said I could not say, without seeing my clients, anything on the subject; I promised to see them; he came again for my answer, but I had not seen my clients; I told him I would notify him of the result, as he was going away that night; I consulted with Mr. Young and some of the defendants, and the result was that letter; I said to my clients that I thought the charge was excessive, but it would do no good for us to object; I thought the government would object, and that the matter would be left with the court; I wrote the letter on the theory that the court would fix his compensation; we did not consent to the compensation, but agreed not to object to the amount; I expressly stated that I would not consent, because my conscience would not approve of it; Mr. Dyer said he thought he should have so much, and wanted us to say yes or no; I did not propose to say yes, and considered it would make no difference whether or not we said no; I communicated to Messrs. Sheeks & Rawlins our conclusion; I had no fear of the court being misled, for I felt certain the government would object to the amount; I was confident that the matter would be carefully sifted, but not necessarily on the evidence before the examiner; I did not think the government would sit quietly by and see that amount appropriated, or that the court would grant it, and I don't think it will yet; I think the charge so excessive on its face that it will not be allowed; there was no proposition about the compensation of the attorneys; have heard Mr. Young say he had conversed on the question, but the receiver's attorneys never told me what they considered their services worth; when I consulted with my clients about the receiver's compensation, Mr. Young was present; I do not know that he was present on each occasion, for I did not see them all at one time.

To Judge McBride—At the conference in Washington, Mr. Dyer was not present; there were Solicitor General Jenks, Col. Broadhead, Mr. Peters and myself.

To Judge Marshall—I never conversed with the receiver about pursuing property after the final decree was entered; there was no understanding with the receiver; I talked with Mr. Peters; Mr. Dyer may have been present once when we were discussing the $268,000 property.

To Judge McBride— This consultation was with Mr. Peters as receiver's counsel; he wanted $268,000 in property; I told him we could not furnish it, and that he could not gather spilt water; he got out of us $25,000 more than he should; it was arbitrary and unjust, and I shall always regard it so; it was that or litigation forever that they crowded upon us; it was no compromise, I can tell you, but taking that to which they had no right; but we worked to get a final decree so as to have the matter adjudicated in the higher court.

On Feb. 16 the proceedings were opened by the introduction as evidence of a *Tribune* article of July 11, 1888, giving an account of Receiver Dyer's success in grasping Church property, and warmly commending him and his attorneys for their tact, skill and courage in performing what was assumed to be their duties.

This was as far as the examination could go with evidence, so

JUDGE MARSHALL

opened the arguments, claiming that the referee should make a finding in favor of the prosecution; he claimed that the evidence showed that the court had been misled in the compromise on the several pieces of real estate for which the $84,666 was taken; these pieces were the Cannon tract, the "Constitution" lot and the Wells corner. The witnesses for the prosecution placed the average value of this property at $183,290, exclusive of the south half of the "Constitution" lot, and adding $30,000 for the enhancement of the value of the Wells corner by the shoe factory. We think we have a right to a finding to the effect that the court had been misled, for it would be remarkable for them to approve such an arrangement otherwise.

There is a charge of gross negligence on the part of the receiver in regard to certain sheep. He leased 25,000 sheep to Mr. Pickard for 20 cents per head. The lease is a very bad one in its terms; it is not a contract of warranty. It does not insure that the number of sheep will be returned, in case there is destruction among them from an unusual cause. In not providing for this in the lease I think the receiver has been guilty of gross negligence; the property is to be returned July 1st, 1889; that is, after the lessee has received all of the benefits he returns the sheep before the year, thus placing the responsibility of three months' care where no return would be made. I do not claim bad faith on the part of the receiver in this, but I think it was gross negligence.

When the receiver was appointed in November, 1887, the fact was before him that in March, 1887, $268,000 worth of personal property had been transferred to the various Stakes. He knew that much of the property was perishable, yet he made no effort to get it until May, 1888. It is no excuse to say that he could not find the property. If he had not the ability to get it, he should have reported to the court that some one else could have been appointed who had the ability. But he refrained from reasons of a personal nature. This we consider a breach of duty on the part of the receiver. Later, he compromised the $268,000 for $75,000, because the defendants said that only $50,000 remained. He made no effort to get the property or its value from the Stakes or the persons who used it. There was no announcement to the court that the $75,000 was accepted in lieu of the $268,000 which had existed.

We also claim that the charge that the receiver failed to take property that belonged to the Church has been proven by abundant evidence, and we are entitled to a finding that there has been gross negligence on his part in this respect. It is in evidence that there was a large amount of property that the receiver's attorneys believed they could have obtained through the courts, yet no effort was made to obtain it. The case was permitted to go to a final decree without such an effort being made. The bill filed in the original suit alleged that the Church had $3,000,000 in property; this was denied by the answer, and was therefore a material issue. Yet the case goes to final decree on a statement of facts regarding a much smaller amount of property than was claimed. It is said there is a saving clause in continuing the receivership. That simply means that, as there is no one else to take charge of the property, it should be left in the custody of the receiver until final adjudication. It relates only to the property already taken. The receiver cannot bring suit for more property, because a final decree in the main case precludes such action. The proceeding of the court is a special proceeding, and by the appeal to the Supreme Court the lower court is barred from any other original proceedings. I think the permitting of this case to go to the final decree under these circumstances was gross negligence. In every suit in the future that decree could be plead as an adjudication.

I think the receiver is in the nature of a trustee. It is his duty to fully disclose his services in making a claim for compensation. The manner in which he does the work is the basis for the estimate of the compensation. The hearing on this subject was a one-sided affair. If the statement of the receiver suppresses any truth as to his services, that is a fraud practiced on the court. The evidence shows that no adequate efforts were made to find the personal property; it was surrendered because the defendants wanted a final decree. The work was done by the attorneys in the case. The fact that there was no detective evidence, and that it was on that point that witnesses based their estimates of his services, vitiates the whole thing. The defendants did not surrender the property because of the receiver's efforts to obtain it, but from another motive. We think the receiver seriously misstated the facts as to the labor he performed, and therefore a fraud was practiced.

JUDGE POWERS

followed. He stated that he did not care to review the testimony at length, but simply desired to make answer to the points suggested by Judge Marshall. After days of examination and thorough investigation, the record shows that the receiver has handled a vast amount of property as an honest and capable man. It is a pleasure for me to say that I believe he has gained by this investigation, after all the insinuations of fraud, misconduct and dishonesty. The evidence shows that he had nothing to fear from a thorough inquiry. The prosecution