

My view, and the decided view of my official superior, the Attorney-General of the United States, is that the question of compensation should be postponed till the Supreme Court of the United States passes on the question of the constitutionality of this law, and the validity of this proceeding, which is now before them. If they should say the proceeding is unconstitutional and void, and that this court and the government had exceeded its powers, every dollar in the hands of the receiver would have to go back to the Church without compensation to receiver, his counsel, or anyone else, from that fund. I refer to the authorities on this matter. They say that regard should be had by the court for the idea whether the fund might go back to the party from whom it was taken, on the ground of the illegality of the proceedings. It would be unjust if it were otherwise. If the higher court should decide that the receiver had been illegally appointed, costs would be taxed against the unsuccessful party.

My proposition is, that if the Supreme Court of the United States should decide that this whole proceeding is null and void, this court would not have the right to pay one dollar to the receiver or his attorneys from this fund. No one is more anxious to break up this corporation than I, inasmuch as its tenets are contrary to law. But we must conduct ourselves within the law. Therefore this matter should not be disposed of till the court of last resort shall determine the validity of the law that governs this case. Until this is done, under no circumstances should the receiver or the court be allowed to diminish this fund, but the receiver should meet his current expenses from the receipts of the fund. The real estate does not belong to the government, but belongs as much to the Church and its successors in interest as it ever did, and your honors have no right to pay it to the receiver or to any one else.

There is also a large amount of personal property, which was escheated. The question of the validity of this escheat is now in the higher court. Suppose that court says the law and the appointment of the receiver are legal, but the decree of this court escheating was void, what would be the effect if that property is distributed? Your honors will see that if the escheat is illegal, no officer of this court has a right to touch it. Therefore this court cannot distribute it.

The next point is the compensation of the receiver. In case of a receivership, the receiver is under no circumstances paid full compensation till the fund is finally distributed under the order of the court. The court will allow reasonable expenses and reasonable compensation by the month, but in no instance has full compensation been allowed till the case has been finally disposed of. Here is a receiver with a million dollars in his possession; there are charges against him, which if true, would cut him off from the right to compensation. I have no

doubt that the decision will be in his favor. But suppose he does in the future violate his oath of office, should he already have his compensation, which such an act would cut him out of? To pay the full amount at this stage is unheard of in law. The \$25,000 is reported and recommended as full compensation; not compensation for the current year, but full compensation. Such an allowance would be in violation of all law and precedent. In matters of this kind courts never depart from the practice of paying only reasonable compensation pending the settlement of the case.

It may be urged that \$25,000 is not full compensation. If it is not, I say it is excessive and exorbitant for one year—more than is paid receivers for railroads, and other corporations where the amount involved reaches into the millions. I find that all of the experts testify that the receiver should be paid a per cent. Mr. Williams put to them a hypothetical question, and they all name 5 per cent. on the basis of collection of debts. Courts of equity do not permit an executor of a will involving a million dollars to charge a per cent., but he is paid a salary. The court will not allow this immense per cent. The compensation of a receiver should not be estimated on a basis of per cent. The uniform practice is the payment of a fair salary as compensation. Receivers are not paid a per cent. except where such a figure has been equitable; even then it has only been where the circumstances made it justifiable in the particular case. The compensation should be based on his business capacity, diligence, responsibility and time devoted to the labors of the receivership. I desire to submit a brief on this point in the future. The court will not consider the declarations of men who come and say they would not do the work for less than so much, but will itself determine what is a reasonable compensation.

In his argument Mr. Hobson referred to a considerable number of cases in support of the various propositions laid down by him. In one case the receivers who had actually handled \$80,000,000, of a fund of \$100,000,000, they were paid for three years' service less per year than is claimed here, receiving for their time \$70,000. He further said that until the court knows the final disposition of this fund it cannot pass upon the compensation of the receiver and his attorneys. Then it should be based on the business capacity, responsibility, and nature of the services performed. In this case a large bond was required. On his bond, if he was dishonest, he was responsible. But the court will not consider that an element of responsibility, for it is not.

The other element of responsibility is the control of the fund, which in this case is not great. The real estate is rented to the defendants, while every dollar of the personalty has been deposited in the bank, and the receiver does nothing but draw the interest. If the bank was to fail, and every dollar he lost,

the receiver would not be held responsible. The fact that he used ordinary care would exonerate him. His responsibility therefore has been and is comparatively light.

No unusual business capacity has been or is required of him. The recovery of the property depended on the learning and ability of his counsel, where the property was not already in the hands of the court. In this case it was stipulated that all this property belonged to the corporation. The corporation was declared dissolved, and the property placed in the hands of the receiver. All he had to do was to go himself or send his deputies, and take control of the property. This he did without any trouble. There was no requirement of extraordinary business capacity or responsibility in this. At the outset it was stipulated that \$268,000 of property had been distributed to the Stakes. It is true he sought for this property. But he did not have to do it long, for by a stipulation made, it was agreed that a large amount was beyond recovery, and \$75,000 in cash was paid in full settlement of that claim. That money was placed in the bank. I approved of that settlement then and I approve of it now. The receiver and his attorneys are entitled to credit, but there was no extraordinary labor; it was mainly due to the sagacity and ability of his attorneys, whom it is recommended to pay a salary of \$10,000 each.

In the recovery of other property, there was no extraordinary effort put forth or unusual ability shown. It came out that certain stocks existed, and a demand was made, and after some little discussion acceded to.

In pursuing cattle and sheep, the receiver has perhaps performed more arduous duties than in any other way. In this regard he discovered from the books that they had the stock. The receiver did no personal work in discovering them. A stipulation was made that they existed, and his chief labor was in gathering up the sheep.

As to the real estate, about which so much has been said, the attorneys did the work. The receiver has only received the moneys, put them in the bank, and drew the interest. All of the acquisitions were the result of the compromise and the concessions by the defendants. Therefore the responsibility was below the ordinary average where such an amount is involved. A man of much smaller business capacity could have done the work equally as well. No great amount of labor or ability was necessary; and all the shrewdness and sagacity exhibited was on the part of his attorneys. I ask that his compensation be postponed till the case is decided, and that he be allowed a reasonable current compensation. In cases where the duties of the receiver are not arduous, \$8,000 or \$10,000 per annum is always considered sufficient. I will not, however, say what the amount should be in this case.

The receiver's accounts are here