no intentional omissions of the receiver to take possession of property, or that he acted otherwise than in good faith.

FIFTH.

On a reference to take testimony concerning the compensation of the receiver and his counsel, testimony was taken before Examiner Sprague, and a report filed November 28, 1888, and the report and all the proceedings before said examiner are in evidence here. The receiver proposed his compensation should be agreed to by the parties, but was told by Mr. Peters that the Attorney or Solicitor General would have to be consulted on the part of the government. The receiver saw two of defendant's counsel, and after naming $25,000 as the amount he thought he should receive, asked if the defendants would consent to the allowance of that sum. They asked time to consult clients, and after some delay, wrote a letter to the receiver, saying in substance, the defendants would not oppose the allowance. One of defendants' counsel thought the amount excessive, and did this because he considered the government would oppose it, that the court would fix the amount and probably do so without much reference to the views of the defendants; but mainly from my own views, and he declined to formally assent. The other counsel considered and advised his clients that the matter was of small importance to the defendants; that if the law was held unconstitutional, the government would pay the Church its losses; if otherwise, it was a matter of small importance to the Church how much was paid for fees, as in that event all the money would be lost to the Church. There was no agreement, understanding or expectation that the defendants should be favored or in anywise gain anything for not opposing the allowance. Messrs. Sheeks & Rawlins, of counsel for defendants, were not consulted and did not act in this matter. With this letter and the letters of various business men who gave opinions, the receiver should have from $30,000 to $40,000.

The receiver went to Washington and saw the solicitor-general, but was informed it was not proper for a government officer to give his consent, and that the court was the proper tribunal to adjust the compensation. The receiver returned and the examination continued. John A. Groesbeck had been examined as a witness before the receiver went to Washington, and the receiver gave his own testimony on his return, and other witnesses followed. During that examination the United States was not represented, except in a limited way by Mr. Peters, who requested time should be given for special counsel whom he had requested the Attorney-General to send, to come and represent the government, and that no report should be made or any final action taken until such special counsel could have an opportunity to be heard and take such action as he desired.

On the examination of Groesbeck the attorney for the receiver put to him a question, hypothetical in its nature, but intended to be a statement, in a general way, of the services performed by the receiver, and the results of such services as a basis for the witness to estimate the value of the services. The witness had previously said he knew of the main suit, and that the receiver had handled various classes of property. The question then put takes about one and a half pages and is on pages 2 and 3 of the report of the testimony. The testimony of the receiver is on pages 5 to 29 inclusive. Counsel appointed by the court in this proceeding, by argument and requests for findings, ask that it be found from the evidence now taken, in substance: That the receiver in his testimony before Examiner Sprague, in many cases magnified his services as receiver, and stated them unfairly, intending to deceive and mislead the examiner and the court; and that other witnesses called for the receiver were asked to estimate and did estimate the value of his services upon the theory that his testimony was true, and that by these means the examiner was influenced and induced to report and did report a finding that from the evidence the receiver should be paid $25,000 for his services. Also that in the question put to Groesbeck, false statements were made of such services, by stating services not performed; by overstating the time devoted to the business; by overstating the number and extent of the agencies and means employed by him in his business, and, as a result, that the receiver had made an unconscionable claim and prosecuted it in bad faith. The testimony now taken and relied on to support these requests may not all be found together, but I assume the greater part of it is in the cross-examination of the receiver, in that portion of the examination commencing near the end of page 996, and continuing many pages.

The nature of the subject is such that to summarize the evidence on all the specifications would require an analytical comparison of the evidence on the two examinations and a consideration of the scope, nature and purpose of the examinations of the witnesses, too discursive for a report, and I refuse the requests with a statement of a few leading facts appearing in the testimony.

The question put to the witness Groesbeck was hypothetical in its nature, formulated and put by the receiver's attorney, without any evidence that the receiver suggested its language, form or scope. In its leading features it is not questioned, and seems substantially accurate according to the evidence, to wit: The amount of bond given, the duration of the services, and the amount and kinds of property received and held. The answer of the witness shows these were to him the more important things. In its more specific details it does not show any such departure from the facts proved as would justify any inference of intentional misstatement, or more than a favorable view of the attorney of the extent of his client's services.

In the testimony of the receiver before Examiner Sprague, the same leading features seem correct, and in the more minute details there is not a sufficient variance from what now appears to lead to conclusions of bad faith.

The answers show the witnesses relied more on the amount of bond, the responsibility, the amount and kinds of property recovered, and general results, than on specific details. While all or nearly all had read the receiver's testimony, some had glanced it over, some knew of the progress of the business from newspapers and from other sources, and some of the witnesses had given letters, stating an acquaintance with his services and naming larger amounts than the receiver was willing to take, before the receiver testified.

In respect to most matters the two examinations are not parallel. In the first the receiver stated in detail, as far as he could, how much time he spent and how it was employed. In the latter examination as to much of the property the questions related to how he got each class of it and called for a statement of such acts as obtained the final results, and the witness could not have understood that he was supposed to be telling the way in which his time was employed during the receivership, or the full extent of his services during the whole time.

I have included in this report some matters which may not be within the scope of the order of reference, but which the attorneys appointed by the court deemed material.

As a general conclusion I find that there was no fraud, corruption, misconduct or fraudulent and unconscionable claims or charges for compensation, or unprofessional conduct on the part of the receiver or his attorneys, in respect to any of the transactions set forth or contained in the petition.

Counsel for the receiver and his attorneys have asked no special findings.

Counsel appointed by the court have asked special findings, which I annex and return herewith. I allow the first, and find in accordance with it, though I do not see it is material. It is in these words:

"That a portion of the real estate acquired in this case, to wit, the premises referred to in the petition of the school trustees herein as the tithing office and grounds, were by the said receiver rented to and are now in the possession of John R. Winder, William B. Preston and Robert T. Burton, and that the same are being used for the purposes of a tithing office in connection with the Salt Lake Stake of the Church of Jesus Christ of Latter-day Saints.

"That at the time the said receiver leased the said premises, as aforesaid, the receiver had reason to believe, and did believe, that the premises would be so used by said lessees."

I have noted the disposition of the other requests on the margin.

Respectfully submitted,

ROBERT HARKNESS,
Examiner.