

duct, or fraudulent claims and charges for compensation and unprofessional conduct on the part of Frank H. Dyer as receiver in this case, and George S. Peters and Parley L. Williams as his attorneys, contained in said petition of said school trustees heretofore filed in this court.

That the said Robert Harkness be and he is hereby clothed with all the powers and authority as an examiner of this court for the purposes of such examination; that he be and he hereby is authorized and empowered to hear and determine all questions that may arise touching the admissibility of testimony with reference to said charges to the same extent as if the matter was being tried, subject, however, to the right of either party to appeal to this court by way of exception to his rulings thereon; that the parties hereto be authorized to take subpoenas from this court for witnesses to appear before said examiner; that said examiner be and he is hereby authorized and 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. And it is further ordered that said examination on the part of the petitioners shall begin on Thursday, the 24th day of January, A. D. 1889, at 10 o'clock a. m., in support of said charges, and that said petitioners have four days in which to produce their testimony in support of said charges as herein set forth; that said respondents shall commence with their testimony to said charges on Wednesday, the 30th day of January, A. D. 1889, at 10 o'clock a. m., and that said respondents have four days in which to produce their testimony in reply to the said charges; that said examiner devote Monday and Tuesday, February 3rd and 4th, 1889, to the taking of rebuttal testimony, the time to be divided between the parties as the said examiner shall direct; that the said examiner make report to this court of its actions and doings, and of the testimony so taken, and all the proceedings had before him, on the 9th day of February, A. D. 1889, and that the hearing upon said report and the amount of compensation to be allowed to the said receiver and to the said attorneys be set for the 11th day of February next, at 10 o'clock a. m.

And it is further ordered that the said examiner may change the allotment of time of the affair of said testimony as hereinbefore set forth, as he may deem just, provided nothing shall be done which shall interfere with the filing of the said report on February 9th next.

It is further ordered that the motion to punish the said receiver for contempt be denied, and that he may go before the examiner and answer the questions heretofore ruled by the said examiner to be proper, and which the said receiver refused to answer.

A discussion of the amendment ensued, Judge Powers arguing that to allow it would be to make the examination a mere machine for the collection of scandal. It implied

that the court needed assistance from the outside to conduct its business, and should not be allowed. The court then adjourned until next morning.

At 10 a. m. on Wednesday, Jan. 23, the court resumed, and an order was made refusing to allow the amendment asked for by Judge Zane.

The case of John H. Linck vs. Salt Lake City et al., was argued and submitted, and at its conclusion the question as to the investigation of the receivership was again called up.

Judge Zane stated that he desired to be heard by the court for but a short time. He then read the following document:

*In the Supreme Court of Utah Territory.*

United States of America

vs.

Church of Jesus Christ of Latter-day Saints et al.

To the Supreme Court of Utah Territory:

Unto the court your petitioners, the school trustees, respectfully state:

The order of the court as now modified by the court has totally changed the nature of this proceeding. A petition in chancery has been transformed into a criminal complaint. We came here to contest the compensation of the receiver and of his solicitors, and our petition was for that purpose. Under the former order of the court we could have done so; under this order we cannot. The court has now ruled that we cannot do the only thing that as school trustees we were interested in doing, or had the right to do. We are completely excluded by this amended order from performing the only duty in connection with the matter that our office places upon us.

But by this amended order the court would impose upon us the duty of carrying on an investigation into the conduct of officers of the court, while confining by their order the inquiry within narrow limits. The court has decided that our particular inquiries of the receiver were proper, but at the same time has ruled that all other questions of the same nature are improper. The court has so changed the order that it is doubtful whether we could introduce testimony upon most of the allegations of the petition, because, legally, they do not amount to charges of fraud, corruption or professional misconduct. We are cut off from all inquiry into anything except those *particular statements in the petition which directly and in sufficient legal phrase, charge fraud, corruption or professional misconduct.*

We can offer proof under this order only of a charge for compensation that is both fraudulent and unconscionable. We have no allegation of such a charge in our petition, and therefore we can offer no proof whatever on the subject of compensation. Had we understood, when this reference was made, that the investigation

would be limited as it now is, we would then have declined to proceed.

If it be the duty of the court to carefully scrutinize the conduct of its own receiver, and if it would place this duty upon us, then it should not limit the investigation, as it now does, to particular acts and to those alone; but it, in justice to us, should extend the investigation to his entire conduct as receiver. In assuming the duty of the court, as we would were we to proceed under this order, we would be so confined and hampered that we could not make our investigation complete. While proceeding under the original order we were authorized to offer evidence as to everything that the receiver had done or failed to do, in order that we might enable the court to fix the compensation for his services. But this matter being excluded by the amended order, only a small part of the receiver's doings can be investigated.

Under these circumstances, we believe it would be better that the court, if it so desire, should investigate the conduct of its officers for itself, in a proceeding where the examination would not be cramped and narrowed, as it is under this order. In that way the examination would be made thorough and more satisfactory to the court.

As long as we had some chance of benefiting the common schools of this Territory, we thought it our duty to proceed, but we conceive it to be no part of our duties as school trustees to prosecute charges of fraud and corruption against officers of this court, nor do we conceive it a part of our duties, either as school trustees or as private citizens, to incur the large expense of summoning witnesses from different counties in this Territory, and even from Idaho and Arizona, merely to assist the court in scrutinizing particular acts of its receiver.

And in view of the facts above stated, and the complete change in the character of the investigation made at this late day, we must decline to assume the functions of a grand jury, or to attempt to perform the duty of the court in investigating the conduct of its own officers.

All of which we respectfully submit.

RUDOLPH ALFF,

Trustee Eighth School District.

J. F. MILLSPAUGH.

L. U. COLBATH,

Twelfth District School.

T. C. BAILEY,

Chairman Board Trustees Seventh School District.

Judge Powers said:—May it please your Honors: If I could be surprised at anything in this extraordinary proceeding I would be by the remarkable paper that has just been read—

Judge Sandford (interrupting)—We do not care to hear any argument about it; the clerk will receive the statement of these school trustees, but it will not go on file. He will simply receive it for further consideration. It is a remarkable document and we desire to consider it carefully.

Judge Powers—Before any action