law rests with the district attorney. They did not wish, as citizens, to engage in a prosecution, and out of respect to their constituents, they stated their reasons for withdrawing. In that statement is the alleged contempt. The language of the statement is not that of the trustees, only so far as they signed it. Mr. Alfi was particularly desirous that he should not be misunderstood.