

said lot 8, in block 76, plat A, above described, and claimed by the Association defendant. On the date when the petition was filed, the Supreme Court made a decree by which, among other matters, it was adjudged that the Receiver be authorized and empowered to accept said sum in compromise and settlement of the suit, and to dismiss the same, or submit to the entry of a decree in favor of the respective defendants in accordance with the terms of his petition. After the entry of this decree, and as a result of the compromise and settlement which it sets forth, the attorneys for the defendants, Horace Eldredge and others, applied to the Third District Court for a decree in favor of the defendants, and on the 15th day of December, 1888, a decree was accordingly made by the court, by which it was adjudged "that the Receiver take nothing by his said action, and that the title of the property is now held by, and the same is adjudged to be in, the several parties defendant who held the same free from any trusts or conditions." The decree describes specifically the portions of lot 8, block 76, plat A, the titles to which are adjudged as vested free from any trusts or conditions in the several defendants, Henry Dinwoodey, R. B. Young, Joseph O. Young, John C. Cutler, Wooley, Young & Hardy Company, the Home Fire Insurance Company, Elias Morris, Caroline E. Dye, William A. Rossiter, Hyrum Clawson and J. H. Parry & Co.; but it contains no separate description of the Council House corner lot claimed by the defendant, the Salt Lake Literary and Scientific Association. Much of the testimony taken by me relates to the Receiver's responsibility, if any, for the making of this decree in the form in which it was entered. It appears on its face to be a final decree in favor of the Literary and Scientific Association and against the receiver, adjudging the title to the Council House corner lot to be in the association free from any trusts in favor of the Church defendant; and it would, unless modified in that respect, operate as a bar to any further claim made by the Receiver or the United States for the premises, as subject to escheat under the acts of Congress mentioned. It is not in accordance with the petition filed by the Receiver, reserving and excepting the lot claimed by the association from compromise and settlement. By the term of the compromise to which the Receiver and defendant in the suit agreed, and which was approved by the Supreme Court, no decree should have been entered in favor of the association. The action should have been continued for further trial as to it, or dismissal without prejudice to another suit by the Receiver to determine the title to the lot reserved.

Under these circumstances, I find that it was the duty of the Receiver to see that a proper decree should be entered in the suit, reserving from the compromise the Council House corner lot. It appears from the evidence that the value of

this lot is forty thousand dollars or more. Whatever doubt may have existed respecting the ability of the Receiver to recover the property, I find that the duty still remained to reserve the right of action to recover it, and then he neglected to perform his duty as Receiver in omitting to have a proper decree entered in the suit. I find from the evidence, however, that in this transaction his neglect was not intentional, nor was it the result of bad faith on his part. The Receiver, from the time the decree in the Eldredge suit was entered until the giving of his testimony on this examination, believed that a proper decree, reserving his right to proceed against the association to recovery of the lot, had been entered. He had employed a competent and skilful attorney to represent him in the suit, and supposed that under the attorney's direction a decree in proper form had been entered. It appears from the evidence that either through a misunderstanding existing between his counsel and the attorneys for the defendant in the suit, respecting the form of the decree, or from the inadvertence, the decree was made in favor of the association, when the action should have been continued against it, or dismissed without prejudice to a new suit. While such facts relieve the Receiver from any charge of bad faith in the transaction, his responsibility would remain for any loss which the plaintiff, the United States, might sustain by reason of the decree, should it ultimately be determined that the Council House corner lot was property of the Church defendant which should have been recovered and held by him as Receiver subject to the future disposition of the court appointing him.

III.

Evidence was taken and is herewith returned, respecting the responsibility, if any, of the Receiver for the making of the agreed state of facts and the final decree filed in this suit on October 8, 1888. It appears by the evidence that at the time the agreed state of facts and decree in the suit were made, a verbal understanding or agreement had been entered into between the attorneys representing the government in the suit, Solicitor General Jenks and George S. Peters, United States Attorney, and F. S. Richards, and of the attorneys for the Church defendant, to the effect that the decree should be final between the parties; that the property of the Church described in the statement of facts and decree was all the property which it possessed and which could be claimed in any future proceeding as property which might be subject to escheat under the acts of Congress. That no suits or other proceeding should be brought or maintained by the government or the Receiver against the defendant or any persons claiming under it, to recover any other property than that described in the decree, and that the suits brought by the Receiver in the District Court for the Territory at Ogden to recover real estate in that city claimed by the Receiver

to be Church property and subject to escheat, were to be dismissed.

The decree sets forth and describes apparently all the property of the Church constituting the subject matter of the suit, and the property which might be subject to escheat under the acts of Congress. No reservation appears to be made in the decree of any right which the government might have to maintain any other suit to recover Church property not named in it. The decree is in fact such as to create the gravest doubt whether any further suits or proceedings can now be maintained by the government to recover any other property of the church except the property which it in terms embraces and describes.

Prior to the making of this agreement of facts and the entry of the decree, the United States District Attorney G. S. Peters, who signed the agreement and assented to the decree in behalf of the government, had been, with the assent of the Attorney General of the United States, employed by the Receiver to assist and advise him as one of his attorneys in all matters pertaining to his receivership. His employment by the Receiver continued until after the decree was entered. At the same time the Receiver had employed as his principal attorney and adviser Parley L. Williams.

I find from the evidence that neither the Receiver nor his attorney, Williams, took any part or participated in the negotiations between the attorneys representing the government and church defendant, which led to the making of the agreed state of facts and the entry of the decree; that it was not the duty of the Receiver to see that a decree should be entered in the suit, which should be in such form as would preserve the right of the government to pursue other property of the church not described in it. Should it ultimately be determined that the decree precludes the government from proceeding to escheat property of the church not mentioned in it, the responsibility of its entry rests with the attorneys for the government who signed the agreement of facts under which it was entered, and not with the Receiver.

IV.

On July 5th, 1890, the Receiver, in compliance with an order of the court, filed with the clerk thereof a report and account of his acts as Receiver from the time of his appointment in the month of November, 1887, until the filing of the report July 5, 1890. In this report a statement in detail is made by him of all real and personal property received by him and taken into his custody under the order appointing him Receiver, together with a statement of all moneys so received and of all disbursements made during his receivership under the orders of the court or otherwise. On Sept. 2, 1890, he also filed with the clerk of the court a further report and account of his receipts and disbursements to July 15, 1890, the date of the acceptance of his resignation as Receiver by order of the court. From month to month from