

THE FARR-SHUPE CASE.

The Testimony all in on Both Sides.

The Motion to Quash the Indictment
Against James Taylor Confessed
by Mr. Dickson,

And an Order is Issued to Re-sub-
mit the Case to the Grand Jury.

TUESDAY AFTERNOON.

[The case of Lorin Farr, vs. P.

R. Shupe.]

The objection was modified to an
exception to said judgment being
immaterial.

Thomas Farr was sworn. He
was employed on Farr's mill dam
in 1884 as overseer. The Northern
part of the levy was completed
about the 12th or 15th of Septem-
ber, could have turned the water
into the dam from 20 to 30 days
sooner had it not been for the in-
junction. Had no other source of
supply of water for the mill race.
He corroborated the evidence of the
previous witness. His father's in-
dividual land is the land in culti-
vation.

Mr. Jonassen moved that the tes-
timony be stricken out as the suit
is a partnership affair. The jury
was then excused till ten a. m. on
Wednesday.

Messrs. James P. Anderson and
Andrew Anderson of Bear River
City, were admitted to citizenship.

The Court then adjourned till
ten a. m. on Wednesday, May 27,
1885.

TO-DAY'S SESSION.

This morning, at ten o'clock,
after the opening of the Court and
the reading of the journal, in the
case of the U. S. vs. James Taylor,
Mr. Dickson confessed the motion
to quash the indictment in conse-
quence of the names of two of the
witnesses not being indorsed on the
indictment, and asked that an order
be made for the case to be recon-
sidered by the Grand Jury. Judge
Williams asked that the Commis-
sioner be required to file his record.

The reconsideration of Mr. Tay-
lor's case by the Grand Jury was
ordered.

In the matter of the filing of the
Commissioner's record the Court
thought they could be obtained
without an order.

Mr. Bierbower was unavoidably
absent, and consequently he would
not be able to defend Hoffman.
Captain Ransford Smith, at the re-
quest of Court, undertook to repre-
sent the defendant. The case was
set for to-morrow afternoon.

A map of Ogden River and its
surroundings was introduced as
evidence in the Farr-Shupe case.

Mr. Farr's examination in chief
was continued. He pointed out
the levy, the dam, the mill race,
and the mill on the map.

Cross-examined by Mr. Jonassen.
They turned the water in about the
13th of September.

By Mr. Kimball. The wooden
part of the dam was put in 16 or
17 years ago. Last summer piles
16 or 18 feet in length were driven
in close to the dam and piles four
feet apart were driven in lower
down.

Thomas L. Williams was called
and sworn. Is 59 years old and
was born in the milling business.
(Laughter.) Works for L. Farr
& Co. Evidence of the former
witness was corroborated by Mr.
Williams.

Miles H. Jones was called. He
resides on Ogden River near Farr
& Co.'s dam. Explained the loca-
tion of the river and the dam on
the map.

Lorin Farr was recalled and he
explained the map.

The minutes of the clerk to
show the judgment in the case of
Shupe vs. Farr was admitted as
evidence for the defense.

The jury was given a recess of
ten minutes.

Mr. Kimball asked to amend
the complaint as to damages to the
mill business, and make \$600.

Mr. Jonassen objected on the
ground that the question was too
late.

The amendment was allowed and
exception taken by the defence.
The clerk was instructed to record
that an order had been made allow-
ing the plaintiffs to lay their dam-
ages to the flouring business in the
sum of \$600.

On the return of the jury they
were addressed by S. J. Jonassen
for the defense. The complaint is
denied entire by the answer. And
the defendants deny that the plain-
tiffs were damaged in any form
whatever. The plaintiffs could
have gone further up the river to
to make their dam, and thus over-
come the necessity of turning the
river on the Shupes' land.

Mr. Kimball objected to this on
the ground that in the case of
Shupe vs. Farr the present plaintiffs
were said to have the right to make
their dam where it is. The Court
concurred in this objection and re-
ferred to his ruling yesterday. This
proved to be quite a sticking point,
but the attorney finally continued
his address to the Jury. He desired
to prove to them that Mr. Farr
built his dam higher than was neces-
sary, obtained more water than was
needed, and thus some of the water
ran on the defendant's land. And
they will prove that no attempt
was made by Mr. Farr to dissolve
the injunction until the 3d day of
September, and that the plaintiff
caused the delay and not the de-
fendants.

For the defense Jno. W. Shupe
was called and sworn. He is ac-
quainted with the river and its sur-

rounding as shown on the map.
The building of the dam was com-
menced immediately after the in-
junction was served. Does not re-
member how many men were at
work on the dam. Is acquainted
with the building of dams. They
could not have worked any more
men with advantage on the dam.
The upper part of the levy is about
five or six feet higher than at the
apron where the waste water runs
off. There would be sufficient depth
of water to run the mill without
running over at the waste apron.
The water could be about two or
two and a half feet deep and five
feet in width.

Sheriff G. R. Belnap appointed
Bailiff of the Court for this term.

Erasmus C. Wansgaard was ad-
mitted as a citizen of the United
States.

Recess till 2 p.m. was taken.

AFTERNOON SESSION.

Albert Heed, late of Idaho, was
admitted to practice at the bar of
this Court.

John W. Shupe resumed his tes-
timony. He had made some mea-
surements at the dam since he was
on the stand in the morning. The
mill race is thirteen feet wide and
will carry four feet of water. The
usual depth of water is two feet.
There is an irrigation ditch gate on
the north side of the river. During
last August the mill race would
have taken the whole of the stream
in the river without running over
onto his land.

By Mr. Kimball--Has built dams
in many places--one in Ogden
Canyon about 1863. Did not re-
member the exact time when Mr.
Farr put in the south part of the
dam. Would think it was about
twenty years ago. Takes the water
for the ice pond from the river
alone. Prior to last summer Farr's
mill race followed the bluff. The
water was taken out at a point higher
up the river from where it is taken
out now. The channel of the
river was changed when the dam
was built, last summer. He filed
the suit for the injunction last July.
He stated in the complaint that if
Farr built the dam it would cause
the water to flow in his land. The
term "sluiceway" in the complaint
refers to the dam and flood-gates.
Sometimes the plaintiff raised his
gates and the whole of the river
could run in. It takes two feet of
water to run the mill. In the spring
of the year the mill race would not
carry the whole of the water in the
river. When the head gate is shut
the water runs over the dam.

By Mr. Kimball--The water was
turned in on the 3rd of September
before the injunction was dissolved.
Is sure it was not on the 13th.

A. J. Shupe was called. The
water was going through on the 3rd
of September. Water was turned
in before that. The rest of the wit-
ness testimony corroborated that of
J. W. Shupe.

Mr. J. O. Stephens in his cross-
examination said the date the water
was turned in was September 3rd.
He remembers it distinctly because
he put it down on a scrap of paper.
He saw this paper a day or two
ago. Had looked at it because he
had heard the matter mentioned.

Re-direct by Mr. Jonassen--Mr.
Shupe asked witness to go out on
the dam on the 3rd of September.

J. W. Shupe re-called by Mr.
Jonassen--The papers were served
on the 3rd of September, and he
took several witnesses out so as to
get their affidavits.

The Court ordered this testimony
to be stricken out.

F. C. Manning was called and
corroborated previous evidence.

In cross examination witness
stated he was certain the date was
the third of September, when the
water was turned in. He could
show counsel the date in his book
if he would come up.

Mr. Lorin Farr re-called said the
head-gate was for the purpose of
preventing a surplus of water run-
ning in the race, which surplus if
allowed to run in would be liable
to cause breakages in the race.
The amount of water in the river
last year was more than double the
quantity for many years past.

Cross-examined. The regulating
of the water was done under his
direction last summer. Gave no
instruction for the head-gate of the
irrigating ditch on the north side
to be shut down for the purpose of
obtaining more water for his mill.

This closed the testimony in this
case.

The Jury was then addressed by
counsel on both sides at considera-
ble length.