

conscionable claims and charges for compensation and unprofessional conduct on the part of the receiver.

On the day after the last order was made, said petitioners, together with one other person, by the name of L. U. Colbath, who had not heretofore appeared before the Court, came into Court and presented through their counsel a paper writing, containing, in substance, the following:

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 for the sole benefit 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 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 the receiver had done or had 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."

It is difficult to conceive of a more deliberate and bare-faced attempt to trifle with the court than has been attempted by the conduct of these petitioners. They assume the responsibility of making charges against officers and attorneys of this court, which were of such a character as no court could overlook. Every opportunity has been given to them to have a full and ample hearing to substantiate the charges; and after that, they come into this court with a paper whose statements are untrue and of a most scurrilous nature, and couched in the most disrespectful language, and by innuendo, and almost by direct charge, attempt to put the court in the position of undertaking by itself to shield its officer and its attorneys against an investigation of charges under which no man can stand up and face an honest community. The paper is full of false assumption from end to end, as can easily be seen by reference to the facts heretofore recited. They undertake in the paper last quoted to say: "We can offer proof under this order only to the charge for compensation that is both fraudulent and unconscionable. We have no allegation of such a charge in our petition, therefore we can offer no proof whatever on the subject of compensation." when the fact is, their original petition, in so many words, charged, "That the amount of compensation—\$25,000—claimed by said receiver, for his individual services is grossly exorbitant, excessive and unconscionable." And it will be seen that in the order made by the court and complained of by the petitioners the

exact words "fraudulent and unconscionable" are used with reference to the charges for compensation by the receiver. The paper has no place whatever in the proceedings; nothing is asked by it. It is wholly voluntary and gratuitous, and was evidently only for the purpose of putting in studied phrases and in writing contemptuous and insolent language.

It is impossible for this court to maintain its integrity and pass by without notice and without action such a contemptuous proceeding as these petitioners have been guilty of, and we are of opinion that this court should issue a written notice to each of the persons, Rudolph Alf, J. F. Millsbaugh, L. U. Colbath, and T. C. Bailey, requiring them to appear before this court, on tomorrow morning, January 30th, at 10 o'clock a.m., to show cause why they should not be punished for contempt; and in case they fail to appear, the clerk shall issue writs of attachment for their arrest, and to bring them forthwith before this court.

J. W. JUDD,
Judge.

SANDFORD, C.J., and
HENDERSON, J., concur.
BOREMAN, J., dissents.

At the close of the reading Judge Judd remarked, "I desire to add that I defer to the opinion of the majority of my brethren in the mild proceeding of issuing a notice to these gentlemen to appear before this court, but my own opinion is that a writ of attachment should be issued at once for these parties. The clerk will enter an order conformably with the opinion."

Judge Boreman, who dissented from the opinion of the majority of the court, stated that he had not had time to write his view of the matter, but would do so, and file it later.

There was an unusually large attendance at the Supreme Court at the opening hour on January 30, both of members of the bar and spectators. The four judges were on the bench; Judge Zane was also present, but Messrs. Alf, Bailey, Millsbaugh and Colbath were not. The latter was absent from the city, and had not been served.

On the opening of the Court Judge Zane arose and said—If the court please, the trustees ordered to appear this morning in the contempt proceeding are in my room, except Mr. Colbath, who is out of town, and cannot get here until tomorrow. They all desire to wait till then if the court will permit it. They asked me to appear for them as counsel.

Judge Judd—We understand this matter to refer to the person, and they will be required to answer in person, not by representative.

Judge Sandford—Let Mr. Colbath be notified to appear the next day after he is served.

Judge Zane—The trustees who are here are now preparing a statement to present to the court. It will be ready in a few minutes. These trustees will sign the statement. One of them, Capt. Bailey, is ill