

the order should be modified so as to provide that the examiner shall proceed to take testimony furnished by either the petitioners or the respondents respecting any and all allegations of fraud, corruption, misconduct, fraudulent claims and charges for compensation, and unprofessional conduct on the part of Frank H. Dyer as receiver in this case, and of George S. Peters and Parley L. Williams as his attorneys, contained in said petition; that said Robert Harkness be clothed with all the powers and authority of examiner of this court for such examination; that he be authorized to pass upon and determine all questions of the admissibility of testimony, the same as though he were being tried before him, subject, however, to the right of either party to appeal to this court by way of exceptions to his ruling thereon; that either of the parties interested be authorized to take subpoenas from this court for witnesses to appear before said examiner; that said examiner be empowered to employ officers, either Federal or Territorial, to attend him under his direction and to fix their compensation; to employ stenographers, and to swear witnesses; that such examination on the part of the petitioners begin January 24th, 1889, and that they be given four days in which to give such testimony; that the respondents in reply commence on Tuesday, January 29, 1889, and that they be given four days, and that two days be given by the examiner to take rebutting testimony, to be divided between the parties as the examiner shall direct, and that said examiner make report of such testimony on or before February 9th, 1889, and that the hearing upon said report be set for February 11th, 1889. The order should further provide that the examiner may change the above allotment and division of time in any manner he may see fit, but only so that the final report may be made and filed by February 9th, 1889.

I concur with the Chief Justice in his opinion just delivered as to the matter of contempt.

JUDGE BOREMAN.

In my view of this matter, the questions asked the receiver as a witness, and which he refused to answer, were, as the examiner ruled, proper and should have been answered, and this he should be required to do whether the amendment of the order, as prayed, be allowed or disallowed. It is no doubt true that nothing was intended to be referred to the examiner except the charges made in the petition of Messrs. Bailey, Alf and Millsbaugh. But one of the charges made in that petition was that the receiver had made an unconscionable claim for compensation, and that being so, said claim was a proper, although not the main or most important, subject of inquiry by the examiner. It would have been misconduct in the receiver to have made such a claim.

If I read aright the report of the examiner, his view was that such matters in the petition as referred to

other subjects than the charges of misconduct, fraud, etc., were not before him, but that all of the charges made by the petitioners against the receiver and his attorneys were before him for investigation. This view was correct, and I approve of the rulings made by the examiner on this subject. The amendment sought to be made to the order of the court is, in my view, not very important, and it would not materially change the subjects of investigation; and with the change made, the receiver would still be required to answer the questions. The answer of the receiver and his attorneys took issue on the unconscionableness of the receiver's alleged claim for compensation, and, as to the wording of the order, the court had advised counsel to confer and to examine it before it should be entered. This was not done, and it seems to me that it is now too late, even although the order did not technically conform to the wording of the opinion of the court delivered at the time. The order should now be that the receiver make answer to the questions, and if he still declines to do so, that he should be punished as for contempt.

I heartily concur in referring the subject of the charges back again to the examiner, and the renewed order of the court will give ample authority to the examiner to fully investigate all of the charges made and to confine the investigation to the charges made in the petition. The question of the amount of compensation that should be allowed the receiver is only incidental to this investigation. That question will come before us for fuller examination when we come to consider the report of the former examiner, Judge E. T. Sprague. Its purpose in this investigation is to show whether the receiver's claim be unconscionable or not. If it be so, the court should know it, not, perhaps, to fix what his compensation should be, but to enable the court to know whether the receiver has been acting in good faith with the court. If he has not, he should be removed. Evidence as to his compensation should be allowed so far as it may, even in the remotest degree, show misconduct on the part of the receiver, as charged, or that any claim he may have made is unconscionable or fraudulent.

These charges of fraud, corruption, and misconduct in the office of receiver, and of his attorneys, are so grave and serious that the Court cannot and will not pass them by, and the parties making them will be allowed ample time and opportunity to substantiate them if it can be done; and the respondents will also be allowed ample time and opportunity to defend themselves against the charges, and to introduce evidence bearing upon their exoneration. It has been claimed and argued that the petitioners are prepared to substantiate the charges they have made, and the parties charged have been equally positive that no such charges can be substantiated, and that they are prepared to show themselves entirely free from

them. It is to be hoped that all parties will now improve the opportunity again offered to bring out all the facts in the matter. The investigation to be satisfactory must be searching and complete, no matter what the result may be. Counsel should keep this fact in view throughout the whole examination.

The court will insist that these charges be sifted to the very bottom, and there should be no delay or obstruction to such searching examination. The parties charged are officers of this court, and the court owes it to itself that the examination should be thorough, and will be satisfied with nothing less. Counsel on both sides should endeavor to aid the examiner and the court with that view. If any witness refuse to answer any question of importance, the question could be waived for the time being, and allow the examination to proceed as to other breaches or charges set forth by petitioners.

The doors should be opened to the fullest extent, and even if necessary go to the very verge as to competency. Of course matters in no way connected with the charges made ought not to be brought out. The court is confined to evidence upon questions in issue, and cannot go outside to investigate extraneous matters and such as are not connected with the charges made. But the charges are broad and specific, and if they be sustained by evidence no addition or outside matters would be necessary; for if the charges made be true, the court would not make any allowance of compensation to the receiver or to his counsel, and probably other action would be taken by the court.

The new order, embodied in the opinion of Associate Justice Henderson, and which is to be entered in the case as to a resubmission of the matter to the examiner, conforms substantially to my views, and will give the fullest opportunity to introduce the evidence as to the alleged unconscionable or fraudulent character of the claim of the receiver for compensation.

Mr. Hobson said that, as the representative of the government, he had no confidence whatever in the charges made against Receiver Dyer. He would, however, like to be present at the hearing before the court, if the date could be changed from Feb. 16 to Feb. 11. He had to be in St. Paul on Feb. 15.

Judge Zane said that, inasmuch as the purpose of the investigation had been changed from inquiry concerning the receiver's compensation, he desired to consult with his clients. They did not desire to appear as prosecutors in a criminal action. As trustees they had no interest in this line, and would not want to assume the expense of prosecuting under the charges made. That was outside of their original design. I am afraid that under that order we cannot introduce any evidence. In a legal sense, corruption and fraud are not charged against the receiver. We wanted to investigate the conduct of the receiver.

Judge Sandford—How much time will you want?