

the property of the United States, furnish additional reasons for permitting the trustees of district schools to appear in this proceeding.

Wherefore, the petitioners pray as follows: "That they may be made parties to such proceedings, or that they may be allowed to appear by their solicitor or otherwise in order to defend and protect the interests of the common schools they represent and preserve so much of the fund as may belong to said schools, and that such other trustees of district schools as may wish to come in, may also be made parties or allowed to appear, and that your petitioners may be allowed to produce evidence to prove and substantiate the facts stated in this petition, and that petitioners may have such other and further relief as to equity belongs, and as to this court may appear to be equitable."

Signed and sworn to by T. C. Bailey, Chairman Board of Trustees, Seventh School District; Rudolph Alf, Chairman Board of Trustees, Eighth School District; J. F. Millsbaugh, Secretary Board of Trustees, Twelfth School District.

Upon the application of the solicitors of said petitioners to be allowed to file said petition in said above entitled cause, to become parties thereto, this Court filed an opinion, written by Henderson, Judge, in substance, as follows:

"This is an application of certain school trustees to be allowed to intervene as parties to the case. We are of the opinion that petitioners do not show by their petition any right to intervene as parties. There is nothing to show that the government is not disposed to look after the interests of the fund, and the interests of petitioners as school trustees are too remote to be recognized by an order allowing them to intervene. But the petition which has been read contains charges of a grave and serious nature against the receiver and his attorneys, Messrs. George S. Peters and Parley L. Williams. The charge has been directly made that the receiver has acted corruptly, and in criminal collusion with the defendants, and that this court has been imposed upon by the representations of the receiver and his said attorneys, and a fraud thereby accomplished. If this be true, a crime has been committed, and this court cannot and will not pass it by without attention, as the action of these officers, charged with a delicate and difficult duty, should be met by responsible accusers and have the opportunity to confront them. Either the receiver and his attorneys have been guilty of a crime, or some person or persons are interested in falsely accusing them. This petition upon being verified and endorsed by some persons responsible for the costs which may be incurred, should be received and filed as charges against the receiver and said attorneys, and they should each be required to file their respective answers thereto, so far as the charges of corruption, fraud and unprofessional conduct are charged against them respectively; and upon the filing of their answers, it should

stand referred to an examiner to take such testimony as is offered, both to sustain and disprove the charges contained in the petition, and report the same to this court on or before the next regular term of this court. If the charges of corruption and improper conduct are sustained, and the fund in controversy in this case thereby preserved and protected, provisions can hereafter be made for the payment of the expenses incurred, but in the meantime we shall postpone the question of compensation to the receiver and attorneys until the bringing in of the report. We have only had a few hours to consider this matter, and therefore have not had time to state more in detail our reasons for this action. An order should be entered conformable to this opinion." Answers were filed by the said Dyer and his solicitors, in due time, denying all said charges in full.

When this opinion was rendered by the court, it was distinctly stated to the persons interested that the order should be drawn in conformity with the opinion, to be accepted and agreed upon by the parties and the attorneys on both sides, and when such was done, it should be handed to the clerk of the court to be entered upon its minutes. Inasmuch as the question of compensation to the receiver had already been referred to the clerk of this court, as special commissioner, it was not thought proper or necessary to refer that question again to another commissioner, but it was intended, as the opinion above set out clearly indicates, to refer the charges of wrong action by the receiver and his attorneys to a special commissioner; instead of which, however, an order which was not presented to the Court, seems to have been drawn and entered, which, in so many words, refers to Mr. Robert Harkness the case, to take and report to this Court such evidence as may by the petitioners or the receiver and his counsel be produced touching the matter in said petition set out.

This order, as will be clearly seen, was not in accordance with the opinion of the Court; for it was not intended to refer the question of compensation to the receiver. It having already, as above stated, been referred to another person as special commissioner, to take proof and report thereon. Howbeit, when the parties met before Commissioner Harkness, they differed materially as to the matters that were referred; one side insisting upon taking proof upon all the matters mentioned in the petition, and the other side insisting upon confining the investigation within the scope indicated by the opinion of the Court. Such proceedings were had as resulted in the application of this Court to amend or reform its order of reference, and upon that application the Court made the following order:

"It is hereby ordered that the motion to amend the journal entry be and the same is hereby allowed; and that the said Robert Harkness, the

examiner heretofore appointed, proceed and take such testimony as may be produced by either party to this proceeding respecting any and all allegations of fraud, corruption, and misconduct, or fraudulent and unconscionable claims, and charges for compensation, and unprofessional conduct on the part of Frank H. Dyer, as receiver in this case, and of George S. Peters and Parley L. Williams, as his attorneys, contained in said petition of said school trustees heretofore filed in this court."

It will be observed that the petition of the persons heretofore mentioned, expressly charged that the receiver and his attorneys, Peters and Williams, misled and deceived the Court into the adoption of a compromise of the suits against the defendants, for the recovery of the real estate mentioned, and that by this fraud and deception there was a loss to the fund of over \$100,000. It was further charged that the receiver rented 30,000 sheep for 20 cents a head per annum when he could have gotten 40 cents per head. And it was further charged that he compromised a claim for cattle for \$75,000 that was worth \$268,998.39, and that that transaction was made without authority of the Court; and it is further charged that property to a large amount, which the receiver could have taken possession of, belonging to the late corporation, was by him neglected; and that his failure to do so was for want of attention to his duties as receiver, or from wilful negligence; or "through combination with agents of the late corporation." And it was charged that Peters abandoned his duty as district attorney to the government and took employment from the receiver, and that he was making a claim against the interests of his clients, to wit: the government, and thereby impliedly charged with malfeasance and corruption in office. It was further charged that P. L. Williams, a commissioner of schools, accepted employment against the interest of the school fund, and that he was guilty of official misconduct; and that finally the claim upon the part of the receiver for \$25,000 as compensation, to use the exact language of the petition, "is grossly exorbitant, excessive and unconscionable."

It is difficult to imagine how stronger charges than these could have been made; and if even one of them should be true, then the receiver and his solicitors are not only not entitled to any compensation, but the receiver should be dismissed from his office as such, and his attorneys disbarred from the right to practice in the courts of this Territory.

Taking this view of the matter the court readily and without hesitation, sought by all the means in its power to give to these petitioners an opportunity to prove the charges, and hence, in its amended order, made the reference as broad as it could well be made, and even went so far as to include in the reference all allegations of fraud, corruption and misconduct, or fraudulent and un-