Digest of the laws and decisions relating to the appointment, salary, and compensation of the officials of the United States courts, with the instructions of the Attorney-General to United States district attorneys, clerks, and marshals.
DIGEST

OF THE

LAWS AND DECISIONS

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APPOINTMENT, SALARY, AND COMPENSATION

OF THE

OFFICIALS OF THE UNITED STATES COURTS,

WITH THE

INSTRUCTIONS OF THE ATTORNEY-GENERAL TO
United States District Attorneys,
Clerks, and Marshals.

EDITED BY

ROBERT M. COUSAR.

(By Authority of Congress.)

WASHINGTON:
GOVERNMENT PRINTING OFFICE.
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JOINT RESOLUTION to provide for the printing of a digest of the laws and decisions relating to the appointment, salary, and compensation of officials of the United States courts.

Resolved by the Senate and House of Representatives of the United States of America in Congress assembled, That there be printed the usual number of copies of a digest of the laws and decisions relating to the appointment, salary, and compensation of the officials of the United States courts, and that in addition to said usual number there be printed and bound in sheep two hundred and fifty copies for the use of the Treasury Department, and seventeen hundred and fifty copies for the use of the Attorney-General, said digest to be printed under the editorial supervision of Robert M. Cousar, and the editing to be paid for out of any moneys in the Treasury not otherwise appropriated, on the direction of the Attorney-General at a price not to exceed two thousand dollars, which sum is hereby appropriated, and is to be in full payment for said work, except the cost of printing and binding the same.

Approved, March 2, 1895.
PREFACE.

This Digest is intended as a guide to the judges and officials of the United States courts in all matters relating to their appointment, salary, and compensation. It contains the sections of the Revised Statutes and laws passed subsequent to the date of revision up to and including the Fifty-third Congress, the decisions of the Supreme Court of the United States to volume 156, United States Reports; of the Court of Claims to volume 29, and of the Circuit Court of Appeals and the Circuit and District Courts to volume 66, Federal Reporter.

It also contains the decisions of the Comptroller of the Treasury to June 30, 1895.

The instructions to district attorneys, marshals, and clerks were prepared under direction of the Attorney-General, and will be strictly enforced by the Department of Justice. The officials of the United States courts are urged to comply with these instructions and thus save time and labor to themselves and the Department.

The remarks under various heads given as "notes" contain what is required by the accounting officers.

WASHINGTON, D. C., July 1, 1895.

ROBERT M. COUSAR.
WITNESSES BEFORE DEPARTMENT OR BUREAU.

Sec. 184. Any head of a Department or Bureau in which a claim against the United States is properly pending may apply to any judge or clerk of any court of the United States, in any State, District, or Territory, to issue a subpoena for a witness being within the jurisdiction of such court, to appear at a time and place in the subpoena stated, before any officer authorized to take depositions to be used in the courts of the United States, there to give full and true answers to such written interrogatories and cross-interrogatories as may be submitted with the application, or to be orally examined and cross-examined upon the subject of such claim.

FEES OF WITNESSES BEFORE DEPARTMENT OR BUREAU.

Sec. 185. Witnesses subpoenaed pursuant to the preceding section shall be allowed the same compensation as is allowed witnesses in the courts of the United States.

PROFESSIONAL ASSISTANCE FOR DEPARTMENT OR BUREAU.

Sec. 187. Whenever any head of a Department or Bureau having made application pursuant to section one hundred and eighty-four, for a subpoena to procure the attendance of a witness to be examined, is of opinion that the interests of the United States require the attendance of counsel at the examination, or require legal investigation of any claim pending in his Department or Bureau, he shall give notice thereof to the Attorney-General, and of all facts necessary to enable the Attorney-General to furnish proper professional service in attending such examination, or making such investigation, and it shall be the duty of the Attorney-General to provide for such service.

EMPLOYMENT OF ATTORNEY.

Sec. 189. No head of a Department shall employ attorneys or counsel at the expense of the United States; but when in need of counsel or advice, shall call upon the Department of Justice, the officers of which shall attend to the same.
SEC. 237. The fiscal year of the Treasury of the United States in all matters of accounts, receipts, expenditures, estimates, and appropriations, except accounts of the Secretary of the Senate for compensation and traveling expenses of Senators, shall commence on the first day of July in each year; and all accounts of receipts and expenditures required by law to be published annually shall be prepared and published for the fiscal year as thus established. The fiscal year for the adjustment of the accounts of the Secretary of the Senate for compensation and traveling expenses of Senators shall extend to and include the third day of July.

ACCOUNTS OF DISTRICT ATTORNEYS—ASSIMILATED FEES.

SEC. 299. All accounts of the United States district attorneys for services rendered in cases instituted in the courts of the United States, or of any State, when the United States is interested, but is not a party of record, or in cases instituted against the officers of the United States, or their deputies, or duly appointed agents, for acts committed or omitted or suffered by them in the lawful discharge of their duties, shall be audited and allowed as in other cases, assimilating the fees, as near as may be, to those provided by law for similar services in cases in which the United States is a party.

Statutes at Large (vol. 18, p. 109) provides as follows:

1. Special compensation of a district attorney for services not covered by salary or fees should be included in his emolument return. (United States v. Smith, in the Supreme Court, May 20, 1895.)

2. The Attorney-General has not power to employ a district attorney under section 363 to perform legal services for the United States in his own district. (Smith v. United States, 26 C. Cls. R., 568.)

3. The Attorney-General and the accounting officers have no power to reduce the assimilated fees where the amount is fixed by statute. A judge has no power to make an allowance to a district attorney in cases tried before him if there is an assimilated fee for the service. Where the Attorney-General directs the district attorney to appear on behalf of the Government in a suit in equity he is entitled to a fee of $20. (Hillborn v. United States, 27 C. Cls. R., 547.)

4. The district attorney is not entitled to additional compensation for services rendered the Rock Creek Park Commission. (Cole v. United States, 28 C. Cls. R., 501.)

5. Assimilated fees are to be included in emolument returns. (Hillborn v. United States, 28 C. Cls. R., 237.)
6. Services rendered by a district attorney in defending an action brought against the United States by an ex-district attorney for fees alleged to have been earned by the latter fall within Revised Statutes, section 824, and he can not recover more than $10, the amount fixed by said section. (Bashaw v. United States, 47 Fed. Rep., 40; 50 Fed. Rep., 748.)

7. No fixed rate of compensation is provided by law for the services of district attorneys in cases involving the title to land occupied by the United States as a garrison and military post, cases on appeal to the circuit court of appeals against or by the United States, or against a collector to recover money exacted by him as a penalty under a statute of the United States, or cases against Indian agents and military officers involving the right of the Government to prevent the building of a railroad across the lands allotted to Indians. (Winston v. United States, 63 Fed. Rep., 691.)

8. A district attorney can not recover, on the basis of a quantum meruit, a sum in excess of the amount allowed by the Attorney-General for services rendered for which no fixed rate of compensation or fees is provided by law. (Winston v. United States, 63 Fed. Rep., 691.)

9. Where a district attorney renders services after removal from office pursuant to arrangements made before notice of his removal, and the Attorney-General allows him a certain sum, to pay which Congress makes a special appropriation, recovery of such money by the district attorney can not be defeated on the ground that he was not lawfully authorized to act. (Winston v. United States, 63 Fed. Rep., 691.)

10. Where a particular item of claims for services of a district attorney, for which the statute fixes no fees, has been allowed by the Attorney-General, and is part of a case by the district attorney against the Government, a recovery for such item will not be denied on the ground that it has been referred to the Court of Claims by the Comptroller under section 1063, and that he desires that court's decision on the questions involved, for future guidance, especially where it does not appear that such claim has been regularly transmitted to such court. (Winston v. United States, 63 Fed. Rep., 691.)

11. A district attorney is entitled to extra compensation for examining the title to public property and making an abstract thereof, though not for giving an opinion on the title; this being part of his duty under Revised Statutes, section 355. (Weed v. United States, 65 Fed. Rep., 399.)

12. Act June 20, 1874, declaring that no civil officer shall hereafter receive any compensation from the United States beyond his salary allowed by law, provided that this shall not be construed to prevent the employment and payment of district attorneys, as allowed by law, for the performance of services not covered by their salaries or fees, gives to a district attorney no new rights to extra compensation, but at most merely preserves such as the law theretofore gave. (Ruhm v. United States, 66 Fed. Rep., 531.)

13. A district attorney who by special direction of the Department of Justice rendered services in proceedings brought against the United States, under act of March 3, 1875, to recover damages caused to lands by the improvement of the Fox and Wisconsin rivers, is precluded by Revised Statutes, sections 1764, 1765, from receiving extra compensation therefor. (Colman v. United States (Cir. Ct. Appls.), 66 Fed. Rep., 695.)

14. A district attorney can not recover extra compensation for services in a case which went to the circuit court of appeals, in performing which he had to go out of his district; for, though performance of such services is not a duty belonging to his office, there is no law authorizing compensation therefor. (Ruhm v. United States, 66 Fed. Rep., 531.)

15. A district attorney can not recover extra compensation for examining title to post-office site, or clerk hire and travel of clerk in connection with such
ASSIMILATED FEES OF ATTORNEYS.

examinations; there being no law allowing special clerk hire in such a case, and district attorneys being required by act of March 2, 1889, to render all legal services connected with procurement of titles to sites for public buildings. (Ruhm v. United States, 66 Fed. Rep., 531.)

16. It being declared the duty of a district attorney by section 771 to prosecute in his district all civil actions in which the United States is concerned, he is not entitled to extra compensation for conducting a suit to recover a pension fraudulently received. (Ruhm v. United States, 66 Fed. Rep., 531.)

17. The district attorney of New Jersey is entitled to special compensation for attending a State court in behalf of the United States and for attending the taking of depositions and for disbursements in the suit; but if the cause be removed to the circuit court of the United States and be there attended to by him, his compensation is that which district attorneys are entitled to under the act of February 28, 1799, chapter 19, being the highest fees which are allowed by the laws of New Jersey for similar services in the supreme court of that State. (Opinion of July 31, 1820, 1 Op., 385.)

18. As there are no fees prescribed for attendance by district attorneys on State courts, they should receive a reasonable compensation for such service. (Opinion of Feb. 18, 1830, 2 Op., 319.)

19. District attorneys not being required by the laws defining their general duties to attend State courts, nor upon judges out of court, if their services are called for therein or on other special occasions, and the fees taxed by them in such State courts can not be recovered, or are inadequate, they should be paid a fair compensation out of any moneys appropriated to the special objects in reference to which the services were rendered or in some cases out of the judiciary fund usually provided in the general appropriation bill. (Opinion of Mar. 7, 1836, 3 Op., 45.)

20. For the performance of a duty not enumerated in the law regulating the fees of district attorneys (act of February 26, 1853) they are entitled to compensation, either in the analogy of the fees fixed by that act or at the discretion of the head of the Department ordering the service. (Opinion of Jan. 25, 1855, 7 Op., 46.)

21. The services of a district attorney or other counsel in defending officers for official acts are and must always be rendered at the request of the head of a Department, and the legal compensation allowed for such services in the fee bill is such sum as may be agreed on. (Opinion of May 25, 1858, 9 Op., 146.)

22. In a case in which the duty of the district attorney to appear on behalf of the United States springs from the request of the head of a Department, the legal fee for his services therein is the sum which the Department may agree to pay him. (Opinion of Apr. 29, 1867, 12 Op., 133.)

23. The act of August 16, 1856, section 12, does not alter the compensation provided in such a case by the act of February 26, 1853, chapter 80. (Ibid.)

24. In a case within the terms of the act of 1856, the district attorney should be allowed such compensation as the proper head of the Department may have agreed to pay him. The question whether the fees in cases within the twelfth section of the act of August 16, 1856, are to be included in the emoluments accounts of district attorneys not considered in this case. (Ibid.)

25. A district attorney who is employed by the Attorney-General to argue a case in which the United States is concerned, as special counsel before the Supreme Court, is entitled to receive a proper compensation for his services; and such compensation is not returnable in his emolument account, and is no part of his maximum allowance provided by the act of February 26, 1853, chapter 80. (Opinion of Oct. 22, 1867, 12 Op., 284.)
26. In general the official duty of a district attorney does not require him to attend the suits in State courts, although the United States may be directly interested therein; and where he appears in those courts (except in certain cases see section 771, Revised Statutes) his appearance there must be pursuant to previous direction or receive the subsequent approval of the Attorney-General to entitle him to compensation from the Government for such service. (Opinion of July 19, 1878, 16 Op., 99.)

27. The compensation of the district attorney for such service is in all cases regulated by section 299, Revised Statutes, with only this exception, that where he has appeared by direction of the Secretary or Solicitor of the Treasury in a suit against a revenue officer, his compensation therefor is regulated by section 827, Revised Statutes. (Ibid.)

28. It is contemplated by section 299 that where no fees are provided by law to which the compensation of a district attorney in respect to any part of his services can be assimilated, a fair and reasonable compensation for such part of his services shall be made. (Ibid.)

29. Compensation allowed a district attorney under section 299 should be included in the semiannual return required from him by section 833. (Ibid.)

30. George W. Jolly, a United States district attorney, presents a claim for $250 for special compensation for services rendered on behalf of officers of the United States, whom plaintiffs by a bill in equity in State court sought to enjoin from prosecuting their work as engineers, such officers acting under authority of the War Department. Bill dismissed without prejudice. Claim allowed by the Attorney-General in the sum of $150, payable from appropriation for special compensation of district attorneys. Held, that as by section 299, Revised Statutes, the fees for such services must be assimilated as near as may be to those provided by law for similar services, and a fee of $20 on a final hearing in equity being provided by section 824, no larger fee seems permissible, although, on a statement of account in accordance with section 824, other fees may be found to be allowable. (Dec. First Comp., Jan. 18, 1894.)

31. Abial Lathrop, United States attorney for the district of South Carolina, presents a claim for $290 for services in a State court within his district on behalf of defendant, a United States Army officer. Claim allowed by the Attorney-General, payable from appropriation for special compensation of district attorneys. Held, that these services were rendered in his official capacity as district attorney under section 299. Fees earned in such cases are emoluments of his office required by section 833 to be included in his semiannual return, and as he has already received his maximum compensation for the year, nothing can be allowed. (Dec. First Comp., Jan. 19, 1894.)

32. T. R. Borland, United States attorney for the eastern district of Virginia, presents a claim for $150 as special compensation for filing a bill in equity in the United States circuit court, the suit not being prosecuted to a final hearing. The Attorney-General allowed $75 from the appropriation for special compensation of district attorneys. Held, that the claim being for services rendered in a United States court, sections 823, 824, Revised Statutes, govern, and no fee contained in section 824 being applicable to this case, the salary of $200 provided by section 771 being for extra services, covered the services, as no specified compensation is otherwise expressly provided by law. Gibson v. Peters, 150 U.S., 342, referred to. (Dec. First Comp., Jan. 19, 1894.)

33. The same attorney claims and was allowed by the Attorney-General $50 as special compensation for services rendered under direction of the Attorney-General in defending the United States in a suit brought pursuant to section 6, act March 3, 1887 (24 Stat., 505). Held, that the fee bill, sections 823, 824 et seq., govern as well when the United States is defendant as when it is plaintiff, and
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34. George A. Neal, attorney for the western district of Missouri, claims and is allowed $50 special compensation for filing a bill in equity and procuring a decree for the cancellation of a patent erroneously issued. The services were performed by direction of the Attorney-General and the account was approved by him, payable from the appropriation for special compensation of district attorneys. Held, that section 824, Revised Statutes, having provided a fee of $20 "on a final hearing in equity" and the fee contained in section 824 being by section 823 made exclusive, no other compensation can be allowed. (Dec. First Comp., Jan. 19, 1894.)

35. P. H. Winston, attorney for the district of Washington, claims $1,500 for services in two cases in State courts, subsequently removed to the United States circuit court, said suits being against officers of the United States. The Attorney-General approved for $1,000; $400 being for services rendered while Winston was district attorney and $600 for services after he went out of office; the $400 payable from special compensation of district attorneys, and the $600 to be reported to Congress for a deficiency appropriation. Held, that Winston having been commissioned as special assistant and not having taken the oath required by section 366, Revised Statutes, and no certificate as required by section 365 having been furnished by the Attorney-General, the $600 can not be allowed at the present time nor is there any appropriation now available. Winston having received during the year in which these services were rendered the maximum compensation allowed by law, the $400 charged for services while he was district attorney can not be allowed. (Dec. First Comp., Jan. 19, 1894; see also in reclaim of Ellery P. Ingham, United States attorney eastern district of Pennsylvania, Jan. 20, 1894.)

36. J. H. M. Wigman, United States attorney for the eastern district of Wisconsin, presents a claim for services rendered within his district by direction of the Attorney-General, in cases in the United States courts in which the United States is defendant, but which are in the hands of a special assistant attorney. The bill includes several items for services rendered in conferring with said special assistant and in preparing briefs. Approved by Attorney-General from appropriation for special compensation of district attorneys. Held, that the fees provided by section 824, Revised Statutes, apply to the services rendered in the cases in court and are by section 823 exclusive. No fee provided by section 824 and no compensation can be allowed. (Dec. First Comp., Feb. 14, 1894.)

37. See in regard to this class of claims the decision of the Second Comptroller in re claim of F. B. Earhart, United States attorney for the eastern district of Louisiana, September 29, 1893. See decision of Supreme Court in United States v. Peters, quoted under section 355, and under section 355.

TITLE TO LAND PURCHASED BY UNITED STATES.

SEC. 355. No public money shall be expended upon any site or land purchased by the United States for the purposes of erecting thereon any armory, arsenal, fort, fortification, navy-yard, custom-house, light-house, or other public building, of any kind whatever, until the written opinion of the Attorney-General shall be had in favor of the validity of the title, nor until the consent of the legislature of the State in which the land or site may be, to such purchase, has been given. The district attorneys of the United States, upon the application of the Attorney-General, shall furnish any assistance or information in their power in
relating to the titles of the public property lying within their respective
districts. And the Secretaries of the Departments, upon the applica-
tion of the Attorney-General, shall procure any additional evidence of
title which he may deem necessary, and which may not be in the pos-
session of the officers of the Government, and the expense of procure-
it shall be paid out of the appropriations made for the contingencies of
the Departments respectively.

The Act of August 1, 1888 (ch. 728, 25 Stat., 357) provides:
That in every case in which the Secretary of the Treasury or any
other officer of the Government, has been, or hereafter shall be, autho-
ized to procure real estate for the erection of a public building or for
other public uses he shall be, and hereby is, authorized to acquire the
same for the United States by condemnation, under judicial process,
whenever in his opinion it is necessary or advantageous to the Gov-
ernment to do so, and the United States circuit or district courts of the
district wherein such real estate is located, shall have jurisdiction of
proceedings for such condemnation, and it shall be the duty of the
Attorney-General of the United States, upon every application of the
Secretary of the Treasury, under this act, or such other officer, to cau-
se proceedings to be commenced for condemnation, within thirty days
from the receipt of the application at the Department of Justice.

Statutes at Large (vol. 25, p. 941, chap. 411) provides as follows:
That hereafter all legal services connected with the procurement of
titles to site for public buildings, other than for life-saving stations and
pier-head lights, shall be rendered by United States district attorneys:
Provided further, That hereafter, in the procurement of sites for such
public buildings, it shall be the duty of the Attorney-General to
require of the grantors in each case to furnish, free of all expenses to
the Government, all requisite abstracts, official certifications, and evi-
dences of title that the Attorney-General may deem necessary.

(See cases quoted under section 299 ante.)

1. A district attorney is legally entitled to compensation for examining the
title to lands purchased by the Government. The amount may be agreed upon in
advance, or may be fixed after the work is completed. (Opinion of Mar. 8, 1866,
11 Op., 433.)

2. An account of a United States attorney in California for professional serv-
cices not falling within the scope of his official duties, rendered in a matter con-
cerning the title to certain property in that State under the charge and super-
vision of the Treasury Department, held to be allowable out of the appropriate
funds of that Department. (Opinion of Apr. 8, 1869, 13 Op., 15.)

3. In the case of an account for professional services in the investigation of
the title to land purchased by the Government, presented by counsel employed to
examine and give an opinion on the title, the proper criterion for determining,
in the absence of express contract, the reasonableness of the account is the charge
made in cases of like magnitude by lawyers of ability and reputation, or, if no
such cases have occurred, the amount which lawyers of learning, ability, and
reputation, equal to the duty, would charge for similar services. (Opinion of
Sept. 12, 1866, 11 Op., 349.)
4. District attorneys are entitled to special compensation for examining titles to lands purchased by the United States. The Attorney-General is invested with sole authority to employ and fix their compensation. Expenses thus arising, including office fees for searches, copies of record, etc., being incidental to the purchase of the land, are ordinarily to be paid out of the appropriation made for the purchase. (19 Op., 63.)

5. Ellery P. Ingham, a district attorney, presents a claim for special compensation for services rendered, in pursuance of the act of August 1, 1888, and by direction of the Attorney-General, at the request of the Secretary of the Treasury, in the United States court within his district, in proceedings to condemn lands for a site for a public building. Held, that on the presentation of a bill rendered in accordance with section 824, Revised Statutes, the fee prescribed by that section can be allowed, and no more. (Dec. First Comp., Jan. 29, 1894.)

6. F. B. Earhart, attorney for the eastern district of Louisiana, claims special compensation for services in proceedings for condemnation of lands for the use of the War Department. Held, that he is entitled to docket fees only. (Dec. Second Comp., Sept. 29, 1893.)

7. The act of March 2, 1889, was passed not only for the purpose of compelling district attorneys to perform services required in proceedings of condemnation, but to prohibit the employment of other than district attorneys to perform such services. (Comptroller to Secretary, Feb. 7, 1895, in re claim of A. B. Boardman.)

CONDUCT AND ARGUMENT OF CASES.

SEC. 359. Except when the Attorney-General in particular cases otherwise directs, the Attorney-General and Solicitor-General shall conduct and argue suits and writs of error and appeals in the Supreme Court and suits in the Court of Claims in which the United States is interested, and the Attorney-General may, whenever he deems it for the interest of the United States, either in person conduct and argue any case in any court of the United States in which the United States is interested, or may direct the Solicitor-General or any officer of the Department of Justice to do so.

ATTORNEY-GENERAL TO DIRECT OFFICERS OF DEPARTMENT OF JUSTICE TO PERFORM ANY DUTY.

SEC. 360. The Attorney-General may require any solicitor or officer of the Department of Justice to perform any duty required of the Department or any officer thereof.

OFFICERS OF DEPARTMENT OF JUSTICE TO PERFORM LEGAL SERVICES FOR OTHER DEPARTMENTS.

SEC. 361. The officers of the Department of Justice, under the direction of the Attorney-General, shall give all opinions and render all services requiring the skill of persons learned in the law necessary to enable the President and heads of Departments, and the heads of Bureaus and other officers in the Departments, to discharge their respective duties; and shall, on behalf of the United States, procure the proper evidence for, and conduct, prosecute, or defend all suits and proceedings in the Supreme Court and in the Court of Claims,
in which the United States, or any officer thereof, as such officer, is a party or may be interested; and no fees shall be allowed or paid to any other attorney or counsellor at law for any service herein required of the officers of the Department of Justice, except in the cases provided by section three hundred and sixty-three.

ATTORNEY-GENERAL TO SUPERINTEND DISTRICT ATTORNEYS AND MARSHALS.

SEC. 362. The Attorney-General shall exercise general superintendence and direction over the attorneys and marshals of all the districts in the United States and the Territories as to the manner of discharging their respective duties; and the several district attorneys and marshals are required to report to the Attorney-General an account of their official proceedings, and of the state and condition of their respective offices, in such time and manner as the Attorney-General may direct.

1. It is not the duty of the Attorney-General to instruct district attorneys in the discharge of their duties; nor to indicate the course to be pursued in particular suits pending in the district and circuit courts; nor to interfere at all with suits until they reach the circuit courts. (1 Op., 608.)

2. Section 362, conferring upon the Attorney-General power to superintend any criminal prosecution instituted by the district attorney, does not authorize the Attorney-General to control the action of district attorneys by general regulations. (Fish v. United States, 36 Fed. Rep., 677.)

NOTE.—See act July 31, 1894, section 13, post page ——.

ASSISTANT UNITED STATES ATTORNEYS.

SEC. 363. The Attorney-General shall, whenever in his opinion the public interest requires it, employ and retain, in the name of the United States, such attorneys and counselors at law as he may think necessary to assist the district attorneys in the discharge of their duties, and shall stipulate with such assistant attorneys and counsel the amount of compensation, and shall have supervision of their conduct and proceedings.

1. Expenses of assistant district attorneys may be merged in their salaries or may be allowed by the Attorney-General, in his discretion, but there is no provision under which a district attorney who has paid the traveling expenses of his assistant can be reimbursed. (Townsend v. United States, 22 C. Cls. R., 207.)

2. A district attorney is not entitled to mileage and per diem for the services of his assistant. (Ibid.)

3. The district attorney and the assistant district attorney are not entitled to additional compensation for services rendered the Rock Creek Park Commission. (Cole v. United States, 28 C. Cls. R., 501.)

4. Under this section the Attorney-General has exclusive authority to fix compensation, and his action is conclusive on the accounting officers. (4 Lawrence, First Comptroller, 113.)

5. Where an attorney is employed to assist the district attorney and he renders continuous service, running through parts of two fiscal years, the compensation for service rendered in each year is to be paid from the appropriation for that year. (Star Route Case, 4 Lawrence, First Comp., 541.)
6. Under this section the Attorney-General is authorized to employ any attorney at law to assist any district attorney in the discharge of his official duties. It does not authorize the employment of an attorney at law who is not a district attorney to render a service to the United States which does not constitute any part of the official duty of the district attorney. (5 Lawrence, First Comp., 52.)

7. The act to aid in the improvement of the Fox and Wisconsin rivers provided that the Department of Justice should "represent the interest of the United States." The Attorney-General employed an attorney at law who was not a district attorney to represent the United States. The Comptroller held that he was not entitled to compensation under this act. (5 Lawrence, First Comp., 56.)

8. The amount of compensation may be fixed after the service is rendered. The Attorney-General can not delegate the authority to fix compensation. A district attorney can not be paid for the services of his assistant. (5 Lawrence, First Comp., 413.)

9. Actual traveling expenses of an assistant, when allowed by the Attorney-General, may be paid from the appropriation for miscellaneous expenses. (Dec. Comp. Treas. in re account of O'Neal, Feb. 9, 1895.)

NOTE.—An appropriation is made each year for the pay of regular assistant attorneys United States courts. The Attorney-General appoints such assistant attorneys as he thinks necessary with such annual compensation as he deems just. An assistant attorney must take an oath of office, as salary will not be allowed for any time prior to the date of the official oath. The Attorney-General approves the salary of each assistant attorney and same is paid monthly by the disbursing clerk of the Department of Justice.

COUNSEL FEES RESTRICTED.

SEC. 365. No compensation shall hereafter be allowed to any person, besides the respective district attorneys and assistant district attorneys for services as an attorney or counselor to the United States, or to any branch or Department of the Government thereof, except in cases specially authorized by law, and then only on the certificate of the Attorney-General that such services were actually rendered, and that the same could not be performed by the Attorney-General, or Solicitor-General, or the officers of the Department of Justice, or by the district attorneys.

1. Where the Government employs an attorney at an agreed compensation to collect a debt, reserving the right to terminate the agreement at any time, and the attorney negotiates the settlement of the debt, and the Government subsequently accepts and receives the fruit of this arrangement, doing nothing in the matter except receiving the money, the attorney will be deemed to have performed his part of the agreement, though it was terminated before the money was paid over. (Mellen v. United States, 13 C. Cls. R., 71.)

See decision of Comptroller in re Costin Brown, quoted under section 366.

APPOINTMENT AND OATH OF SPECIAL ATTORNEYS.

SEC. 366. Every attorney or counselor who is specially retained, under the authority of the Department of Justice, to assist in the trial of any case in which the Government is interested, shall receive a commission from the head of such Department, as a special assistant to
the Attorney-General, or to some one of the district attorneys, as the nature of the appointment may require; and shall take the oath required by law to be taken by the district attorneys, and shall be subject to all the liabilities imposed upon them by law.

1. In an action brought to recover fees as assistant district attorneys in suits to vacate patents of public land, it being conceded that the complainants did not expect, during the period in which the services were performed, that the United States would compensate them, and that they looked for recompense to the clients who had retained them, and that the use of the name of the United States had been consented to on the application of the plaintiffs on the understanding that they were to receive no compensation from the United States, and that on the first intimation that they might look to the United States for compensation, their formal employment was at once terminated. Held, that there was no contract, express or implied, between them and the United States, for a breach of which judgment should be rendered against the latter. (Coleman v. United States, 152 U. S., 96.)

2. The accounting officers will not allow the account of a special assistant attorney unless he has taken the oath prescribed by law. (Dec. First Comp., Jan. 19, 1894, in re claim of Winston.)

3. A. B. Boardman was appointed to take charge of proceedings in condemnation of land in the city of New York. Held, that the act of March 2, 1889, not only compels the district attorney to perform this service, but prohibits the employment of others to perform such services, and that this claim can not be paid from the appropriation for custom-house, New York, N. Y., site. (Letter of Comptroller to Secretary, Feb. 7, 1895.)

4. Claims for legal services rendered in connection with river and harbor works are not payable from the appropriation for the work in connection with which the services were rendered. Such claims should be paid from the appropriations under the Department of Justice. (Comptroller to Secretary in re claim of W. H. Sartelle, special assistant attorney, Mar. 23, 1895.)

5. No compensation can be allowed or paid to a special assistant to a United States district attorney appointed under the provisions of sections 363 and 366, unless the certificate required by section 365 is furnished. (Dec. Comp. in re account of Costin Brown, June 12, 1895.)

Note.—An appropriation is made each year for pay of special assistant attorneys United States courts. A special assistant attorney must take an oath of office before entering upon the discharge of his duties. He renders an account to the Attorney-General; the Attorney-General approves the account in such sum as has been agreed upon, or for such amount as he thinks reasonable. The Attorney-General also certifies that the services were actually rendered, and that the same could not be performed by the Attorney-General, or Solicitor-General, or officers of the Department of Justice, or by the district attorneys. See section 1757 R. S. for oath.

INTEREST OF UNITED STATES IN PENDING SUITS; WHO TO ATTEND TO.

Sec. 367. The Solicitor-General, or any officer of the Department of Justice, may be sent by the Attorney-General to any State or District in the United States to attend to the interests of the United States in any suit pending in any of the courts of the United States, or in the courts of any State, or to attend to any other interest of the United States.
SEC. 368. The Attorney-General shall exercise general supervisory powers over the accounts of district attorneys, marshals, clerks, and other officers of the courts of the United States.

1. The supervisory powers of the Attorney-General over the accounts of district attorneys, marshals, clerks, and other officers of the courts of the United States are the same which were vested in the Secretary of the Interior before the creation of the Department of Justice. (United States v. Waters, 133 U.S., 208.)

NOTE.—See act of July 31, 1894: (28 Statutes, 210) post page—.

TRAVELING EXPENSES OF OFFICERS OF THE DEPARTMENT OF JUSTICE.

SEC. 370. Whenever the Solicitor-General, or any officer of the Department of Justice, is sent by the Attorney-General to any State, District, or Territory, to attend to any interest of the United States, the person so sent shall receive, in addition to his salary, his actual and necessary expenses while absent from the seat of Government; the account thereof to be verified by affidavit.

NOTE.—An itemized account of expenses is made out by the officer and sworn to by him. Vouchers must be furnished for hotel bills and other expenses where practicable. The account is approved by the Attorney-General and payment made from the proper appropriation.

SOLICITOR OF THE TREASURY TO TAKE COGNIZANCE OF FRAUDS.

SEC. 376. The Solicitor of the Treasury, under direction of the Secretary of the Treasury, shall take cognizance of all frauds or attempted frauds upon the revenue, and shall exercise a general supervision over the measures for their prevention and detection, and for the prosecution of persons charged with the commission thereof.

SOLICITOR OF THE TREASURY TO ESTABLISH RULES RESPECTING SUITS.

SEC. 377. The Solicitor of the Treasury shall establish such regulations, not inconsistent with law, with the approbation of the Secretary of the Treasury, for the observance of collectors of the customs, and, with the approbation of the Attorney-General, for the observance of district attorneys and marshals respecting suits in which the United States are parties, as may be deemed necessary for the just responsibility of those officers, and the prompt collection of all revenues and debts due and accruing to the United States. But this section does not apply to suits for taxes, forfeitures, or penalties arising under the internal-revenue laws.
SOLICITOR—NATIONAL BANKS—P. O.—DISTRICT JUDGES.

SOLICITOR OF THE TREASURY TO INSTRUCT ATTORNEYS, MARSHALS, AND CLERKS.

Sec. 379. The Solicitor of the Treasury shall have power to instruct the district attorneys, marshals, and clerks of the circuit and district courts in all matters and proceedings appertaining to suits in which the United States is a party or interested, except suits for taxes, penalties, or forfeitures under the internal-revenue laws, and to cause them, or either of them, to report to him from time to time any information he may require in relation to the same.

SUITS INVOLVING NATIONAL BANKS TO BE CONDUCTED UNDER DIRECTION OF THE SOLICITOR OF THE TREASURY.

Sec. 380. All suits and proceedings arising out of the provisions of law governing national banking associations, in which the United States or any of its officers or agents shall be parties, shall be conducted by the district attorneys of the several districts under the direction and supervision of the Solicitor of the Treasury.

1. The expenses of proceedings instituted by the Comptroller of the Currency for the forfeiture of the charter of a national banking association, including the fee of the district attorney for his services in such proceedings, should be defrayed out of the funds or assets of the association. What would be a reasonable fee for the services of the district attorney depends upon the circumstances of the case. (19 Op., 633.)

2. The Supreme Court of the United States, overruling case reported in 35 Fed. Rep., 721; 36 Fed. Rep., 487, has decided that where the district attorney appeared in behalf of Peters, the receiver of a national bank, in suit against R. H. McDonald, he is not entitled to be paid from the assets of the bank, nor is he entitled to special compensation from the Government. (Gibson v. Peters, 150 U.S., 342.) In this case the receiver did not employ the district attorney and did not want his services.

SUITS FOR MONEY DUE POST-OFFICE DEPARTMENT.

Sec. 381. In the prosecution of any suit for money due the Post-Office Department, the United States attorney conducting the same shall obey the directions which may be given him by the Department of Justice.

1. A district attorney may lawfully receive special compensation for extra-official services in the pursuit and collection of funds embezzled by a deputy postmaster. (Opinion of Feb. 23, 1855, 7 Op., 53.)

Note.—Account should be sent to Department of Justice.

UNITED STATES DISTRICT COURTS.

APPOINTMENT OF JUDGES.

Sec. 551. A district judge shall be appointed for each district, except in the cases hereinafter provided. Every such judge shall reside in the district for which he is appointed, and for offending against this provision shall be deemed guilty of a high misdemeanor.
SEC. 554. District judges are entitled to receive yearly salaries at the following rates, payable quarterly from the Treasury: The judge of the district of California five thousand dollars; the judge of the district of Louisiana four thousand five hundred dollars; the judges of the district of Massachusetts; the northern, southern, and eastern districts of New York; the eastern and western districts of Pennsylvania; the district of New Jersey; the district of Maryland; the southern district of Ohio, and the northern district of Illinois, four thousand dollars. The judges of all other districts three thousand five hundred dollars. No other allowance or payment shall be made to them for travel, expenses, or otherwise.

The act of February 24, 1891 (26 Stat. L., p. 783), provides that:
The salaries of the several judges of the district courts of the United States shall hereafter be at the rate of five thousand dollars per annum.

1. The salaries of the district judges are paid monthly by disbursing clerk, Department of Justice, from the appropriation for "salaries, district judges." Salary is paid from the date of taking the oath of office.

APPPOINTMENT OF CLERKS UNITED STATES DISTRICT COURTS.

SEC. 555. A clerk shall be appointed for each district court by the judge thereof, except in cases otherwise provided for by law. The act of June 20, 1874 (chap. 328, 18 Stat., 1091, provides as follows:

SEC. 2. That every clerk of the circuit or district court of the United States, United States marshal, or United States district attorney, shall reside permanently in the district where his official duties are to be performed, and shall give his personal attention thereto; and in case any such officer shall remove from his district, or shall fail to give personal attention to the duties of his office, except in case of sickness, such office shall be deemed vacant: Provided, That in the Southern district of New York said officers may reside within twenty miles of their districts.

The act of August 13, 1888 (chap. 866, sec. 7, 25 Stat., 437), provides:

That no person related to any justice or judge of any court of the United States by affinity or consanguinity within the degree of first cousin shall hereafter be appointed by such court or judge to or employed by such court or judge in any office or duty in any court of which such justice or judge may be a member.

EASTERN DISTRICT OF ARKANSAS.

SEC. 556. In the eastern district of Arkansas, there shall be appointed two clerks of the district court thereof, one of whom shall reside and keep his office at Little Rock, and the other shall reside and keep his office at Helena.
The act of February 28, 1887 (chap. 273, 24 Stat., 428), provides:
That terms of the circuit and district courts of the United States for
the eastern judicial district for the State of Arkansas shall be held
twice in each year at the city of Texarkana, in said eastern judicial
district, commencing on the second Mondays in January and July, to
be known as the Texarkana division of said district.

DISTRICT OF KENTUCKY.

SEC. 557. In the district of Kentucky a clerk of the district court shall be appointed at each place of holding the court, in the same manner and subject to the same duties and responsibilities which are, or may be, provided concerning clerks in independent districts.

NORTHERN ILLINOIS.

Act of July 31, 1894 (28 Stat., 204):
The judge of the district court for the northern district of Illinois shall be authorized to appoint a clerk of such court at an annual salary of three thousand dollars.

1. The law giving the district courts the power of appointing their own clerks does not prescribe any form in which this shall be done. The power vested in the court is a continuing power, and the mere appointment of a successor would per se be a removal of the prior incumbent. (13 Peters, U.S., 230.)

NOTE.—See sections 621, 622, and 623 as to clerks in western North Carolina, western Virginia, and western Wisconsin.

DEPUTY CLERKS OF THE DISTRICT COURT.

SEC. 558. One or more deputies of any clerk of a district court may be appointed by the court, on the application of the clerk, and may be removed at the pleasure of judges authorized to make the appointment. In case of the death of the clerk, his deputy or deputies shall, unless removed, continue in office and perform the duties of the clerk, in his name, until a clerk is appointed and qualified; and for the default or misfeasances in office of any such deputy, whether in the lifetime of the clerk or after his death, the clerk, and his estate, and the sureties in his official bond shall be liable; and his executor or administrator shall have such remedy for any such default or misfeasances committed after his death as the clerk would be entitled to if the same had occurred in his lifetime.

DEPUTY CLERKS IN INDIANA.

SEC. 559. In the district of Indiana the clerk of the district court must appoint a deputy clerk for said court held at New Albany, and a deputy clerk for said court held at Evansville; who shall reside and keep their offices at said places respectively. Each deputy shall keep
in his office full records of all actions and proceedings in the district court held at the same place, and shall have the same power to issue all process from the said court that is or may be given to the clerks of other district courts in like cases.

DEPUTY CLERKS IN IOWA.

SEC. 560. In the district of Iowa a deputy clerk of the district court shall be appointed at each place, in the four divisions of said district, where said court is required to be held; each of whom, in the absence of the clerk, may exercise all the official powers of clerk, at the place and within the division for which he is appointed.

COMPENSATION OF DEPUTY CLERKS.

SEC. 561. The compensation of deputies of the clerks of the district courts shall be paid by the clerks, respectively, and allowed in the same manner that other expenses of the clerks' offices are paid and allowed.

1. The question of the compensation of the deputy depends upon the contract between the deputy and the clerk, subject to the approval of the Attorney-General. In all cases where the clerk would have an excess if no deputy was employed, or paid, he should, before entering into a contract with the deputy, secure the authority of the Attorney-General to employ a deputy at a certain compensation. Before agreeing to increase the pay of a deputy the consent of the Attorney-General should be obtained. At the close of each half year the deputy should execute to the clerk a receipt for such sum as has been paid him, which receipt is included as a voucher in his emolument return.

DISTRICT JUDGE TO HOLD COURT IN ANOTHER DISTRICT.

SEC. 596. It shall be the duty of every circuit judge, whenever in his judgment the public interest so requires, to designate and appoint, in the manner and with the powers provided in section 591, the district judge of any judicial district within his circuit to hold a district or circuit court in the place or in aid of any other district judge within the same circuit; and it shall be the duty of the district judge, so designated and appointed, to hold the district or circuit as aforesaid, without any other compensation than his regular salary as established by law, except in the case provided in the next section.

The act March 3, 1881 (21 Stat., 454), provides as follows:

So much of section 596 of the Revised Statutes as forbids the payment of the expenses of district judges while holding court outside of their districts is hereby repealed.

EXPENSES OF DISTRICT JUDGE HOLDING COURT IN SOUTHERN NEW YORK.

SEC. 597. Whenever a district judge, from another district, holds a district or circuit court in the southern district of New York, in pursuance of the preceding section, his expenses, not exceeding ten dollars a day, certified by him, shall be paid by the marshal of said district,
as a part of the expenses of the court, and shall be allowed in the mar­
shall's account.

Note.—The expenses of judges incurred under the preceding sections are paid
by the marshal from the appropriation for pay of bailiffs, etc.

UNITED STATES CIRCUIT COURT.

APPOINTMENT AND SALARIES OF CIRCUIT JUDGES.

SEC. 607. For each circuit there shall be appointed a circuit judge,
who shall have the same power and jurisdiction therein as the justice
of the Supreme Court, allotted to the circuit, and shall be entitled to
receive a salary at the rate of six thousand dollars a year, payable
quarterly on the first days of January, April, July, and October.
Every circuit judge shall reside within his circuit.

The act of March 3, 1887 (24 Stat., 492), provides as follows:
There shall be appointed for the second circuit, by the Presi­
dent of the United States, by and with the advice and consent of the Senate, in
addition to the present circuit judge, another circuit judge, who shall
have the same qualifications and shall have the same power and juris­
diction therein that the present circuit judge, has under existing laws,
and who shall be entitled to the same compensation as the present
circuit judge.

The act of July 23, 1894 (28 Stat., 115), provides as follows:
Be it enacted by the Senate and House of Representa­
tives of the United
States of America in Congress assembled, That there shall be in the
eighth judicial circuit an additional circuit judge, who shall be appointed
by the President, by and with the advice and consent of the Senate, and
shall possess the same qualifications and shall have the same powers and
jurisdiction now prescribed by law in respect to the present circuit judges.

The act of February 8, 1895 (28 Stat., 643), provides as follows:
Be it enacted by the Senate and House of Representa­
tives of the United
States of America in Congress assembled, That there shall be in the
seventh judicial circuit an additional circuit judge, who shall be appointed
by the President, by and with the advice and consent of the Senate, and
shall possess the same qualifications and have the same
power and jurisdiction now prescribed by law in respect to the present
circuit judges therein.

The act of February 18, 1895 (28 Stat., 665), is as follows:
Be it enacted by the Senate and House of Representa­
tives of the United
States of America in Congress assembled, That there shall be in the ninth
judicial circuit an additional circuit judge, who shall be appointed by
the President, by and with the advice and consent of the Senate, and
shall possess the same qualifications and have the same power and juris­
diction now prescribed by law in respect to the present circuit judges
therein.

Note.—Salaries are paid monthly by the disbursing clerk of the Department
of Justice from the appropriation for salaries, circuit judges. (See the act estab­
lishing the circuit courts of appeals, post page ——.)
Sec. 619. A clerk shall be appointed for each circuit court by the circuit judge of the circuit, except in cases otherwise provided for by law.

The act of February 6, 1889 (chap. 113, sec. 3, 25 Stat., 655), provides as follows:

Hereafter all appointments of clerks of circuit courts of the United States shall be made by the circuit judges of the respective circuits in which such circuit courts are or may be hereafter established; and all provisions of law inconsistent herewith are hereby repealed.

Note.—See acts of June 20, 1874, and August 13, 1888, set out under section 555.

Circuit Clerks in Kentucky.

Sec. 620. In the district of Kentucky, a clerk of the circuit court shall be appointed at each place of holding the court, in the same manner and subject to the same duties and responsibilities which are or may be provided for clerks in independent districts.

Clerks of United States Courts in Western North Carolina.

Sec. 621. In the western district of North Carolina the circuit and district judges shall appoint three clerks, each of whom shall be clerks both of the circuit and district courts for said western district of North Carolina. One shall reside and keep his office at Statesville, one shall reside and keep his office at Asheville, and the third shall reside and keep his office at Greensborough.

Clerks of United States Courts in Western Virginia.

Sec. 622. In the western district of Virginia the circuit and district judges shall appoint four clerks, each of whom shall be clerks both of the circuit and district courts for said district. One of these clerks shall reside and keep his office at Lynchburg, another shall reside and keep his office at Abingdon, another shall reside and keep his office at Danville, and the fourth shall reside and keep his office at Harrisonburgh, in said district.

Clerks of United States Courts in Western Wisconsin.

Sec. 623. In the western district of Wisconsin the circuit and district judges shall appoint two clerks, each of whom shall be clerks both of the circuit and district courts for said district. One shall reside and keep his office at Madison, and the other shall reside and keep his office at La Crosse.

Deputy Clerks of Circuit Courts.

Sec. 624. One or more deputies of any clerk of a circuit court may be appointed by such court, on the application of the clerk, and may be removed at the pleasure of judges authorized to make the appoint-
DEPUTY CLERKS—CIRCUIT COURT COMMISSIONERS.

ment. In case of the death of the clerk, his deputy or deputies shall, unless removed, continue in office, and perform the duties of the clerk in his name until a clerk is appointed and qualified; and for the defaults or misfeasances in office of any such deputy, whether in the life-time of the clerk or after his death, the clerk, and his estate, and the sureties in his official bond shall be liable; and his executor or administrator shall have such remedy for any such defaults or misfeasances committed after his death as the clerk would be entitled to if the same had occurred in his life-time.

DEPUTY CLERKS OF CIRCUIT COURT IN INDIANA.

SEC. 625. In the district of Indiana a deputy clerk of the circuit court must be appointed for said court held at New Albany, and a deputy clerk for said court held at Evansville, who shall reside and keep their offices at said places respectively. Each deputy shall keep in his office full records of all actions and proceedings in the circuit court held at the same place, and shall have the same power to issue all process from the said court that is or may be given to the clerks of other circuit courts in like cases.

COMPENSATION OF DEPUTY CLERKS, CIRCUIT COURTS.

SEC. 626. The compensations of deputies of clerks of the circuit courts shall be paid by the clerks, respectively, and allowed, in the same manner that other expenses of the clerks' offices are paid and allowed.

NOTE.—See note under section 561.

UNITED STATES CIRCUIT COURT COMMISSIONERS.

SEC. 627. Each circuit court may appoint, in different parts of the district for which it is held, so many discreet persons as it may deem necessary, who shall be called "commissioners of the circuit courts," and shall exercise the powers which are or may be expressly conferred by law upon commissioners of circuit courts.

NOTE.—As to commissioners in the Indian Territory see the act of March 1, 1895, post page——. In all the other Territories the supreme courts have power and authority to appoint commissioners, except in the Territory of Alaska, where the commissioners are appointed by the President. As to the powers and duties of these see laws and remarks under title Alaska.

SEC. 628. No marshal, or deputy marshal, of any of the courts of the United States shall hold or exercise the duties of commissioner of any of the said courts.

1. The statutes of the United States confer upon notaries public no general authority to administer oaths. (United States v. Hall, 131 U. S., 50.)

2. No statute of the United States authorizes a commissioner of the circuit court to administer an oath to a deputy surveyor of the United States in regard to the manner in which he fulfilled a contract for surveying public lands. (United States v. Reilly, 131 U. S., 58.)
3. The approval of a commissioner's account by a circuit court of the United States is prima facie evidence of its correctness, and in the absence of clear and unequivocal proof of mistake on the part of the court should be conclusive. (United States v. Jones, 134 U. S., 483.)

4. The law of the State in which the services were rendered must be looked at in order to determine what are necessary services. (United States v. Ewing, 140 U. S., 142.)

5. Although the Revised Statutes, section 847, gives a commissioner the same compensation as is allowed to clerks for like services it does not authorize them to perform any act not otherwise required or authorized by law. (Davies v. United States, 23 C. Cls. R., 468.)

6. A commissioner is entitled only to such fees as are prescribed by statute, and only for services which he is required or authorized by some law to render. (Ibid.)

7. The Chinese immigration act, July 5, 1884, imposes duties upon commissioners, but provides no compensation. They are entitled to the fees allowed by law in all analogous cases. (Cass v. United States, 24 C. Cls. R., 118.)

8. Where the services of a commissioner or chief supervisor of elections are within the scope of the law defining his duties the approval of the circuit or district court determines the fact that they were necessary and proper and sufficient to entitle the officer to the fee prescribed by law; but the approval does not establish the accuracy of the account, nor take it out of the supervision of the accounting officers, nor render the Government liable for a service or expenditure not authorized by law. (Dennison v. United States, 25 C. Cls. R., 304.)

9. A commissioner is entitled to fees where proceedings were commenced against a defendant, but the case was returned before another commissioner. (Faucett v. United States, 26 C. Cls. R., 154.)

10. Under powers given commissioners by section 727, a commissioner may issue a warrant for the arrest of a person charged with the commission of an extraditable offense in a foreign country. (In re Mineau, 45 Fed. Rep., 188.)

11. The rejection by a district court of a United States commissioner's claim for fees because of a supposed want of jurisdiction is no bar to a subsequent suit therefor, when the circuit court in a similar case has held in favor of the jurisdiction. (Rand v. United States, 48 Fed. Rep., 357.) Affirmed by the circuit court of appeals. (53 Fed. Rep., 348.)

12. A commissioner is but the officer of the court to whom are committed duties which otherwise must be performed by the court itself. In all he does he is not a separate tribunal, but an arm of the court to execute preliminary work. As an examining magistrate his functions are ministerial, not judicial. (United States v. Berry, 2 McCrary, 58.)

13. All offices, the term of which is not fixed by the Constitution or limited by law, must be held either during good behavior or (which is the same thing in contemplation of law) during the life of the incumbent; or must be held at the will and discretion of some department of the Government, and subject to removal at pleasure. In the absence of all constitutional provision or statutory regulation it would seem to be a sound and necessary rule to consider the power of removal as incident to the power of appointment. (Ex parte Hennen, 13 Peters, U. S., 259.)

14. A United States commissioner is subject to the control of the court when acting as an examining magistrate, and the court can assume control of the proceedings whenever justice may require it should be done. (United States v. Berry, 4 Fed. Rep., 779.)
15. A United States commissioner when acting as an examining magistrate is a mere officer of the court as to whom the writ of prohibition is never employed. (Ibid.)

16. In the absence of the district judge from his place of residence, where the same is within 3 miles of the place where a vessel is moored, the jurisdiction conferred upon him by section 4546, Revised Statutes, may be exercised by a United States commissioner. The commissioner is bound to inform himself of the absence of the judge from his place of residence. (The schooner Jefferson Borden, 6 Fed. Rep., 301.)

17. The order of the circuit court to commissioners in the first judicial circuit providing for the keeping of a docket by each commissioner, nowhere imposes upon a commissioner the duty of exhibiting his docket for inspection by the agent of the Department of Justice, and in lieu of any specific provision for fees to the commissioner for keeping such docket he is not bound to allow such inspection, his fees for keeping the docket having been disallowed by the Comptroller of the Treasury. (In re Rand, 18 Fed. Rep., 99.)

18. A United States commissioner may be removed by the circuit court which appointed him, although he is not strictly an officer of the court, but exercises independent judicial functions which are conferred upon him by law. The power of removal is incident to the power of appointment, where no definite tenure of office is fixed by law. (In re Eaves, 30 Fed. Rep., 21.)

19. Where an affidavit is such in form and substance as fairly to call for the deliberate judgment of a commissioner whether or not a criminal violation of some Federal statute is charged, and he in good faith holding it sufficient, proceeds with the examination, he is entitled to the fees allowed by law, though his decision was erroneous. (Van Buren v. United States, 36 Fed. Rep., 77.)

20. The district attorney has no absolute power to dismiss a criminal case, pending the examination of the accused before a commissioner. He attends the examination only as counsel for the Government to see that the evidence against the accused is properly presented. (United States v. Schuman, 7 Sawyer, 439.)

21. The powers and duties of commissioners discussed by Justice Field. (Ibid.)

22. The office of commissioner may be held by the clerk of the court. (United States v. Durbacher, 63 Fed. Rep., 872.)

23. While commissioners have no fixed tenure of office and the appointing court has power to remove them at pleasure, the exercise of this power should be governed by a sound legal discretion, and if there are charges against a commissioner he should be heard. (In re commissioners of circuit court, 65 Fed. Rep., 314.)

SUPREME COURT OF THE UNITED STATES.

SEC. 673. The Supreme Court of the United States shall consist of a Chief Justice of the United States and eight associate justices, any six of whom shall constitute a quorum.

SALARIES OF CHIEF JUSTICE AND ASSOCIATE JUSTICES.

SEC. 676. The Chief Justice of the Supreme Court of the United States shall receive the sum of ten thousand five hundred dollars a year, and the justices thereof shall receive the sum of ten thousand dollars a year each, to be paid monthly.

Note.—Salaries are paid monthly from the appropriation for salaries, justices, etc., Supreme Court. Salary is paid from the date of the oath of office.
CLERK AND MARSHAL OF THE SUPREME COURT.

SEC. 617. The Supreme Court shall have power to appoint a clerk and a marshal for said court, and a reporter of its decisions.

NOTE.—See act August 13, 1888, set out under section 555.

FEES OF CLERK OF THE SUPREME COURT.

The Act of March 3, 1883 (chap. 143, 22 Stat., 631), provides:

That so much of section three of the act of February twenty-eight, seventeen hundred and ninety-nine, as relates to the compensation of said clerk for his attendance in court is hereby repealed: And provided further, That the Supreme Court is hereby authorized and empowered to prepare the table of fees to be charged by the clerk thereof, and until the same is thus prepared the fees therein charged for recording or copying any paper or record shall not exceed fourteen cents per folio.

Rule 24 of the Supreme Court is as follows:

In pursuance of the act of March 3, 1883, authorizing and empowering this court to prepare a table of fees to be charged by the clerk of this court, the following table is adopted:

For docketing a case and filing and endorsing a transcript of the record, five dollars.

For entering an appearance, twenty-five cents.

For entering a continuance, twenty-five cents.

For filing a motion, order or other paper twenty-five cents.

For entering any rule or for making or copying any record or other paper, twenty cents per folio for each one hundred words.

For transferring each case to a subsequent docket and indexing the same, one dollar.

For entering a judgment or decree, one dollar.

For every search of the records of the court, one dollar.

For a certificate and seal, two dollars.

For receiving, keeping, and paying money in pursuance of any statute or order of court, two per cent on the amount so received, kept and paid.

For an admission to the bar and certificate under seal, ten dollars.

For preparing the record or a transcript thereof for the printer, indexing the same, supervising the printing and distributing the printed copies to the justices, the reporter, the law library, and the parties or their counsel, fifteen cents per folio.

For making manuscript copy of the record, when required under rule ten, twenty cents per folio but nothing in addition for supervising the printing.

For issuing a writ of error and accompanying papers, five dollars.

For a mandate or other process, five dollars.

For filing briefs, five dollars for each party appearing.
For every copy of any opinion of the court or any justice thereof certified under seal, one dollar for every printed page, but not to exceed five dollars for any copy.

1. The clerk of this court, when money paid into court is put in his custody, is entitled to a per cent on the amount. (Florida v. Anderson, 131 U.S., Appendix, 135.)

2. When the clerk has no security for fees due him from a party entitled to a mandate he may withhold the mandate until his fees are paid, or he is otherwise satisfied in that behalf. (Osborn v. United States, 131 U.S., Appendix, 137.)

Note.—The clerk of the Supreme Court of the United States does not present accounts against the Government for the reason that he earns a large excess.

DEPUTY CLERKS OF THE SUPREME COURT.

Sec. 678. One or more deputies of the clerk of the Supreme Court may be appointed by the court on application of the clerk, and may be removed at the pleasure of the court. In case of the death of the clerk, his deputy or deputies shall, unless removed, continue in office and perform the duties of the clerk in his name until a clerk is appointed and qualified; and for the defaults or misfeasances in office of any such deputy, whether in the lifetime of the clerk or after his death, the clerk, and his estate, and the sureties in his official bond shall be liable; and his executor or administrator shall have such remedy for any such defaults or misfeasances committed after his death as the clerk would be entitled to if the same occurred in his lifetime.

1. Each deputy clerk must execute to the clerk a receipt for amount paid him for services, which receipt is included as a voucher in the annual return of earnings made by the clerk.

MAREHAL OF THE SUPREME COURT.

Sec. 680. The marshal is entitled to receive a salary at the rate of three thousand five hundred dollars a year. He shall attend the court at its sessions; shall serve and execute all process and orders issuing from it, or made by the Chief Justice or an associate justice in pursuance of law; and shall take charge of all property of the United States used by the court or its members. With the approval of the Chief Justice he may appoint assistants and messengers to attend the court, with the compensation allowed to officers of the House of Representatives of similar grade.

Note.—The salary of the marshal is paid monthly from the appropriation for salaries, justices, etc., Supreme Court. For the fiscal year 1878, and since that time, the appropriation for the salary of the marshal has been $3,000. The salary is paid from the date of the oath of office by the disbursing clerk of the Department of Justice.
RETIRED JUDGES.

SEC. 714. When any judge of any court of the United States resigns his office, after having held his commission as such at least ten years, and having attained the age of seventy years, he shall, during the residue of his natural life, receive the same salary which was by law payable to him at the time of his resignation.

1. Is paid monthly, without application therefor, by disbursing clerk, Department of Justice, from appropriation for salaries, retired judges.

BAILIFFS AND CRIERS.

SEC. 715. The circuit and district courts may appoint criers for their courts, to be allowed the sum of two dollars per day; and the marshals may appoint such a number of persons, not exceeding five, as the judges of their respective courts may determine, to attend upon the grand and other juries, and for other necessary purposes, who shall be allowed for their services the sum of two dollars per day, to be paid by and included in the accounts of the marshal, out of any money of the United States in his hands. Such compensation shall be paid only for actual attendance, and, when both courts are in session at the same time, only for attendance on one court.

The sundry civil act of March 2, 1895 (28 Stat., 958), provides:

That all persons employed under section seven hundred and fifteen of the Revised Statutes shall be deemed to be in actual attendance when they attend upon the order of the courts; that no such person shall be employed during vacation.

Note.—The sundry civil appropriation act for the fiscal year 1896, and several years prior thereto, provides that not exceeding three bailiffs and one crier in each court, except in the southern district of New York, shall be employed.

1. A bailiff in attendance upon a term of court is entitled, under the joint resolutions of January 6, 1886 (23 Stat., 516), and February 23, 1887 (24 Stat., 644), and the act of June 28, 1894 (28 Stat., 96), to his per diem compensation for a legal holiday when the session of the court is temporarily interrupted by adjournment over such holiday. (Compt. in re account of J. H. McCarty, Feb. 26, 1895.)

OFFICERS WHO ARE NOT TO PRACTICE AS ATTORNEYS.

SEC. 748. No clerk, assistant or deputy clerk, of any territorial, district, or circuit court, or of the Court of Claims, or the Supreme Court of the United States, or marshal or deputy marshal of the United States within the district for which he is appointed, shall act as a solicitor, proctor, attorney, or counsel in any cause depending in either of said courts, or in any district for which he is acting as such officer.

PENALTY FOR VIOLATING PRECEDING SECTION.

SEC. 749. Whosoever violates the preceding section shall be stricken from the roll of attorneys by the court upon complaint, upon which the respondent shall have due notice, and be heard in his defense; and in the case of a marshal or deputy marshal so acting, he shall be recommended by the court for dismissal from office.
UNITED STATES DISTRICT ATTORNEYS.

APPOINTMENT OF DISTRICT ATTORNEYS.

SEC. 767. There shall be appointed in each district, except in the middle district of Alabama, and the northern district of Georgia, and the western district of South Carolina, a person learned in the law, to act as attorney for the United States in such district. The district attorney of the northern district of Alabama shall perform the duties of district attorney of the middle district of said State; and the district attorney of the southern district of Georgia shall perform the duties of district attorney of the northern district of said State; and the district attorney of the eastern district of South Carolina shall perform the duties of district attorney for the western district of said State.

The act of April 25, 1882 (22 Stat., 47), provides:
That hereafter there shall be for each of the two judicial districts in the State of Georgia a judge, district attorney, marshal, and clerk, to be appointed, commissioned, and removed, as provided by law for other such officers.

The act of March 3, 1803 (chap. 220, sec. 1, 27 Stat., 74'), provides:
That in each of the three judicial districts of the State of Alabama there shall be a district attorney and a marshal.

DISTRICT ATTORNEYS IN IOWA.

SEC. 768. The district attorney of the district of Iowa shall perform the duties of district attorney for all of the divisions of said district.

The act of July 20, 1882 (chap. 312, sec. 3, 22 Stat., 172), provides:
That the district attorney and United States marshal for the district of Iowa shall be the district attorney and marshal of the southern district of Iowa, and the President of the United States, by and with the advice and consent of the Senate, is authorized and directed to appoint one person as marshal and one as district attorney for the northern district of Iowa.

TERM AND OATH OF DISTRICT ATTORNEYS.

SEC. 769. District attorneys shall be appointed for a term of four years, and their commissions shall cease and expire at the expiration of four years from their respective dates. And every district attorney, before entering upon his office, shall be sworn to a faithful execution thereof.

Note.—The salary of the attorney will cease at the expiration of his term of office. The term of office expires four years from the date when the commission takes effect. If the commission takes effect February 19, 1894, the term of office expires with February 18, 1898, the attorney being paid for that day.
SEC. 770. The district attorney for the southern district of New York is entitled to receive quarterly, for all his services, a salary at the rate of six thousand dollars a year. For extra services the district attorney for the district of California is entitled to receive a salary at the rate of five hundred dollars a year, and the district attorneys for all other districts at the rate of two hundred dollars a year.

NOTE.—Salaries of district attorneys in the several States are paid quarterly. The salary is paid from the appropriation for salaries, district attorneys. A charge for salary must not be included in an account for services. The salary is paid by the disbursing clerk of the Department of Justice.

The district attorney for the district of California became, under the act of August 5, 1886 (24 Stat., 308), the attorney for the northern district of California and entitled to the salary of five hundred dollars.

DUTIES OF DISTRICT ATTORNEYS.

SEC. 771. It shall be the duty of every district attorney to prosecute, in his district, all delinquents for crimes and offenses cognizable under the authority of the United States, and all civil actions in which the United States are concerned, and, unless otherwise instructed by the Secretary of the Treasury, to appear in behalf of the defendants in all suits or proceedings pending in his district against collectors, or other officers of the revenue, for any act done by them or for the recovery of any money exacted by or paid to such officers, and by them paid into the Treasury.

The act of March 3, 1875 (chap. 130, sec. 8, 18 Stat., 401), provides:

That in any action now pending, or which may be brought against any person for or on account of anything done by him while an officer of either House of Congress in the discharge of his official duty, in executing any order of such House, the district attorney for the district within which the action is brought, on being thereto requested by the officer sued, shall enter an appearance in behalf of such officer; and all provisions of the eighth section of the act of July twenty-eighth, eighteen hundred and sixty-six, entitled "An act to protect the revenue, and for other purposes," and also all provisions of the sections of former acts therein referred to, so far as the same relate to the removal of suits, the withholding of executions, and the paying of judgments against revenue or other officers of the United States, shall become applicable to such action and to all proceedings and matters whatsoever connected therewith, and the defense of such action shall thenceforth be conducted under the supervision and direction of the Attorney-General.

1. The district attorney is specially charged with the prosecution of all delinquents for crimes and offenses; and these duties do not end with the judgment or order of the court. He is bound to provide the marshal with all necessary process to carry into execution the judgment of the court. This falls within
his general superintending authority over the prosecution. (Levy Court v. Ringgold, 5 Peters, U.S., 451.)

2. The general authority to prosecute delinquents given to a United States attorney by section 771 authorizes him to employ a stenographer in criminal cases, and to render the United States liable for a reasonable fee for services rendered, without first obtaining the authorization of the Attorney-General. (Fish v. United States, 36 Fed. Rep., 677.)

3. An action to enforce the statutory lien for internal-revenue taxes alleged to have been evaded by the defendant is "a civil action in which the United States are concerned," and which it is the duty of the district attorney to prosecute under section 771. (Bliss v. United States, 37 Fed. Rep., 191.)

4. The district attorney has no absolute power over a criminal case pending before the grand jury or before a commissioner. After indictment he has absolute power to enter a nolle prosequi. (United States v. Schuman, 7 Sawyer, 439.)

5. The district attorney for the southern district of New York may be allowed his fees and costs for defending the collector at the port of New York in cases in the State courts for the repayment of duties in addition to the maximum allowance mentioned in the act of May 18, 1842, chapter 29, as the judicial department has thus decided in two several cases, in which the United States have acquiesced. (Opinion of Dec. 15, 1843, 4 Op., 293.)

6. The act of August 16, 1856 (chap. 124, sec. 12), was intended to compel district attorneys to include in their emolument accounts the fees received from the Government for defending its officers. (Opinion of May 25, 1858, 9 Op., 146.)

7. Where the office of a district attorney is overburdened with business the Departments may employ other counsel to aid him in defending suits against the public officers, or may allow him to employ a regular assistant at an agreed salary. (Ibid.)

8. It is in the discretion of the Secretary of the Treasury to decide whether an outgoing district attorney shall cease all connection with pending suits against collectors; but in some cases it would be wise to employ the late attorney as assistant counsel with the incumbent. (Ibid.)

9. It is no part of the official duty of the district attorney to appear in a State court to attend to suits, although the United States may be directly interested therein, except in cases specially provided for. (5 Lawrence, First Comptroller, 38.)

DISTRICT ATTORNEYS TO REPORT TO SOLICITOR OF TREASURY.

Sec. 772. Every district attorney shall, on instituting any suit for the recovery of any fine, penalty, or forfeiture, immediately transmit to the Solicitor of the Treasury a statement thereof.

RETURNS OF DISTRICT ATTORNEYS TO SOLICITOR OF TREASURY.

Sec. 773. Every district attorney shall, immediately after the end of every term of the circuit and district courts for his district, forward to the Solicitor of the Treasury, except in the cases provided for in the next section, a full and particular statement, accompanied by the certificate of the clerks of said courts, respectively, of all causes pending in said courts, and of all causes decided therein during such term, in which the United States are party. He shall also, on the first day of October in each year, make a return to said Solicitor of the number of
suits and proceedings commenced, pending, and determined within his
district during the fiscal year next preceding the date of such return,
showing the date when such proceeding or suit in each case was com-
menced. If the determination thereof has been delayed or continued
beyond the usual or reasonable period, the reasons must be set forth,
and a statement must be made of the measures taken by the district
attorney to press such proceedings or suits to a close.

RETURNS OF DISTRICT ATTORNEYS TO COMMISSIONER OF INTERNAL
REVENUE.

SEC. 774. When any suit or proceeding arising under the internal-
revenue laws, to which the United States are party, or any suit or
proceeding against a collector or other officer of the internal revenue,
wherein a district attorney appears, is commenced, the attorney for the
district in which it is brought shall immediately report to the Commis-
sioner of Internal Revenue the full particulars relating to the same;
and he shall, immediately after the end of each term of the court in
which such suit or proceeding is pending, forward to the said Commis-
sioner a full and particular statement of its condition.

REPORTS OF DISTRICT ATTORNEYS TO DEPARTMENT OF JUSTICE.

SEC. 775. Each district attorney shall, immediately after the end of
every term in which any suit for moneys due on account of the Post-
Office Department has been pending in his district, forward to the
Department of Justice a statement of any judgment or order made, or
step taken in the same, during such term, accompanied by a certificate
of the clerk, showing the parties to and amount of every such judg-
ment, with such other information as the Department of Justice may
require. And the said attorney shall direct speedy and effectual exe-
cution upon said judgment, and the United States marshal to whom
the same is directed shall make returns of the proceedings thereon to
the Department of Justice, at such times as it may direct.

UNITED STATES MARSHALS.

APPOINTMENT OF UNITED STATES MARSHALS.

SEC. 776. A marshal shall be appointed in each district, except in
the middle district of Alabama, and the northern district of Georgia,
and the western district of South Carolina. The marshal of the south-
er district of Alabama shall perform the duties of marshal of the
middle district of said State, and shall keep an office at Montgomery,
in said middle district. The marshal of the southern district of
Georgia shall perform the duties of marshal of the northern district of
said State. The marshal of the eastern district of South Carolina
shall perform the duties of marshal of the western district of said State.

The act of April 25, 1882 (chap. 87, sec. 1, 22 Stat., 47), provides:

That hereafter there shall be for each of the two judicial districts in the State of Georgia a judge, district attorney, marshal and clerk to be appointed, commissioned, and removed as provided by law for other such officers.

The act of April 25, 1892 (chap. 87, sec. 1, 27 Stat., 745), provides:

That in each of the three judicial districts of the State of Alabama there shall be a district attorney and a marshal.

Section 777 is superseded by the act of April 25, 1882 (22 Stat., 47).

1. A resignation to take effect at a future date may, with the consent of the appointing power, provided no new rights have intervened, be withdrawn before the time when the resignation was to take effect, and the officer will continue to be an officer de jure thereafter.

2. D, a United States marshal, commissioned on February 6, 1890, tendered his resignation November 3, 1893, to take effect December 31, and the Attorney-General, by direction of the President, accepted the same on November 8. In December, the Department of Justice requested the marshal to withdraw his resignation and serve during the January term of court in his district. The marshal on December 29 asked an advance of funds for the expenses of that term, which was granted, and continued to act as marshal until his successor qualified on January 20. He was recognized by the court and the Department as marshal. Held, that D continued to be de jure marshal after December 31, and is entitled to the fees earned by him from January 1 to 20. (Comp. in re accounts of J. J. Dickerson, Nov. 16, 1894.)

MARSHAL OF THE DISTRICT OF IOWA.

Sec. 778. The marshal of the district of Iowa shall perform the duties of marshal for all the divisions of said district, and shall keep an office at each of the places in the four divisions of said district where the circuit and district courts thereof are required to be held; and his charges for mileage, in the execution of the duties of his office, within said district, shall be computed from the city of Iowa.

The act of July 20, 1882 (chap. 312, sec. 3, 22 Stat., 172), provides:

That the district attorney and the United States marshal for the district of Iowa shall be the district attorney and marshal of the southern district of Iowa; and the President of the United States, by and with the advice and consent of the Senate, is authorized and directed to appoint one person as marshal and one as district attorney for the northern district of Iowa.

MARSHAL’S TERM OF OFFICE.

Sec. 779. Marshals shall be appointed for a term of four years.

Note.—The term expires four years from the date of the taking effect of the commission which is issued after the marshal has been confirmed by the Senate.
DEPUTY MARSHALS—SALARIES OF MARSHALS.

APPOINTMENT AND REMOVAL OF DEPUTY MARSHALS.

SEC. 780. Every marshal may appoint one or more deputies, who shall be removable from office by the judge of the district court, or by the circuit court for the district, at the pleasure of either.

1. Deputy.—A deputy marshal is an officer of the United States within the purview of section 5398, and so is the keeper of a State jail to whose custody a person is committed by legal process issued by a United States court or judicial officer with the consent of the State. (9 Sawyer, 90.)

2. Special deputy marshal.—Where, under the laws of a State, a sheriff may appoint a person to perform a special service, a marshal, under section 788, has the same authority, and the person so appointed by him is an officer de facto, and a person served with process by such appointee can not dispute his authority on the ground that he had not taken the oath of office as required by the statute in relation to the appointment of deputies. (Hayman v. Charles, 4 McCrary, 248.)

3. Though deputy marshals are recognized officers of the court, they are engaged and compensated by the marshal, and are in no sense creditors of the United States, and if the marshal fails to pay them out of fees coming to his hands he will not be liable upon his bond. (Bollin v. Blythe, 46 Fed. Rep., 181.)

4. A deputy marshal is not an officer of the United States and can not sue them for services rendered. (Powell v. United States, 60 Fed. Rep., 687.)

5. In a State where the laws authorize the appointment of special deputy sheriffs to do particular acts without requiring of them an oath of office which is required of deputy sheriffs generally, a marshal can not be allowed credit in the settlement of his emolument account for payments to persons whom he has authorized to serve writs in special cases by indorsing their authority thereon when such persons have not taken the oath of office required by section 782, Revised Statutes, of deputy marshals. (Comp. in re account of D. T. Guyton, Jan. 7, 1895.)

6. Section 788, Revised Statutes, relates solely to the manner of executing the laws and does not authorize the marshal to adopt the manner prescribed by State statutes for the appointment of deputy sheriffs. (Comp. in re account of D. T. Guyton, Jan. 7, 1895.)

7. A deputy marshal is not required to take the oath prescribed by section 1757. (Dec. of Comp. in letter to Branagan, June 18, 1895.)

SALARIES OF MARSHALS.

SEC. 781. Marshals are entitled to receive salaries, as a compensation for extra services as follows: The marshal of the district of California, at the rate of five hundred dollars a year; the marshal of the districts of North Carolina, at the rate of four hundred dollars a year; the marshals of all other districts, except the southern and eastern districts of New York, the eastern district of Pennsylvania, the southern district of Illinois, the western district of Missouri, the northern and southern districts of Georgia, and the districts of Massachusetts, Maryland, and Nevada, at the rate of two hundred dollars a year.

Under act of August 5, 1886 (chap. 928, 24 Stat., 308), the southern district of California was organized, and the marshal of the district of California became the marshal of the northern district of said State, and is therefore entitled to the salary of $500 provided above.
The act of June 4, 1872 (chap. 282, 17 Stat., 215), created the western district of North Carolina, and the marshal of North Carolina becoming marshal of the eastern district of that State, receives the salary of $400 provided above for the marshal of North Carolina.

The marshals of the eastern district of New York, the southern district of Illinois, the western district of Missouri, and the district of Nevada, though excepted by section 781 from the provisions giving salaries to marshals, are paid salaries, appropriations having been made therefor as follows: Western Missouri since April 15, 1857; southern Illinois since July 6, 1858; Nevada since May 21, 1862, and eastern New York since October 4, 1866.

NOTE.—Salaries are paid quarterly by disbursing clerk, Department of Justice, from the appropriation for salaries, district marshals.

OATH OF OFFICE OF MARSHAL AND DEPUTY.

SEC. 782. Every marshal and deputy marshal shall, before he enters upon the duties of his appointment, take, before the district judge of the district, an oath or affirmation in the following form: "I, A. B., do solemnly swear (or affirm) that I will faithfully execute all lawful precepts directed to the marshal of the district of ———, ———, under the authority of the United States, and true returns make, and in all things well and truly, and without malice or partiality, perform the duties of the office of marshal (or marshal's deputy, as the case may be) of the district of ———, during my continuance in said office, and take only my lawful fees. So help me God." The words "So help me God" shall be omitted in all cases where an affirmation is admitted instead of an oath. Provided, That when any person who is appointed deputy marshal resides and is more than twenty miles from the place where the district judge resides and is, the said oath of office may be taken by him before any judge or justice of any State court within the same district, or before any justice of the peace having authority therein, or before any notary public duly appointed in such State, or before any commissioner of a circuit court for such district, and shall, when certified by such officer to the said district judge, be as effectual as if taken before such district judge.

NOTE.—It is important that each marshal and deputy take the oath of office before entering upon the discharge of his duties. No allowance will be made for services performed prior to the date of the oath. Copy of the oath of office of the marshal must be forwarded to the Attorney-General. Special deputies must take the oath. The oath required by section 1757, Revised Statutes, must be taken by marshals, but need not be taken by deputies.

BOND OF MARSHAL.

SEC. 783. Every marshal, before he enters on the duties of his office, shall give bond before the district judge of the district, jointly and severally with two good and sufficient sureties, inhabitants and freeholders...
of such district, to be approved by said judge, in the sum of twenty thousand dollars, for the faithful performance of said duties by himself and his deputies. Said bond shall be filed and recorded in the office of the clerk of the district court or circuit court sitting within the district, and copies thereof, certified by the clerk, under the seal of the said court, shall be competent evidence in any court of justice.

The act of February 22, 1875 (chap. 95, sec. 2, 18 Stat., 333), provides that the Attorney-General may require any marshal to give a bond in a sum not to exceed $40,000.

The act of March 2, 1895 (28 Stat., 807), provides as follows:

Hereafter every officer required by law to take and approve official bonds shall cause the same to be examined at least once every two years for the purpose of ascertaining the sufficiency of the sureties thereon; and every officer having power to fix the amount of an official bond shall examine it to ascertain the sufficiency of the amount thereof and approve or fix said amount at least once in two years and as much oftener as he may deem it necessary.

Hereafter every officer whose duty it is to take and approve official bonds shall cause all such bonds to be renewed every four years after their dates, but he may require such bonds to be renewed or strengthened oftener if he deem such action necessary. In the discretion of such officer the requirement of a new bond may be waived for the period of service of a bonded officer after the expiration of a four-year term of service pending the appointment and qualification of his successor: Provided, That the nonperformance of any requirement of this section on the part of any official of the Government shall not be held to affect in any respect the liability of principal or sureties on any bond made or to be made to the United States: Provided further, That the liability of the principal and sureties on all official bonds shall continue and cover the period of service ensuing until the appointment and qualification of the successor of the principal: And provided further, That nothing in this section shall be construed to repeal or modify section thirty-eight hundred and thirty-six of the Revised Statutes of the United States.

Note.—Before advances are made to a marshal he must file in the office of the Auditor for the State and other Departments a certified copy of his bond and oaths of office.

Suits on Marshal's Bond.

Sec. 784. In case of a breach of the condition of a marshal's bond, any person thereby injured may institute in his own name and for his sole use a suit on said bond, and thereupon recover such damages as shall be legally assessed, with costs of suit, for which execution may issue for him in due form. If such party fails to recover in the suit, judgment shall be rendered and execution may issue against him for costs in favor of the defendant; and the United States shall in no case be liable for the same.
MARSHAL'S BOND TO REMAIN UNTIL THE WHOLE PENALTY IS RECOVERED.

SEC. 785. The said bond shall remain, after any judgment rendered thereon, as a security for the benefit of any person injured by breach of the condition of the same, until the whole penalty has been recovered; and the proceedings shall always be as directed in the preceding section.

LIMITATION OF SUITS ON MARSHAL'S BOND.

SEC. 786. No suit on a marshal's bond shall be maintained unless it is commenced within six years after the right of action accrues, saving, nevertheless, the rights of infants, married women, and insane persons, so that they sue within three years after their disabilities are removed.

The act of August 8, 1888 (25 Stat., 387), is as follows:

Be it enacted, &c., That hereafter, whenever any deficiency shall be discovered in the accounts of any official of the United States, or of any officer disbursing or chargeable with public money, it shall be the duty of the accounting officers making such discovery to at once notify the head of the Department having control over the affairs of said officer of the nature and amount of said deficiency, and it shall be the immediate duty of said head of Department to at once notify all obligors upon the bond or bonds of such official of the nature of such deficiency and the amount thereof. Said notification shall be deemed sufficient if mailed at the post-office in the city of Washington, District of Columbia, addressed to said sureties respectively, and directed to the respective post-offices where said obligors may reside, if known; but a failure to give or mail such notice shall not discharge the surety or sureties upon such bond.

SEC. 2. That if, upon the statement of the account of any official of the United States, or of any officer disbursing or chargeable with public money, by the accounting officers of the Treasury, it shall thereby appear that he is indebted to the United States, and a suit therefor shall not be instituted within five years after such statement of said account, the sureties on his bond shall not be liable for such indebtedness.

1. Under the act of April 10, 1806, and on the general principle that the courts of the United States have original jurisdiction, whether from the character of the claim or the citizenship of the parties, they may entertain proceedings against the marshal and his sureties, the circuit courts have jurisdiction of suits on marshals' bonds without reference to the citizenship of the parties. (Wetmore v. Rice, 1 Biss., 237; De Loyne v. Davidson, 1 Biss., 433.)

2. After judgment has once been entered for the penalty, it remains as security for all persons injured by default of the marshal. Complaint may be made, damages assessed, and execution issued until the whole penalty shall have been recovered. (Ibid.)

3. Under act of April 10, 1806, it is optional with the injured party to bring the suit in his own name or in the name of the United States, and the United States is not substantially a party to the record. (De Loyne v. Davidson, 1 Bissell, 433.)
4. The marshal is not responsible on his official bond for the act of his deputy in discharging sureties on a replevin bond, in any case where the attorney of the plaintiff in that suit, though he gave no direct and positive instructions to the deputy, has still done that which was calculated to mislead the deputy, and to induce his erroneous act. (1 Wall., 644.)

5. The obligation on an official bond of a person intrusted with public money is not that of a mere depositary, but of a person who has made a contract which he must, at his own peril, perform. The acts of April 29, 1864, and March 3, 1865, furnish the only exceptions to this rule which this court can act upon. (9 Wall., 83.)

6. In suits against persons accountable for public moneys, it is not necessary after introducing certified transcripts of the party's accounts, properly adjusted by the Treasury officers, to show that the defendant had notice of the adjustment or of the balance found against him. (9 Wall., 759.)

7. In order to allow a marshal, in a suit by the Government on his official bond, to set off a credit, it must be shown that the claim for credit has been legally presented to the accounting officers of the Treasury for their examination, and been by them (except in certain cases) disallowed. And to be legally presented the claim should be presented by items and with the proper vouchers. (9 Wall., 759.)

8. Evidence of alleged payments made, or of set-off on a suit on a marshal's official bond, held rightly excluded under the fourth section of the act of March 3, 1797, there having been no evidence that what was excluded was a claim presented to the accounting officers of the Treasury, and by them disallowed; it not being pretended that the defendants were at the trial in possession of vouchers not before in their power to procure. (Halliburton v. United States, 13 Wall., 63.)

9. The taking by a marshal upon a writ of attachment on mesne process against one person, of the goods of another, is a breach of the condition of his official bond for which his sureties are liable. (Lammon v. Fensier, 111 U.S., 17.)

10. The failure of the United States to present its claim against the estate of a deceased United States marshal constitutes no defense to an action against the sureties on his official bond. (United States v. Adams, 54 Fed. Rep., 114.)

11. Section 786, limiting the time within which actions must be commenced on marshals' bonds, does not apply to actions instituted by the United States. (United States v. Rand, 4 Saw., 272.)

12. It is not consistent with the relation between the Government and its officer for the former to make itself the creditor of the latter without their consent, and to detain their salaries in the discharge of debts so acquired. (1 Op., 676.)

13. The officers of the Treasury are authorized to withhold the pay of officers of the Government who are ascertained to be in default to the Government where the time for accounting has actually passed, but not otherwise. (4 Op., 33.)

DUTIES OF MARSHAL.

SEC. 787. It shall be the duty of the marshal of each district to attend the district and circuit courts when sitting therein, and to execute, throughout the district, all lawful precepts directed to him, and issued under the authority of the United States; and he shall have power to command all necessary assistance in the execution of his duty.
MARSHALS—POWERS—DEATH—REMOVAL.

MARSHALS TO HAVE SAME POWERS AS SHERIFFS.

SEC. 788. The marshals and their deputies shall have, in each State, the same powers, in executing the laws of the United States, as the sheriffs and their deputies in such State may have, by law, in executing the laws thereof.

1. The marshal in each State has the same powers as the sheriff in executing the laws of the State. (United States v. Hardin, 10 Fed. Rep., 332.)

2. The authority and powers of the United States marshals and their deputies are confined to the districts for which they are appointed. (Walker v. Lea, 47 Fed. Rep., 645.)

3. Under Revised Statutes, section 788, giving to United States marshals and their deputies the power possessed by sheriffs of the States, a deputy marshal in Virginia has power to arrest without a warrant a person who, in his presence, has in possession whisky for the purpose of selling the same without payment of the internal-revenue tax in violation of Revised Statutes, section 3452. (Carico v. Wilmore, 51 Fed. Rep., 196.)

4. Under section 788 a marshal has the same right to arrest without a warrant as the sheriffs of the State within which is situated the district for which he acts. (In re Acker, 66 Fed. Rep., 290.)

5. Section 788 relates solely to the manner of executing the laws, and does not authorize the marshal to adopt the manner prescribed by State statutes for the appointment of deputy marshals. (Comp. in re account of D. T. Guyton, Jan. 7, 1895.)

IN CASE OF DEATH OF MARSHAL DEPUTIES TO CONTINUE.

SEC. 789. In case of the death of any marshal, his deputy or deputies shall continue in office, unless otherwise specially removed, and shall execute the same in the name of the deceased, until another marshal is appointed, as provided in this chapter, and duly qualified. The defaults or misfeasances in office of such deputies in the mean time shall be adjudged a breach of the condition of the bond given by the marshal who appointed them; and the executor or administrator of the deceased marshal shall have like remedy for the defaults and misfeasances in office of such deputies, during such interval, as he would be entitled to if the marshal had continued in life and in the exercise of his said office until his successor was appointed and duly qualified.

MARSHAL OR DEPUTY MAY EXECUTE PROCESS IN HIS HANDS ON REMOVAL OR EXPIRATION OF TERM OF OFFICE.

SEC. 790. Every marshal or his deputy, when removed from office, or when the term for which the marshal is appointed expires, shall have power, notwithstanding, to execute all such precepts as may be in their hands respectively at the time of such removal or expiration of office; and the marshal shall be held responsible for the delivery to his successor of all prisoners who may be in his custody at the time of his
removal, or when the term for which he is appointed expires; and for that purpose he may retain such prisoners in his custody until his successor is appointed and duly qualified.

Note.—The marshal or his deputies may serve all process in the hands of the marshal or his deputies at the time of the resignation, removal, or death of the marshal. The marshal will be allowed credit in his account against the United States for services for which the United States is liable.

VACANCY IN OFFICE OF DISTRICT ATTORNEY AND MARSHAL—HOW FILLED TEMPORARILY.

Sec. 793. In case of a vacancy in the office of the district attorney or marshal within any circuit, the circuit justice of such circuit may fill the same, and the person appointed by him shall serve until an appointment is made by the President, and the appointee is duly qualified, and no longer. The appointment made by such justice shall be in writing, which shall be filed in the clerk’s office of the circuit court, and a copy thereof shall be entered upon the journal of said court. Any marshal so appointed shall give bond, as if appointed by the President, and the bond shall be approved by said justice. It shall then be filed in the clerk’s office of said court, and a copy shall be entered on the journal of the court. A certified copy of such entry shall be prima facie proof of the execution of such bond, and of the contents thereof.

1. A marshal serving under an ad interim appointment is entitled to the fees and emoluments of the office until he receives notice of the appointment and qualification of his successor. (Comptroller in re account of A. E. Baxter, June 26, 1895.)

OATH OF CLERKS.

Sec. 794. The clerk of the Supreme Court, and every clerk and deputy clerk of a circuit or district court, shall, before he enters upon the execution of his office, take an oath or affirmation in the following form: “I, A B, being appointed a clerk of ——— ———, do solemnly swear (or affirm) that I will truly and faithfully enter and record all the orders, decrees, judgments, and proceedings of the said court, and that I will faithfully and impartially discharge and perform all the duties of my said office, according to the best of my abilities and understanding. So help me God.” The words “so help me God” shall be omitted in all cases where an affirmation is admitted instead of an oath.

Note.—See section 1757.

BOND OF CLERK.

Sec. 795. The clerk of every court shall give bond in a sum to be fixed, and with sureties to be approved by the court which appoints him, faithfully to discharge the duties of his office, and seasonably to record the decrees, judgments, and determinations of the court of which he is clerk; and a new bond may be required whenever the court
deems it proper that such bond should be given. A copy of every bond given by a clerk shall be entered on the journal of the court for which he is appointed, and the bond shall be deposited for safe-keeping as the court may direct. A certified copy of such entry shall be prima-facie proof of the execution of such bond and of the contents thereof.

The act of February 22, 1875 (chap. 95, secs. 2 and 3), set out under section 846, post page—, provides that the official bond of the clerk shall not be less than $5,000 nor more than $20,000, as determined by the Attorney-General, and that he may require any clerk to give a bond not to exceed $40,000.

Note.—See act of March 2, 1895, set out under section 783.

BOND OF DEPUTY CLERK.

SEC. 796. Any circuit or district court may require any deputy clerk thereof to give bond to the United States for the faithful discharge of his duty as such deputy, in the same penalty, and with surety in the same manner, as is required by law of clerks; and such bond shall be recorded and preserved in like manner. But the taking of such bond shall not affect the legal responsibility of the clerk for the acts of such deputy.

FEES TO BE TAXED.

SEC. 823. The following and no other compensation shall be taxed and allowed to attorneys, solicitors, and proctors in the courts of the United States, to district attorneys, clerks of the circuit and district courts, marshals, commissioners, witnesses, jurors, and printers in the several States and Territories, except in cases otherwise expressly provided by law. But nothing herein shall be construed to prohibit attorneys, solicitors, and proctors from charging to and receiving from their clients, other than the Government, such reasonable compensation for their services, in addition to the taxable costs, as may be in accordance with general usage in their respective States, or may be agreed upon between the parties.

FEES OF ATTORNEYS, SOLICITORS, AND PROCTORS.

DOCKET FEE OF TWENTY DOLLARS.

SEC. 824. On a trial before a jury, in civil or criminal causes or before referees, or on a final hearing in equity or admiralty, a docket fee of twenty dollars: Provided, That in cases of admiralty and maritime jurisdiction, where the libellant recovers less than fifty dollars, the docket fee of his proctor shall be but ten dollars.

1. The Government is not liable for the fee of counsel assigned by the United States court to defend a criminal. (Nabb v. United States, 1 C. Cls., R. 173.)
2. Compromise.—The Government being the defendant in the Court of Claims, is at liberty to deal with the claimant's attorney pendente lite and settle the suit. The settlement must stand, and if any question exists it is between the attorney and his client. (Stowe's Case, 5 C. Cls. R., 362.)

3. In the case of Bliss v. United States, the attorney sued for fees withheld by the Government. Two suits were pending for internal-revenue taxes, which were dismissed at the defendant's cost. By consent a fee of $1,000 was taxed in one of said suits in favor of the district attorney, and a fee of $1,500 in the other suit, which fees, amounting to $2,500, were collected by said district attorney. The Comptroller refuses to pay an account presented by Bliss against the Government, and set off the amount against fees wrongfully collected and retained by said attorney. The court decided that the attorney was entitled only to the legal fees, and that all money received by him in excess of the fees fixed by law belonged to the United States, and could be treated as money received to the use of the Government. (37 Fed. Rep., 191.)

4. Where the jury fails to agree the district attorney is entitled to a docket fee of $20. (Hilborn v. United States, 27 C. Cls. R., 547.)

5. A district attorney is not entitled to a docket fee "in any suit or proceeding arising under the revenue laws." (Ibid.)

6. Where the Attorney-General directs a district attorney to appear on behalf of the Government in a suit in equity he is entitled to a fee of $20. (Ibid.)

7. The docket fee of $20, taxable upon a trial or final hearing, is taxable but once and then only upon that examination of the law of facts which results in the final disposition of the case. It is not taxable where the jury has disagreed. (Cleaver v. Traders' Ins. Co., 40 Fed. Rep., 863.)

8. The docket fee and fee for depositions "allowed to attorneys, solicitors, and proctors" cannot be taxed in favor of a party not an attorney who conducts his own cause. (Gorse v. Parker, 36 Fed. Rep., 840.)

9. Two or more trials.—In a suit at law there were three trials before a jury resulting upon the first trial in a verdict for the plaintiff, but followed upon the second and third trials in two separate verdicts for the defendant. Held, that the defendant's attorney was entitled to a docket fee of $20 for each of the three trials. (Justice Blatchford, in Schmieder v. Barney, 7 Fed. Rep., 451.)

10. The statute does not forbid the allowance of a docket fee on or for each trial before a jury, where there is a verdict, or on or for each final hearing in equity or admiralty, if there are two or more final hearings, such as are above defined in the above cause. (In each of these three cases there was a hearing and decree for plaintiffs, and afterwards, on application of defendants, the cases were reheard and bills dismissed—two docket fees of $20 each allowed in each case.) (Justice Blatchford, Wooster v. Handy, 23 Fed. Rep., 451.)

11. A docket fee of $20 is taxable for each jury trial and verdict. (Williams v. Morrison, 32 Fed Rep., 682.)

12. Bankruptcy.—This case is one in involuntary bankruptcy where the debtor resisted the adjudication. Under the amended general orders in bankruptcy no allowance out of the estate of the bankrupt can be made to the attorneys of the petitioning creditors for having the debtor adjudged a bankrupt, except the $20 docket fee taxable to the prevailing party in a suit in equity. (In re Lloyd, bankrupt, 7 Fed. Rep., 459.)

13. An attorney's fee of $20 is all that can be taxed as costs against the estate. (In re Lloy, bankrupt, 7 Fed. Rep., 459.)

14. The fees of attorneys for resisting an involuntary adjudication, and preparing the schedules, can not be proved as a debt against the bankrupt, unless the retainer was prior to the filing of the bankruptcy petition, nor can they be now allowed as costs against the estate. (In re Ward, 12 Fed. Rep., 325.)
15. Where in an equity case, before any decree is rendered, an order dismissing the bill with costs is obtained without notice to the defendant, or hearing or consideration of the case by the court, the solicitor's fee of $20 will not be allowed. (Coy v. Perkins, 13 Fed. Rep., 111.)

16. Where there was no hearing and no decision by the court no docket fee is provided by the statute in an equity case. (Yale Lock Manufacturing Co. v. Calvin, 14 Fed. Rep., 269.)

17. Admiralty.—Where a libel is filed against a tug for negligence, and a cross libel by the owner of the tug for services, and the libelant recovers his damages, less the value of the towage services, no mention being made of the cross libel in the decree, libelant's proctor is entitled to but one docket fee. (The W. B. Castle, 16 Fed. Rep., 927.)

18. Equity.—The fee bill is intended to regulate only those fees and costs which are strictly chargeable as between party and party, and does not regulate the fees of counsel and other charges and expenses, as solicitor and client, nor the power of a court of equity in cases of the administration of funds under its control to make such allowances to the parties out of the fund as justice and equity may require. (Louisiana State Lottery Co. v. Clark, 16 Fed. Rep., 20.)

19. Equity.—A hearing on demurrer is a final hearing, and a docket fee of $20 may be taxed. (Price v. Coleman, 22 Fed. Rep., 694.)

20. Admiralty.—The hearing of exceptions to a pleading in admiralty, where the exceptions are in the nature of a special demurrer, or a motion to make more definite and certain, is not such a final hearing in equity or admiralty under section 824 as to entitle a party to docket fee or costs. (The Anchoria, 23 Fed. Rep., 669.)

21. Equity.—To constitute a “final hearing in equity or admiralty” within the meaning of section 824 there must be a hearing of the cause on its merits; that is, a submission of it to the court in such shape as the parties choose to give it, with a view to a determination whether the plaintiff or libelant has made out the case stated by him in his bill as the ground for the permanent relief which his pleading seeks, on such proof as the parties place before the court, be the case one of pro confesso, or bill, or libel and answer, or pleadings alone or pleadings and proof. (Justice Blatchford, Wooster v. Handy, 23 Fed. Rep., 49; Mercartney v. Crittenden, 24 Fed. Rep., 401.)

22. Equity.—Where a demurrer to a bill in equity is overruled and defendant has leave to answer, the plaintiff is not entitled to tax a docket fee of $20, as upon a final hearing. (McLean v. Clark, 23 Fed. Rep., 861.)

23. Equity.—A docket fee can only be taxed upon a hearing which is final in fact and results in a disposition on the merits of the case. (Ibid.)

24. Equity.—No docket fee is taxable in a suit in equity voluntarily discontinued by the complainant before any hearing interlocutory or final. (Ozark Land Co. v. Leonard, 24 Fed. Rep., 658.)

25. Equity.—Where a case is remanded to the State court on the ground that the circuit court has no jurisdiction, the court may allow such attorney's fee as would ordinarily be allowed on the final disposition of the cause—$20 allowed. (Josslyn v. Phillips, 27 Fed. Rep., 481.)

26. Equity.—Where a suit had abated, after demurrer overruled and answer filed, by the death of the plaintiff, and subsequently there was granted a motion by defendant to dismiss for want of prosecution, held, that the attorney's docket fee of $20 was taxable under a decree awarding the defendant his costs. (Partee v. Thomas, 27 Fed. Rep., 429.)
27. *Equity.*—Where a settlement between parties to a suit stipulated that the complainants were not to be charged with the defendant’s costs or expenses, and the defendant’s attorney being present did not object, the subsequent filing of a cost bill against said complainants for defendant’s solicitor’s fees is a violation of the agreement. (Cahn v. Lung, 28 Fed. Rep., 396.)


29. The docket fee of $20 is taxable whenever a trial at common law is begun by the swearing of a jury, or by the introduction of testimony at the opening of argument upon a final hearing in admiralty or equity. This was a case where, after the evidence on both sides had been concluded, libelant discontinued his suit. (The Bay City, 3 Fed. Rep., 47.)

30. Where a vessel was in custody of the court under process issued against her, and the case was entered in the admiralty docket, a consent was given that the case be discontinued on payment of the amount claimed and libelant’s costs. *Held,* that the granting of a motion for an order discharging the vessel from custody and canceling stipulations was a final hearing under section 824, Revised Statutes, and the libelant was entitled to a docket fee. (The Alert, 15 Fed. Rep., 620.)

31. *Mistrial.*—In a case which had been twice tried to a jury and the jury had each time disagreed, and at a subsequent term the case was dismissed, *held,* that under section 824 an attorney’s docket fee of only $5 is taxable. (Strafer v. Carr, 6 Fed. Rep., 466.)

32. The phrase “trial before a jury” in said section applies only to cases in which a controversy is terminated by a verdict of a jury and a judgment thereon. (Ibid.)

33. Where there have been two trials of a cause, the first of which resulted in a disagreement of the jury and the second in a verdict for the defendant, but one docket fee of $20 will be allowed. (Huntress v. Town of Epsom, 15 Fed. Rep., 732.)

34. *Equity.*—Where a suit is dismissed for want of prosecution a docket fee to the defendant is not taxable. (Wigton v. Brainerd, 28 Fed. Rep., 29.)

35. *Equity.*—After the usual pleadings were filed and issue joined, the case noticed for final hearing, and called on the calendar, on complainant’s motion his bill was dismissed “with the usual costs to defendant.” *Held,* that the docket fee must be disallowed. (Ryan v. Gould, 32 Fed. Rep., 754.)


37. *Equity.*—A solicitor for an intervenor in an equity case, who prevails in such intervention, is not entitled to a docket fee of $20, under the provisions of section 824. Such a termination of the intervening cause is not a final hearing in equity. (Central Trust Co. v. W., St. L. and P. Ry. Co., 32 Fed. Rep., 634.)

38. *Equity.*—An intervenor who files his claim in a suit involving the operation of a railroad by a receiver, and receives payment for injuries received by such operation, is not entitled to a docket fee or fees for depositions taken in support of his claim. (M. P. Ry. Co. v. T. P. Ry. Co., 38 Fed Rep., 775.)

39. *Admiralty.*—Libelant obtained decree in district court. On appeal the circuit court rendered a decree in favor of libelant. *Held,* that an appeal in admiralty suspends the original decree, there is not final hearing until that in the appellate court, and that the docket fee of $20 in admiralty cases accrues in case of appeal in the circuit court, and should be charged but once. (The Lillie, 42 Fed. Rep., 179.)
FEES OF ATTORNEYS—DOCKET FEE OF TWENTY DOLLARS. 45

40. The taxable costs, as such, provided by sections 823 and 824, do not belong primarily to the attorney by force of any law. (Celluloid Manufacturing Co. v. Chandler, 27 Fed. Rep., 9.)

41. Before the passage of the act of February 26, 1853, of which sections 823 and 824 are a revision, costs were distinctly taxed and allowed in favor of the party obtaining judgment. (Act of 1793, chap. 20, sec. 4.) The purpose of the act of February 26, 1853, was to secure a uniform rule of taxation in the Federal courts, and there was no purpose to change the party in whose favor the allowance was made so as to take the costs from the party to the suit and give them to the attorney. (Ibid.)

42. The usage claimed that docket fees and fees allowed for travel and attendance should be taxed and treated by the solicitor or attorney as his own was not shown to prevail generally, but appeared from the evidence to be confined to a few States. (Ibid.)

43. Res adjudicata.—A decree by consent in an action brought by the Government taxing the district attorney's fee at a given sum is not conclusive that the district attorney is entitled to the amount taxed, as against the Government. (Bliss v. United States, 37 Fed. Rep., 191, and 38 Fed. Rep., 230.)

44. Excessive allowance.—Authority to settle the case on payment of a given sum and all costs is not authority to the district attorney to retain as against the Government the excess of his fees as taxed over the amount allowed to him by statute. (Ibid.)

45. Same.—By consenting to the taxation of a greater fee in favor of the district attorney than the statute allows the Commissioner of Internal Revenue can not preclude the Government from claiming the excess. (Ibid.)

46. Same.—The excess of fees taxed and received by the district attorney, over the amount allowed by statute, may be treated by the Government as moneys in his hands belonging to it. (Ibid.)

47. In a suit by the district attorney for compensation for other prosecutions the Government may set off such excess under the act of March 3, 1887, providing for bringing suits against the United States. (Ibid.)

48. Where several suits by the same firm against different insurance companies are, by agreement, submitted to referees to fix the value of the property destroyed, and to render a final award, and the referees give judgment against the insurance companies for a certain amount and costs, it is proper to allow as costs an attorney's fee of $20 in each of the original cases. (Switzer v. Home Ins. Co., 46 Fed. Rep., 50.)

49. A district attorney is entitled to a docket fee of $20 for a trial before a jury, although the jury fails to agree in a verdict. (Van Hoorebeke v. United States, 46 Fed. Rep., 456.)

50. When a demurrer to a bill in equity is sustained a docket fee of $20 is taxable in favor of the defendant. (Greener v. Steinway, 48 Fed. Rep., 708.)

51. If, after a decree refusing a preliminary injunction, the plaintiff dismisses the bill, the docket fee of $20 upon final hearing is taxable for the solicitor of the prevailing party. (L. and N. R. R. Co. v. Merchants' Compress and Storage Co., 50 Fed. Rep., 449.)

52. Admiralty.—On an appeal in admiralty from the district to the circuit court, where the cause is heard on proof and decided, one docket fee of $20 to the proctor, and only one, is taxable. (Dedekam v. Vose, 3 Blatchf., 77.)

53. Admiralty.—An appeal in admiralty was dismissed with costs, for irregularity. Docket fee of $20 taxable. (Hayford v. Griffith, 3 Blatchf., 79.)

54. Admiralty.—The docket fee of $20 can be taxed only on a final hearing, and can be taxed but once in a cause. (Dedekam v. Vose, 3 Blatchf., 153.)
55. Equity.—Neither a docket fee nor any item of costs is taxable, on a reference to a collector, in a suit to recover back an excess of duties, to adjust the amount of the recovery, nor are any costs taxable for such adjustment. (Field v. Schell, 4 Blatchf., 435.)

56. A docket fee of $20 is the highest compensation allowed to a solicitor in a cause, and it can be allowed only once. (Troy Iron and Nail Factory v. Corning, 7 Blatchf., 16.)

57. Equity.—A docket fee of $20 is not taxable in a suit in equity which is dismissed for want of prosecution. (Vigton v. Brainard, 24 Blatchf., 18.)

58. Where services of counsel are rendered for the benefit of a special fund of a class of creditors, and in opposition to the interests of the general creditors, a counsel fee will not be allowed out of the general fund in excess of the statutory allowance of $20. (In re Hope Mining Co., 2 Saw., 351.)

59. To constitute a final hearing in equity or admiralty there must be a hearing of the cause on its merits, that is, a submission of it to the court in such shape as the parties choose to give it, with a view to a determination whether the plaintiff or libellant has made out the case stated by him in his bill or libel on the ground for the permanent relief which his pleading seeks, on such proof as the parties place before the court, be the case one of pro confesso on bill or libel and answer, or pleadings alone, or pleadings and proof. (Mercartney v. Crittenden, 11 Saw., 113.)

60. Where a settlement between parties to a suit stipulated that the complainants were not to be charged with defendant's costs or expenses, and the defendant's attorney being present did not object, the subsequent filing of a cost bill against said complainants for defendant's solicitors' fees is a violation of the agreement. (Cahn v. Lung, 12 Saw., 92.)

61. To authorize a fee of $20, there must be an issue of fact to be passed upon by a jury after testimony taken; a mere formal verdict rendered on a plea of guilty does not constitute "a trial before a jury." (Attorney-General Devens.)

62. Upon the affirmance of a judgment with costs, by the circuit court of appeals, an attorney's fee of $20 is taxable, as this is the uniform practice of the Supreme Court, under a rule identical with that of the circuit court of appeals (Sup. Ct. Rule 24, subd. 2, 3, Sup. Ct. XIII; Cir. Ct. App., Rule 31, subd. 2, 47 Fed., XIII), and as the act creating the latter court declares that the costs and fees in the Supreme Court now provided for by law shall be costs and fees in the circuit courts of appeals. (K. C., F. S. and M. R. R. Co. v. McDonald, 60 Fed. Rep., 522.)

63. A reasonable attorney's fee is properly taxable as costs in contempt proceedings. (Stahl v. Ertel, 62 Fed. Rep., 920.)

64. The amount of an allowance for counsel fees is, necessarily, to a great extent within the sound discretion of the trial court. (So. Cal. Motor Road Co. v. Union Loan and Trust Co. (C. C. A.), 64 Fed. Rep., 450.)


66. A district attorney is entitled only to the regular fees, under sections 823 and 824, for services in a suit in the United States court, for the Marine Hospital. (Comptroller to the Secretary in re claim of Watson, June 5, 1895.)

Note.—The account must show, in each case, that there was a jury trial and verdict, or that there was a final hearing in equity or admiralty.
Docket Fee of Ten Dollars.

Par. 2. In cases at law, when judgment is rendered without a jury, ten dollars.

1. An order remitting a case from the circuit court to the district court on motion of the district attorney is not a judgment within the meaning of section 824, prescribing the fee of a district attorney in such cases. (Stanton v. United States, 37 Fed. Rep., 252.)

2. A district attorney is not entitled to a fee of $10 for obtaining warrants for the removal of prisoners arrested in one district and triable in another. (Bird v. United States, 45 Fed. Rep., 110.)

3. An attachment for contempt in which a district attorney properly and necessarily appears for the Government is an independent suit, in which he is entitled to his statutory fee. (Van Hoorebeke v. United States, 46 Fed. Rep., 456.)

4. For services in a suit by an ex-district attorney against the United States for fees alleged to have been earned, the district attorney is entitled to a fee of $10. (Bashaw v. United States, 47 Fed. Rep., 40.)

5. For services performed by a district attorney in bringing a suit against a national bank and obtaining a forfeiture of its charter he is not entitled to more than $10, the fee prescribed by section 824, Revised Statutes, there being no other law of the United States giving a compensation to a district attorney for such services. (Bashaw v. United States, 47 Fed. Rep., 40.)

6. A district attorney is entitled to a docket fee of $10, under paragraph 2 of section 824, Revised Statutes, for his services in Chinese cases heard by the district court on appeal from a United States commissioner under section 13 of the act of September 13, 1888 (25 Stat., 476). (Comp. in re account of W. A. Poucher, Jan. 16, 1895.)

Note.—The account must show that there was a trial and judgment, and that the case has been finally disposed of.

Docket Fee of Five Dollars.

Par. 3. In cases at law, when the cause is discontinued, five dollars.

1. A district attorney is not entitled to a docket fee for discontinuing a case before a commissioner. All services before a commissioner are payable under a per diem clause. (Stanton v. United States, 37 Fed. Rep., 252.)

2. Where the accused is bound over by the commissioner to the court, and the commissioner’s record is sent to the court and docketed, a fee is recoverable for a discontinuance, although no information has been filed. (Ibid.)

3. Where the commissioner’s record and bail bond are returned to court, and an indictment is drawn, but the grand jury find “not a true bill,” a fee is recoverable for a discontinuance. (Ibid.)

4. For services rendered by a district attorney in securing a compromise of a civil suit brought in favor of the United States, whereby the suit is dismissed without trial, he is only entitled to a docket fee of $5. (Ibid.)

Note.—No docket fee is allowed where the defendant is held by the commissioner and the case dismissed by the court, nor where indictment is ignored. No docket fee is allowed in any case for services before a commissioner.
FEES OF ATTORNEYS—SCIRE FACIAS—DEPOSITIONS.

DOCKET FEE IN SCIRE FACIAS CASES.

PAR. 4. For scire facias and other proceedings on recognizances, five dollars.

Note:—This fee of $5 covers all compensation to which an attorney is entitled for services in a case of this nature. In no case is a fee of $10 or $20 taxable for scire facias or other proceedings on recognizance. The fee is taxable only on the final disposition of the cause.

FEE FOR TAKING DEPOSITIONS.

PAR. 5. For each deposition taken and admitted in evidence in a cause, two dollars and fifty cents.

1. The Revised Statutes, 824, authorizing solicitor’s fee of $2.50 for each deposition taken in a cause, does not apply to depositions taken in other suits in which the complainant is a party, and used by agreement in a suit against different defendants. (Carey v. Lovell Man. Co., 39 Fed. Rep., 163.)

2. Section 824 allowing solicitors $2.50 for “each deposition taken and admitted in evidence in a cause” includes as well depositions taken in the ordinary way under equity rule 67 as those taken otherwise. (Overruling Tuck v. Olds, 29 Fed. Rep., 883; Ingham v. Pierce, 37 Fed. Rep., 647.)

3. Under section 824 the prevailing party is entitled to collect for his attorney a fee of $2.50 for the deposition of each witness “taken and admitted in evidence,” to be taxed as costs. (Broyles v. Buck, 37 Fed. Rep., 137.)

4. Such fees are allowed to the party as compensation for his attorney’s services in and about the depositions, and are to be taxed in addition to the fees of commissioners to take testimony. (Ibid.)

5. When counsel, for their mutual convenience, agree that depositions taken in a suit in a State court between the same parties may be read on the trial of a cause in this court, the attorney of the prevailing party is entitled to tax the fee of $2.50 for each deposition admitted in evidence as if it had been taken in this court. (Jerman v. Stewart, Gwynn & Co., 12 Fed. Rep., 271.)

6. Where, after issue joined by the pleadings, the case is referred to a commissioner under admiralty rule 19 to take testimony, and the depositions are returned to the court, and used by the court as evidence in deciding the cause, the clerk may tax as costs to the prevailing party $2.50 for each one. (The Sallie P. Linderman, 22 Fed. Rep., 557.)

7. No attorney’s fee (of $2.50 each) for examination of witnesses called before a master or special examiner are taxable as costs. (In re Strauss v. Meyer, 22 Fed. Rep., 467.)

8. Where, on the hearing of one of several suits, heard at the same time, brought by the same plaintiff against different defendants, for the infringement of the same patent, depositions taken in others of said suits are admitted in evidence by virtue of a stipulation that all the evidence taken for the final hearing on both sides, in the other suits, may be read on the final hearing herein, with the same force and effect as if taken herein, a solicitor’s fee of $2.50 for each deposition in each one of the cases is not taxable. (Justice Blatchford in Wooster v. Handy, 23 Fed. Rep., 49; see also 24 Fed. Rep., 401.)

9. The traveling expenses of attorneys to take evidence and attend court, and the expenses of messengers, are no part of the taxable costs. Such expenses were never taxable before or since the act of 1853. (Ibid.)
10. Where the deposition of the witness was taken and entitled in several suits, he being sworn in each, but his deposition was written down only once, and there was no agreement that the solicitor's fee should be taxed but once for the group of cases, such fee is taxable for the deposition in each case. (Ibid.)

11. Where a suit is voluntarily dismissed by the complainant, without a submission or hearing, on a settlement of the case at complainant's cost, with consent of the defendant, and the attorneys of both parties, the solicitor's fees for taking depositions are not allowable under sections 823 and 824. (Cahn v. Lung, 28 Fed. Rep., 396.)

12. Where depositions are taken in one equity cause, and afterwards by stipulation used in the same and also in other causes, but one solicitor's fee can be taxed therefor, and that in the suit where such depositions were originally taken. (American Diamond Rock Boring Co. v. Sheldon, 28 Fed. Rep., 217.)

13. Costs are not taxable for depositions taken for use upon an accounting before a master and in contempt proceedings, as for depositions for the final hearing, notwithstanding they were referred to upon a motion for rehearing, which resulted in a dismissal of the bill, as upon a final hearing. (Spill v. Celluloid Manufacturing Co., 28 Fed. Rep., 870.)

14. When the plaintiff is nonsuited upon the statement of his case by his attorney, the defendant is not entitled in the taxation of costs to include a charge for depositions taken against him by plaintiff, as the depositions are not in such case admitted in evidence. (Cahn v. Monroe, 29 Fed. Rep., 675.)

15. Attorneys' fees for depositions taken in a former case, on behalf of plaintiff in the former suit, and by stipulation of attorneys read upon the trial of a later suit in which the former plaintiff is defendant, at suit of another plaintiff, can not be taxed as costs by plaintiff in the latter suit, he having incurred no liability in procuring said depositions. A deposition when taken is common property, and may be used by either party. (Winegar v. Cahn, 29 Fed. Rep., 676.)

16. Revised Statutes, 824, does not apply to depositions taken before any of the regular examining officers of the court in the ordinary way of taking depositions, or before some person agreed on by the parties to act as examiner, but applies only to depositions taken de bene esse, and in such other cases not within the scope of the ordinary method of taking testimony in the cases pending in the Federal courts, as may arise. (Tuck v. Olds, 29 Fed. Rep., 883.)

17. Intervenor.—The intervenor is not entitled to recover a fee of $2.50 for each deposition taken and admitted in evidence. (Central Trust Co. v. W., St. L. and P. Ry. Co., 32 Fed. Rep., 694.)

18. Section 824 does not apply to depositions taken before a commissioner to distribute the proceeds from the sale of a vessel in the registry of a court of admiralty. (Dalzell's Sons & Co. v. The Daniel Kaine, 31 Fed. Rep., 746.)

19. Under section 824, where a deposition, though written out but once, was taken by consent to be read in two cases, entitled as of both, so filed and admitted in evidence on the joint trials of the same, held, that a taxation of the $2.50 docket fee for such deposition in favor of the party prevailing in each suit is authorized, no agreement to the contrary having been entered into. (Archer v. Hartford Fire Ins. Co., 31 Fed. Rep., 660.)


21. Where a deposition was taken and used in the district court and then read on appeal in the circuit court from the apostles, a fee of $2.50 for reading the deposition in the circuit court is not taxable. Such fee is taxable only on a new deposition taken in the circuit court. (Dekeman v. Vose, 3 Blatchf., 77.)
22. The item of $2.50 allowed as costs for each deposition taken and admitted as evidence in a cause is not taxable in an equity suit, except for the deposition admitted on a final hearing. (Stimpson v. Brook, 3 Blatchf., 456; Troy Iron and Nail Factory v. Corning, 7 Blatchf., 16.)

23. A deposition is evidence given by a witness under interrogatories, oral or written, and usually written down by an official person; while an affidavit is the mere voluntary act of the party making the oath. (Dekeman v. Vose, 3 Blatchf., 456.)

24. A fee of $2.50 for each deposition taken and admitted in evidence is taxable, and it is immaterial before what officer such deposition was taken. (Ferguson v. Dent, 46 Fed. Rep., 88.)

25. Where a suit is voluntarily dismissed by the complainant, without a submission or hearing, on a settlement of the case at complainant's costs, with consent of defendant and the attorneys of both parties, the solicitor's fees for taking depositions are not allowable. (Cahn v. Lung, 12 Saw., 92.)

Note.—The account of the attorney must show the name of each witness in the case in whose behalf the deposition was taken and that it was admitted in evidence.

DOCKET FEE IN CASES REMOVED.

Par. 6. For services rendered in cases removed from a district to a circuit court by writ of error or appeal, five dollars.

Note.—The attorney is allowed a fee of $5 for services in the circuit court in this case. In cases appealed from the district to the supreme court of a Territory the district attorney is allowed $5 for his services in the supreme court.

PER DIEM FOR EXAMINATION BEFORE COMMISSIONER.

Par. 7. For examination by a district attorney, before a judge or commissioner, of persons charged with crime, five dollars a day for the time necessarily employed.

1. A district attorney is entitled to charge a per diem for services before a commissioner upon the same day that he is allowed a per diem for attendance upon the court. (United States v. Erwin, 147 U. S., 685.)

2. The district attorney is entitled to his per diem for the time necessarily spent in the investigation of an offense, in cooperation with the commissioner before the arrest is made and the witnesses sworn. (Stanton v. United States, 37 Fed. Rep., 252; but see Patterson v. United States, 150 U. S., 65, where it is decided that a commissioner is not entitled to a per diem for this service.)

3. The district attorney is entitled to compensation for the time actually and necessarily spent before the commissioner upon the arraignment, though no witnesses are examined, the magistrate having adjourned the hearing upon motion of the accused. (Ibid.)

4. The district attorney is entitled to per diem for the actual examination of the accused upon an application to take the poor convict's oath. (Ibid.)

5. A district attorney who is upon attendance upon a Federal court, and also upon the same day conducts the examination before a commissioner of a person charged with crime, is entitled to only one per diem fee for the day. (Baxter v. United States, Cir. Ct. Apps., 51 Fed. Rep., 671.)
6. A district attorney is to be paid by the day and not by the case for services in the examination of persons charged with crime. (Opinion of Oct. 25, 1858, 9 Op., 242.)

7. He is to be paid his per diem for services before any judicial officer. (Ibid.)

8. A district attorney is entitled to be paid his per diem for services before a person acting as a United States commissioner, although he had not been legally appointed. (Opinion of Nov. 2, 1858, 9 Op., 251.)

9. A district attorney is not entitled to per diem fees for the attendance of his assistant before a court or commissioner; such per diem fees can only be earned by his personal attendance. (Comp. in re appeal of W. A. Poucher, June 19, 1895.)

10. When the court is held at a place other than that of the residence of the district attorney he is entitled to per diem fees for the days upon which he personally attended only and not for every day of the term. (Comp. in re appeal of W. A. Poucher, June 19, 1895.)

11. A district attorney, for examinations before commissioners of persons charged with crimes, is entitled to but one per diem on any one day, without regard to the number of cases in which he appears either before the same or different commissioners. (Dec. First Comp., Feb. 15, 1894.)

Note.—A per diem is allowed for attendance before a commissioner on the same day that a per diem has been charged for attendance on the circuit or district court. Only one fee of $5 will be allowed for appearing before a commissioner on any one day, although two or more cases may have been prosecuted by him before two or more different commissioners on the same day. Where the attorney appears to prosecute a person charged with crime and also to represent the Government on the application of a poor convict for discharge on the same day he is allowed only one per diem.

PER DIEM FOR ATTENDANCE ON COURT.

Par. 8. For each day of his necessary attendance in a court of the United States on the business of the United States, when the court is held at the place of his abode, five dollars; and for his attendance when the court is held elsewhere, five dollars for each day of the term.

The act of March 3, 1887 (Stat. L., vol. 24, p. 541), provides that “hereafter no part of any money appropriated shall be used in payment of a per diem compensation to any attorney, clerk or marshal, for attendance in court except for days when the court is open by the judge for business or business is actually transacted in court, and when they attend under sections five hundred and eighty-three, five hundred and eighty-four, six hundred and seventy-one, six hundred and seventy-two, and two thousand and thirteen of the Revised Statutes, which facts shall be certified in the approval of their accounts.”

1. A district attorney has no right to charge a per diem for attendance at court when he did not personally attend. (Townsend v. United States, 22 C. Cls. R., 207.)

2. A district attorney's fee of $5 for attendance at court or at examinations before a judge or commissioner is not a reimbursement for personal expenses, and is included in the emoluments of office. (Smith v. United States, 26 C. Cls. R., 568.)
3. A district attorney is not entitled to a per diem for attendance on court and also before a commissioner on the same day. (Stanton v. United States, 37 Fed. Rep., 252; but see decision of the Supreme Court in United States v. Erwin, 147 U. S., 685, quoted under paragraph 7.)

4. He is entitled to a per diem for attendance before a commissioner on the application of a poor convict for discharge. (Bird v. United States, 45 Fed. Rep., 110.)

5. He is entitled to a per diem for attendance before a commissioner on days when recognizances are taken, though no witnesses are examined. (Ibid.)

6. The per diem allowed a district attorney attending court elsewhere than at the place of his abode, in the discharge of his official duties, cannot be paid to him for Sundays or legal holidays occurring during the term of court, because prohibited by the proviso to the appropriation act of March 3, 1887, which to that extent amends section 824. (United States v. Perry, Cir. Ct. App., 50 Fed. Rep., 743.)

7. No district attorney can receive on any one day more than one per diem for the services of that day. (9 Op., 292.)

8. When the district attorney and his substitute are both necessarily employed in different courts on the same day, they are each entitled to a per diem allowance of $5. (Opinion of Dec. 11, 1860, 9 Op., 526.)

NOTE.—Per diem will only be allowed for days when the court was open for the transaction of business or business was actually transacted in court. When the court is held at a place other than the residence of the attorney, he will be allowed per diem for each day he actually attends the court. When the court is held at the place of the residence of the attorney, per diem will be allowed only for each day of his necessary attendance on business of the United States. The attorney must be personally present in court to entitle him to a per diem. He is not allowed per diem for the attendance of his assistant. This rule does not apply in Utah, where the attorney is entitled to a per diem for each day of the necessary attendance by an assistant United States attorney when the attorney is not present.

MILEAGE.

PAR. 9. For traveling from the place of his abode to the place of holding any court of the United States in his district, or to the place of any examination before a judge or commissioner, of a person charged with crime, ten cents a mile for going and ten cents a mile for returning.

1. A district attorney is not entitled to mileage for going home on Sunday and again returning to attend court on the following day. (United States v. Shields, 153 U. S., 88.)

2. A district attorney has no right to charge for mileage when he did not personally travel. He can not charge for travel of his assistant. (Townsend v. United States, 22 C. Cis. R., 207.)

3. There is no law by which a district attorney who has paid the expenses of his assistant can be reimbursed. (Ibid.)

4. Mileage does not come within the meaning of the words "fees and emoluments." (Rev. Stat., 833.) Mileage is a commutation or substitute for expenses of travel; it is a reimbursement at a fixed rate. (Smith v. United States, 26 C. Cis. R., 568.)
5. When a district attorney actually and necessarily travels from the place of his abode to the place of an examination before a commissioner of a person charged with crime, in the discharge of his official duty, he is entitled to mileage for such travel, notwithstanding such place of examination is at the headquarters of such district attorney. (United States v. Perry, Cir. Ct. Apps., 50 Fed. Rep., 743.)

6. When a district attorney goes from a place where he is engaged at the district court to a place where he is officially called to appear before a commissioner he is entitled to mileage for the distance so traveled when such distance is less than that from his home to the place where the commissioner sits. (Van Hooerebeke v. United States, 46 Fed. Rep., 456.)

7. A district attorney is entitled to mileage from the place of his abode to the place of any examination before a commissioner of a person charged with crime in any case where in his judgment it was necessary for him to attend, and he did actually attend such examination. (United States v. Perry, Cir. Ct. Apps., 50 Fed. Rep., 743.)

8. He is entitled to mileage by the most convenient and practicable routes, though not the shortest routes. (Ibid.)

9. He is not entitled to mileage for going to and returning from his home during an adjournment over Sunday. (Ibid.)

10. L., a United States district attorney, claims mileage for two trips from his place of residence to the place of holding court to attend a continuous session of the court covering the end of one term, the last day of which was March 5, and the beginning of a new term, the first day of which was March 6, the first of said mileages having been allowed. Held, that the claim for mileage for the second trip cannot be allowed because the travel claimed was not "actually and necessarily performed" within the meaning of section 7 of the act of February 22, 1875 (18 Stat., 334), under the decision in United States v. Shields (153 U. S., 88), that more than one mileage could not be allowed for a continuous session of the court. (Comp. in re account of A. P. Lyon, Aug. 25, 1894.)

11. A district attorney is entitled to travel by the usually traveled route, although such route be not actually the shortest. (Comp. in re appeal of W. A. Poucher, June 19, 1895.)

12. A district attorney is usually entitled to mileage for travel of himself or an assistant to attend an examination before a commissioner at a point where another assistant lives in all cases where he deems such action necessary. (Comp. in re appeal of W. A. Poucher, June 19, 1895.)

13. Mileage is a reimbursement of expense and not a fee to be accounted for in the emolument return (United States v. Smith, in Supreme Court, May 20, 1895)

14. Mileage is not a fee and is not doubled by act of July 31, 1894. (28 Stat. 204) and Section 840 R. S. (Comp. in re account of C. E. Mellette, June 15, 1895).

SPECIAL COUNSEL FEE.

PAR. 10. When an indictment for crime is tried before a jury and a conviction is had, the district attorney may be allowed, in addition to the attorney's fees herein provided, a counsel fee, in proportion to the importance and difficulty of the cause, not exceeding thirty dollars.

1. The amount of counsel fee to be allowed to a district attorney under Revised Statutes, 824, is discretionary with the court, within the limits of the statute, and the action of the court in this respect is not subject to review by the Attorney-General or by the accounting officers of the Treasury. (Waters v.

2. The provisions of 26 Statutes, 947; 27 Statutes, 223, 714; Revised Statutes, 837, and Supplement Revised Statutes, 767, section 16, that district attorneys for Montana shall for services receive double fees, applies to counsel fee not exceeding $30, which section 824 provides may be allowed, in addition to the regular fee, when a conviction is had in a criminal case before a jury. (Weed v. United States, 65 Fed. Rep., 399.)

NOTE.—The account must show indictment and conviction, and must be supported by a copy of the order of the court allowing the counsel fee. The order allowing counsel fee should be embodied in the general order approving the account.

TWO PER CENTUM TO DISTRICT ATTORNEYS.

SEC. 825. There shall be taxed and paid to every district attorney two per centum upon all moneys collected or realized in any suit or proceeding arising under the revenue laws, and conducted by him in which the United States is a party, which shall be in lieu of all costs and fees in such proceedings.

1. A suit against a surety upon a collector's bond to recover moneys due for customs duties is a suit "arising under the revenue laws," and the district attorney is entitled to 2 per cent on the recovery. (Beckwith v. United States, 16 C. Cls. R., 250.)

2. Where a district attorney prosecutes a suit arising under the revenue laws to judgment, and the judgment is satisfied by deducting the amount thereof from a judgment recovered against the United States, he is entitled to his per cent. (Ibid.)

3. For prosecuting an action for the enforcement of the statutory lien for internal-revenue taxes the district attorney is entitled to 2 per cent of the amount collected or realized as provided by section 825. (Bliss v. United States, 37 Fed. Rep., 191.)

4. Where a proceeding in rem under the internal-revenue laws is directed to be discontinued on the payment by the claimant of the legal costs which have accrued, the district attorney is not entitled to charge, under the eleventh section of the act of March 3, 1863, chapter 76, 2 per cent on the value of the property. (Opinion of Sept. 1, 1865, 11 Op., 329.)

5. A district attorney can not be allowed to retain 2 per cent of any moneys realized in a suit under the revenue laws without a previous taxation of his account by the court. (Opinion of Nov. 10, 1865, 11 Op., 393.)

6. District attorneys are entitled to a commission upon the "tax" required to be paid by the purchasers of forfeited property sold in pursuance of section 3334, Revised Statutes. (Opinion of July 1, 1876, 15 Op., 566.)

7. Fees of district attorneys in the class of customs cases referred to in section 825, Revised Statutes, are exclusively provided for therein, and where no amount is collected no fee can be charged under section 824. (Dec. of Comp. in re Macfarlane, Nov. 5, 1894.)

NOTE.—The commission is allowed only when the money has been actually collected and paid into the Treasury or into the registry of the court. Where this commission is allowed no docket fee or fee for depositions is allowed.
DISTRICT ATTORNEYS' FEES ON BOND.

SEC. 826. No fee shall accrue to any district attorney on any bond left with him for collection, or in a suit commenced on any bond for the renewal of which provision is made by law, unless the party neglects to apply for such renewal for more than twenty days after the maturity of the bond.

COMPENSATION IN SUITS AGAINST OFFICERS OF THE REVENUE.

SEC. 827. When a district attorney appears by direction of the Secretary or Solicitor of the Treasury, on behalf of any officer of the revenue in any suit against such officer, for any act done by him, or for the recovery of any money received by him and paid into the Treasury in the performance of his official duty, he shall receive such compensation as may be certified to be proper by the court in which the suit is brought, and approved by the Secretary of the Treasury.

1. In determining the allowance which a district attorney should receive, under section 827, as compensation for appearing by direction of the Secretary of the Treasury, or of the Solicitor of the Treasury, in suits against officers of the United States for acts done by them or for the recovery of money received by them and paid into the Treasury, the Secretary of the Treasury may, in his discretion, properly consider what compensation such attorney otherwise annually receives from the Government, and limit the amount to be received by him for the services mentioned, including what he thus otherwise receives, to a sum not exceeding $10,000 per annum. (Opinion of May 18, 1877, 15 Op., 277.)

2. The district attorney for the southern district of New York may be allowed his fees and costs for defending the collector at the port of New York in cases in the State courts for the repayment of duties in addition to the maximum allowance mentioned in the act of May 18, 1842, chapter 29, as the judicial department has thus decided in two several cases, in which the United States have acquiesced. (Opinion of Dec. 15, 1843, 4 Op., 294.)

3. Section 827 makes the compensation of district attorneys for the class of services mentioned in that statute dependent upon the approval of the Secretary. (17 Op., 479.)

4. It is not the duty of a United States attorney to advise or defend boards of immigration, but the Secretary of the Treasury is empowered by the act of August 3, 1882, chapter 376, to employ and pay out of the immigrant fund counsel for those purposes. (18 Op., 108.)

5. Suit against the Secretary of the Treasury for cotton seized by order of the Secretary. The district attorney, for defending the Secretary, may be allowed special compensation under section 827. (18 Op., 121.)

6. The district attorney may be allowed special compensation for defending Postmaster James in the Yale lock suits. (Ibid.)

7. The statutes which fix the salary and fees for official services do not regulate in any way the payment for unofficial services rendered. Of this character are the services rendered by virtue of section 827. (18 Op., 192.)

8. When a United States attorney appears in cases mentioned in section 827 a proper and reasonable allowance for his services in such cases may be made to him by the Secretary of the Treasury. The allowance so made the district attorney at New York is in addition to the annual salary provided by section 770 for the ordinary official services of the district attorney. (19 Op., 354.)
9. A United States attorney appearing on behalf of the Government in suits brought under Section 15 of the act of June 10, 1890 (26 Stat., 138), is not entitled to compensation under Sec. 827, R. S. (20 Op. Atty. Genl., 228; Comp. in re claim of Harlan Cleveland, June 26, 1895).

NOTE.—This account must be sworn to by the attorney and approved by the court and by the Secretary of the Treasury.

DEED TO PROPERTY PURCHASED BY UNITED STATES.

Act of March 1, 1879 (chap. 125, sec. 3, 20 Stat., 332):

And it is hereby provided, That all certificates of purchase, and deeds of property purchased by the United States under the internal-revenue laws, on sales for taxes, or under executions issued from United States courts, which now are, or hereafter may be, found in the office of any collector, United States marshal, or United States district attorney, shall be immediately transmitted by such officers respectively to the Commissioner of Internal Revenue.

And it is hereby further provided, That for the preparation and approval by the United States district attorney of each deed as above required, a fee of five dollars shall be allowed to that officer, to be paid by the United States, and which he shall account for in his emolument returns.

CLERKS' FEES.

ISSUING SUMMONS, CAPIAS, ETC.

Sec. 828. For issuing and entering every process, commission, summons, capias, execution, warrant, attachment, or other writ, except a writ of venire, or a summons or subpoena for a witness, one dollar.

1. A certified copy of the record of a sentence to imprisonment is sufficient to authorize the detention of the prisoner, without any warrant or mittimus. (Ex parte Wilson, 114 U. S., 417.)

2. Precip for mittimus after sentence is not necessary. (United States v. Van Duzee, 140 U. S., 169.)

3. The court disallows charge for issuing commitments to jail, in addition to copy of order of removal, as being too indefinite. (United States v. Taylor, 147 U. S., 695.)

4. No fee is authorized for issuing precepts to a marshal to summon juries. (Martin v. United States, 26 C. Cls. R., 160.)

5. The issuing of more than one capias for the arrest of parties included in one indictment is justifiable, if necessary, as where they live in different localities separate writs were issued by order of the court. (Ibid.)

6. A clerk has no authority in the absence of statutory regulations to issue execution without direction of the plaintiff or his attorney. (Wills v. Chandler, 2 Fed. Rep., 273.)

7. In the United States courts a summons must issue from the court and be signed by the clerk, and sealed with the seal of the court. (Dwight v. Merritt, 4 Fed Rep., 614.)

8. The clerk is entitled to fees for issuing writs of commitment to jail to await trial. (Erwin v. United States, 37 Fed. Rep., 470.)

9. He is entitled to fee for affixing seal to copies of writs of commitment. (Ibid.)
10. He is entitled to fees for making certified copies of warrants of commitment for jailer. (Ibid.)

11. Under the Code of Alabama, sections 4434 and 4869, in scire facias on forfeited appearance bond in criminal cases a separate notice must issue to each obligor. This is in the nature of a writ and to be paid for by the United States. The usual mode of service is by leaving a copy of the scire facias with the defendant. (Jones v. United States, 39 Fed. Rep., 410.)

12. The clerk is entitled to fee for issuing precipe to jury commissioner. (Goodrich v. United States, 47 Fed. Rep., 267.)

13. Under section 1030 a warrant is not necessary to authorize a marshal to bring a prisoner confined at Sioux City to Fort Dodge for trial, and the clerk is not entitled to a fee for issuing the same. (Van Duzee v. United States, 48 Fed. Rep., 643; affirmed by the Cir. Ct. Apps., 52 Fed. Rep., 330.)

14. When a prisoner is ordered to be confined until his fine is paid the clerk is entitled to fee for mittimus, entering return and filing same. (Ibid.)

15. Where several defendants are jointly indicted for conspiracy, the Department erred in refusing payment of the charges of the clerk for capias writs for their arrest, on the ground that a separate writ was issued against each defendant under the practice of the court. (Clough v. United States, 55 Fed. Rep., 921.)

16. The clerk is entitled to $1 for issuing each commission to a supervisor of elections. (Ibid.)

17. The clerk is entitled to fees for issuing, entering, and filing returns of four separate commitments when four separate bench warrants are issued for the four defendants and each defendant is committed to jail by a different deputy marshal on the same day. (Fuller v. United States, 58 Fed. Rep., 329.)

18. Where an indictment or information is of more than a year's standing no further alias or pluries capias should issue when there is no fair probability of arrest, except on order of the district attorney. (Register Dept. Justice, 1886, p. 258.)

19. After one execution has been returned nulla bona no alias should issue except when ordered by the district attorney. (Ibid.)

**Note:**—When there are two or more defendants in the same case only one warrant of arrest capias or mittimus will be allowed, unless it is clearly shown that separate writs were necessary. Only one writ will be allowed where there are two or more cases against the same person. No fee is allowed for praecipe to jury commissioner. No fee is allowed for seal to writ.

**ISSUING SUBPOENAS.**

**Par. 2.** For issuing a writ of summons or subpoena, twenty-five cents.

1. When there is a rule of court that the clerk in issuing subpoenas in criminal cases shall make copies to be left with witness he is entitled to compensation for such copies. (United States v. Van Duzee, 140 U. S., 169.)

2. A clerk in Virginia is entitled to fees for copies of subpoenas for service, but not for attaching to the copies certificates under seal. (Martin v. United States, 26 C. Cls. R., 160.)

3. Every subpoena in criminal cases for witnesses for the United States must contain the names of all witnesses in the same case who reside in the same locality and can be conveniently embraced in it; this in order to avoid unnecessary expense, as provided in section 829. (United States v. Ralston, 17 Fed. Rep., 895.)
4. Witnesses for the United States must be summoned to testify not only in the case in which the subpoena is entitled, but generally for the United States. See sec. 877 (Ibid.)

5. The clerk is entitled to a fee for making a copy of the subpoena for service on each witness. (Erwin v. United States, 37 Fed. Rep., 470.)

6. The rule is that there should be but one subpoena issued for all the witnesses in a case, but this rule is subject to exceptions. The clerk may issue separate subpoenas for witnesses in criminal cases when necessary to secure their immediate attendance. (Erwin v. United States, 39 Fed. Rep., 410.)

7. Where a rule of the court requires the clerk to make copies of the subpoenas to be left with witnesses he is entitled to fees for such copies. (Van Duzee v. United States, 41 Fed. Rep., 571.)

8. The names of all witnesses in a case on behalf of one party should be included in one subpoena. Fee for more than one subpoena will not be allowed unless the necessity for such additional subpoenas is shown. (2 Lawrence, 286.)

NOTE.—Where more than one subpoena is issued in a case on the same day the necessity therefor must be clearly shown. Copy of the subpoena for service is allowed where the practice is to serve by copy. Certificate and seal not necessary and not allowed. The account must show compliance with section 829, paragraph 25, and section 877, Revised Statutes.

FILING PAPERS.

Par. 3. For filing and entering every declaration, plea, or other paper, ten cents.

1. The clerk is entitled to a fee for filing criminal cases sent up by a commissioner. (United States v. Van Duzee, 140 U. S., 168.)

2. He may file papers sent up by the commissioners before whom the examinations were had, in the order and as they came from the commissioners, and is entitled to his fee for filing each separate paper. (Ibid; see also 37 Fed. Rep., 470; Van Duzee v. United States, 41 Fed. Rep., 571; Taylor v. United States, 45 Fed. Rep., 531; Clough v. United States, 45 Fed. Rep., 921; 39 Fed. Rep., 410.)

3. The clerk is entitled to fee for filing the marshal's account with the vouchers attached, but not for filing each voucher. (United States v. Jones, 147 U. S., 672; United States v. Payne, 147 U. S., 687.)


5. The clerk is entitled to 10 cents for filing each order to pay jurors and witnesses. (Singleton v. United States, 22 C. Cls. R., 118, and Erwin v. United States, 37 Fed. Rep., 470.)


8. Affidavits of witnesses as to mileage and attendance need not be filed. (United States v. Taylor, 147 U. S., 695.)
9. He is entitled to a fee for filing precipes for bench warrants. (United States v. Van Duzee, 140 U.S., 169.)

10. He is not entitled to a fee for filing precipe for commitments after sentence because not necessary. (Ibid.)

11. He may charge for filing oaths, bonds, and appointments of deputy marshals, jury commissioners, bailiffs, district attorneys and their assistants. (Ibid.)

12. The clerk is entitled to 10 cents for filing each paper that comes into his possession officially, although pertaining to the same case or matter. (Dimmick v. United States, 36 Fed. Rep., 82.)

13. The clerk is authorized to file for his own protection a requisition for a search of the records, and he can not be required to return it to the party delivering it. For filing such requisition he is entitled to a fee of 10 cents. (In re Woodbury, 7 Fed. Rep., 705.)

14. He is entitled to 10 cents for every separate voucher filed by him, although such vouchers are filed with his report of moneys on hand. (Goodrich v. United States, 35 Fed. Rep., 193. Overruled.)

15. He is entitled to a fee of 10 cents from the United States for filing the appointment of a deputy marshal. (Van Duzee v. United States, 41 Fed. Rep., 571.)

16. He is entitled to fee for filing the precept of the district attorney for a bench warrant, as by settled practice these warrants do not issue immediately on the orders of the court, but only when required by the attorney, and the same rule applies to a precept for a commitment on a sentence to pay a fine and be committed until its payment; but see as to mittimus the decision of the Supreme Court in Van Duzee v. United States, 140 U.S., 169. (Van Duzee v. United States, 41 Fed. Rep., 571.)

17. He is entitled to fee for filing venires and precepts to distribute. (Davis v. United States, 45 Fed. Rep., 162.)

18. The clerk is entitled to fees for filing receipts of collectors for fines paid, as such receipts are necessary for the proper settlement of his accounts and the accounts of the collector. (Van Duzee v. United States, 48 Fed. Rep., 643; affirmed, Cir. Ct. Apps., 52 Fed. Rep., 380.)


20. The clerk is entitled to fee for filing indictments, and for filing district attorneys' reports on accounts of marshals, clerks, commissioners, and others. (Van Duzee v. United States, 59 Fed. Rep., 440.)

21. Clerks of district courts are not entitled to fees for filing certificates of discharge of witnesses, nor for filing duplicate abstracts and vouchers. (United States v. Converse (C. C. A.), 63 Fed. Rep., 423.)

Note.—The clerk is allowed 10 cents for filing each separate paper sent up by a commissioner, 10 cents for filing each duplicate account of a marshal, attorney, or clerk, but not to 10 cents for filing each voucher contained in such account. He is allowed 10 cents for filing each necessary order. No fee is allowed for filing orders of the district attorney discharging witnesses.

ADMINISTERING OATH.

PAR. 4. For administering an oath or affirmation, except to a juror, ten cents.

1. A clerk is not entitled to a fee from the United States for administering an oath of office to a deputy marshal, jury commissioners, bailiffs, district attorneys and their assistants. (United States v. Van Duzee, 140 U. S., 169.)
FEES OF CLERKS—ACKNOWLEDGMENTS—DEPOSITIONS, ETC.

2. A clerk is entitled to a fee for swearing bailiffs as against the United States. (Davis v. United States, 45 Fed. Rep., 162. Overruled by the Supreme Court.)

3. The swearing of the first day of the term of persons summoned as grand and petit jurors to make true answers touching their qualifications as jurors is not within section 828, disallowing compensation to a clerk for oaths to jurors, and he is entitled to 10 cents for each person so sworn. (Clough v. United States, 55 Fed. Rep., 921.)

4. The clerk is not entitled to any fee (as against the United States) for administering oaths to answers of defendants in scire facias cases. (Fuller v. United States, 58 Fed. Rep., 329.)

NOTE.—No fee is allowed for swearing jurors on the voir dire. Clerks, marshals, attorneys, and commissioners must pay for affidavits to their accounts, and for oaths of office.

TAKING ACKNOWLEDGMENTS.

PAR. 5. For taking an acknowledgment, twenty-five cents.

1. The Supreme Court of the United States, overruling as to that point cases reported in Federal Reporter (vol. 34, pp. 17 and 211; 36, p. 671; 40, p. 446; 45, pp. 162 and 531; C. Cls. R., 25, pp. 380 and 346; 26, p. 1), has decided that clerks and commissioners are entitled to a single fee for taking the acknowledgment to a bond or recognizance without regard to the number of persons who may acknowledge it. (United States v. Ewing, 140 U. S., 142; United States v. Barber, 140 U. S., 177; United States v. Hall, 147 U. S., 691, and United States v. Taylor, 147 U. S., 695.)

NOTE.—Only 25 cents is allowed for acknowledgment to a bond or recognizance without regard to the number of persons signing or acknowledging it. Where defendants or witnesses give sureties a separate bond may be given by each and fee for acknowledging will be allowed. Where the witnesses do not give sureties only one acknowledgment for all the witnesses will be allowed.

TAKING DEPOSITIONS.

PAR. 6. For taking and certifying depositions to file, twenty cents for each folio of one hundred words.

NOTE.—This covers all compensation to which the clerk is entitled for taking a deposition, except for subpoena and for oath to witness.

COPIES OF DEPOSITIONS.

PAR. 7. For a copy of such deposition furnished to a party on request, ten cents a folio.

1. The expense of printing testimony for the convenience of the court can not be taxed as costs against the losing party. (Spaulding v. Tucker, 2 Saw., 50.)

ENTRIES.

PAR. 8. For entering any return, rule, order, continuance, judgment, decree, or recognizance, or drawing any bond, or making any record, certificate, return, or report, for each folio, fifteen cents.

1. A clerk is entitled to legal charges for entering orders approving accounts. (United States v. Van Duzee, 140 U. S., 169; United States v. Jones, 147 U. S., 672.)

2. A clerk is entitled to fees for entering orders approving accounts of officers of the court. (United States v. Payne, 147 U. S., 687.)

3. Charges for separate reports of the amounts due each juror and witness and filing separate orders for their payment are disallowed. (United States v. King, 147 U. S., 676.)
4. Charges for separate recognizances for witnesses in a criminal case disallowed, it not appearing that the witnesses could not have been conveniently recognized together. (United States v. King, 147 U. S., 676.)

5. A clerk is entitled to fee for drawing recognizances of defendants. (United States v. King, 147 U. S., 676.)

6. A clerk is entitled to fee for making record entries of recognizances of defendants, or of entering and filing each recognizance, but not for both. (United States v. Payne, 147 U. S., 687.)

7. He is entitled to fees for entering order for trial and for entering verdict and judgment. (United States v. Van Duzee, 140 U. S., 169.)

8. He is entitled to charge for copying transcript from commissioner's court as a part of the final record where the practice so requires. (Ibid.)

9. He is entitled to charge for recording, after the determination of a prosecution, all the proceedings relating to it, including the order of commitment. (United States v. Jones, 147 U. S., 672.)

10. He is not entitled to fee for entering on final record proceedings before a committing magistrate. (United States v. King, 147 U. S., 676.)

11. The ruling in United States v. King, that proceedings before a commissioner form no part of the record, applies to affidavits. (United States v. Taylor, 147 U. S., 685.)

12. He is entitled to fee for recording oaths, bonds, and appointments of deputy marshals, jury commissioners, bailiffs, district attorneys and their assistants, if required by court to do so. (United States v. Van Duzee, 140 U. S., 169.)

13. He is not entitled to fees for preparing official bonds. (Ibid.)

14. He is entitled to fees for entering orders of court for alias fieri facias, and venditioni exponas, one folio each. (United States v. Payne, 147 U. S., 687.)

15. He is entitled to fees for entering separate orders of court excusing jurors. (Ibid.)

16. He is entitled to fees for entering orders of court to issue subpoenaas. (Ibid.)

17. He is entitled to fee for entering order for alias capias. (Ibid.)

18. The clerk is entitled to 15 cents per folio for making and recording in the minutes of the court a separate report of the attendance and travel of each juror and witness. (Singleton v. United States, 22 C. Cls. R., 118.)

19. The clerk is not entitled to 15 cents for a certificate to copy of each order to pay jurors and witnesses. (Ibid.)

20. Where writs of fieri facias are recorded by the clerk it must be presumed, if his accounts are approved, that the services were directed or required by the court. (Martin v. United States, 26 C. Cls. R., 160.)

21. The orders entered by the clerk are the orders of the court. Where he has no discretion as to the form of an order or record he is entitled to pay for the services performed. (Ibid.)

22. Where returns by the marshal on unexecuted capiases are recorded by the clerk it must be presumed, if his accounts are approved, that the services were directed or required by the court. (Ibid.)

23. All the proceedings connected with the approval of officers' accounts against the Government under the act of February 22, 1875, are for the convenience and at the expense of the United States, and include the certified copy of order of approval indorsed on the original account sent to the Treasury Department, as well as the original order entered on the minutes. But there is no law or regulation for indorsing a certified copy of the order on the duplicate account retained in the clerk's office. (Jones v. United States, 39 Fed. Rep., 410.)
24. The fees for entering orders approving accounts, as required by the act of February 22, 1875, and for certified copies of such orders for the Department, are properly chargeable against the Government. (Erwin v. United States, 37 Fed. Rep., 470.)


26. The clerk's fees for recording the orders in connection with the approval of the accounts of a district attorney should be paid directly to the clerk by the Government. (Stanton v. United States, 37 Fed. Rep., 252.)

27. A clerk is entitled to fees—for entering order, 15 cents per folio; copy, 10 cents per folio; certificate to copy, 15 cents per folio; seal, 20 cents, and filing duplicate account, 10 cents. (Marvin v. United States, Fed. Rep., 405, vol. 44.)

28. Under act of February 22, 1875, requiring official account to be presented to the court in the presence of the district attorney or his assistant, it is necessary that an entry should be made showing such submission, and the clerk is entitled to a fee for making the same as well as for entering the subsequent order of approval or disapproval. (Van Duzee v. United States, 48 Fed. Rep., 643; affirmed by the Cir. Ct. App., 52 Fed. Rep., 930.)

29. The clerk is entitled to fee for making an entry showing the presentation of an account in open court and the action of the court thereon. (Van Duzee v. United States, 59 Fed. Rep., 440.)

30. The clerk is entitled to a fee for a certificate showing that the duplicate of the marshal's account has been duly filed with the clerk. (Ibid.)

31. Where blanks furnished by the Department for abstracts of payment of witnesses and jurors contain jurats the clerk is entitled to a fee of 25 cents for each jurat. (Marvin v. United States, 44 Fed. Rep., 405.)

32. The clerk is entitled to fee for affidavits of witnesses as to attendance and travel. (Taylor v. United States, 45 Fed. Rep., 531.)

33. The clerk is entitled to fees—for oaths to jurors as to attendance and travel, 10 cents each; for certificate to each juror, 15 cents; for entering an order requiring the marshal to pay jurors, 15 cents per folio; for copy thereof for the marshal, 10 cents per folio, and for making a report to the court of the per diem and mileage due jurors. (Van Duzee v. United States, 48 Fed. Rep., 643; affirmed by the Cir. Ct. App., 52 Fed. Rep., 930.)

34. The clerk is entitled to fees for certificates to the marshal as to the attendance of jurors and witnesses. (Clough v. United States, 55 Fed. Rep., 921.)

35. The clerk is entitled to fees for making separate reports to the court of the amount of witness fees due from the United States, and obtaining separate orders for the payment thereof, such services being rendered pursuant to an order of court, and prior to the decision of the Supreme Court condemning the practice. (Fuller v. United States, 58 Fed. Rep., 329.)

36. The clerk is entitled to fee for making report to court of per diem and mileage due jurors and witnesses. (Van Duzee v. United States, 59 Fed. Rep., 440.)

37. The clerk is entitled to 15 cents per folio for drawing reports of attendance of jurors and witnesses. (Erwin v. United States, 37 Fed. Rep., 470.)

38. The clerk is entitled to 15 cents per folio for entering orders to pay jurors and witnesses. (Ibid.)

39. Courts have inherent power to take a recognizance. Clerks have such power only by statute. (United States v. Evans, 2 Fed. Rep., 147.)
40. The clerk can not charge for drawing a bond and its approval when it was drawn by counsel and approved by the court. (Cavender v. Cavender, 10 Fed. Rep. 828.)

41. As it is the duty of the clerk to approve recognizances in criminal cases, his indorsement of approval thereon in accordance with the usual practice is the making of an entry or certificate, within the meaning of Revised Statutes, 828, allowing a fee of 15 cents a folio for such entries. (Van Duzee v. United States, 48 Fed. Rep., 643; affirmed by Cir. Ct. Apps., 52 Fed. Rep., 930.)

42. The clerk is entitled to fees for recording officials' bonds on the minutes. (Clough v. United States, 55 Fed. Rep., 921.)

43. The final record to be made by the clerk of all the proceedings of court embraces the final commitment by the court in a criminal case, but does not embrace the preliminary bail bond and justification of sureties taken before the commissioner, as these are proceedings of the magistrate and not of the court. (Jones v. United States, 39 Fed. Rep., 410.)

44. The clerk is entitled to fees for final records in cases of attachments against jurors and witnesses for contempt. (Erwin v. United States, 37 Fed. Rep., 470.)

45. The clerk is entitled to fees for entering on the final record the affidavit, warrant of arrest, marshal's return, finding of the commissioner, commitment to jail, recognizance, justification of surety, waiver of homestead, petition and order for subpœnas for the defendant, commitment to jail, recognizance, justification of surety, and return of commitment. (Erwin v. United States, 37 Fed. Rep., 470; but see United States v. King and United States v. Taylor, 147 U. S., 676 and 695.)

46. In charging for final record the clerk is entitled to count each separate and distinct order or other proceeding separately. (Erwin v. United States, 37 Fed. Rep., 470.)

47. The final record in cases of admiralty appeals must be such as is required by section 750, including the "process, pleadings, and decrees," and such records must correspond with the "judgment, record." of the common law. (24 Fed. Rep., 481.)

48. The court (northern Iowa) has adopted a rule providing that in criminal cases the final record shall include the order made by the commissioner binding the defendant to appear before the grand jury, the indictment, the presentment thereof, the bench warrant, if any, and return thereon, the plea of defendant, the verdict of the jury, and the final orders and sentences thereon. The clerk is entitled to the fee for entering the return of the commissioner in the final record. It can not be contended that there is no case in court until indictment is found. (Van Duzee v. United States, 41 Fed. Rep., 571.)

49. Clerks' fees for final record should be in accordance with the folios contained therein. (Marvin v. United States, 44 Fed. Rep., 405.)

50. According to the settled practice in Iowa, the final entries in criminal cases should contain the following papers, for which clerks are entitled to folio fees: The commissioner's order for appearance before grand jury; the entry showing the due presentment of the indictment; the bench warrant and return thereon; the arraignment and plea; the entry showing trial and verdict; the sentence and final orders, such as granting new trial, modifying or suspending sentence, or directing manner and place of executing it; the mittimus and return showing the execution of the sentence, and the entry of satisfaction when a fine is paid. But it should not contain the bail bonds or entries of default and forfeiture, the orders for attachments of witnesses, the attachments or returns thereon. (Van Duzee v. United States, 48 Fed. Rep., 643; affirmed by the Cir. Ct. Apps., 52 Fed. Rep., 930.)

51. The clerk is entitled to fees for making final records. (Clough v. United States, 55 Fed. Rep., 921.)
The clerk is entitled to fees for copying into the final record in criminal cases all papers which he is required to so record by an order of the court. (Fuller v. United States, 58 Fed. Rep., 329.)

The clerk is entitled to 15 cents a folio for making separate record entries of the various steps and proceedings in a criminal case, with the necessary repetitions of captions, etc., and can not be required to delay the entries until the determination of the case, in order to make all the entries under one caption; but when the sentence is announced and in part suspended at the time, the entries should be under one caption, and a charge for repetition thereof should not be allowed. (Van Duzee v. United States, 59 Fed. Rep., 440.)

For entering an order appointing an attorney to defend a poor person the clerk is entitled to 15 cents per folio, which is properly chargeable to the United States. (Goodrich v. United States, 42 Fed. Rep., 392.)

Clerk not entitled to fee for entering oral appearance of attorneys in criminal cases, as this is included in docket fee. (Marvin v. United States, 44 Fed. Rep., 405.)

A clerk is entitled to fees for entering orders appointing attorneys to defend. (Goodrich v. United States, 47 Fed. Rep., 267.)

The clerk can not charge for keeping a record of witnesses separate from his subpoena record. (Jones v. United States, 39 Fed. Rep., 410.)

The clerk is entitled to charge 15 cents per folio for recording the names, residences, etc., of jurors on a record, which he is required to make by a rule of the court. (Erwin v. United States, 37 Fed. Rep., 470.)

Where, by order of the court, the clerk enters upon the minutes as memorial services in respect to the late Vice-President, a proceeding in court of official character, the fee for entering is properly chargeable to the Government. (Ibid.)

An original entry, distinct from all others, though less than a folio, is to be charged as a folio. (Cavender v. Cavender, 10 Fed. Rep., 828.)

The clerk is entitled to 10 cents for filing the appointment of a deputy marshal, and 15 cents a folio for recording his oath of office, which is chargeable to the Government. (Van Duzee v. United States, 41 Fed. Rep., 571.)

Fees for entries on the jackets in which the papers are inclosed, showing the date of disposition of the cases and the pages of the record where the proceedings will be found, are covered by the general charges for indexing. (Ibid.)

For entry of return of the grand jury the clerk is entitled to the statutory fees, 15 cents per folio. (Ibid.)

The clerk of the United States circuit court in New Jersey is entitled to collect from plaintiff in an action at law fees for recording proceedings and judgments therein in favor of plaintiffs. The practice in New Jersey provides that when any civil action shall have been determined the clerk of the court shall enter all the proceedings, including the judgment, in a book of records to be kept for that purpose. (Morrison v. Bernards Township, 35 Fed. Rep., 409.)

The fees allowed for making dockets, indexes, issuing venires, taxing costs, and all other services on the trial or argument of a cause does not include entering the order for trial and recording the verdict. (Van Duzee v. United States, 41 Fed. Rep., 571.)

Fifteen cents per folio for entering report of money paid into court is properly chargeable to the United States. (Goodrich v. United States, 42 Fed. Rep., 392.)

For annual statement to the Attorney-General of judgments, etc., the clerk is entitled to a compensation for the final abstract of 15 cents per folio. (Marvin v. United States, 44 Fed. Rep., 405.)
68. A clerk is not entitled to fees as for reports, for letters transmitting receipts to the depository for moneys, as the commissions on such moneys were intended to pay for these services. (Ibid.)

69. A clerk is not entitled to fees for keeping list of names and residences of jurors, as this is the duty of the jury commissioner. (Ibid.)

70. A clerk is entitled to fees for orders to bring prisoners to court for trial where they have been committed by commissioners to jails of other counties. (Taylor v. United States, 45 Fed. Rep., 531.)

71. The clerk is entitled to fees for orders of continuances from day to day in criminal cases. (Ibid.)

72. The clerk is entitled to fees for making reports to the Solicitor of the Treasury, for entering appearances and arguments, and for appointments of supervisors of elections. (Goodrich v. United States, 47, Fed. Rep., 267.)

73. The clerk is entitled to 15 cents per folio for entering orders appointing supervisors of elections. (Cleugh v. United States, 55 Fed. Rep., 321.)

74. The law having made it the duty of the clerk to make official reports to the Department of all litigation against the United States, or to which it is a party, he is entitled to 15 cents per folio therefor. (Ibid.)

75. For entering names of jurors with post-office addresses on slips for the jury box and recording the names in a book kept in his office, the clerk is entitled to 15 cents per folio. (Fuller v. United States, 58 Fed. Rep., 329.)

76. The clerk is entitled to 15 cents per folio for making record entry of presentment and return of indictment. (Van Duzee v. United States, 59 Fed. Rep., 440.)

77. The clerk is entitled to fees for entering returns of warrants and subpoenas. (Goodrich v. United States, 47 Fed. Rep., 267.)

78. An original entry, distinct from all others, though less than one hundred words, is to be charged as a folio. (3 McCrary, 383.)

79. A transcript of a record on appeal or writ of error is only a copy and the clerk can charge therefor only 10 cents a folio. (Ibid.)

80. For binding or express charges on the transcript the clerk may charge the reasonable actual cost to him. (Ibid.)

81. The clerk may collect his costs as they accrue, irrespective of the final result. (Ibid.)

82. Clerks' fees are proper charges under a decree dismissing a case at complainant's costs. (Cahn v. Lung, 12 Saw., 92.)

83. The clerk can not charge for drawing a bond and its approval when it was drawn by counsel and approved by the court. (3 McCrary, 383.)

84. The expenses of printing the record and evidence in an equity suit is, under the second additional rule of May 25, 1842, part of the costs, and properly taxable as such. (Jordan v. The Agawam Woolen Company, 3 Cliff., 239.)

85. A clerk is entitled to fees for entering of record separate recognizances of witnesses where it is shown that the witnesses could not recognize together without hardship. (United States v. Converse (C. C. A.), 63 Fed. Rep., 423.)

86. A clerk is entitled to fees for entering orders of court for the marshal to pay jurors and witnesses, and for making certificates to such orders. (United States v. Converse (C. C. A.), 63 Fed. Rep., 423.)

87. When an established practice of the court, with the approval of the judge thereof, requires separate orders to pay witnesses and certified copies of such separate orders to be given to the marshal, charges for copies of such orders and certificates thereto will be allowed to the clerk of the court, notwithstanding that in lieu of actually entering each separate order he incorporates the names.
of all witnesses in each case in a single order. (Dec. Comp. in re appeal of Noble C. Butler, clerk Cir. Ct., Feb. 14, 1895.)

Note.—The clerk is allowed 15 cents a folio for entering each order approving an account, 10 cents a folio for copy, 15 cents for certificate to copy, and 20 cents for seal to certificate. He is allowed for entering a general order to pay jurors and witnesses, but not for a separate order to pay each juror or witness, except as indicated in note 87 above. He is allowed 15 cents a folio for entering any order directing the payment or allowance of costs or expenses against the United States, where such order is necessary and required by the accounting officers or the Attorney-General. He is allowed for certified copy of such orders when required to be made. He is not allowed for seals to same. He is allowed 15 cents for a certificate to each juror and witness of the amount due him for attendance and travel. He is allowed 15 cents for a certificate indorsed on each pay roll of jurors and witnesses. He is allowed 15 cents a folio for drawing each bond, where the same is actually drawn by him. A separate bond may be drawn for each defendant. All witnesses in a case must be included in the same bond or recognizance, except where they are required to give sureties. The clerk is allowed 15 cents a folio for each separate entry; not for each statement, motion, or order contained in an entry. The account must show the date of each entry and the actual number of folios contained in each separate entry.

Final record.—The decisions relating to final records are placed under this paragraph because the clerks usually claim and charge 15 cents a folio for making same. The accounting officers allow only 10 cents per folio as for copies of papers, under paragraph 9 of the fee bill. In the absence of a rule of the court prescribing what shall constitute the final record in a criminal case, the clerk will be allowed for copying the indictment, the capias or bench warrant on which the arrest is made, the entries on the minutes of the return of the indictment, the arraignment, plea, the impaneling of the jury, trial, verdict, judgment, and sentence, and the final mittimus. If there is a rule of court as to final records the clerk will be allowed for copying such papers as the court requires to be included therein.

COPIES OF ENTRIES, ETC.

Par. 9. For a copy of any entry or record, or of any paper on file, for each folio, ten cents.

1. The clerk is entitled to fees for copies of orders to pay jurors and witnesses when required by the Treasury Department. (United States v. Van Duzee, 140 U.S., 169.)

2. He may charge for copies of orders directing marshals to pay jurors and witnesses, but not for seals. (United States v. Taylor, 147 U. S., 695.)

3. He is entitled to fees for certified copies of orders approving accounts, but not to seals where not required by the accounting officers. (United States v. Jones, 147 U. S., 672.)

4. He is entitled to charge for copies of orders for marshal to pay supervisors of election. (Ibid.)

5. He is entitled to fee for copy of indictment to defendant when ordered by the court, but not otherwise. (United States v. Van Duzee, 140 U. S., 169.)

6. Copies of orders to marshal to pay witnesses, jurors, special deputy marshals, and supervisors, to be used as vouchers in his accounts, are at the expense of the United States. (Jones v. United States, 39 Fed. Rep., 410.)

7. He is entitled to fee for copies of orders to pay jurors and witnesses and for seals thereon. (Marvin v. United States, 44 Fed. Rep., 405; but as to seals see decision quoted in item 2 above.)
8. He is entitled to fees for making duplicate certified copies of the orders of the court for the payment of jurors and witnesses, and of orders directing the marshal to procure record books needed for the business of the court, but not for affixing the seal to the certificates thereof. (Van Duzee v. United States, 59 Fed. Rep., 440.)

9. Same as to certified copies of the orders directing the marshal to furnish meals to jurors. (Ibid.)

10. Same as to special counsel fees of the district attorney. (Ibid.)

11. He is not entitled to fees for certified copies of orders of approval to be filed with duplicate accounts. (Van Duzee v. United States, 48 Fed. Rep., 643; affirmed by the Cir. Ct. Apps., 52 Fed. Rep., 930.)

12. He is entitled to fee for certified duplicate copy of order directing the marshal to procure record books. (Ibid.)

13. He is not entitled to a fee from the Government for a certified copy of a bail bond furnished sureties under section 1018, Revised Statutes, as the sureties should pay for same. (Ibid.)

14. He is entitled to fee for copy of indictment furnished defendant under rule of the court with certificate and seal thereto, as the practice is to certify copies of all parts of the record furnished by the clerk. (Ibid.)

15. The Code of Iowa, section 4515, requires that when a prisoner is committed the jailer shall be furnished with a certified copy of the entry of judgment. Held, that when a prisoner is committed to a State jail under sentence of court it is the duty of the clerk to furnish such certified copy and he is entitled to the fee therefor. (Ibid.)

16. When the clerk, upon the written order of the district attorney, furnished him with copies of indictments containing numerous counts against the officers of a national bank, and it clearly appears that such copies were necessary for the proper preparation of the case of the Government, the clerk will be allowed folio fees therefor. (Ibid.)

17. He is not entitled to charge the United States for making for his office files copies of reports required by the Department regulations to be made to the Solicitor of the Treasury. (Jones v. United States, 39 Fed. Rep., 410.)

18. A transcript of the record on appeal or writ of error is only a copy and the clerk can charge therefor only 10 cents a folio. (Cavender v. Cavender, 10 Fed. Rep., 828.)

19. He is entitled to 10 cents a folio for a copy of an indictment for the defendant in other than capital cases when ordered by the court. (Van Duzee v. United States, 41 Fed. Rep., 571.)

20. Fees for making transcript required by section 10, act of March 3, 1887 (24 Stat., 507), when ordered by the district attorney, are chargeable to the United States. (Goodrich v. United States, 42 Fed. Rep., 392.)

21. He is entitled to fees for certified copies of orders appointing supervisors of elections. (Ibid.)

22. He is entitled to fee for copy of mittimus. (Clough v. United States, 55 Fed. Rep., 321.)

23. He is entitled to fee for copies of scire facias. (Ibid.)

24. He is entitled to 10 cents a folio for certified transcripts in criminal cases, and at the request of the district attorney, to be used outside of the State. (Ibid.)

NOTE.—The clerk is allowed for copy of the order of approval to be forwarded with the original account with certificate and seal thereto. He is not allowed for copy to be filed with the duplicate account, except where the duplicate is required to be filed at a place other than the place where the order of approval
is made. In that case he may attach to the duplicate account a certified copy of the order of approval, but no fee will be allowed for seal to such certificate. He is allowed for certified copies of orders to pay jurors, witnesses, meals of jurors, orders allowing special counsel fees, and all other special orders allowing expenses against the Government, where such copies are required by the accounting officers, but he is not allowed for seals to such certified copies, nor for duplicate copies to be filed with the duplicate accounts. In conclusion, it may be said that the accounting officers in regard to this matter follow strictly what seems to be the opinion of the Supreme Court in relation to all matters in connection with the approval, etc., of accounts. The clerk is allowed for copies of such orders as are required to be forwarded with the accounts certified in such manner as the Department requires, and to nothing further.

Final record.—The clerk is allowed 10 cents a folio for making final record, but as they generally charge 15 cents a folio and insist that they are entitled to that amount, the decisions, remarks, etc., are entered under paragraph 8.

DOCKET FEE OF THREE DOLLARS.

Par. 10. For making dockets and indexes, issuing venire, taxing costs, and all other services, on the trial or argument of a cause where issue is joined and testimony given, three dollars.

1. A clerk is entitled to docket fees in suits upon manufacturers’ bonds under the internal-revenue law where issue was joined and testimony given. (United States v. Payne, 147 U. S., 687.)

2. He is not entitled to a docket fee until the case is finally disposed of. (United States v. Taylor, 147 U. S., 695.)

3. He is entitled to a docket fee of $3 where there was a trial by jury. The joiner of issue if it does not appear will be presumed. (Martin v. United States, 26 C. Cls. R., 160.)


Note.—The account must show that issue was joined and testimony given and that the case has been finally disposed of, to entitle the clerk to the docket fee of $3. He is entitled to only one fee in each case, no matter how many trials there may have been. Where issue is joined and testimony given the clerk is entitled to a docket fee of $3, although the case may be afterwards dismissed.

DOCKET FEE OF TWO DOLLARS.

Par. 11. For making dockets and indexes, taxing costs, and all other services, in a cause where issue is joined, but no testimony is given, two dollars.

1. A clerk is entitled to fees for making docket entries and indexes in cases of scire facias and other proceedings where issue was joined. (United States v. Payne, 147 U. S., 687.)

2. He is entitled to docket fees on cases of contempt against witnesses. (Taylor v. United States, 45 Fed. Rep., 531.)

3. He is entitled to fees for making dockets and indexes in sci. fa. cases. (Clough v. United States, 55 Fed. Rep., 921.)

Note.—The account must show that issue was joined and that the case has been finally disposed of. Where a plea of not guilty is entered which is afterwards withdrawn and a plea of guilty entered, the clerk will be allowed a docket fee of only $1.
DOCKET FEE OF ONE DOLLAR.

PAR. 12. For making dockets and indexes, taxing costs, and other services, in a cause which is dismissed or discontinued, or where judgment or decree is made or rendered without issue, one dollar.

1. A clerk cannot charge for docketing and indorsing an order for the removal of a prisoner for trial in another district. (United States v. King, 147 U.S., 676. This case overrules 37 Fed. Rep., 470.)

2. He is not entitled to docket fee where no indictment is found. (United States v. Payne, 147 U.S., 687. This case overrules Martin v. United States, 26 C. Cls. R., 160; Marvin v. United States, 44 Fed. Rep., 405.)

3. He is not entitled to a docket fee where the indictment is returned "not a true bill." (United States v. Taylor, 147 U.S. 695. This overrules Van Duzee v. United States, 41 Fed. Rep., 571.)

4. An attachment against a defaulting witness or juror for contempt of court is an independent suit or cause for which a docket fee is chargeable under the fee bill. (Erwin v. United States, 37 Fed. Rep., 470.)

5. Where a case is removed from one division of a district to another no docket fee is chargeable until the case is terminated. (Van Duzee v. United States, 41 Fed. Rep., 571.)

6. An attachment against a witness for contempt of court in not obeying a subpoena is a criminal proceeding in which the United States is plaintiff, and the costs of the proceeding, including a docket fee, are chargeable to the United States. (Ibid.)

7. An application for a writ of habeas corpus is a proceeding sui generis, and the provisions of section 828 do not apply. The clerk should be allowed analogous fees. Docket fee of $1 allowed. (In re Moy Chee Kee, 13 Saw., 121.)

NOTE.—The account must show that the case has been finally disposed of. No fee is allowed where the indictment is ignored, nor where the papers from a commissioner's court are dismissed without any further proceedings.

DOCKET FEE IN REMOVED CASES.

PAR. 13. For making dockets and taxing costs, in cases removed by writ of error or appeal, one dollar.

AFFIXING SEAL.

PAR. 14. For affixing the seal of the court to any instrument, when required, twenty cents.


2. The marshal being the official of the court required to attend each sitting is cognizant of the orders of the court without their being exemplified by its seal. The seal authenticates the utterances of the court to persons beyond it. (Singleton v. United States, 22 C. Cls. R., 118.)

3. When writs of scire facias are served by original and copy the clerk is not entitled to fee for affixing the seal of the court to the copy. (Martin v. United States, 26 C. Cls. R., 160.)
FEES OF CLERKS—SEAL—SEARCH—COMMISSIONS.

4. Seals to copies of writs of commitment are authorized. (Erwin v. United States, 37 Fed. Rep., 470.)

5. The clerk can not charge for affixing the seal of the court to a certificate of the search of the records unless he is required to affix it. (7 Fed. Rep., 705.)

6. He is entitled to fee for seal to copy of order approving account. (Marvin v. United States, 44 Fed. Rep., 405.)


8. He is not entitled to fee for affixing seal to commission of a supervisor of elections. (Clough v. United States, 55 Fed. Rep., 921.)

9. He is not entitled to fee for seal to copy of order to furnish meals to jurors. (Van Duzee v. United States, 59 Fed. Rep., 440.)

10. No fee allowed for seals to writs nor to copies of writs for service.

NOTE.—Seals are only allowed to copies of orders approving accounts to be forwarded with such accounts. Not allowed to copies of orders to pay jurors, witnesses, and other expenses, because not required by the accounting officers. No fee allowed for seals to writs nor to copies of writs for service.

SEARCHING FOR MORTGAGES, ETC.

PAR. 15. For every search for any particular mortgage, judgment, or other lien, fifteen cents.

1. The Government is not liable for a clerk's charge of 15 cents for search in bankruptcy cases in order to make up his report No. 1 in bankruptcy, because said charge does not legally come within the terms of the fee bill. (In re clerk's charges, 5 Fed. Rep., 440.)

SEARCHING FOR JUDGMENTS, ETC.

PAR. 16. For searching the records of the court for judgments, decrees, or other instruments constituting a general lien on real estate, and certifying the result of such search, fifteen cents for each person against whom such search is required to be made.

1. A clerk is authorized to file a requisition for a search of the record for judgments, etc., for his own protection, and he is entitled to a fee of 10 cents for filing such requisition. (In re petition of Woodbury, 7 Fed. Rep., 705.)

2. He is entitled to 15 cents for each person against whom the search is made. (Ibid.)

3. He is entitled to 15 cents per folio for the certificate of such search. (Ibid.)

4. He can not charge for affixing the seal of the court to such certificate unless required to affix it. (Ibid.)

COMMISSIONS.

PAR. 17. For receiving, keeping, and paying out money, in pursuance of any statute or order of court, one per centum on the amount so received, kept, and paid.

1. The commission of 1 per cent can not be claimed unless the money passes through his hands actually or constructively. (Leech v. Kay, 4 Fed. Rep., 72.)
2. When an assignee in bankruptcy sold real estate coming into his hands, and subsequently filed a bill in equity in the circuit court to settle conflicting claims to the property, there is no statute requiring him to pay the proceeds of the sale into the registry of the court; and there was no order of the court in this case requiring him to do so. The clerk can not charge commissions on the fund. (Ibid.)

3. The rule of the Federal court requiring a party redeeming real estate, which has been sold under a foreclosure decree, to pay 1 per cent commission to the clerk on the amount paid into court for the redemption of the property, in addition to the amount with the prescribed interest thereon, going to the purchaser, is in accordance with section 829, and is not in derogation of the right of redemption given by the State law. The right of redemption given by the State law must be permitted in the Federal court, subject to the act of Congress fixing the amount to be paid to the clerk on all moneys received, kept, and paid out by him in pursuance of any statute or under any order of the court. (Blair v. C. and P. R. R., 12 Fed. Rep., 750.)

4. A clerk who receives, keeps, and pays out money under a judgment is entitled to a commission of 1 per cent on the amount so received, to be paid by the defendant as part of the costs. (Ibid.)

5. Where a vessel is sold by a trustee under the limited liability act, and the proceeds of sale are paid into court, the clerk's commission is payable from such proceeds, even though the owner appears and contests the liability of the vessel for her loss. (The Vernon, 36 Fed. Rep., 113.)


7. A vessel was libeled for salvage. After a decree for salvage was rendered the claim was paid without a sale. No money was paid into the registry of the court or into the hands of the marshal. The clerk, under section 828, giving him a commission for "receiving, keeping, and paying out money," in pursuance of any order of court, a given per cent on the amount received, kept, and paid, is not entitled to commission on the award. (Smith v. The Morgan City, 39 Fed. Rep., 572.)

8. Where a decree ordering the sale of mortgaged railroad property requires the payment of earnest money into court at the time of the sale, to be returned in case the case is not confirmed, and afterwards, by consent of parties, the decree is modified so as to allow a certified bank check to be given instead of cash, and requiring the commissioner to deposit the same with a trust company, the clerk is not entitled to receive any percentage thereon as a fee. (Easton v. Houston, 44 Fed. Rep., 718.)

9. The receiving, keeping, and paying out money by the clerk, under an execution issued on a judgment in an action under the internal-revenue laws, for which Revised Statutes, 828, allows the clerk 1 per cent commission, is a service rendered the Government for which the Government is liable; and such commissions are to be paid under Revised Statutes, 3216, through the collector, into the Treasury, as are the clerk's fees that are taxed and included in the judgment and collected from the defendant. (United States v. Wolters, 51 Fed. Rep., 896.)

10. A rule of the court requiring a person redeeming from a foreclosure sale to pay, in addition to the amount required to effect redemption, a commission of 1 per cent to the clerk, sustained. (Blair v. C. and P. R. R. Co., 11 Biss., 320.)

11. The "tax" required to be paid by purchasers of forfeited property in pursuance of section 3334, Revised Statutes, is not within sections 828 (clause 17) and 829 (clause 6) of the Revised Statutes, and therefore clerks and marshals are not entitled to commissions thereon. (Opinion of July 1, 1876, 15 Op., 566.)
12. A United States district court has power to make an allowance to the clerk of the court for services rendered beyond what are required by law. Such compensation allowed in the face of a transfer by him of a large fund from the depository of court to a trust company; a change made by order of court on application of the proctors in interest and for their pecuniary benefit, and imposing on the clerk additional cares, responsibilities, and duties. (Bronsted v. The Advance, 60 Fed. Rep., 422.)

NOTE.—The clerk will not be allowed commissions unless he actually received and paid over the money. The commissions are held to cover all services in that connection, and no fee will be allowed for drawing or taking receipts for money.

TRAVEL AND ATTENDANCE.

PAR. 18. For traveling from the office of the clerk, where he is required to reside, to the place of holding any court required by law to be held, five cents a mile for going and five cents for returning, and five dollars a day for his attendance on the court while actually in session.

The act of March 3, 1887 (24 Stat., 541), provides that “hereafter no part of any appropriation shall be used in payment of a per diem compensation to any attorney, clerk, or marshal for attendance in court, except for days when the court is open by the judge for business, or business is actually transacted in court, and when they attend under sections five hundred and eighty-three, five hundred and eighty-four, six hundred and seventy-one, six hundred and seventy-two, and two thousand and thirteen of the Revised Statutes, which fact shall be certified in the approval of their accounts.”


2. When a circuit clerk attends court personally at one place and appoints a deputy to attend it at another place or in a different division of the same judicial district, he is entitled, under section 831, to make a per diem charge for attendance at each. (United States v. King, 147 U.S., 676.)

3. The Revised Statutes, section 824, prescribe for the clerk of the circuit court a fee of $5 a day for his attendance on court while actually in session. This includes days when the court opened at the time and place appointed by law, and was adjourned without transacting business. (Jones v. United States, 21 C. Cls. R., 1; Bell v. United States, 23 C. Cls. R., 142.)

4. A clerk who is clerk both of a circuit and district court can not receive dual compensation, though both courts be in session on the same day, but he may elect against which court he will charge his fee for attendance. (Butler v. United States, 23 C. Cls. R., 182; Goodrich v. United States, 42 Fed. Rep., 392; Clough v. United States, 55 Fed. Rep., 921; Goodrich v. United States, 35 Fed. Rep., 193.)

5. Act of August 4, 1886 (24 Stat., 222, 253), which provides that “no part of the money appropriated by this act be used in payment of a per diem compensation to any clerk or marshal for attendance in court, except for days when
business is actually transacted,” applies only to that appropriation; it does not take away the clerk’s legal right to a per diem. (Converse v. United States, 26 C. Cls. R., 6.)

6. Prior to act of March 3, 1887 (24 Stat., 509, 541), a clerk was entitled to per diem for days when the court was opened, though no suitors appeared and no business was transacted. (Converse v. United States, 26 C. Cls. R., 6; Goodrich v. United States, 35 Fed. Rep., 193.)

7. The act of March 3, 1887 (24 Stat., 509, 541), provides that hereafter no part of the appropriation shall be used in payment of any per diem compensation to any attorney, clerk, or marshal for attendance in court, except for days when the court is open for business and business is actually transacted. (Converse v. United States, 26 C. Cls. R., 6.)

8. The proviso relative to compensation for attendance of court officers in the act of August 4, 1886, was repealed by the proviso covering the same subject-matter in the act of March 3, 1887. Since the passage of the latter act it is not necessary that business be transacted in court to entitle the clerk to his per diem; it is sufficient if the court is open for business by the judge. (Erwin v. United States, 37 Fed. Rep., 470.)

9. The offices of clerk and commissioner are compatible. A person who holds two distinct compatible offices may recover the compensation of each. A clerk is given a per diem fee for his attendance at a session of the court, and a commissioner is given a per diem fee for hearing and defending. (Erwin v. United States, 37 Fed. Rep., 470; Goodrich v. United States, 42 Fed. Rep., 392.)

10. The act of August 4, 1886, provides that none of the money thereby appropriated shall be used to pay clerks’ per diem for attendance, except for days when business was actually transacted by the clerk on the days for which he claims per diem. (Marvin v. United States, 44 Fed. Rep., 405.)

11. Revised Statutes, 583, which provides that whenever the judge is not present “at the commencement of any regular, adjourned, or special term,” the court may be adjourned on his written order, applies to session of court held after an adjournment for several days by order of the judge—clerk entitled to per diem. (Pitman v. United States, 45 Fed. Rep., 159.)

12. The allowance of 5 cents a mile is a reimbursement of expenses, and not a fee to be accounted for in the emolument return. (Dec. Comp. in re account of S. S. Vinson, June 13, 1895; see also United States v. Smith, in Supreme Court, May 20, 1895.)

13. The mileage of the clerk of the United States district court is not a fee, and is not doubled by act of July 31, 1894 (28 Stat., 204), and section 840, Revised Statutes. (Comp. in re account of C. E. Mellette, June 15, 1895.)

Note.—The clerk who is a commissioner may charge for attendance on court and for hearing and deciding on criminal charges on the same day. Where the same person is clerk of a circuit and district court, and attends both on the same day, he is allowed one per diem, and may elect in which to charge attendance. When court is open at different places in the same district on the same day, the clerk attending personally at one place and by deputy at another place, he is allowed per diem for each.

BOOKS OPEN FOR INSPECTION.

PAR. 19. All books in the offices of the clerks of the circuit and district courts, containing the docket or minute of the judgments, or decrees thereof, shall, during office hours, be open to the inspection of any person desiring to examine the same, without any fees or charge therefor.
GENERAL PROVISIONS.

1. Where the question is whether a clerk's service was rendered or was necessary, or was required by the court, the approval of his account makes it evidence prima facie. (Martin v. United States, 26 C. Cls. R., 160.)

2. If a clerk's account was approved in the manner provided by law the burden of proof is on the defendant; if not, on him. (Martin v. United States, 26 C. Cls. R., 160.)

3. This court can not overrule the circuit or district court as to the necessity or propriety of the clerk's services, such as entering the appearance of the district attorney, etc. (Martin v. United States, 26 C. Cls. R., 160.)

4. The disallowance by the First Comptroller of fees claimed by clerk is not conclusive against the clerk. (Davis v. United States, 45 Fed. Rep., 162.)

5. Revised Statutes, sections 839, 842, 844, and 857, providing for the retention of fees by the clerks and other officers until the maximum of their compensation is reached, apply to fees other than those for which the Government is responsible, and which are to be paid out of the Treasury under the provisions of section 856. (United States v. Wolters, 51 Fed. Rep., 896.)

6. Services rendered the Government by the clerk or other officer of the court in suits by it, for which the law fixes certain fees, render the Government liable therefor, whether it succeeds in collecting its legitimate costs from the defendant or not. (United States v. Wolters, 51 Fed. Rep., 896.)

7. Name of defendant.—If the Department refuse payment of the account of a clerk of a Federal court for services rendered the Government, on the ground that the names of the defendants were not given, and a duplicate of the account filed in the clerk's office shows who the defendants were, and the records of the court show that they were subsequently indicted and tried, the court will direct payment of fees. (Clough v. United States, 55 Fed. Rep., 921.)

8. If the Department refuses to allow an account of the clerk on the ground that it does not sufficiently describe the nature of the suits, the court will direct payment of the account, if its records show that the services were actually rendered. (Clough v. United States, 55 Fed. Rep., 921.)

9. The question of a person's right to the office of clerk of a circuit court, and to the compensation belonging thereto, can not be determined by the auditing of his account in the Treasury Department. (United States v. Harsha, Cir. Ct. Apps., 56 Fed. Rep., 963.)

10. The same person may hold the office of clerk of the United States circuit court and clerk of the circuit court of appeals and receive the salary and compensation attached to each office. (United States v. Harsha, Cir. Ct. Apps., 56 Fed. Rep., 963.)

MARSHALS' FEES.

FOR SERVING WARRANT.

SEC. 829, PAR. 1. For service of any warrant, attachment, summons, capias, or other writ, except execution, venire, or a summons or subpoena for a witness, two dollars for each person on whom service is made.

1. Arrest in another district.—A marshal of a district into which an offender comes may deputize the marshal of the district in which the offense was committed, or his deputy, to execute the warrant of removal, and relinquish to him the fees therefor. (United States v. Fletcher, 147 U.S., 664.)
2. The marshal is not entitled to a fee of $2 for serving a warrant of commitment. (United States v. Tanner, 147 U. S., 661.)

3. A marshal having prisoners in custody before a commissioner is prohibited from charging a fee when they are remanded, and should the commissioner needlessly issue warrants of commitment, the prohibition of the statute will still apply. (Turner v. United States, 19 C. Cis. R., 629.)

4. The commitment of the prisoner to the county jail under commitment by a commissioner is not an absolute commitment, as the marshal can take the prisoner out of the custody of the jailer when it becomes necessary for him to complete the service by capias by producing the body of the prisoner at the ensuing term of the court. (United States v. Harden, 10 Fed. Rep., 802.)

5. Service in another district.—A marshal is not entitled to fees for services rendered outside of his own district. (Dubois v. United States, 25 C. Cls. R., 195.)

6. A marshal is not entitled to a fee for the service of a commissioner's warrant in a criminal case where the deputy marshal after arresting the accused allows him to go free upon his promise to attend the commissioner's court on a certain designated day. (United States v. Ebbs, 10 Fed. Rep., 369.)

7. Where a commissioner accepted an appearance bond in the absence of the accused, and before he had a preliminary examination, and the marshal was advised of that fact, held, that a warrant in his hands is superseded, and that a subsequent arrest under the warrant is not authorized, and does not entitle the marshal to charge a fee for the service of the warrant. (Ibid.)

8. Upon a bill of review to correct a decree given in favor of the United States the subpoena to appear and answer may be served on the district attorney. (Rush v. United States, 13 Fed. Rep., 625.)

9. Where the marshal is required to serve process in suits other than where the United States requires the service, he has a right to demand his fee in advance of the service to be performed. (Duy v. Knowlton, 14 Fed. Rep., 107.)

10. A nonresident defendant in attendance upon the trial of his case, at which trial his presence is necessary both as a witness and for the purpose of instructing, is protected while in such attendance from service by summons of a new writ or complaint against him. (Wilson Sewing Machine v. Wilson, 22 Fed. Rep., 503; Small v. Montgomery, 23 Fed. Rep., 707.)

11. The thirteenth equity rule, which declares that the service of all subpoenas shall be by a delivery of a copy thereof by the officer serving the same to the defendant, personally, or by leaving a copy thereof at the dwelling house or usual place of abode of each defendant, with some adult person who is a member of or resident in the family, does not require the copy of the subpoena to be left with a person in the dwelling house, but is satisfied with a service at the door outside the dwelling house. (Phenix Ins. Co. v. Wolf, 1 Fed. Rep., 775.)

12. The marshal's duty to serve and right to compensation for serving precepts which are agreed to have been "duly issued by the court or a commissioner in accordance with established usage" can not be affected by the opinion of the Comptroller that the issue of such precepts was unnecessary. (Harmon v. United States, 43 Fed. Rep., 560.)

13. Where writs issued before the marshal who served them qualified for office were turned over to him by his predecessor under arrangement that he should have the fees therefor, and the writs are served by him, after he qualifies, he is entitled to fee for such service. (Fletcher v. United States, 45 Fed. Rep., 213.)

14. Arrest in another district.—Where the marshal, according to the practice in his district as allowed by the Government, pursues into another district fugitives from justice and arrests them as special deputy of the marshal of the other district, who relinquishes all claim to fees for such arrest, such marshal is entitled to compensation for his services in pursuing, arresting, and bringing back such
fugitives, even though the practice of the Department in that respect has been changed since the services were rendered. (Fletcher v. United States, 45 Fed. Rep., 213.)

15. The acceptance by a United States commissioner of an appearance bond tendered by the friends of an absent offender supersedes a warrant of arrest theretofore issued, and the marshal is not entitled to a fee for a subsequent arrest upon the same warrant under verbal direction of the commissioner. (United States v. Ebbs, 49 Fed. Rep., 149.)

16. A deputy United States marshal who has a warrant of arrest is bound to be prepared at all times to execute the same; and if he comes into the presence of the accused, but does not arrest him because the warrant was left at home, he is not entitled to fee for time subsequently spent in making the arrest. (United States v. Ebbs, 49 Fed. Rep., 149.)

17. A marshal who reads a warrant of arrest to a person charged with crime, but afterwards permits him to go free upon his verbal promise to appear before the commissioner for examination, is not entitled to a fee for the arrest. (United States v. Ebbs, 49 Fed. Rep., 149.)

18. The marshal has the right to demand the payment of fees for the service of process in advance. (Ray v. Knowlton, 11 Biss., 360.)

19. An order to show cause, issued on a creditor's petition in bankruptcy, provided that a copy of the petition should be served with a copy of the order. Held, that the marshal was entitled to a fee for the service of each, even though they were served at the same time. (In re Burnell Bros., 7 Biss., 275.)


21. A marshal is entitled to fees for serving mandates to bring before the commissioner convicts applying for discharge. (Hitch v. United States, 66 Fed. Rep., 937.)

22. A marshal is not entitled to fees for serving bench warrants on prisoners in custody on commitment by a commissioner. (Hitch v. United States, 66 Fed. Rep., 937.)

23. The marshal for the northern district of Mississippi claims fees and expenses for serving, in the southern district of Mississippi, warrants issued by commissioners in the northern district, the marshal for the southern district having deputized him and waived all fees in his favor. Held, that the warrants in these cases did not run beyond the district in which they were issued, and therefore his fees and expenses in serving them can not be allowed. He may be allowed fees and expenses for serving the warrants within his district when the defendants came with him into his district. (Comp. in re account of D. T. Guyton, Sept. 26, 1894.)

24. A warrant of arrest does not run beyond the district out of which it issues, and a marshal can not receive fees and expenses for serving such writ in any other district than that of the court or the commissioner who issued it. In re account D. T. Guyton, Sept. 26, 1894, affirmed. (Comp. in re accounts of W. H. Tisdale, Dec. 27, 1894.)

25. A writ of habeas corpus ad testificandum will run wherever a writ of subpoena will run, and may be served beyond the district out of which it issued by the marshal of the district of the court which issued the writ. (Comp. in re accounts of W. H. Tisdale, Dec. 27, 1894.)

26. A marshal will be allowed fees for the service of a writ of attachment upon a defaulting witness, although the service is made beyond the limits of the district of which he is the marshal. (Comp. in re account of W. K. Meade, Feb. 18, 1895.)
27. When a criminal has been sentenced and committed to a penitentiary for the term of one year only, and the court by whom the criminal was sentenced issued a writ for the purpose of bringing him before that court for resentencing, the writ will run beyond the limits of the district from which it issued. Such a writ may be served outside of his district by the marshal of the district from which it is issued, for which service he is entitled to 6 cents a mile for going only, $2 for serving the writ, and 10 cents a mile for transporting himself, prisoner, and guard. (Comp. in re account of E. D. Nix, May 15, 1895.)

28. A marshal bringing before the court upon a capias a person already in custody can not, under section 1030, Revised Statutes, be allowed fees for serving the capias or for travel in executing such order. (Comp. in re account of A. E. Baxter, June 25, 1895.)

29. A marshal serving under an ad interim appointment is entitled to the fees and emoluments of the office until he receives notice of the appointment and qualification of his successor. (Comp. in re account of A. E. Baxter, June 26, 1895.)

NOTE.—The arrest must be actually made. If the defendant escapes after being arrested, it must be clearly shown that the officer making the arrest was in no way to blame for such escape. The name of each party on whom service is made must be given. No fee is allowed for service of warrant outside of the marshal’s district. A writ of habeas corpus ad testificandum, an attachment for a witness, and a writ of subprena may be served beyond the district and fee will be allowed. The account must show the date and place of the issuance of the writ, by whom issued, and the date and place of service. No fee is allowed for serving a warrant of commitment other than the 50 cents for committing each defendant.

FOR KEEPING PROPERTY.

PAR. 2. For the keeping of personal property attached on mesne process, such compensation as the court, on petition setting forth the facts under oath, may allow.

1. A deputy marshal, by permission of the collector of the port, entered a warehouse in which goods were stored in the custody of the collector, and made service of process and affixed a notice of seizure to the property, and thereafter a keeper visited the storehouse three times a day, though without entering it. Held, that the marshal had effected an attachment and was entitled to charge a custody fee in such amount as he had actually paid a keeper for that service. (Jorgensen v. Casks of Cement, 40 Fed. Rep., 606.)

2. Where a debtor was adjudged a bankrupt on his own petition, and prior to the filing thereof a flock of sheep belonging to him had been taken on attachment, and kept by the officer until delivered to the assignee, held, that such officer is entitled to a compensation from the assignee for keeping such sheep until claimed and received by the assignee. (Zeiber v. Hill, 1 Saw., 268.)

3. The marshal is not entitled to an allowance for the custody of property by way of commission. (In re Burnell Bros., 7 Biss., 275.)

NOTE.—The account must be sworn to and accompanied by a certified copy of the order of approval. Seal need not be attached to this copy. The marshal must furnish receipts for all expenses claimed.

SERVING VENIRES.

PAR. 3. For serving venires and summoning every twelve men as grand or petit jurors, four dollars, or thirty-three and one-third cents each. In States where, by the laws thereof, jurors are drawn by lot, by constables, or other officers of corporate places, the marshal shall receive, for each jury, two dollars for the use of the officers employed
in drawing and summing the jurors and returning each venire, and two dollars for his own services in distributing the venires. But the fees for distributing and serving venires, drawing and summoning jurors by township officers, including the mileage chargeable by the marshal for each service, shall not at any court, exceed fifty dollars.

1. Distributing venires.—Marshal is entitled to fees for distributing venires. (United States v. Harmon, 147 U. S., 268.)

2. An adjourned term of court is not the same court as the original term, within Revised Statutes, 829, paragraph 3. (Campbell v. United States (C. C. A.), 65 Fed. Rep. 777.)

Note.—Fees and mileage must not exceed $50 for any term of a court. The name of each juror and the date and place of each service must be given. Where actual expense in lieu of mileage is charged such expense is not considered in limiting the fees to $50. The marshal must, however, charge mileage or expense on the whole venire. He can not charge mileage to summon some jurors and actual expense as to others. The allowance of $50 covers all payments to township officers as well as the mileage and fees of the marshal.

HOLDING COURT OF INQUIRY.

PAR. 4. For holding a court of inquiry or other proceedings before a jury, including the summoning of a jury, five dollars.

SERVING SUBPÆNAS.

PAR. 5. For serving a writ of subpæna on a witness, fifty cents; and no further compensation shall be allowed for any copy, summons, or notice for a witness.

1. When a marshal received, in due course of law, processes of summons and subpæna for the same witnesses (it being the usual mode of procuring the attendance of witnesses in the court from which they issued) and served the same as required, he is entitled to the fees for both services, on their being allowed and certified by the district judge. (Opinion of Feb. 14, 1840, 3 Op., 497.)

2. Where it is the settled practice of the court to procure the attendance of witnesses by the service both of the process of summons and of subpæna, and an order issues to the marshal to summon witnesses, that officer is entitled, for performing the order, to the compensation prescribed for actually summoning the witness, and also to the compensation prescribed for serving the subpæna. The marshal can not disregard the orders or process issued by the court, even though they are superfluous, but must execute such as shall be issued to him in the ordinary practice, and for which he is entitled to the prescribed fees at the hands of the Government. (Opinion of May 16, 1840, 3 Op., 536.)

3. The taxation of the court and the allowance and certificate of the judge are conclusive upon the accounting officers when the service or purpose is enumerated in the act of Congress, and the sum allowed therefor is not exceeded. (Ibid.)

4. The marshal can not be allowed more for the service of a summons, where a subpæna and summons shall have been directed to him in order to obtain the attendance of a single witness, than the sum prescribed for summoning a single witness. (Ibid.)

5. A marshal of the United States is entitled to compensation for serving a subpæna in a criminal case on a witness beyond the limits of his own district, and also for executing an attachment on the same witness for failing to appear. (Opinion of Feb. 9, 1859, 9 Op., 265.)
SERVING WRITS OF POSSESSION, ETC.

PAR. 6. For serving a writ of possession, partition, execution, or any final process, the same mileage as is allowed for the service of any other writ, and for making the service, seizing or levying on property, advertising and disposing of the same by sale, set off, or otherwise according to law receiving and paying over the money, the same fees and poundage as are or shall be allowed for similar services to the sheriffs of the States, respectively, in which the service is rendered.

1. The Supreme Court has no jurisdiction in a case in which the judges of the circuit have divided in opinion upon a motion for a rule to show cause why the taxation of costs of the marshal on an execution should not be reversed and corrected. (Bank v. Groen, 6 Peters, 26.)

2. A marshal, like a sheriff, is bound after the expiration of his term of office to complete an execution which has come to him during his term; and an execution is never completed until the money is made and paid over to the plaintiff, if it is practicable to make it. (McFarland v. Gwin, 3 How., 717.)

3. A plaintiff has a right to direct a deputy marshal to receive a certain description of money in satisfaction of an execution. The deputy then acts as agent of the plaintiff and not of the marshal. (Gwin v. Buchanan, Hagan & Co., 4 How., 1.)

4. A marshal is not entitled to a fee for serving an execution returned “no money and no property.” (Dubois v. United States, 25 C. Cls. R., 195.)

5. Where an execution ca. sa. was served by the marshal in the county of New York, and the defendants held under arrest for some time, and the action was subsequently settled by a compromise, the defendants paying plaintiffs a smaller sum than that specified in the execution, held, that the marshal is entitled to poundage on the whole amount for which the execution issued; that the new provisions contained in the New York Code of Civil Procedure do not affect this question; that the rate of poundage should be that allowed the sheriffs in the different counties throughout the State, under 2 New York Revised Statutes, 645, section 33, and not the special rates allowed the sheriff of the county of New York. (United States v. Haas, 5 Fed. Rep., 29.)

6. Money collected by a United States marshal on an execution issuing out of the United States circuit court, and held by him as trustee of the defendant, is not subject to attachment. (Clarke v. Shaw, 28 Fed. Rep., 356.)

7. In a suit to recover possession of a vessel, where the marshal seizes and takes possession of the vessel, and on settlement of the suit delivers up possession of the property, subject to his fees, he is entitled to his regular commissions on the value of the vessel, under Revised Statutes, 829, besides keeper’s fees, though the claim was not for a money demand. (The May H. Brockway, 49 Fed. Rep., 161.)

8. Where, in the southern district of New York, an execution is regularly issued by plaintiff’s attorney, is stayed after levy, and subsequently vacated by order of court, the marshal is entitled to fees for levying, but not to poundage, for, under Code Civil Procedure, New York, section 3307, sub. 7, poundage depends upon the collecting of the execution. The court may, however, in its discretion, under such section, allow the marshal compensation for his trouble and expenses in caring for the property levied upon. (Amato v. Jacobus (C. C. A.), 58 Fed. Rep., 855.)

9. Under section 829, Revised Statutes, the marshal for the district of Kentucky, in a case where proceedings are stayed after levy of an execution, and no moneys are collected thereon, is entitled to charge the half commissions.
allowed by the law of Kentucky to a sheriff in such a case. (Opinion of June 30, 1877, 15 Op., 347.)

10. Where the marshal who levied the execution has received his half commissions, his successor will be entitled to no more than half commissions for completing the collection and paying over. (Ibid.)

11. Marshals are liable to account to the United States for moneys paid to their deputies on execution, even though the return day of the execution may have passed; and defendants in such execution, who shall have paid money on the same, after the return day, are entitled to be credited at the Treasury for such payments. (Opinion of Apr. 7, 1836, 3 Op., 78.)

Note.—The marshal is not entitled to any fees or expenses on an execution where it is returned nulla bona. Where he serves the writ and makes collections thereon he is entitled to credit, as a sheriff would be under similar circumstances, for all necessary expenses for which vouchers are furnished. A voucher for advertising must be accompanied by a copy of the advertisement, and must be sworn to by the publisher of the paper in which the advertisement appeared. It must give the date of each insertion. The affidavit must state that the charges are the usual commercial rates.

BAIL BOND.

Par. 7. For each bail bond, fifty cents.

SUMMONING APPRAISERS.

Par. 8. For summoning appraisers, fifty cents each.

EXECUTING DEED.

Par. 9. For executing a deed prepared by a party or his attorney, one dollar.

1. A party purchasing has an option under section 829 to draw his own deed and have it executed by the marshal at a charge of $1. (The John E. Mulford, 18 Fed. Rep., 455.)

DRAWING AND EXECUTING DEED.

Par. 10. For drawing and executing a deed, five dollars.

Note.—It is the duty of the marshal to prepare and execute the deed unless the party elects to draw his own deed, in which case the marshal executes it.

COPIES OF WRITS, ETC.

Par. 11. For copies of writs or papers furnished at the request of any party, ten cents a folio.

PROCLAMATIONS IN ADMIRALTY.

Par. 12. For every proclamation in admiralty, thirty cents.

SERVING ATTACHMENT.

Par. 13. For serving an attachment in rem or a libel in admiralty, two dollars.
EXPENSES OF KEEPING BOATS.

PAR. 14. For the necessary expenses of keeping boats, vessels, or other property attached or libeled in admiralty, not exceeding two dollars and fifty cents a day.

1. Section 829 does not fix $2.50 a day as an absolute limit of the charges taxable by the marshal for expenses incurred by reason of the custody of property attached in admiralty cases. (The Perseverance, 22 Fed. Rep., 462.)

2. But he can not charge $5 a day on the ground that he paid a watchman $2.50 for watching the property in the daytime, and another watchman $2.50 for watching the same property, at the same place, in the nighttime. (Ibid.)

3. Charges incurred by the marshal for extra men employed to prevent the collector of customs from taking the property by force out of the marshal's custody were disallowed. (Ibid.)

4. If it is necessary for the marshal to maintain possession and care of property in different places at the same time, and also to protect it from unusual and serious danger, such as loss by depredations of river thieves, there is nothing in section 829 to limit the marshal's expenses to $2.50 per day. (Ibid.)

5. A marshal may receive more than $2.50 per day for custody fees on proof to the court of the existence of extraordinary circumstances, requiring extraordinary expenditure, in order to maintain his custody. (The Captain John, 41 Fed. Rep., 147.)

6. A marshal can not charge $2.50 custody fee for the day and $2.50 for the night. (Ibid.)

7. Where a vessel, seized under a warrant from the district court, continued in the custody of the marshal until the case was disposed of in the circuit court, the marshal had no right to effect insurance on the vessel while so remaining in his custody at the expense of either party, without their consent. Money paid by the marshal for such insurance can not be allowed in the taxation of costs. (Burke v. The brig M. P. Rich, 1 Cliff., 509.)

8. Under paragraph 14 of section 829, Revised Statutes, allowing a marshal $2.50 a day for the necessary expenses of keeping boats, vessels, and other property attached or libeled in admiralty, credit can not be allowed for $2.50 for a keeper by day and $2.50 for a keeper by night. The marshal is limited to $2.50 for each day of twenty-four hours for the hire of keepers. (Comp., Mar. 19, 1895, in re account of Orville T. Porter.)

9. The expense of keeping libeled vessels in excess of $2.50 per day is an extraordinary expense within the discretion of the President, under section 846, Revised Statutes. (Comp. to Atty. Gen., Mar. 30, 1895.)

NOTE.—The expense must be approved by the court. The total expenses must not exceed $2.50 per day for the time the property was in the custody of the marshal. Receipted vouchers must be furnished. Where the actual and necessary expenses chargeable against the United States exceed the fixed limit, the marshal should have the account approved by the court and transmit it to the Attorney-General to be submitted to the President as an extraordinary expense under section 846, Revised Statutes.

COMMISSIONS ON CLAIMS IN ADMIRALTY.

PAR. 15. When the debt or claim in admiralty is settled by the parties without a sale of the property, the marshal shall be entitled to a commission of one per centum on the first five hundred dollars of the
claim or decree, and one-half of one per centum on the excess of any sum thereof over five hundred dollars: *Provided,* That, when the value of the property is less than the claim, such commission shall be allowed only on the appraised value thereof.

1. A vessel was libeled for salvage, but the warrant of arrest remained in the clerk’s office and was never given to the marshal. The parties stipulated that the vessel should remain in her owner’s possession. The bond was neither taken in the marshal’s name nor delivered to him. After a decree for salvage was rendered the claim was paid without sale, no money passing through the marshal’s hands. Revised Statutes, 829, provides for a commission to the marshal for sales in admiralty proceedings which shall be reduced when the claim is settled without a sale. *Held,* that the marshal should receive the reduced commission which is given him as compensation for the loss of his opportunity to earn fees by a sale of the property, and not as a compensation for services. (Smith *v.* The Morgan City, 39 Fed. Rep., 572.)

2. Under section 829 the marshal is entitled to his commissions when after a seizure in admiralty the suit is settled, though without an order of sale. (The Clintonia, 11 Fed. Rep., 740.)

3. The marshal in preserving property arrested under process, acts as bailee, and is responsible to all parties interested for its proper care. In the absence of any statute or rule of court, he is entitled to be paid his fees at the time he delivers up the property by the person entitled to receive it. (The Georgeanna, 31 Fed. Rep., 405.)

4. The libelant sued as seaman under rule 45 without security. The vessel was arrested, and nineteen days afterwards was released on a deposit by the claimant in the registry of the amount sued for with interest, costs, and officers’ fees under rule 65. The libel, on trial, was dismissed. The object of rule 65 was not to deprive the marshal of his security for fees, but rather to confirm and regulate it; that he was entitled to be paid his fees out of the deposit in the registry, and that it was laches in the claimant not to apply to the court under rule 45 immediately upon arrest of the vessel to require security from the libelant or the release of the vessel. (Ibid.)

5. The claimant, after appearance and answer, submitted to the Secretary of the Treasury a petition for the remission of the forfeiture, which was granted on condition that the claimants pay all costs and expenses incurred by the United States. (The Captain John, 41 Fed. Rep., 147.)

6. Under section 829, paragraph 15, where a case is dismissed without any formal appearance of claimant on payment of a sum less than that claimed commissions will be allowed on the amount paid in settlement. (Hanson *v.* Scottish Dale, 65 Fed. Rep., 810.)

**COMMISSIONS ON SALES.**

**PAR. 16.** For sale of vessels or other property under process in admiralty, or under the order of a court of admiralty, and for receiving and paying over the money, two and one-half per centum on any sum under five hundred dollars, and one and one-quarter per centum on the excess of any sum over five hundred dollars.

1. Where a vessel is sold by a trustee under the limited liability act the marshal is not entitled to a commission. (The Vernon, 36 Fed. Rep., 113.)

2. An auctioneer is not required by law to be employed by the marshal in sales under process or decree in admiralty; and if an auctioneer be employed
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by him, he is but the agent of the marshal, and can make no charge which the marshal could not lawfully make. (The John E. Mulford, 18 Fed. Rep., 455.)

3. The marshal’s fees and charges on sales are limited by sections 823 and 829, and as these do not include any charge for an auctioneer, a notice prior to a marshal’s sale that $25 auctioneer’s fee would be required of the purchaser in addition to his bid is an unlawful exaction. (Ibid.)

4. When a marshal has been paid his commissions on the sale of a vessel under decree of the district court, and the claimant files a petition on which monition is issued, asking that the balance of the proceeds of the sale in the registry of the court be paid to him, and it is so ordered, the marshal is not entitled, in addition to his fees for serving the process, to a commission on the amount paid to the claimant. (The Colorado, 21 Fed. Rep., 592.)

NOTE.—The account must show that the money has been actually received and paid over.

COMMISSIONS FOR DISBURSING MONEY.

PAR. 17. For disbursing money to jurors and witnesses, and for other expenses, two per centum.

1. Commissions.—A marshal is not entitled to commissions on disbursements for the support of a penitentiary, made under Revised Statutes, 1892. (United States v. Baird, 150 U.S., 54.)

2. Section 829, providing that the marshal be allowed “for disbursing money to jurors and witnesses, and for other expenses, two per centum,” held not to be limited to expenses of court. (In re Burnell Bros., 7 Biss., 275.)

NOTE.—The marshal is entitled to commissions on the amounts which have been allowed him in his accounts for disbursements. When an account for fees and expenses (not supplemental for a former fiscal year) is made up by a marshal, he should include charge for commissions on all disbursements made by him since his last preceding account for fees and expenses. When such account is examined by the accounting officers commissions will be allowed on all disbursement accounts examined and certified, and on which commissions have not heretofore been allowed. The marshal of a Territory will not be allowed commissions on disbursements for expenses of a penitentiary where he is allowed a salary as keeper of same.

EXPENSES ENDEAVORING TO ARREST.

PAR. 18. For expenses while employed in endeavoring to arrest, under process, any person charged with or convicted of a crime, the sum actually expended, not to exceed two dollars a day, in addition to his compensation for service and travel.

1. The marshal is entitled to $2 per day expenses endeavoring to arrest. (United States v. Harmon, 147 U. S., 268.)

2. When an outgoing marshal relinquishes to his successor his right to expenses incurred in endeavoring to arrest, the incoming marshal may charge these fees in his account, and they should be allowed. (United States v. Fletcher, 147 U. S., 664.)

3. The Treasury officials have a right to require items of expense endeavoring to arrest. (Ibid.)

4. A marshal is entitled to expense incurred in making an arrest, although such arrest was not made by the deputy sent for that purpose, but was made in consequence of information acquired in traveling about for that purpose under the
direction of the district attorney, and the marshal is not restricted to the statutory allowance of $2 a day. (Kinney v. United States, 54 Fed. Rep., 313.)

5. A marshal is not entitled to expenses incurred in endeavoring to make an arrest when he had no warrant and could not have arrested the accused if found. (Ibid.)

6. He is also entitled to the expense of the deputy in thus traveling about under direction of the district attorney, it appearing that the arrest followed directly from information thus obtained. (Ibid.)

7. By paragraph 18 of section 829 the marshal is entitled to charge as part of the expense in serving a writ in a criminal case a per diem paid his deputy not to exceed $2 a day. (United States v. Harker, 3 Saw., 237.)

8. A marshal is not entitled to expenses endeavoring to serve a bench warrant on a prisoner in custody on mittimus from commissioner. (Hitch v. United States, 66 Fed. Rep., 937.)

NOTE.—Not exceeding $2 will be allowed for any one day. Though a marshal or deputy has two or more writs he is allowed only $2 a day. Two deputies are not each entitled to $2 a day for expenses of endeavoring to arrest on the same writ. The expense can be charged only from the time the marshal starts on the trip to arrest until the time of the arrest. The expense endeavoring ceases the moment the marshal has a prisoner in custody. The account must show the date, the point from and to which travel is made, and the number of miles traveled on each day, for which expense is charged. The marshal is not entitled to $2 unless he or his deputy actually expends that amount. Receipts must be furnished whenever practicable. The items of expense must be given.

COMMITTING AND DISCHARGING PRISONERS.

PAR. 19. For every commitment or discharge of a prisoner, fifty cents.

1. The commitment fee of 50 cents covers compensation for serving warrant of commitment. (United States v. Tanner, 147 U. S., 661.)

2. The marshal is entitled to charge for releases on bail before the commissioner where such release involves the taking of a bail bond. (Kinney v. United States, 54 Fed. Rep., 313.)

3. The fees of the marshal for bringing in and returning, and the intermediate commitment of prisoners or witnesses, in cases pending before the commissioner are embraced in the per diem allowance made by the act of February 26, 1853, chapter 80, for the attendance of the marshal and his deputies at the trial. (Opinion of Mar. 22, 1856, 7 Op., 667.)

4. The same rule applies for the same service in cases pending in the circuit or district court. (Ibid.)

5. A marshal is entitled to fees for discharging poor convicts on order of the commissioner. (Hitch v. United States, 66 Fed. Rep., 937.)

NOTE.—To entitle the marshal to this fee it must appear that the prisoner was actually committed to a jail or penitentiary. The date and place of commitment must be given. Fifty cents is allowed for each prisoner, though there may be several committed under one writ. Only one committing fee of 50 cents will be allowed, though the marshal had two or more warrants of commitment against the same defendant. To entitle a marshal to a fee for discharging a prisoner he must actually have such prisoner in custody and actually discharge him. Where there are two or more cases against the same defendant, he is discharged in each case, the marshal is entitled to only one discharge fee.
TRANSPORTING CRIMINALS.

Par. 20. For transporting criminals, ten cents a mile for himself and for each prisoner and necessary guard; except in the case provided for in the next paragraph.

1. Transporting prisoners.—A marshal is entitled to the amount paid for hack hire in transporting prisoners to and from court. (United States v. Harmon, 147 U.S., 268; same case, 43 Fed. Rep., 560.)

2. A marshal is entitled both to transportation of himself and prisoner, and to travel in going to serve a warrant of removal or warrant to commit. (Harmon v. United States, 43 Fed. Rep., 560; overruled as to travel to serve, see United States v. Tanner, 147 U.S., 661.)

3. A marshal is entitled to mileage for taking a prisoner to and from the commissioner and jail, by virtue of warrant and mittimus under the Connecticut practice. Section 1030 does not apply. (Kinney v. United States, 54 Fed. Rep., 313.)

4. A marshal is entitled to expenses incurred in taking a prisoner from the jail in one city to the court-house in another, this not coming within the provisions of section 1030. (Ibid.)

5. A marshal is entitled to 10 cents per mile for transporting prisoners committed, pursuant to Revised Statutes, 5541, to a jail outside his district, but within the State in which it lies, and is not limited to actual expenses. (United States v. McMahon (C. C. A.), 65 Fed. Rep., 976.)

6. Marshals are entitled to compensation for transporting witnesses in custody (though it be not mentioned by the statute) by analogy of the statute compensation for the transportation of criminals. (Opinion of June 18, 1853, 6 Op., 58.)

7. See note 27, paragraph 1.

Note.—The date and nature of the writ, by whom issued, the point from and to which the prisoner was transported must be given. If travel is made by other than the most direct route, the reason for such longer travel must be given. If the reason given is not sufficient, mileage will be allowed only by the most direct route. Guard certificates must be furnished in all cases.

TRANSPORTING CONVICTS.

Par. 21. For transporting criminals convicted of a crime in any district or Territory where there is no penitentiary available for the confinement of convicts of the United States to a prison in another district or Territory designated by the Attorney-General, the reasonable actual expense of transportation of the criminals, the marshal, and the guards, and the necessary subsistence and hire.

Note.—The marshal must make out an itemized account of expenses on the blank form prescribed by the Attorney-General. Receipts must be furnished for guard hire, hotel bills, and all other expenses, where practicable. The expense of transporting criminals is included as a voucher in the account for fees and expenses of marshals and forwarded with such account to the Attorney-General. Per diem compensation is not allowed the marshal or deputy in charge representing the marshal. As to transportation of Chinese persons convicted of being unlawfully in the United States, see directions under title "Enforcement of Chinese exclusion act," post page 159.
PER DIEM FOR ATTENDANCE ON COURT.

Par. 22. For attending the circuit and district courts, when both are in session, or either of them when only one is in session, and for bringing in and committing prisoners and witnesses during the term, five dollars a day.

Hereafter no part of any money appropriated shall be used in payment of a per diem compensation to any attorney, clerk, or marshal for attendance in court except for days when the court is open by the judge for business, or business is actually transacted in court, and when they attend under sections 583, 584, 671, 672 and 2013, of the Revised Statutes, which fact shall be certified in the approval of their accounts. (Act of Mar. 3, 1887, Stat. L., vol. 24, p. 541.)

1. Marshals are entitled to per diem fees for attendance under sections 583, 584, 671, 672, and 2013, Revised Statutes, the same as if the judge were present and business transacted. (United States v. Pitman, 147 U. S., 669.)

2. Under section 829, Revised Statutes, the marshal is entitled to per diem for attendance only when the court is in session. (McMullen v. United States, 24 C. Cls. R., 394.)

3. The appropriation act of 1887 (24 Stat. L., 541) took away per diem for Sundays and holidays which the accounting officers had been allowing. (Ibid.)

4. A marshal can not charge for constructive attendance on court on Sunday, the court not being in session. (Dubois v. United States, 25 C. Cls. R., 195.)

5. The fact that the 5th of July was generally celebrated as Independence Day, the 4th falling on Sunday, does not disentitle a marshal to his per diem for attending court on that day, where the record shows that the court was open and transacted business. (Fletcher v. United States, 45 Fed. Rep., 213.)

6. A marshal is entitled to per diem compensation for attendance on court where no certificate is filed showing that the court is open and business transacted. (Kinney v. United States, 54 Fed. Rep., 313.)

7. A marshal is entitled to his per diem when, in obedience to an order of court directing an adjournment to a certain day, he is present upon that day, the journal is opened by the clerk, and the court is then adjourned to another day by direction of the judge. (Kinney v. United States, 60 Fed. Rep., 883.)

8. A marshal is not entitled to per diem for attendance on Sundays during the terms of Federal courts, when courts are not open for business. (Campbell v. United States, 65 Fed. Rep., 777.)

9. A marshal is entitled to separate per diem allowance for separate and distinct services on the same day for each of which a per diem allowance is authorized by the fee bill. (United States v. McMahon (C. C. A.), 65 Fed. Rep., 976.)

10. A marshal will be allowed a double per diem fee for attendance upon court and before a commissioner on the same day, under the authority of the United States v. Erwin (147 U. S., 685), the language of section 829, Revised Statutes, in regard to marshal's fees, being substantially the same as that of section 824, relating to fees of attorneys. (Dec. First Comp. Bowler, p. 107.)

11. A marshal is entitled to receive a per diem for services of his deputy in one district court while he himself is in attendance on the same day upon another branch of the same court sitting in the same place, but not in the same room. (Dec. First Comp. Bowler, p. 187.)

Note.—The order of approval or a certificate of the judge must show that on each day for which attendance is charged court was opened by the judge for
business, or business was actually transacted, etc., as provided by the act above quoted. Where attendance is by deputy, the account must give the name of the deputy so attending. When court is in session in two or more places in a district on the same day, the marshal is allowed for each day's attendance on each court by himself or deputies. A marshal is allowed a fee for attendance on court and before a commissioner on the same day, if he actually attends on both.

PER DIEM FOR ATTENDANCE BEFORE COMMISSIONERS.

PAR. 23. For attending examinations before a commissioner, and bringing in, guarding, and returning prisoners charged with crime, and witnesses, two dollars a day; and for each deputy not exceeding two, necessarily attending, two dollars a day.

1. The number of officers necessarily attending before a commissioner, not exceeding the marshal and two deputies, is a matter to be decided by the marshal in the honest exercise of his discretion. (Harmon v. United States, 43 Fed. Rep., 560.)

2. The examination by a commissioner of a poor convict is a proceeding in a criminal case. (Ibid.)

3. Neither a marshal nor his deputy is entitled to a per diem for attendance before a commissioner on days for which he has received a per diem for attendance on court. (Fletcher v. United States, 45 Fed. Rep., 213.)

4. When a commissioner holds an accused person to trial, and verbally commits him to the custody of the marshal until bail is obtained, the latter is entitled to fees for guarding him, as he has no authority to commit him to jail without a written mittimus. The marshal is sole judge as to whether a guard is necessary when the prisoner is before the commissioner. (United States v. Ebbs, 49 Fed. Rep., 149.)

5. A hearing on the question of admission to bail or on a motion to adjourn or on arraignment or commitment constitutes a "hearing and deciding" for the attendance upon which the marshal is entitled to a fee. (Kinney v. United States, 54 Fed. Rep., 313.)

6. A marshal is entitled to per diem fee for attendance before commissioner on application of poor convict for discharge. (Hitch v. United States, 66 Fed. Rep., 937.)

Note.—Only one per diem will be allowed for each day to a marshal or deputy, though such marshal or deputy may attend before two or more commissioners in two or more cases on the same day. No per diem is allowed for the attendance of a marshal or deputy before a commissioner where he arrests a defendant on a capias from court and takes him before a commissioner to permit the prisoner to give bond or to have him committed. Nor will he be allowed a per diem after the case has been disposed of by the commissioner, the defendant committed, and he is brought out to enter into bond.

TRAVEL TO ATTEND COURT.

PAR. 24. For traveling from his residence to the place of holding court, to attend a term thereof, ten cents a mile for going only.

1. The marshal is entitled to mileage to attend court on the days when the courts were held by adjournment over an intervening day and were not held on consecutive days, and to attend special courts or special terms of court. (United States v. Harmon, 147 U. S., 268; same case, 43 Fed. Rep., 560.)
2. He is not entitled to mileage for going to attend court when it adjourns over on Sunday. (United States v. Shields, 153 U. S., 88.)

3. The marshal is entitled to charge for travel to attend court on days which were consecutive. (Kinney v. United States, 54 Fed. Rep., 313.)

4. See note 3 after section 835.

Note.—Travel must be by the most direct, practicable route. When the court adjourns over several days the marshal may return home and charge for again traveling to attend court. The date and miles traveled and the charge therefor should be given, and then the days of attendance and the charge therefor.

TRAVEL TO SERVE PROCESS.

PAR. 25. For travel, in going only, to serve any process, warrant, attachment, or other writ, including writs of subpoena in civil or criminal cases, six cents a mile, to be computed from the place where the process is returned to the place of service, or, when more than one person is served therewith, to the place of service which is most remote, adding thereto the extra travel which is necessary to serve it on the others. But when more than two writs of any kind required to be served in behalf of the same party on the same person might be served at the same time, the marshal shall be entitled to compensation for travel on only two of such writs; and to save unnecessary expense, it shall be the duty of the clerk to insert the names of as many witnesses in a cause in such subpoena, as convenience in serving the same will permit.

1. The marshal is entitled to charge for travel to serve each writ where he had in his hands for service several precepts against different persons for different causes, and made service of two or more of such precepts in the course of one trip. (United States v. Harmon, 147 U. S., 268; Harmon v. United States, 43 Fed. Rep., 560; Fletcher v. United States, 45 Fed. Rep., 213. The decision of the Supreme Court overruled Turner v. United States, 19 C. Cls. R., 629, and United States v. Ralston, 17 Fed. Rep., 895; see also the opinion of the Attorney-General Oct. 10, 1878, 16 Op., 165.)

2. A marshal is not entitled to charge for travel in going to serve process when taking a prisoner under sentence to the place of commitment. (United States v. Tanner, 147 U. S., 661; overruling Tanner v. United States, 25 C. Cls. R., 68.)

3. The marshal may charge mileage on as many writs as he may have in his hands where the writs are against different persons. (United States v. Fletcher, 147 U. S., 664; but see act Mar. 3, 1893, quoted in note.)

4. A deputy is not entitled to traveling expenses after the warrant has been returned from the place of return to the place of the residence of the deputy. (Dubois v. United States, 25 C. Cls. R., 195.)

5. The marshal is entitled to mileage in serving writs where it appears that the railroad route traveled was the nearest practicable. (Kinney v. United States, 54 Fed. Rep., 313.)

6. He is entitled to charge for the distance charged for by the railroad company, though the actual distance was a little less, and for the distance from the railway terminus to the destination. (Ibid.)

7. He may also charge for actual travel where the service and return were in the same place, and there is proof that such charges have always theretofore been allowed and paid. (Ibid.)
8. He is entitled to travel for procuring witnesses outside the district by direction of the district attorney. (Ibid.)

9. When a marshal serves several subpoenas for the Government in different cases on the same person, on the same trip, he is entitled to mileage on two, and only two, subpoenas. (Campbell v. United States (C. C. A.), 65 Fed. Rep., 777.)

10. A marshal is not authorized, after he has received his actual expenses upon one writ for making a trip on which he serves several writs in favor of the Government upon different persons, to thereafter recover his mileage on the other writs so served. (Campbell v. United States (C. C. A.), 65 Fed. Rep., 777.)

11. A marshal is not entitled to 6 cents a mile for travel to serve warrants to commit. (Campbell v. United States (C. C. A.), 65 Fed. Rep., 777.)

12. A marshal is entitled to mileage in traveling a second time to attend a hearing before a commissioner, such hearing having been postponed from a previous date when the marshal was present. (Hitch v. United States, 66 Fed. Rep., 937.)

13. A marshal is entitled to mileage in serving bench warrants on prisoners in custody under commitments by commissioners. (Hitch v. United States, 66 Fed. Rep., 937.)


15. A marshal is entitled to mileage only on the shortest practicable route, although he actually traveled by longer route. (Hitch v. United States, 66 Fed. Rep., 937.)

16. Where a marshal serves several writs upon the same trip he must elect to take mileage or actual expenses for the whole trip; he can not take mileage in part and expenses in part, although he claims mileage on one writ to place of service and actual expenses on another writ from the place where the first writ was served. (Dec. Comp. in re accounts of W. H. Tisdale, Dec. 27, 1894.)

17. The act of March 3, 1893 (27 Stat., 608), contained a provision "that hereafter no marshal or deputy marshal shall be allowed more than one mileage, etc." Such a limitation is equivalent to "after the passage of this act," which includes the date of its passage. Duplicate mileage can not, therefore, be allowed for service on March 3, or thereafter. (Dec. R. B. Bowler, First Comp., p. 1.)

18. A United States marshal presents a supplemental account for fees earned at 6 cents per mile traveling to serve writs, during the fiscal year 1890. (Now claimed under Harmon Case.) Held, that without deciding whether or not the Comptroller has authority to now reopen the settlement for the year 1890 made by his predecessor, the present claim should be disallowed in order that the Government may, if suit is brought, recover by counterclaim such fees as were allowed in the settlement sought to be reopened, but which would be disallowed under the present rulings of this office. (Dec. First Comp. R. B. Bowler, p. 73.)

19. A marshal is entitled to charge mileage for actual travel and expense endeavoring to serve a writ from the place where the writ was received to the place of service. (Dec. First Comp. Bowler, p. 192.)

20. See decision quoted under paragraph 1, note 27.

Note.—The act of February 22, 1875 (chap. 95, sec. 7), provided that marshals should be entitled only to mileage actually and necessarily performed. This was construed by the accounting officers to limit a marshal to one mileage without regard to the number of writs he served on the same trip. The decision of the Supreme Court in United States v. Harmon (147 U. S., 268) overruled this
practice, and a marshal was under that decision allowed mileage on each writ served. Soon after this decision was rendered came the act of March 3, 1893 (chap. 208, 27 Stat., 608), followed by the act of August 18, 1894, which provides: 

"That hereafter no marshal or deputy marshal shall be allowed more than one mileage for each mile actually and necessarily traveled, irrespective of the number of writs he may execute in making such travel; nor shall any marshal or deputy marshal be allowed any additional mileage incident to the execution or return of any writ of arrest, commitment, or removal other than the ten cents a mile now allowed by law for each deputy, prisoner, and guard; and no mileage shall be allowed on any writ not executed or when the travel was without cost to marshal or deputy.

"Provided, That it shall be the duty of the marshal, his deputy, or other officer, who may arrest a person charged with any crime or offense, to take the defendant before the nearest circuit court commissioner or the nearest judicial officer having jurisdiction under existing laws for a hearing, commitment, or taking bail for trial, and the officer or magistrate issuing the warrant shall attach thereto a certified copy of the complaint, and upon the arrest of the accused, the return of the warrant, with a copy of the complaint attached, shall confer jurisdiction upon such officer as fully as if the complaint had originally been made before him, and no mileage shall be allowed any officer violating the provisions hereof."

Under the above provision the marshal has the choice of two officers before whom he may take a person charged with crime, namely, (1) the circuit court commissioner nearest to the place where the arrest is made, or (2) the judicial officer having jurisdiction under existing laws nearest to the place where the arrest is made. No mileage will be allowed marshals who do not comply with this provision as above explained.

In rendering accounts marshals will be obliged to state under oath (1) that the officer before whom the defendant was taken was the circuit court commissioner, or the judicial officer having jurisdiction under existing laws, as the case may be, nearest to the place of arrest, and (2) for mileage claimed in all cases that the travel was not free, but was made with cost to marshal or deputy.

MILEAGE IN OKLAHOMA AND THE INDIAN TERRITORY.

Act of May 2, 1890 (chap. 182, 26 Stat., 81): 

Sec. 10. Persons charged with any offense or crime in the Territory of Oklahoma, and for whose arrest a warrant has been issued, may be arrested by the United States marshal or any of his deputies, wherever found in said Territory, but in all cases the accused shall be taken, for preliminary examination, before a United States commissioner, or a justice of the peace of the county, whose office is nearest to the place where the offense or crime was committed.

Sec. 40. That persons charged with any offense or crime in the Indian Territory, and for whose arrest a warrant has been issued, may be arrested by the United States marshal or any of his deputies, wherever found in said Territory, but in all cases the accused shall be taken, for preliminary examination, before the commissioner in the judicial division whose office or place of business is nearest, by the route usually traveled, to the place where the offense or crime was committed; but this section shall apply only to crimes or offenses over which the courts located in the Indian Territory have jurisdiction: Provided, That in all
cases where persons have been brought before a United States commis-

sioner in the Indian Territory for preliminary examination, charged

with the commission of any crime therein, and where it appears from

the evidence that a crime has been committed, and that there is prob-

able cause to believe the accused guilty thereof, but that the crime is

one over which the courts in the Indian Territory have no jurisdiction,

the accused shall not, on that account, be discharged, but the case

shall be proceeded with as provided in section ten hundred and fourteen

of the Revised Statutes of the United States.

Note.—Under these provisions marshals in Oklahoma Territory must take the
defendant before the commissioner nearest to the place of arrest, or before a jus-
tice of the peace of the county in which the arrest was made who is nearest to
the place of arrest. In the Indian Territory the marshal must take the defend-
ant before the commissioner in the judicial division whose office is nearest the
place of arrest by the route usually traveled. (See the Indian Territory act of
Mar. 1, 1895.)

ACTUAL EXPENSES.

Par. 26. In all cases where mileage is allowed to the marshal he may
elect to receive the same or his actual traveling expenses, to be proved
on his oath, to the satisfaction of the court.

1. A marshal may charge for actual traveling expenses incurred in traveling
to make service of a monition, in lieu of mileage. (24 Fed. Rep., 733.)

2. He is not entitled to the actual expenses incurred in earning a fee in addi-
tion to the statutory allowance. (United States v. Fitzsimmons, 50 Fed. Rep., 381.)

3. He has no authority to employ an auctioneer to sell property, and is entitled
to no allowance for the expense thereof. (Ibid.)

4. He is entitled to charge for the hire of carriages to transport prisoners and
to serve process. (Kimney v. United States, 54 Fed. Rep., 381.)

5. Where the marshal elects to receive actual expenses in lieu of mileage to
serve venire, the expense is no part of the $50 to which the marshal is limited
in serving the venire. (3 Law.; First Comp., 163.)

Note.—The marshal must charge mileage or expense for the trip. Expenses
must be itemized, dates given, and receipts furnished whenever practicable.

FEES TO BE PAID MARSHAL.

Sec. 830. There shall be paid to the marshal his fees for services rendered for the United States, for summoning jurors and witnesses in behalf of the United States, and in behalf of any prisoner to be tried for a capital offense, for the maintenance of prisoners of the United States confined in jail for any criminal offense; also, for his reasonable actual expense for the transportation of criminals, and of the marshal and guards, to prisons designated by the Attorney-General, and for hire and subsistence in that behalf, as hereinbefore provided; also, his fees for the commitment or discharge of prisoners; his expenses necessarily incurred for fuel, lights, and other contingencies that may accrue in holding the courts within his district, and providing the books necessary to record the proceedings thereof: Provided, That he shall not
incur, or be allowed, an expense of more than twenty dollars in any one year for furniture, or fifty dollars for rent of a building and making improvements thereon without first submitting a statement and estimates to the Attorney-General and getting his instructions in the premises.

1. The marshal is entitled to the amounts paid for blanks for the United States attorney. (United States v. Harmon, 147 U. S., 268.)

2. The construction given to an act by the Department charged with the duty of enforcing it is material only in case of doubt. (United States v. Tanner, 147 U. S., 661.)

3. When claims against the United States are presented to the proper Department for allowance, and the Department suspends action until proper vouchers are furnished, or other reasonable requirements are complied with, the courts should not assume jurisdiction until final action is taken. (United States v. Fletcher, 147 U. S., 664.)

4. An approval by a district court of a marshal's account, under act of Feb. 22, 1875, is not a judgment. The statute having made such accounts subject to revision by the accounting officers, the order of the court is only prima facie evidence of the amount due. (Turner v. United States, 19 C. Cis. R., 629.)

5. A clerk in a marshal's office receiving a salary is an employee of the Government. (Duval v. United States, 23 C. Cis. R., 102.)

6. The marshal is entitled to charge for stationery furnished by him for the use of the court. (Kinney v. United States, 54 Fed. Rep., 313.)

7. He is entitled to charge for payments to messengers, criers, and bailiffs in pursuance of statutory requirements. (Kinney v. United States, 54 Fed. Rep., 313.)

8. The allowance of items under section 846 paid under order of the court is not reviewable in an action against the marshal by the Government to recover the same as paid contrary to law. (United States v. Hillyer Cir. Ct. App., 58 Fed. Rep., 678.)

9. Entries and memoranda made by a deceased marshal are admissible in evidence in favor of his administratrix in an action by her against the United States to recover for services, and disbursements, of the intestate in his lifetime. (Kinney v. United States, 54 Fed. Rep., 313.)

10. The approval of a marshal's account by a circuit court of the United States, under act of February 22, 1875, is prima facie evidence of its correctness, and, in the absence of clear and unequivocal proof of mistake on the part of the court, is conclusive. (Kinney v. United States, 54 Fed. Rep., 313.)

11. Under act of 1884 (chap. 53, sec. 9) fixing the salary of the United States marshal in Alaska at $2,500 per annum, and providing that he shall pay the fees received by him into the Treasury of the United States, he is required to pay over all fees received by him, whether for services rendered to the Government or for those rendered to private litigants. (United States v. Hillyer, Cir. Ct. App., 58 Fed. Rep., 678.)

12. The circuit and district courts have power to direct the marshal to furnish meals for jurors in cases where the United States is not a party and the marshal is entitled to be reimbursed for such expenses. (Campbell v. United States (C. C. A.), 65 Fed. Rep., 777.)

13. J. A. Moore, late United States marshal, claims fees for services rendered after the expiration of his commission. He continued to act as marshal and was recognized by the court, although no appointment under section 793, Revised
Statutes, was made. Held, that as by section 779, Revised Statutes, a marshal’s term is limited to four years, Moore can be allowed no compensation after the expiration of his term. (First Comp. Bowler, p. 110).

14. The United States marshal for the district of Massachusetts includes in his accounts of miscellaneous expenses, United States courts, a voucher in favor of the clerk of the circuit court for printing a record in a case in which the United States was plaintiff. Included in the voucher is a charge of $75.60 for the services of the clerk in “proof reading and directing the record.” Held, that as the fees of a clerk of a circuit court found in section 828 are by section 823 exclusive, and as that section provides no fee for such services as were rendered by the clerk in this case, the amount ($75.60) will be disallowed. Payment would be in violation of section 1765. (First Comp. Bowler, p. 253.)

15. When the purchase of towels, matches, and soap for the use of the courts (not for the use of the officers of the courts, to wit, marshal, clerk, and district attorney) is deemed necessary by the Attorney-General the expense thereof is a proper charge against the appropriation for “Miscellaneous expenses, United States courts.” (Letter of Comp. to Atty. Gen., Jan. 8, 1895.)

16. Expenses of arranging and preserving old records and papers of the district and circuit courts may be paid from the appropriations for miscellaneous expenses, United States courts, and the Attorney-General may employ the district attorney and clerk to perform this service. (Comp. to Atty. Gen., May 6, 1895.)

NO PER DIEM TO ATTORNEY, CLERK, OR MARSHAL FOR ATTENDANCE ON RULE DAY.

SEC. 831. No per diem or other allowance shall be made to any district attorney, clerk of a circuit court, clerk of a district court, marshal or deputy marshal, for attendance at rule-days of a circuit or district court; and when the circuit and district courts sit at the same time no greater per diem or other allowance shall be made to any such officer than for an attendance on one court.

MARSHAL OF THE SUPREME COURT OF THE UNITED STATES.

SEC. 832. The marshal of the Supreme Court of the United States shall be entitled to receive for the service of any warrant, attachment, summons, capias, or other writ, except execution, venire, or a summons, or subpoena for a witness, one dollar for each person on whom such service may be made. His fees for all other services shall be the same as are herein allowed to other marshals; but he shall pay into the Treasury of the United States all fees received by him, and render a true account thereof at the close of each term to the Attorney-General.

EMOLUMENT RETURNS—WHEN AND BY WHOM MADE.

SEC. 833. Every district attorney, clerk of a district court, clerk of a circuit court, and marshal, shall, on the first days of January and July, in each year, or within thirty days thereafter, make to the Attorney-General, in such form as he may prescribe, a written return for the half year ending on said days, respectively, of all the fees and emoluments
of his office, of every name and character, and of all the necessary expenses of his office, including necessary clerk-hire, together with the vouchers for the payment of the same for such last half year. He shall state separately in such returns the fees and emoluments received or payable under the bankrupt act; and every marshal shall state separately therein the fees and emoluments received or payable for services rendered by himself personally, those received or payable for services rendered by each of his deputies, naming him, and the proportion of such fees and emoluments which, by the terms of his service, each deputy is to receive. Said returns shall be verified by the oath of the officer making them.

WHAT TO BE INCLUDED IN RETURNS BY ATTORNEY AND MARSHAL.

Sec. 834. The preceding section shall not apply to the fees and compensation allowed to district attorneys by sections eight hundred and twenty-five and eight hundred and twenty-seven. All other fees, charges, and emoluments to which a district attorney or a marshal may be entitled, by reason of the discharge of the duties of his office, as now or hereafter prescribed by law, or in any case in which the United States will be bound by the judgment rendered therein, whether prescribed by statute or allowed by a court, or any judge thereof, shall be included in the semi-annual return required of said officers by the preceding section.

MAXIMUM COMPENSATION OF DISTRICT ATTORNEY.

Sec. 835. No district attorney shall be allowed by the Attorney-General to retain of the fees and emoluments of his office which he is required to include in his semi-annual return, for his personal compensation, over and above the necessary expenses of his office, including necessary clerk-hire, to be audited and allowed by the proper accounting officers of the Treasury Department, a sum exceeding six thousand dollars a year, or exceeding that rate for any time less than a year.

1. Charge for mileage to serve process must be accounted for in the emolument return of the marshal. (United States v. Smith, in the Supreme Court, May 20, 1895.)

2. Special compensation of a district attorney for services not covered by salary or fees should be included in his emolument return. (United States v. Smith, in the Supreme Court, May 20, 1895.)

3. The allowance of mileage for travel to attend court is a reimbursement of expenses incurred and not a fee to be accounted for in the emolument return of the marshal or clerk. (United States v. Smith, in the Supreme Court, May 20, 1895; in re account of S. S. Vinson, Dec. Comp. Treas., June 13, 1895.)

4. The allowance of 10 cents a mile to attend court or an examination before a commissioner is a reimbursement for traveling expenses and not a fee to be included in the emolument return of the district attorney. (United States v. Smith, in the Supreme Court, May 20, 1895.)
5. A per diem compensation is a fee which must be accounted for in the emolument return. (United States v. Smith, in the Supreme Court, May 20, 1895.)

6. The Treasury Department, in determining whether a district attorney has received earnings in excess of the maximum of personal compensation and emoluments allowed by law, for a particular year, can not include compensation for travel allowed by law on a mileage basis. (Winston v. United States, 63 Fed. Rep., 691.)

7. If the costs of dockets can be allowed a district attorney as a proper office expense; it should be allowed out of the fees and emoluments earned for the years during which the expenses were incurred, and not otherwise. (Ruhm v. United States, 66 Fed. Rep., 531.)

8. A district attorney traveling to Washington on the order of the Attorney-General can not be allowed his expenses except as payable from the emoluments of his office. (Dec. Comp. in re claim of O'Neal, Feb. 9, 1895.)

NOTE.—See decisions quoted under section 845, post page 99.

DISTRICT ATTORNEY OF SOUTHERN NEW YORK TO BE PAID EXPENSES.

SEC. 836. There shall be paid to the district attorney for the southern district of New York, in addition to his salary, at the rate of six thousand dollars a year, such sum as shall be necessary, together with the costs and fees allowed him by law, to pay such amount as may be fixed by the Attorney-General for the proper expenses of his office. But nothing in this or the preceding section shall forbid the allowance of additional compensation for services in prize causes as provided in Title “Prize.”

Note.—The district attorney for the southern district of New York renders an account in the nature of an emolument return to the Attorney-General monthly instead of half yearly, showing his earnings and expenses for such month. The Attorney-General approves such expenses as he deems proper, and refers the account or return to the Auditor for the State and other Departments, when an account is stated in favor of the attorney, for the amount of his office expenses for the month in excess of his earnings.

ATTORNEY AND MARSHAL IN OREGON AND NEVADA—DOUBLE FEES.

SEC. 837. The district attorneys and marshals for the districts of Oregon and Nevada shall be entitled to receive, for the like services, double the fees hereinbefore provided; but neither of them shall be allowed to retain of such fees any sum exceeding the aggregate compensation of such officer as hereinbefore provided.

OFFICERS IN NEW MEXICO AND ARIZONA TO HAVE DOUBLE FEES.


Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the act of the Congress of the United States entitled “An act to regulate the fees and costs to be allowed clerks, marshals, and attorneys of the circuit and district courts of the United States, and for other purposes,” approved February
twenty-sixth, eighteen hundred and fifty-three, and section eight hun-
dred and thirty-seven of the Revised Statutes of the United States, is
extended to the Territories of New Mexico and Arizona, and shall apply
to the fees of all officers in such Territories; but the district attorney
shall not, by fees and salary together, receive more than three thou-
sand five hundred dollars per year; and all fees or moneys received by
him above said amount shall be paid into the Treasury of the United
States.

1. Section 837, Revised Statutes, and act of August 7, 1882, do not authorize
double charge of mileage to a district attorney. (United States v. Smith, in
Supreme Court, May 20, 1895.)

2. The United States commissioners for the Territory of Arizona are entitled
to double fees. (McGrew v. United States, 23 C. Cls. R., 274.)

MAXIMUM COMPENSATION TO MARSHALS AND ATTORNEYS IN NEW
MEXICO AND ARIZONA.

Act of July 2, 1890 (26 Stat. L., 212, chap. 650):
That the marshals and district attorneys of the Territories of New
Mexico and Arizona respectively shall be allowed to retain of their fees
and emoluments such sum as shall be necessary to make their whole
compensation including salary six thousand dollars per year each, if
such fees and emoluments shall be sufficient therefor, and all fees or
moneys received by them respectively above such amount shall be paid
into the Treasury of the United States, and their accounts shall be
made, audited, returned and settled at the same times and in the same
manner that the accounts of other marshals and district attorneys are
required to be made, audited, returned and settled.

COMPENSATION TO ATTORNEY FOR PROSECUTION OF FRAUDS ON THE
REVENUE.

SEC. 838. It shall be [the] duty of every district attorney to whom
any collector of customs, or of internal revenue, shall report, accord-
ing to law, any case in which any fine, penalty, or forfeiture has been
incurred in the district of such attorney for the violation of any law of
the United States relating to the revenue, to cause the proper proceed-
ings to be commenced and prosecuted without delay, for the fines, pen-
alties, and forfeitures in such case provided, unless, upon inquiry and
examination, he shall decide that such proceedings cannot probably be
sustained, or that the ends of public justice do not require that such
proceedings should be instituted; in which case he shall report the
facts in customs cases to the Secretary of the Treasury, and in internal-
revenue cases to the Commissioner of Internal Revenue for their direc-
tion. And for the expenses incurred and services rendered in all such
cases, the district attorney shall receive and be paid from the Treasury
such sum as the Secretary of the Treasury shall deem just and reason-
able, upon the certificate of the judge before whom such cases are tried
or disposed of: Provided, That the annual compensation of such district attorney shall not exceed the maximum amount prescribed by law, by reason of such allowance and payment.

1. An action can not be maintained against the United States by a district attorney to recover for services rendered and expenses incurred in prosecuting for fines, penalties, and forfeitures under Revised Statutes, sections 838 and 3085, for violations of the customs laws or the internal-revenue laws, unless the Secretary of the Treasury first determines what sum he deems just and reasonable therefor. (United States v. Bashaw, 152 U. S., 436.)

2. A district attorney may recover reasonable compensation for services rendered and expenses incurred under section 838, in making an examination into alleged violation of the internal-revenue laws reported to him by the collector, though no proceedings are instituted in court. (Bashaw v. United States, 47 Fed. Rep., 40; affirmed by Cir. Ct. Apps., 50 Fed. Rep., 749; overruled by Supreme Court, 152 U. S., 436.)

3. Section 838 does not authorize an allowance to be made by the Secretary of the Treasury to a district attorney for services in internal-revenue cases reported to the latter wherein no judicial proceedings have been instituted. (18 Op., 126.)

4. When the appropriation has been exhausted claims allowed by the Secretary will be reported to the Speaker of the House of Representatives. (1 Law., First Comp., 172.)

5. The Secretary of the Treasury will not approve any claim for services under section 838 in any case not tried or disposed of before the proper judge. Compensation will not be allowed for inquiry and examination where no prosecution is instituted. (4 Law., First Comp., 643; 5 Law., First Comp., 138; 6 Law., First Comp., 22; see letter of Secretary to First Comp. in relation to claim of J. A. Connelly, Feb. 26, 1884.)

6. The expenses of the district attorney when traveling for the purpose of personally interviewing persons he may desire as expert witnesses in customs cases can not be paid by the Secretary, unless such expenses shall be certified as proper by the court in which the suits are pending as part of compensation of the district attorney, in which case, if approved by the Secretary, the entire compensation, including expenses, may be paid from the appropriation for expenses of collecting revenue from customs. (Comptroller to Secretary, Feb. 25, 1886.)

Note.—The Secretary will not approve an account for services under this section where no proceedings are instituted. An account for services rendered under section 838 must be sworn to by the attorney and approved by the court.

COMPENSATION RETAINED BY CLERK.

Sec. 839. No clerk of a district court, or clerk of a circuit court, shall be allowed by the Attorney-General, except as provided in the next section, and in section eight hundred and forty-two to retain of the fees and emoluments of his office, or, in case both of the said clerkships are held by the same person, of the fees and emoluments of the said offices, respectively, for his personal compensation, over and above his necessary office expenses, including necessary clerk-hire, to be audited and allowed by the proper accounting officers of the Treasury, a sum exceeding three thousand five hundred dollars a year for any such district clerk or for any such circuit clerk, or exceeding that rate for any time less than a year.
EMOLUMENT RETURNS OF CLERK OF THE SUPREME COURT OF THE UNITED STATES AND OF THE SUPREME COURT OF THE DISTRICT OF COLUMBIA.


Provided, That the clerk of the supreme court of the District of Columbia shall make to the Attorney-General his semiannual report of fees and emoluments in the same manner and under the same regulations as clerks of the other courts of the United States, under and in accordance with section eight hundred and thirty-three of the Revised Statutes, the maximum of whose compensation, after the payment of office expenses, and other allowances granted by the Attorney-General, shall not exceed the maximum of three thousand five hundred dollars, and the balance of said fees and emoluments of his office shall be paid into the Treasury according to the provisions of section eight hundred and forty-four of the Revised Statutes: Provided, That the clerk of the Supreme Court of the United States shall not hereafter retain of the fees and emoluments of his office, for his personal compensation, over and above the necessary clerk-hire and the incidental expenses of his office, certified to by the court, or by one of its justices appointed by it for that purpose, and to be audited and allowed by the proper accounting officers of the Treasury, a sum exceeding six thousand dollars a year, or exceeding that rate for any time less than a year; and the surplus of such fees and emoluments shall be paid into the Treasury as provided by law in cases of clerks of the circuit and district courts of the United States.

CLERKS IN CALIFORNIA, OREGON, AND NEVADA TO CHARGE AND RETAIN DOUBLE FEES AND COMPENSATION.

SEC. 840. The clerks of the several circuit and districts courts in California, Oregon, and Nevada shall be entitled to charge and receive double the fees hereinbefore allowed to clerks, and shall be allowed, respectively, by the Attorney-General, to retain of the fees so received by them, for their personal compensation, over and above the necessary expenses of their offices, including the salaries of deputy clerks, and necessary clerk-hire, to be audited by the proper accounting officers of the Treasury Department, any sum not exceeding seven thousand dollars a year, nor exceeding that rate for any time less than a year: Provided, That whenever, in either of the said districts, the same person holds the office of clerk of both the circuit and district courts, he shall be allowed by the Attorney-General to retain for his personal compensation, as aforesaid, only such sum as is herein allowed to be retained by a person holding the office of clerk of only one of the said courts.

COMPENSATION TO BE RETAINED BY MARSHALS.

SEC. 841. No marshal shall be allowed by the Attorney-General, except as provided in the next section, to retain of the fees and emoluments which he is required to include in his semi-annual return, as
aforesaid, for his personal compensation, over and above the necessary expenses of his office, including necessary clerk-hire, to be audited and allowed by the proper accounting officers of the Treasury Department, and a proper allowance to his deputies, any sum exceeding six thousand dollars a year, or exceeding that rate for any time less than a year. The allowance to any deputy shall in no case exceed three fourths of the fees and emoluments received or payable for the services rendered by him, and may be reduced below that rate by the Attorney-General, whenever the returns show such rate to be unreasonable.

ADDITIONAL COMPENSATION IN PRIZE CAUSES TO CLERKS AND MARSHALS.

Sec. 842. Clerks and marshals may be allowed to retain, for all official services in prize causes, an additional compensation not exceeding in amount one-half of the maximum compensation allowed to them, respectively, by the three preceding sections.

ALLOWANCES FOR EACH YEAR MADE FROM THE FEES THEREOF.

Sec. 843. The allowances for personal compensation of district attorneys, clerks, and marshals, for each calendar year, shall be made from the fees and emoluments of that year, and not otherwise.

PAYMENT OF SURPLUS FEES INTO THE TREASURY.

Sec. 844. Every district attorney, clerk, and marshal shall, at the time of making his half-yearly return to the Attorney-General, pay into the Treasury, or deposit to the credit of the Treasurer, as he may be directed by the Attorney-General, any surplus of the fees and emoluments of his office, which said return shows to exist over and above the compensation and allowances authorized by law to be retained by him.

EMOLUMENT RETURNS TO BE AUDITED.

Sec. 845. In every case where the return of a district attorney, clerk, or marshal shows that a surplus may exist, the Attorney-General shall cause such returns to be carefully examined, and the accounts of disbursements to be regularly audited by the proper officer of his department, and an account to be opened with such officer in proper books to be provided for that purpose.

1. Where no limitation has been placed upon the clerk of a United States circuit court for clerk hire, they are not liable to account for necessary sums paid for that purpose out of the emoluments of their office, and which payments have been approved by the Attorney-General. (Selby v. United States, 47 Fed. Rep., 800.)
2. But where, notwithstanding this absence of limitation, the First Comptroller demands the payment of a specified sum, claiming that he had expended more for clerk hire than was allowed by law, which sum the clerk pays over with full knowledge of all the facts and without duress of any sort, this is a voluntary payment and the money can not be recovered. (Selby v. United States, 47 Fed. Rep., 800.)

3. There is no law or practice entitling deputy marshals to all the fees earned in individual cases. (United States v. Fitzsimmons, 50 Fed. Rep., 381.)

4. A marshal is not entitled to an allowance for sending a third person to investigate a controversy between himself and one of his deputies. (United States v. Fitzsimmons, 50 Fed. Rep., 381.)

5. A marshal and the sureties on his bond are not liable to his deputies for fees due them which were paid over to him; their claim is against the Government, and hence, in a suit by the Government on his bond, he is not entitled to a set-off for fees still owing to his deputies. (United States v. Fitzsimmons, 50 Fed. Rep., 381.)

6. In a suit upon the official bond of a United States marshal for sums due on his fee and emolument account, interest should be allowed from the date when a balance was stated against him by the Treasury officials, although the amount found to be due is less than this balance. (United States v. Fitzsimmons, 50 Fed. Rep., 381.)

7. Section 841, Revised Statutes, does not make it unlawful for the marshal to allow a deputy three-fourths of the gross fees without first deducting the expenses incurred in earning the fees, and where during his whole term of office the marshal adopted this basis of settlement, both with his deputies and with the Treasury Department, and no objection was made thereto, he can not in an action on his bond claim that the settlement should have been on a basis of three-fourths of the net fees. (United States v. Fitzsimmons, 50 Fed. Rep., 381.)

8. A United States marshal in his character of disbursing officer of the Government is not entitled, as between himself and the Government, to credit for unpaid disbursements, or for services rendered and fees earned by his deputies, unless he has paid for the same. (Fitzsimmons v. United States (C. C. A.), 54 Fed. Rep., 812.)

9. In an action on the official bond of a marshal to recover money due the United States, moneys alleged to be due by the United States to the marshal’s deputies can not be allowed as a set-off when there is no showing as to the character of the services for which credit is claimed, or whether any return thereof, duly verified, with details was ever made as required by section 833, or that the same had ever been submitted to the Treasury Department to be audited and allowed in accordance with section 841. (Fitzsimmons v. United States (C. C. A.), 54 Fed. Rep., 812.)

10. Under sections 823 and 829 the clerk of a district court in the Territory of Utah is not entitled for his personal compensation, over and above office expenses, to more than $2,500 a year. (United States v. Averill, 130 U. S., 335.)

11. Alaska.—Under act of May 17, 1884 (chap. 53, sec. 9, 23 Stat., 24), fixing the salary of United States marshal in Alaska at $2,500 per annum, and providing that he shall pay the fees received by him into the Treasury of the United States, he is required to pay over all fees received by him, whether for services rendered to the Government or for those rendered to private litigants. (United States v. Hillyer, 58 Fed. Rep., 678.)

Note.—See decisions quoted under section 835, ante, page 94.
ACCOUNTS—APPROVAL—FORWARDING.

HOW ACCOUNTS ARE TO BE CERTIFIED—EXTRAORDINARY EXPENSES.

Sec. 846. The accounts of district attorneys, clerks, marshals, and commissioners of circuit courts shall be examined and certified by the district judge of the district for which they are appointed, before they are presented to the accounting officers of the Treasury Department for settlement. They shall then be subject to revision upon their merits by said accounting officers, as in case of other public accounts: Provided, That no accounts of fees or costs paid to any witness or juror, upon the order of any judge or commissioner, shall be so re-examined as to charge any marshal for an erroneous taxation of such fees or costs. [That where the ministerial officers of the United States have or shall incur extraordinary expense in executing the laws thereof, the payment of which is not specifically provided for; the President of the United States is authorized to allow the payment thereof under the special taxation of the district or circuit court of the district in which the said services have been or shall be rendered, to be paid from the appropriation for defraying the expenses of the judiciary.]

ACCOUNTS TO BE APPROVED BY COURT.


Sec. 1. That before any bill of costs shall be taxed by any judge or other officer, or any account payable out of the money of the United States shall be allowed by any officer of the Treasury, in favor of clerks, marshals, or district attorneys, the party claiming such account shall render the same, with the vouchers and items thereof, to a United States circuit or district court, and, in presence of the district attorney or his sworn assistant, whose presence shall be noted on the record, prove in open court, to the satisfaction of the court, by his own oath or that of other persons having knowledge of the facts, to be attached to such account, that the services therein charged have been actually and necessarily performed as therein stated; and that the disbursements charged have been fully paid in lawful money; and the court shall thereupon cause to be entered of record an order approving or disapproving the account, as may be according to law, and just. United States commissioners shall forward their accounts, duly verified by oath, to the district attorneys of their respective districts, by whom they shall be submitted for approval in open court, and the court shall pass upon the same in the manner aforesaid. Accounts and vouchers of clerks, marshals, and district attorneys shall be made in duplicate, to be marked respectively “original” and “duplicate.”

CLERK TO FORWARD ACCOUNTS.

And it shall be the duty of the clerk to forward the original accounts and vouchers of the officers above specified, when approved, to the proper accounting officers of the Treasury, and to retain in his office
ACCOUNTS—TO BE REVISED—BONDS.

the duplicates, where they shall be open to public inspection at all times.

ACCOUNTING OFFICERS TO REVISE ACCOUNTS.

Nothing contained in this act shall be deemed in any wise to diminish or affect the right of revision of the accounts to which this act applies by the accounting officers of the Treasury, as exercised under the laws now in force.

CLERK AND MARSHAL TO INCREASE BOND.

SEC. 2. That whenever the business of the courts in any judicial district shall make it necessary, in the opinion of the Attorney-General, for the clerk or marshal to furnish greater security than the official bond now required by law, a bond in a sum not to exceed forty thousand dollars shall be given when required by the Attorney-General, who shall fix the amount thereof.

BONDS OF CLERKS.

SEC. 3. That the clerks of the Supreme Court and the circuit and district courts, respectively, shall each, before he enters upon the execution of his office, give bond, with sufficient sureties, to be approved by the court for which he is appointed, to the United States, in the sum of not less than five, and not more than twenty thousand dollars, to be determined and regulated by the Attorney-General of the United States, faithfully to discharge the duties of his office, and seasonably to record the decrees, judgments, and determinations of the court of which he is clerk; and it shall be the duty of the district attorneys of the United States, upon requirement by the Attorney-General, to give thirty days notice of motion in their several courts that new bonds, in accordance with the terms of this act, are required to be executed; and upon failure of any clerk to execute such new bonds, his office shall be deemed vacant.

The Attorney-General may at any time, upon like notice through the district attorney, require a bond of increased amount, in his discretion, from any of said clerks within the limit of the amount above specified; and the failure of the clerk to execute the same shall in like manner vacate his office.

All bonds given by the clerks shall, after approval, be recorded in their respective offices, and copies thereof from the records, certified by the clerks respectively, under seal of court, shall be competent evidence in any court. The original bonds shall be filed in the Department of Justice.
MANDAMUS—REMOVAL OF CLERK—MILEAGE, ETC.

MANDAMUS TO COMPUL OFFICER TO MAKE RETURNS.

SEC. 4. That the circuit courts of the United States, for the purposes of this act, shall have power to award the writ of mandamus, according to the course of the common law, upon motion of the Attorney-General or the district attorney of the United States, to any officer thereof, to compel him to make the returns and perform the duties in this act required.

PRESIDENT MAY REMOVE CLERK.

SEC. 5. That if any clerk of any district or circuit court of the United States shall willfully refuse or neglect to make any report, certificate, statement, or other document required by law to be by him made, or shall willfully refuse or neglect to forward any such report, certificate, statement, or document to the department, officer, or person to whom, by law, the same should be forwarded, the President of the United States is empowered, and it is hereby made his duty, in every such case, to remove such clerk so offending from office by an order in writing for that purpose.

And upon the presentation of such order, or a copy thereof, authenticated by the Attorney-General of the United States, to the judge of the court whereof such offender is clerk, such clerk shall thereupon be deemed to be out of office, and shall not exercise the functions thereof.

And such district judge, in the case of the clerk of a district court, shall appoint a successor; and in the case of the clerk of a circuit court, the circuit judge shall appoint a successor.

And such person so removed shall not be eligible to any appointment as clerk or deputy clerk for the period of two years next after such removal.

PENALTY FOR REFUSAL TO REPORT.

SEC. 6. That if any clerk mentioned in the preceding section shall willfully refuse or neglect to make or to forward any such report, certificate, statement, or document therein mentioned, he shall be deemed guilty of a misdemeanor, and shall be punished by a fine not exceeding one thousand dollars, or by imprisonment not exceeding one year, in the discretion of the court; but a conviction under this section shall not be necessary as a condition precedent to the removal from office provided for in this act.

MILEAGE AND EXPENSES.

SEC. 7. That the proviso in the sixth paragraph of the act entitled "An act making appropriations for the support of the Army for the fiscal year ending June thirtieth, eighteen hundred and seventy-five, and for other purposes," approved June sixteenth, eighteen hundred and seventy-four, shall not be construed to apply to or to have applied
to attorneys, marshals, or clerks of courts of the United States, their assistants or deputies. And all accounts of said attorneys, marshals, and clerks, for mileage and for expenses, incurred subsequent to the first day of July, eighteen hundred and seventy-four, and prior to the first day of January, eighteen hundred and seventy-five, shall and may be audited, allowed, and paid at the Treasury Department of the United States in the same manner as if said act had not been passed. And from and after the first day of January, eighteen hundred and seventy-five, no such officer or person shall become entitled to any allowance for mileage or travel not actually and necessarily performed under the provisions of existing law.

Sec. 8. That all acts inconsistent with the provisions of this act are hereby repealed.

1. An account stated in the Treasury Department which does not arise in the ordinary mode of doing business in that Department, can derive no additional validity from being certified under the act of Congress. A Treasury statement can only be regarded as establishing items for money disbursed through the ordinary channels of the Department, where the transactions are shown by its books. In these cases the officers may well certify, for they must have official knowledge of the facts stated. But when money comes into the hands of an individual not through the officers of the Treasury, or in the regular course of official duty, the books of the Treasury do not exhibit the facts nor can they be known to the officers of the Department. In such a case the claim of the United States must be established, not by a Treasury statement, but by the evidence on which that statement was made. (United States v. Buford, 3 Peters U.S., 29.)

2. Treasury settlements are only prima facie evidence of the correctness of the balance certified, but it is as competent for the accounting officers to correct mistakes and to restate balances as it is for a judge to change his decree during the term for which it was entered. Errors of computation against the United States are no more vested rights in favor of sureties than against principal. (Soule v. United States; 100 U.S., 11.)

3. It is not decided (1) whether, after settlement of an account at the Treasury, it can be reopened by the accounting officers on the ground of error arising only from mistakes of law, nor (2) whether errors in accounts with the United States stated closed and settled by payment can be corrected otherwise than by regular judicial proceedings, instituted by the United States. (United States v. Philbrick, 120 U. S., 52.)

4. Settled accounts in the Treasury Department, where the United States have acted on the settlement and paid the balance therein found due, can not be opened or set aside years afterwards merely because some of the prescribed steps in the accounting, which it was the duty of a head of a Department to see had been taken, had been, in fact, omitted; or on account of technical irregularities, when the remedy of the party against the United States is barred by statute of limitation and the remedies of the United States are intact. (United States v. Johnson, 124 U. S., 236.)

5. The powers of an Auditor in the Treasury Department are limited to an examination and auditing of accounts, to the certification of balances, and to their transmission to the Comptroller, and do not extend to the allowance or disallowance of the same. (United States v. Waters, 133 U. S., 208.)

6. A Comptroller of the Treasury has no power to review, revise, or alter items in accounts expressly allowed by statute, or items of expenditures or allowances
made upon judgment or decision of officers charged by law with the duty of expending the money or making the allowance. (Ibid.)

7. The approval of a commissioner's account by a circuit court of the United States is prima facie evidence of its correctness. (United States v. Jones, 134 U.S., 483.)

8. The only practical effect of the decision of the accounting officers is to authorize the issue of Treasury warrants where the decisions are in favor of the claimants, and to prevent the issue of warrants when the decisions are against them. (Longwill v. United States, 17 C. Cls. R., 288.)

9. The rejection of a claim in whole or in part by the accounting officers leaves the party free to pursue his remedy at law, viz, an action in this court, although he may have accepted the portion allowed. (Ibid.)

10. Where a person is both debtor and creditor of the Government in any form the accounting officers are required by law to set off the one indebtedness against the other and certify only the balance. (Taggert v. United States, 17 C. Cls. R., 322.)

11. The duty of the accounting officers in the matter of set-off does not extend beyond the interest of the Government. (Ibid.)

12. It is the duty of the accounting officers in proper cases to set off one demand against another when the Government is both debtor and creditor of the same party. (Ibid.)

13. The certified balances made by the accounting officers are not evidence for or against the Government. (McCann v. United States, 18 C. Cls. R., 445.)

14. It is no part of the duty of the Auditors (except the Sixth Auditor) to make decisions binding in any way upon anybody, and their opinions and decisions upon controverted questions, if they choose to give them, have no official determining force. They are only to examine accounts, certify balances and transmit them to the proper Comptroller for his decision thereon. (Ridgway v. United States, 18 C. Cls. R., 707.)

15. The Comptrollers of the Treasury (including the Sixth Auditor and the Commissioner of Customs) alone of the accounting officers have authority to reject claims; and it is their duty to exercise this power in cases which they believe to be tainted with fraud, or to which in their judgment a substantial defense at law may be set up. (Longwill v. United States 17 C. Cls. R., 288.)

16. Where the accounting officers have jurisdiction of a claim their adjustment, in the absence of fraud or mistake of fact, can not be attacked after payment, and the money recovered back because of their mistake of law. (Mullett v. United States, 21 C. Cls. R., 485.)


18. Section 856 authorizes the payment of commissioners' accounts whenever made out, approved, and presented. (Patterson v. United States, 21 C. Cls. R., 322.)

19. The Revised Statutes do not forbid United States commissioners to demand payment at any time of their accounts. (Ibid.)

20. A marshal can not prescribe the form of vouchers. That decision is properly exercised by the Comptroller of the Treasury. (Singleton v. United States, 22 C. Cls. R., 118.)

21. If the Comptroller prescribe a certificate of the clerk the marshal can not require exemplified copies. (Ibid.)
22. The approval of a commissioner's account by the court is not a prerequisite to payment. If he verifies and presents his account, as required by law, and the court declines to act upon it, his right to compensation can not thereby be defeated. (Knox v. United States, 23 C. Cis. R., 367.)

23. The approval of an officer’s account by a circuit or district court merely determines the fact that the services were rendered. (Zabriskie v. United States, 29 C. Cis. R., 188.)

24. The appropriate Comptroller of the Treasury has the right to revise the accounts of United States marshals, clerks, and court commissioners, after they have been approved by the judges of the United States courts, and to decide upon their validity; the judge having acted upon said accounts only in a ministerial capacity, and Congress having by express statute given this power to the accounting officers of the Treasury. (United States v. Ralston, 17 Fed. Rep., 895.)


26. While section 846 seems to secure to the accounting officers of the Treasury a right of revision of the accounts of the district attorney after they have been allowed by the court, this right of revision must be exercised when the account comes before those officers for action upon it; and after they have passed the account as allowed by the court, and it has been paid, it can not afterwards be impeached, except for fraud or palpable mistake. (Tuthill v. United States, 38 Fed. Rep., 538.)

27. Although the acts of a Federal judge in passing upon the accounts of a United States marshal in open court, as required by act of February 22, 1875, is in a sense the act of the court, yet, as his decision is subject to revision by the accounting officers of the Treasury, it is also quasi judicial, and therefore a presentation to him is a presentation to an officer in the civil service of the United States within the meaning of section 5438, making it an offense to present to such officer for approval any fraudulent claims against the United States. (United States v. Stroback, 48 Fed. Rep., 902.)

28. Under section 846 an action will not lie for money paid out by a district attorney to prevent the escape of an alleged criminal, the allowance not having been made by the President. (Stanton v. United States, 37 Fed. Rep., 252.)

29. Accounts of a commissioner which have long been suspended by the Comptroller will be held not to be still pending in the Treasury Department, but to have been rejected by it. (Hallett v. United States, 63 Fed. Rep., 817.)

30. The approval by the court of a commissioner's accounts, while prima facie evidence of their correctness and conclusive as to matters within the discretion of the commissioner, and where there is no clear proof of mistake by the court, is unavailing where the commissioner clearly acted without authority. (Hallett v. United States, 63 Fed. Rep., 817.)

31. The allowance of items, under section 846, paid under order of the court is not reviewable in an action against the marshal by the Government to recover the same as paid contrary to law. (United States v. Hillyer, Cir. Ct. Apps., 58 Fed. Rep., 678.)

32. The act of August 2, 1861, chapter 37, does not transfer the settlement of the accounts of the district attorneys and marshals to the Attorney-General. (10 Op., 95.)

33. Under the provisions of section 846, Revised Statutes, the amount of any witness or juror fee paid by the marshal, upon the order of any judge or commissioner, can not be reexamined by the accounting officers of the Treasury. If you pay the amount ordered by the judge in these pay rolls to the proper parties, the accounting officers will be compelled to allow you credit in the settlement of your accounts. (Comp. to E. L. Hall, Jan. 10, 1895.)
34. The expense of keeping libeled vessels in excess of $2.50 per day is an extraordinary expense within the discretion of the President under section 846, Revised Statutes. (Comp. to Atty. Gen., Mar. 30, 1895.)

NOTE.—District attorneys, clerks, and marshals.—The accounts of district attorneys, clerks, and marshals, accompanied by affidavits as to correctness, must be presented to the court in duplicate in the presence of the district attorney. The affidavit should set forth the period covered by the account, the amount thereof, that the services charged for were actually and necessarily performed as therein stated, and that no part of the account has been paid. The affidavit must be made before an officer authorized to administer oaths. It is preferable that it be made before a United States official. If the account covers disbursements the affidavit must state that the disbursements charged have been actually made in lawful money. The accounts must be presented in open court in the presence of the district attorney or his assistant. The order of approval must show the presence of the district attorney or his assistant, the period covered by the account, and the amount for which same is approved. This order must be entered of record, and a certified copy thereof accompany the account as in other cases.

Commissioners.—The account of a commissioner verified by his affidavit must be forwarded to the district attorney to be by him presented to the court. An order of approval must be entered of record, and a certified copy thereof accompany the account as in other cases.

Forwarding accounts.—Note particularly that all accounts must be forwarded by the clerk to the Attorney-General. They must not be sent by the claimant or by an attorney or claim agent, nor to such attorney or agent.

Extraordinary expenses.—An account for extraordinary expenses must be supported by receipts where practicable, must be sworn to, approved by the court, and forwarded to the Attorney-General, to be by him submitted to the President. Whenever it is possible to do so authority to incur extraordinary expenses should be obtained from the Attorney-General before the expenses are incurred.

Decisions quoted in items 5, 14, and 15 were prior to act of July 31, 1894.

SEC. 847. PAR. 1. For administering an oath, ten cents.
PAR. 2. For taking an acknowledgment, twenty-five cents.
PAR. 3. For hearing and deciding on criminal charges, five dollars a day for the time necessarily employed.
PAR. 4. For attending to a reference in a litigated matter, in a civil cause at law, in equity, or in admiralty, in pursuance of an order of the court, three dollars a day.
PAR. 5. For taking and certifying depositions to file, twenty cents for each folio.
PAR. 6. For each copy of the same furnished to a party on request, ten cents for each folio.
PAR. 7. For issuing any warrant or writ, and for any other service, the same compensation as is allowed to clerks for like services.
PAR. 8. For issuing any warrant under the tenth article of the treaty of August nine, one thousand eight hundred and forty-two, between the United States and the Queen of the United Kingdom of Great Britain
and Ireland, against any person charged with any crime or offense set forth in said article, two dollars.

PAR. 9. For issuing any warrant under the provision of the convention for the surrender of criminals, between the United States and the King of the French, concluded at Washington November nine, one thousand eight hundred and forty-three, two dollars.

PAR. 10. For hearing and deciding upon the case of any person charged with any crime or offense, and arrested under the provisions of said treaty, or of said convention, five dollars a day for the time necessarily employed.

For the examination and certificate in cases of applications for discharge of poor convicts imprisoned for non-payment of a fine or fine and costs, five dollars a day for the time necessarily employed.

DOCKET FEES.

Act of August 4, 1886 (Stat. L., vol. 24, p. 274), contains the following: Provided, That for issuing any warrant or writ and for any other necessary service, commissioners may be paid the same compensation as is allowed to clerks for like services, but they shall not be entitled to any docket fees.

INTERNAL-REVENUE PROSECUTIONS.

The sundry civil act for 1895, approved August 18, 1894 (28 Stat., 416), has the following:

And hereafter no part of any money appropriated to pay any fees to the United States commissioners, marshals, or clerks shall be used for any warrant issued or arrest made, or other fees in prosecutions under the internal-revenue laws, unless said fees have been taxed against and collected from the defendant or unless the prosecution has been commenced upon a sworn complaint setting forth the facts constituting the offense and alleging them to be within the personal knowledge of the affiant or upon a sworn complaint by a United States district attorney, collector, or deputy collector of internal-revenue or revenue agent, setting forth the facts upon information and belief, and approved either before or after such arrest by a circuit or district judge or the attorney of the United States in the district where the offense is alleged to have been committed or the indictment is found.

Note.—The account of the commissioner must show that the above provision was complied with. In each case the name of the person making the complaint must be given.

AN ACT REGULATING FEES AND THE PRACTICE IN EXTRADITION CASES.


Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That all hearings in cases of
extradition under treaty stipulation or convention shall be held on land, publicly, and in a room or office easily accessible to the public.

SEC. 2. That the following shall be the fees paid to commissioners in cases of extradition under treaty stipulation or convention between the Government of the United States and any foreign government, and no other fees or compensation shall be allowed to be received by them:

For administering an oath, ten cents.
For taking an acknowledgment, twenty-five cents.
For taking and certifying depositions to file, twenty cents for each folio.
For each copy of the same furnished to a party on request, ten cents for each folio.
For issuing any warrant or writ, and for any other service, the same compensation as is allowed clerks for like services.
For issuing any warrant under the tenth article of the treaty of August ninth, eighteen hundred and forty-two, between the United States and the Queen of the United Kingdom of Great Britain and Ireland, against any person charged with any crime or offense as set forth in said article, two dollars.
For issuing any warrant under the provision of the convention for the surrender of criminals, between the United States and the King of the French, concluded at Washington November ninth, eighteen hundred and forty-three, two dollars.
For hearing and deciding upon the case of any person charged with any crime or offense, and arrested under the provisions of any treaty or convention, five dollars a day for the time necessarily employed.

SEC. 3. That on the hearing of any case under a claim of extradition by any foreign government, upon affidavit being filed by the person charged setting forth that there are witnesses whose evidence is material to his defense, that he cannot safely go to trial without them, what he expects to prove by each of them, and that he is not possessed of sufficient means, and is actually unable to pay the fees of such witnesses, the judge or commissioner before whom such claim for extradition is heard, may order that such witnesses be subpoenaed; and in such cases the costs incurred by the process, and the fees of witnesses, shall be paid in the same manner that similar fees are paid in the case of witnesses subpoenaed in behalf of the United States.

SEC. 4. That all witness fees and costs of every nature in cases of extradition, including the fees of the commissioner, shall be certified by the judge or commissioner before whom the hearing shall take place to the Secretary of State of the United States, who is hereby authorized to allow the payment thereof out of the appropriation to defray the expenses of the judiciary; and the Secretary of State shall cause the amount of said fees and costs so allowed to be reimbursed to the
Government of the United States by the foreign government by whom the proceedings for extradition may have been instituted.

1. Commissioners should forward their accounts for fees earned under this act to the Secretary of State. (See "Extradition," sec. 5270, Rev. Stat.)

For greater convenience the decisions affecting the accounts of United States circuit court commissioners are given in the order in which the charges usually occur in their accounts.

**DRAWING COMPLAINT.**

**Par. 1.** For drawing a complaint or affidavit for a warrant, twenty cents a folio.

1. A commissioner is entitled to charge for drawing complaints as for "taking and certifying depositions to file" 20 cents a folio. (United States v. Ewing, 140 U.S., 142; United States v. McDermott, 140 U.S., 151; United States v. Barber, 140 U.S., 164.)

2. A commissioner is entitled to fees for oaths to complaints and for jurats. (United States v. Barber, 140 U.S., 164.)

3. A commissioner is entitled to fees for filing complaints. (United States v. Barber, 140 U.S., 164.)

4. By the Code of Alabama (4256 and 4686) it is the judicial duty of examining magistrates to prepare affidavits on which to ground complaints. (Ravesies v. United States, 24 C. Cls. R., 224.)

5. The Revised Statutes, section 1014, requires commissioners to perform their duties agreeably to the usual mode of process in the State where they act, which entitles a commissioner in Alabama to fees for preparing affidavits for complaints. (Ibid.)

6. It is no part of the ministerial or judicial service of a commissioner to prepare an affidavit on which to ground a complaint in cases coming before him as commissioner. This affidavit was what the witness swore to of his own personal knowledge, while the complaint only contained information to the best of his belief. (Ravesies v. United States, 23 C. Cls. R., 299.)

7. A commissioner is not entitled to fees for drawing complaints. (Stafford v. United States, 25 C. Cls. R., 280; overruled by the Supreme Court, Faucett v. United States, 26 C. Cls. R., 154.)

8. A commissioner is entitled to fees for drawing papers in excess of the number of folios deemed necessary by the accounting officers, if his account was approved by the circuit court. (McCafferty v. United States 26 C. Cls. R., 1; Faucett v. United States, 26 C. Cls. R., 154.)

9. A commissioner of the circuit court, when engaged, under section 1014, in causing the arrest or imprisonment, or holding to bail for trial, any person charged with the commission of any crime against the United States, acts as a committing magistrate, and must proceed according to the law of the State in similar cases. (United States v. Martin, 17 Fed. Rep., 150.)

10. When the district attorney examines and approves complaints drawn by a circuit court commissioner, the court will not reduce the commissioner's fees for same, on the ground that they were unnecessarily verbose, unless it appears that the surplusage was introduced merely to increase fees. (Barber v. United States, 35 Fed. Rep., 386.)
11. A commissioner who, when acting under the instructions of the district attorney, draws complaints and issues warrants in more than one suit against the same party for violations of the same sections of the statutes, is entitled to fees in all the suits. (Ibid.)

12. A commissioner in Alabama is not entitled to a fee for drawing a complaint. (Strong v. United States, 34 Fed. Rep., 17; McKinstry v. United States, 34 Fed. Rep., 211; this decision, rendered by the district judge, was overruled by the circuit court, 40 Fed. Rep., 813.)

13. It being important to the liberty of the citizen and the administration of justice that complaints in criminal cases should be technically full and complete, a United States commissioner is entitled to compensation for such papers as are drawn and entered by him in good faith and in accordance with the practice of the State within which he acts, although the Comptroller may be of opinion that such papers may be comprised within a given space and that all beyond is unnecessary verbiage. (Rand v. United States, 36 Fed. Rep., 671.)


15. Revised Statutes, 1014, provides for the mode of criminal procedure at the expense of the United States against offenders against the United States taken before commissioners for preliminary examination. Arrests for such offenses can be made by such a warrant issued on a sworn complaint only. Held, that under sections 828 and 847 a commissioner was entitled from the Government to 15 cents a folio for drawing complaints in criminal cases for violating election laws. (McDermott v. United States, 40 Fed. Rep., 217.)

16. A commissioner of the circuit court must, in Alabama, begin a criminal case by a complaint sustained by sworn statements of the complainant and his witnesses, and there being no specific fee provided therefor in the fee bill, he may charge for such necessary statements as depositions. (McKinstry v. United States, 40 Fed. Rep., 813.)

17. A commissioner is entitled to fees for drawing complaints, 15 cents a folio. (Crawford v. United States, 40 Fed. Rep., 446.)

18. Commissioners are entitled to fees for drawing and filing affidavits upon which warrants are issued where such affidavits are by the laws of the State necessary to the issuance of such warrants. (In re Gourdin, 45 Fed. Rep., 842.)

19. Commissioners are entitled to 20 cents per folio for drawing complaints, and also to the fees for the jurats or certificates to the oaths of affiants to such complaints. (Clough v. United States, 47 Fed. Rep., 791.)

20. Persons arrested upon a complaint charging one offense can not be held thereunder if the examination discloses a different offense, and therefore complaints can not be objected as too long because of charging more than one offense. (Rand v. United States, 48 Fed. Rep., 357.)

21. The commissioner is entitled to 20 cents per folio for drawing complaints. (Clough v. United States, 55 Fed. Rep., 921.)

NOTE.—A commissioner is allowed 20 cents a folio for drawing the complaint, 10 cents for oath, 15 cents for jurat, and 10 cents for filing the complaint. If the number of folios seem to be excessive the charge may be suspended for explanation.

COPY OF COMPLAINT.

PAR. 2. Drawing copy of complaint, ten cents a folio; filing, ten cents.
ISSUING WARRANT.

PAR. 3. Issuing warrant of arrest, one dollar; entering return, fifteen cents; filing warrant, ten cents.

1. It is within the discretion of a commissioner in Alabama to cause more than one warrant against the same party for a violation of the same section of the Revised Statutes to be issued; and when the court below approves his account containing charges for such issues, it is conclusive upon the accounting officers of the Treasury that the discretion was properly exercised. (United States v. Barber, 140 U. S., 177.)

2. A warrant issued by a commissioner of a court of the United States is not void for the want of a seal, the commissioner having no seal, and not being required by statute to affix one to warrants issued by him. (Starr v. United States, 153 U. S., 614.)

3. Where separate warrants are issued for persons charged with committing the same offense who apparently might have been joined in one warrant, it will be held, in the absence of explanation, that the item for duplicate warrants is an overcharge. (Churchill v. United States, 25 C. Cls. R., 1.)

4. An indorsement of a complaint in a revenue case that the commissioner will issue the warrant if, in his opinion, there is reasonable ground to believe the accused guilty, is a substantial compliance with the rule requiring the approval of the district attorney in internal-revenue cases. (Ibid.)

5. A commissioner is entitled to fees in each of two separate cases against the same defendant if the offenses were distinct. (McCafferty v. United States, 26 C. Cls. R., 1.)

6. He is entitled to fees where the warrant was issued but the defendant was not arrested. (Faucett v. United States, 26 C. Cls. R., 154.)

7. A commissioner may charge for issuing several warrants in a case where there are several defendants living in opposite directions, and which have to be served by different officers. (Goodrich v. United States, 42 Fed. Rep., 392.)

8. Commissioners are entitled to fees for affidavits, warrants, etc., where accused person was not arrested. (Marvin v. United States, 44 Fed. Rep., 405.)

9. A commissioner is entitled to fee for affixing seal to warrant of arrest. (Clough v. United States, 47 Fed. Rep., 791; reversed by the circuit court of appeals, where it is held that affixing the seal is a necessary part of the issuance of the writ, and is paid for by the fee for the process, 55 Fed. Rep., 373.)

10. In cases for violating the election laws the commissioner is entitled to 15 cents for entering the return of warrants and subpoenas for the Government. (McDermott v. United States, 40 Fed. Rep. 217.)

11. Commissioners are entitled to the same fees as clerks for entering returns. (Rand v. United States, 38 Fed. Rep., 665.)


13. Under Revised Statutes, 847, providing that for issuing any warrant or writ, and for any other service, commissioners shall be allowed the same compensation as is allowed clerks for like services, and Revised Statutes, 828, providing compensation to clerks for entering any return, etc., a commissioner is entitled to fees for entering returns of warrants and subpoenas in his docket. (Crawford v. United States, 40 Fed. Rep., 446.)

14. Commissioners are entitled to fees for entering returns on warrants and subpoenas, since such returns are necessary in order to ascertain what the deputy marshals have done. (In re Gourdin, 45 Fed. Rep., 842.)


NOTE.—Where there are several defendants, and the commissioner issues a separate warrant against each, the necessity for more than one warrant must be clearly shown. Where there are two or more cases against the same defendant fee for only one warrant will be allowed. Where the defendant is in custody on another charge no warrant is necessary. No fee is allowed for seal to warrant. A fee of 15 cents is allowed for entering the return on each warrant and 10 cents for filing it.

ISSUING SUBPOENA.

PAR. 4. Issuing subpoena, twenty-five cents; entering return, fifteen cents; filing subpoena, ten cents.

1. Where a warrant is returned not executed (nothing being done with the subpoena) no entry about the subpoena is required, and no fee can be charged for “entering return.” (Davies v. United States, 23 C. Cls. R., 468.)

2. The commissioner may charge for issuing two subpoenas in the same case where the witnesses reside in opposite directions and have to be subpoenaed by different officers. (Goodrich v. United States, 42 Fed. Rep., 392.)

NOTE.—Where a charge is made for more than one subpoena in a case the necessity therefore must be clearly shown. Where the warrant is returned not executed no return is necessary on the subpoena, and no fee will be allowed for entering return. The account must show that the subpoena was for witnesses for the United States. Except in the case above mentioned, a fee of 15 cents is allowed for entering return of subpoena. Ten cents is allowed for filing each subpoena.

COPY OF SUBPOENA.

PAR. 5. Copies of subpoena for service on each witness, ten cents a folio.

1. A commissioner is entitled to fees for making and certifying copies of subpoenas when required by rule of court. (United States v. Allred, 155 U. S., 591.)

NOTE.—Allowed where service is by copy.

ISSUING WRIT OF COMMITMENT.

PAR. 6. Issuing temporary writ of commitment pending examination, one dollar; entering return, fifteen cents; filing, ten cents.

1. In Tennessee a temporary mittimus may become necessary, and a charge for it should be allowed, unless there has been an abuse of discretion in regard to it. (United States v. Ewing, 140 U. S., 142.)
2. Section 1030, Revised Statutes, was intended to correct the abuse of charging fees for temporary writs of commitment. (Gilbert v. United States, 23 C. Cls. R., 218.)

3. Where the prisoner is brought before the commissioner on a warrant, and temporary warrant of commitment is issued, no fee is authorized. (Ibid.)

4. Not required and can not be charged for on a continuance before a commissioner. (Davies v. United States, 23 C. Cls. R., 498.)

5. Where a jailer refuses to receive a prisoner without a mittimus, the commissioner is entitled to fee for temporary warrant of commitment. (Stafford v. United States, 25 C. Cls. R., 280; McCafferty v. United States, 26 C. Cls. R., 1.)

6. A commissioner is not entitled to a fee for a temporary mittimus unless the jailer refuses to receive the prisoner. (Faucett v. United States, 26 C. Cls. R., 154.)

7. Commissioners are entitled to fees for written orders of commitment of persons necessarily remaining in custody over night. (Heyward v. United States, 37 Fed. Rep., 764.)

8. Section 1014 clothes commissioners in each State with the general powers and authority given to committing magistrates thereof, and as committing magistrates in Illinois are not only authorized but required to issue warrants for the commitment to jail of persons charged with crime pending adjournments of the examination in default of bail, the circuit court commissioners in that State have the same power and are entitled to $1, as are also clerks of courts. (Hoyne v. United States, 38 Fed. Rep., 542.)

9. The commissioners have authority under the State statutes to commit defendants to county jails. Commissioners have similar powers in United States cases as justices of the peace have in State cases. (United States v. Hardin, 10 Fed. Rep., 802.)

10. Section 1030 applies where the accused is in custody under a warrant from the court, and not where he is arrested on the first warrant from the commissioner to arrest and bring before him, and the commissioner is entitled to a fee for a mittimus upon the first continuance, if the prisoner is to be held. (Marvin v. United States, 44 Fed. Rep., 405.)

11. When a prisoner is transferred from State to Federal custody a new warrant is necessary, and the commissioner is entitled to a fee therefor. (Rand v. United States, 48 Fed. Rep., 357.)

NOTE.—The fees for issuing, entering return, and filing writ are allowed where the writ is necessary. Where the case is heard and finally disposed of by the commissioner on the same day that the warrant is returned no fee will be allowed for a temporary mittimus unless the necessity therefor is clearly shown. Where a temporary mittimus issues and a temporary bond is taken the same day the necessity therefor must be clearly shown. Where there are several defendants only one mittimus will be allowed. Where there are two or more cases against the same person only one mittimus will be allowed.

**DRAWING BOND.**

**PAR. 7.** Drawing bond for appearance of defendant before commissioner, fifteen cents per folio; taking acknowledgment, twenty-five cents; certificate to acknowledgment, fifteen cents; filing bond, ten cents.

1. Where a bond is taken for the appearance of a defendant before a commissioner, and afterwards the case is continued, a second bond is not necessary. The first bond should be conditioned for the appearance of the defendant until
2. A commissioner is not entitled to a fee for drawing a bail bond and taking a recognizance in the same case. (Stafford v. United States, 25 C. Cls. R., 280.)

3. A commissioner's bill for drawing a recognizance can not be scaled on the ground that the form of recognizance used by him was longer than necessary where such form has for a long time been used in his district and thus impliedly sanctioned by the court. (Crawford v. United States, 40 Fed. Rep., 446.)

4. It being important to the liberty of the citizen and the due administration of justice that bonds in criminal cases should be technically full and complete, a United States commissioner is entitled to compensation for such papers as are drawn by him in good faith and in accordance with the practice of the State within which he acts, although the Comptroller may be of opinion that such papers may be comprised within a given space, and that all beyond is unnecessary verbiage. (Marvin v. United States, 44 Fed. Rep., 405.)

5. A commissioner is entitled to a fee for recognizances of record where justices of the peace in the State in which the Federal court is held have power to take such recognizance. (Ibid.)

6. Commissioners entitled to fees for drawing bail bonds and for drawing affidavits of sureties as to solvency. (Clough v. United States, 47 Fed. Rep., 791.)

7. Fees for recognizance must be allowed although the instruments exceed the length arbitrarily fixed by the First Comptroller as sufficient, when upon inspection they disclose no unnecessary verbiage. (Rand v. United States, 48 Fed. Rep., 357.)

8. Section 1014 declares that the examination of persons charged with offenses against the United States shall be conducted agreeably to the usual mode of process in the State. The revised statutes of Maine provide for the taking of the recognizance of an offender upon any adjournment of the examination. United States commissioners in Maine are entitled to fees for taking recognizances of defendants from day to day. (Ibid.)

9. The question of the proper fee to be allowed a commissioner for taking acknowledgments of defendants and witnesses was involved in the decisions of the Court of Claims in Court of Claims Reports (vol. 25, pp. 1, 280, and 346; vol. 26, pp. 1 and 124; vol. 28, p. 65) and the decisions of Federal courts reported in Federal Reporter (vol. 34, pp. 17 and 21; vol. 35, p. 88; vol. 36, p. 671; vol. 37, p. 764; vol. 40, pp. 446 and 813; vol. 42, p. 392; vol. 44, p. 405; vol. 45, pp. 162, 531, and 842; vol. 47, p. 791; vol. 55, p. 921). This question has been finally determined by the Supreme Court, which has decided that clerks and commissioners are entitled to a single fee of 25 cents for taking the acknowledgment to a bond or recognizance without regard to the number of persons who may acknowledge it. (United States v. Ewing, 140 U. S., 142; United States v. Barber, 140 U. S., 177; United States v. Hall, 147 U. S., 691; United States v. Taylor, 147 U. S., 695.)

10. Where a commissioner has been allowed a fee of 25 cents for an acknowledgment he can not recover for having affixed a certificate thereto. (Bell v. United States, 28 C. Cls. R., 65.)

11. When a commissioner can take a recognizance for attendance from day to day he will not be allowed fees for the taking of more than one temporary recognizance in any one case. (Comp. in re appeal of N. R. Broyles, June 17, 1895.)

Note.—A fee of 15 cents a folio is allowed for drawing each bond, 25 cents for the acknowledgment of the principal and sureties thereto, and 10 cents for filing the bond. No fee is allowed for certificate to acknowledgment. A sepa-
rate bond may be drawn for each defendant. Only one temporary bond of a defendant in a case will be allowed, as the bond should be for the appearance of the defendant until his case is finally disposed of by the commissioner.

**AFFIDAVITS OF JUSTIFICATION.**

**PAR. 8.** Drawing affidavits of justification of sureties, fifteen cents per folio; oath to surety, ten cents; jurat to each oath, fifteen cents; filing affidavits, ten cents each.

1. A commissioner is not entitled to fees for drawing affidavits of justification of sureties. (Stafford v. United States, 25 C. Cls. R., 280; Faucett v. United States, 26 C. Cls. R., 154.)

2. Commissioners are entitled to fees for drawing affidavits of sureties on bail bonds and for certifying to oaths taken before them. (Clough v. United States, 55 Fed. Rep., 921.)

3. Commissioners are entitled to 10 cents each for oaths to sureties on bail bonds. (McKinstry v. United States, 34 Fed. Rep., 211.)

4. Compensation at the statutory rate can not be denied to the commissioner for oaths administered to sureties in criminal cases on the ground that such oaths were unnecessary, as they can not be held to know the sufficiency of a surety offered until he has been examined under oath. (Rand v. United States, 36 Fed. Rep., 671.)

5. A commissioner is entitled to a fee of 10 cents for filing a justification of a surety on a recognizance when in fact the justification is upon a separate paper which is actually filed by the commissioner. (Comp. in re account Qf W. W. Craig, May 9, 1895.)

**NOTE.**—Fifteen cents a folio is allowed for drawing each affidavit of justification, 10 cents for oath to each surety, and 15 cents for jurat. No fee is allowed for filing the affidavit if it is on same sheet as the bond. If on a separate paper fee for filing is allowed.

**BOND OF WITNESSES.**

**PAR. 9.** Drawing bond for the appearance of the witnesses before the commissioner, fifteen cents a folio; taking acknowledgment, twenty-five cents; certificate to acknowledgment, fifteen cents; filing bond, ten cents.

1. Commissioners conducting preliminary examinations are entitled to fees for recognizances of witnesses from day to day and for final appearance at court, as well as fees for the acknowledgments thereto, but only for one recognizance in each instance for all the witnesses, and the length of such recognizance must be left to the discretion of such commissioner. (Rand v. United States, 48 Fed. Rep., 357.)

2. A commissioner has no authority under section 879 to charge for taking recognizances of witnesses to appear at an adjourned hearing before him. (Hallett v. United States, 63 Fed. Rep., 817.)

3. The authority of a commissioner to charge for taking recognizances of witnesses to appear at an adjourned hearing before him depends on whether the laws of the State where the proceedings take place authorize a committing magistrate to take such recognizances. (Hallett v. United States, 63 Fed. Rep, 817.)
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4. A commissioner in Massachusetts can not charge for temporary recognizance of witnesses except when defendant is charged with a crime punishable by death or life imprisonment, as in no case do the statutes of that State authorize a committing magistrate to take such recognizances, and no authority is to be implied from his power to adjourn hearings. (Hallett v. United States, 63 Fed. Rep., 817.)

Note.—Not allowed by the accounting officers, except for attached witnesses who are required to give bond with sureties.

SWARING WITNESSES.

Par. 10. Swearing witnesses to testify, ten cents each.

1. A circuit court commissioner in a State where the law requires the hearing of evidence offered by the defendant is entitled, under the provisions of section 1014, to fees for swearing defendant’s witnesses, but not to a fee for swearing the defendant himself where his statement is to be taken not under oath. (Comp. in re appeal of N. R. Broyles, June 17, 1895.)

PER DIEM.

Par. 11. Hearing and deciding on criminal charge, five dollars a day.

1. A commissioner is not entitled to a per diem fee for services in taking a complaint antecedent to the issuing of warrant. (Patterson v. United States, 150 U.S., 65.)

2. Although such services are of a judicial nature and may be required by the laws of the State in which they are rendered, they can not be charged against the United States in the absence of a provision by Congress for their payment. (Ibid.)

3. The decision of a commissioner of a circuit court of the United States, upon a motion for bail and the sufficiency thereof, and his decision upon a motion for a continuance of the hearing of a criminal charge are judicial acts on the “hearing and deciding on criminal charges” within the meaning of Revised Statutes, 847, providing for a per diem compensation in such cases. (United States v. Jones, 134 U.S., 483.)

4. A commissioner acting judicially has the discretion to suspend the hearing, and a per diem for a continuance should be allowed. (United States v. Ewing, 140 U.S., 142.)

5. For acts not merely clerical and acts which involve investigation and decision, a United States commissioner is entitled to $5 a day. (Harper v. United States, 21 C. Cls. R., 56.)

6. A commissioner is entitled to per diem fee for day when motion is made for continuance, same is granted, bail fixed, sufficiency of bail decided upon, or defendant committed, though no witnesses were examined. (Ravesies v. United States, 23 C. Cls. R., 299.)

7. When a commissioner has charged an unusual number of days, and on being requested so to do by the First Comptroller fails to explain the charge to the Comptroller or court, it may be presumed to be an overcharge. (Davies v. United States, 23 C. Cls. R., 468.)

8. A statute of Minnesota requires a magistrate to examine a complainant and his witnesses and reduce the complaint to writing before issuing his warrant. A commissioner in that State proceeds accordingly and seeks to receive his per diem for “hearing and deciding on criminal charges.” Held, that when the
examination of a complainant and his witnesses is prior to the issuance of a warrant and by the commissioner alone, no counsel being present and the defendant not before the commissioner, there is no controversy, and the service is clerical. No per diem fee is authorized. (Ives v. United States, 24 C. Cls. R., 364.)

9. For days when the motion for continuance was argued by the district attorney and the counsel for the defendant and for hearing and deciding on the sufficiency of bail per diem for hearing is authorized. (Ibid.)

10. A commissioner is entitled to a per diem for day when the defendant was arraigned. (Stafford v. United States, 25 C. Cls. R., 280.)

11. He is not entitled to two per diem fees for hearing different cases on the same day. (McCafferty v. United States, 26 C. Cls. R., 1.)

12. A commissioner is not entitled to a per diem for an examination of a complaint antecedent to issuing a warrant. (Ibid.)

13. He is entitled to a per diem fee where the proceeding consists of an arraignment and plea, an examination of witnesses, granting a continuance, fixing the amount of bail, and committing the defendant in default of bail. (McCafferty v. United States, 26 C. Cls. R., 1; Faucett v. United States, 26 C. Cls. R., 154.)

14. He is entitled to a per diem for hearing and deciding on criminal charges, though no evidence be produced or witnesses examined. (Rand v. United States, 36 Fed. Rep., 671.)

15. When, by request of the accused on the day of hearing, a continuance until the next day is granted without other proceedings, the commissioner is not entitled to the per diem of $5. (McKinstry v. United States, 34 Fed. Rep., 211. Overruled.)

16. Where the defendant waives an examination the commissioner is entitled to a per diem fee. (Goodrich v. United States, 42 Fed. Rep., 392.)

17. He is entitled to per diem fee for time actually spent by him in his judicial character as commissioner on criminal cases after the accused were arrested, though their cases were continued. (Marvin v. United States, 44 Fed. Rep., 405.)

18. Commissioner is entitled to per diem for services performed as such, though he performed services as clerk, and received compensation therefor on the same day. (Ibid.)

19. Commissioners are entitled to their per diem fees, pending preliminary examination of an offender, even though no witnesses are examined and no arguments heard on some of the days. (Rand v. United States, 48 Fed. Rep., 367; affirmed by Cir. Ct. Apps., 53 Fed. Rep., 348.)

20. The commissioner is not entitled to a per diem when the case is continued and nothing else is done. (3 Law., First Comp., 268. Overruled.)

21. Where a prisoner is brought before a commissioner on a capias from court, the amount of the bail being fixed in the capias, the service is not such a "hearing and deciding on criminal charges" as is contemplated by the statute to entitle the commissioner to a per diem. (Dec. First Comp. Bowler, p. 172.)

NOTE.—No per diem fee is allowed for any day prior to the time the defendant is arrested and brought before the commissioner. Where a commissioner is also a clerk of a court he may charge a per diem for hearing a case on the same day that he has been allowed for attendance on court. He can not charge more than one per diem for services as commissioner on the same day. He is not allowed a per diem for hearing a case and another for hearing an application for the discharge of a poor convict on the same day. After the defendant has been committed for appearance at court and is brought before the commissioner for the
purpose of entering into bond no per diem is allowed. Where a defendant is arrested on a capias from court and brought before the commissioner to give bond or be committed no per diem fee is allowed.

**PER DIEM UNDER SECTION 1042.**

Par. 12. For hearing and deciding on the application of poor convicts for discharge under section 1042, five dollars a day.

*Note.*—The commissioner can not charge this fee and also a per diem for hearing and deciding on criminal charges on the same day. The commissioner who is also clerk of a United States court may charge a per diem for attendance and also for attendance on the court on the same day. Though two or more convicts are discharged on the same day only one per diem fee will be allowed.

**ORDERS DISCHARGING.**

Par. 13. For entering order discharging defendant, fifteen cents per folio.

1. Commissioners are entitled to 25 cents each for orders discharging prisoners. (Heyward *v.* United States, 37 Fed. Rep., 764.)

*Note.*—Not allowed by the accounting officers.

**ORDERS COMMITTING.**

Par. 14. For entering order committing defendant, fifteen cents per folio.

*Note.*—No such charge is allowed. Mittimus where necessary covers this charge.

**DOCKET-ENTRIES.**

Par. 15. For docket entries, fifteen cents per folio.

1. A commissioner is entitled to fees for making entries on the docket in various cases of the name of an affiant, his official position, if any, date of issuing warrant, name of defendant and witnesses, and final disposition of the case, when required by rule of court. (United States *v.* Allred, 155 U. S., 591.)

2. *Docket entries.*—"Any other service" (sec. 828, par. 8) means service required of commissioners by law or by order of court, and the commissioners not being required by law or order of court to enter on their dockets any of the items specifically mentioned in paragraph 8, they are not entitled to compensation for such entries. (McKinstry *v.* United States, 34 Fed. Rep., 211.)

*Note.*—Not allowed by the accounting officers, except in cases covered by decision of the Supreme Court.

**ISSUING FINAL MITTIMUS.**

Par. 16. Issuing final mittimus, one dollar; entering return, fifteen cents; filing, ten cents.

1. A commissioner is entitled to a fee of 10 cents for filing a final mittimus. (Comp. in re account of W. W. Craig, May 9, 1895.)

*Note.*—See decisions quoted under paragraph 6 for temporary mittimus; also note under that head.
COPY OF MITTIMUS.

Par. 17. Copy of mittimus for jailor, ten cents a folio; certificate to same, fifteen cents.

Note.—Allowed where it is necessary.

FINAL BOND.

Par. 18. For drawing final bond, fifteen cents per folio; taking acknowledgment of defendant and sureties, twenty-five cents; certificate to acknowledgment, fifteen cents; filing bond, ten cents.

1. A commissioner is not entitled to 10 cents for filing a final bond. (Stafford v. United States, 25 C. Cls. R., 280.)


3. A commissioner can not charge for more than one final recognizance of all the witnesses in a case, without its being shown that they could not conveniently be recognized together. (Hallett v. United States, 63 Fed. Rep., 817.)

4. It is in the discretion of the commissioner to take recognizances of defendants and witnesses recognized in previous cases for the same grand jury. (Hallett v. United States, 63 Fed. Rep., 817.)

5. A commissioner is entitled to fees by the folio for drawing recognizances and orders to the full number of folios employed, in the absence of proof that these papers were unnecessarily prolix. (Hirschbeck v. United States, 63 Fed. Rep., 945.)

6. A commissioner can not charge for more than one acknowledgment to a recognizance. (Hallett v. United States, 63 Fed. Rep., 817.)

Note.—See note and decisions under paragraph 7 for drawing temporary bonds. A commissioner is not allowed for filing a final bond for the reason that it is filed by the clerk, not by the commissioner.

AFFIDAVITS OF JUSTIFICATION.

Par. 19. Drawing affidavit of justification of sureties on final bond, fifteen cents a folio; oath to sureties, ten cents each; jurats to oaths, fifteen cents each; filing affidavits, ten cents each.

Note.—See note under paragraph 8.

BONDS OF WITNESSES TO COURT.

Par. 20. Drawing bond for the appearance of witnesses to court, fifteen cents a folio; taking acknowledgment, twenty-five cents; certificate, fifteen cents; filing bond, ten cents.

1. A commissioner is entitled to charge for taking recognizances of witnesses for the Government. (United States v. Barber, 140 U. S., 164.)

2. The same rule as to recognizances and acknowledgments of same by defendants and sureties should apply to witnesses. (Ibid.) That is, all the witnesses in a case on behalf of the United States should be jointly acknowledged.

3. Separate bonds for witnesses to appear at court are not required. (Davies v. United States, 23 C. Cls. R., 468.)
4. A commissioner is entitled to 25 cents for taking the acknowledgment of all the witnesses in a case to a recognizance. (Rand v. United States, 48 Fed. Rep., 357.)

NOTE.—Only one bond for all the witnesses in a case is allowed unless the witnesses are required to give sureties. Only 25 cents allowed for the acknowledgment of all the witnesses. No fee is allowed for certificate or for filing the final bond.

OATHS AS TO ATTENDANCE OF WITNESSES.

PAR. 21. Administering oaths to witnesses to attendance and travel, ten cents each.

1. Commissioners are entitled to fees for oaths to witnesses to attendance and travel. (United States v. Barber, 140 U.S., 164.)

NOTE.—The account must show they were witnesses for the United States. No fee is allowed for drawing affidavits as to attendance and travel, because it is sufficient to swear and examine the witnesses orally as to same.

WITNESS CERTIFICATES.

PAR. 22. Issuing a certificate to each witness as to attendance and travel, fifteen cents.


NOTE.—This fee is not allowed in addition to duplicate orders to pay. It is rarely charged.

ORDERS TO PAY WITNESSES.

PAR. 23. Drawing orders to pay witnesses (drawn in duplicate), fifteen cents per folio.

1. Commissioners are entitled to folio fees for drawing orders to pay witnesses. (United States v. Barber, 140 U.S., 164; Stafford v. United States, 25 C. Cis. R., 280.)

2. The commissioner has discretion to make more than one order to pay witnesses in a case. (Hallett v. United States, 63 Fed. Rep., 817.)

3. A commissioner can not charge for triplicate instead of duplicate orders to pay witnesses. (Hirschbeck v. United States, 63 Fed. Rep., 949.)

NOTE.—Duplicate orders allowed; triplicate not allowed.

TRANSCRIPTS.

PAR. 24. For transcript of proceedings, fifteen cents per folio.

1. A commissioner is entitled to fees for making transcript of proceedings when required by rule of court. (United States v. Allred, 155 U. S., 591, and Dec. First Comp. R. B. Bowler, p. 77.)

2. A commissioner is entitled to fees for transcript of proceedings where the original papers are not sent up. (United States v. Barber, 140 U. S., 164.)

3. Where the commissioner returns the original papers with a short statement indorsed on the complaint, showing what action was taken by the commissioner, magistrate, or officer, he is entitled to a reasonable allowance for such indorsement at 15 cents a folio. (Crawford v. United States, 40 Fed. Rep., 446.)
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4. He is entitled to a fee for a transcript of the docket for the circuit court made under the order of the court. (Heyward v. United States, 37 Fed. Rep., 764.)

5. He is entitled to 10 cents per folio for transcript or copy of proceedings and 15 cents for certificate thereto. (Strong and McKinstry v. United States, 34 Fed. Rep., 17 and 211.)

6. Where he holds a person to bail on a criminal charge he is entitled to fee for transcript of docket entries, and the accounting officers can not assume that four folios are sufficient. (Hoyne v. United States, 38 Fed. Rep., 542.)

7. Under the provisions of the statute fees should be allowed for transcripts of the records. (Marvin v. United States, 44 Fed. Rep., 405.)

8. A commissioner who, acting under section 1014, Revised Statutes, sends up such a transcript as is required by the usual mode of procedure under the State laws is entitled to his fees therefor. (Comp. in re account of James Brizzolara, Mar. 18, 1895.)

COPY OF PROCESS.

PAR. 25. For copy of process, ten cents per folio.

1. A commissioner is entitled to fees for copy of process sent to court where the original papers are not sent to court. (Ravesies v. United States, 23 C. Cls. R., 299.)

2. Copy of process is not required where the defendant is discharged by the commissioner. (Davies v. United States, 23 C. Cls. R., 468; Dec. First Comp. Bowler, p. 77.)

3. Where a commissioner is required by a rule of the court to send up the original papers, and he also sends up copies, he is entitled for the latter to the prescribed fees. (Churchill v. United States, 25 C. Cls. R., 1; Stafford v. United States, 25 C. Cls. R., 280.)

4. A commissioner is entitled to 10 cents per folio for warrant of arrest only. (McKinstry v. United States, 34 Fed. Rep., 211.)

5. The accounting officers have no right to make an arbitrary rule limiting the length of copies of process. (Rand v. United States, 38 Fed. Rep., 665.)

6. Commissioners are entitled to fees for copies of process sent to court when defendants are held. (Clough v. United States, 47 Fed. Rep., 791.)

7. Commissioners are entitled to fees for return of proceedings to court and copies thereof. (Rand v. United States, 48 Fed. Rep., 357.)

8. Commissioners are entitled to fees for copies of process sent to court where preliminary examinations in criminal cases have been had. (Clough v. United States, 55 Fed. Rep., 921.)

9. A commissioner can charge for copies of process and return of proceedings to court where defendants were not arrested, or were discharged, the court having, at the request of the Attorney-General, entered an order directing commissioners, after final disposition of each case, to return copies of all papers, with recognizances taken, and transcript of the proceedings, though such requirement was conditioned on provision being made for compensating the commissioner. (Hallett v. United States, 63 Fed. Rep., 517.)

10. Fees will not be allowed for copies of process when the originals are required to be sent to the court by its order, for in such cases the copy is unnecessary, and the practice of sending the originals has been sanctioned by the Supreme Court in United States v. Barber (140 U. S., 167), conducing as it does to a diminution of expenses to the Government. (Comp. to Att'y. Gen., Nov. 16, 1894.)

Note.—Where the defendant is discharged no fee is allowed for copy of process. Where the original papers are sent to court no fee is allowed.
PAR. 26. Writing testimony of witnesses on behalf of the United States, twenty cents per folio.

1. A commissioner is entitled to fees for writing testimony. (United States v. Ewing, 140 U. S., 142; United States v. Barber, 140 U. S., 164.)

2. He is not entitled to fee for filing each deposition separately. When a series of sheets are attached together they form a single paper within the meaning of the law. (United States v. Barber, 140 U. S., 164.)

3. He is not entitled to compensation for reporting to the district attorney testimony in criminal cases. (Gilbert v. United States, 23 C. Cls. R., 218.)

4. Where the rule of the court requires the commissioner to send up notes of testimony for the use of the district attorney the commissioner is entitled to fee therefor. (Stafford v. United States, 25 C. Cls. R., 280.)

5. A commissioner is not entitled to fees for reporting testimony to the district attorney. (Faucett v. United States 26 C. Cls. R., 154.)


7. A commissioner in the northern district of New York claims fees for taking and authenticating depositions of defendant and his witnesses as well as witnesses for the prosecution. He also claims such fees when defendant is discharged as well as when he is committed. Held, that as section 1014, Revised Statutes, provides that the form of procedure in such cases shall be agreeably to the usual mode of process in the State, and as the New York Criminal Code required the taking, authenticating, and transmitting of defendant's statement and the depositions of his witnesses, the fee of 20 cents per folio will be allowed. It is allowed whether the defendant is discharged or held. (Dec. First Comp. Bowler, p. 213.)

NOTE.—When the State law requires the committing magistrate to reduce to writing testimony taken before him on behalf of the State in criminal prosecutions a commissioner will be allowed for that service 20 cents a folio; also where a rule of the court requires the commissioner to reduce the testimony to writing. No fee is allowed in any instance for copy of the testimony, as the original should be sent to court.

DOCKET FEES.

PAR. 27. For docketing, indexing, and taxing costs.

NOTE.—The question of docket fees to commissioners was involved in cases reported in the Federal Reporter (vol. 33, p. 164; vol. 34, pp. 17 and 211; vol. 36, p. 671; vol. 37, pp. 762, 764, and 765; vol. 38, pp. 542 and 665; vol. 40, pp. 217, 446, and 813; vol. 42, p. 392; vol. 44, p. 405; vol. 47, p. 791; vol. 48, p. 357; vol. 53, p. 348) and Court of Claims Reports (vol. 20, p. 273; vol. 23, pp. 367 and 374; vol. 24, pp. 118 and 481; vol. 25, p. 24). The Supreme Court of the United States has decided that commissioners were entitled to docket fees for cases disposed of prior to August 4, 1886 (see United States v. Wallace, 116 U.S., 396), that the right to docket fees was taken away by the act of August 4, 1886, and that since that date they have not been entitled to such fees. (United States v. Ewing, 140 U. S., 142; United States v. McDermott, 140 U. S., 151; United States v. Hall, 147 U. S., 691.)
MONTHLY REPORTS.

PAR. 28. Monthly reports to the Commissioner of Internal Revenue and to the court, fifteen cents per folio.

1. A commissioner is entitled to fees for making report to clerk of court and Commissioner of Internal Revenue of cases heard and disposed of under the internal-revenue laws when required by rule of court. (United States v. Allred, 155 U.S., 591.)


Note.—This report is not now required, and for that reason no fee is allowed.

AFFIXING SEALS.

PAR. 29. For affixing seal, twenty cents.

1. A commissioner having power to administer oaths is entitled to no fees for affixing his seal to an affidavit. (Muirhead v. United States, 13 C. Cls. R., 251.)

Note.—Is not allowed by the accounting officers as against the Government. There is no law requiring a commissioner to have an official seal.

OATHS TO DEPUTY MARSHALS.

PAR. 30. Oath, ten cents; jurat, fifteen cents, to deputy marshal as to service.

1. A commissioner is entitled to fees for administering oaths to deputy marshals to verify their accounts of service, when the regulations of the Department of Justice require such officers to certify on oath that their accounts rendered to the marshal are correct. (United States v. Allred, 155 U. S., 591.)

2. The Government is not liable to a commissioner for services rendered by him to deputy marshals in administering oaths verifying their accounts. (McKinstry's Case, 29 C. Cls. R., 52.)

3. A commissioner is not entitled to charge for administering two oaths when duplicate oaths are required. (Hirschbeck v. United States, 63 Fed. Rep., 949.)

4. A commissioner is not entitled to charge for making triplicate instead of duplicate affidavits to the accounts of special deputy marshals. (Hirschbeck v. United States, 63 Fed. Rep., 949.)

Note.—The commissioner is allowed 25 cents for oath and jurat to deputy marshal to account for services.

OATHS OF SUPERVISORS.

PAR. 31. Drawing oaths, &c., of supervisors of election.

1. The law having been repealed, it is not considered necessary to quote at length the decisions on this point. The question was decided in United States v. McDermott (140 U. S., 151), Bell v. United States (25 C. Cls. R., 26), and Hoyne v. United States (27 C. Cls. R., 289; 40 Fed. Rep., 217, 446).
COMMISSIONER’S FEES—FEES OF WITNESSES.

ENTERING JUDGMENTS.

PAR. 32. For entering judgment, fifteen cents a folio.

1. A commissioner is entitled to fee for entering on warrant the judgment of final disposition of a case when required by rule of court. (United States v. Allred, 155 U. S., 591.)

2. A commissioner is entitled to the same fees as a clerk for entering orders of continuance. (Hallett v. United States, 63 Fed. Rep., 817.)

3. A commissioner is not entitled to charge for arraigning parties brought before him. (Hirschbeck v. United States, 63 Fed. Rep., 949.)

FEES OF WITNESSES.

SEC. 848. For each day’s attendance in court, or before any officer pursuant to law, one dollar and fifty cents, and five cents a mile for going from his place of residence to the place of trial or hearing, and five cents a mile for returning. When a witness is subpoenaed in more than one cause between the same parties, at the same court, only one travel fee and one per diem compensation shall be allowed for attendance. Both shall be taxed in the case first disposed of, after which the per diem attendance fee alone shall be taxed in the other cases in the order in which they are disposed of.

When a witness is detained in prison for want of security for his appearance, he shall be entitled, in addition to his subsistence, to a compensation of one dollar a day.

Note.—The witness must be actually in prison to entitle him to the fee of $1.

MILEAGE OF WITNESSES IN COLORADO.

Act of June 15, 1880 (chap. 247, 21 Stat., 290), provides:
That jurors and witnesses in the district and circuit courts of the United States, in and for the State of Colorado, shall be entitled to receive fifteen cents for each mile actually traveled in coming to or returning from said courts.

MILEAGE OF WITNESSES IN CERTAIN STATES.

Act of August 3, 1892 (chap. 361, 27 Stat., 347), provides:
That jurors and witnesses in the United States courts in the States of Wyoming, Montana, Washington, Oregon, California, Nevada, Idaho, and Colorado, and in the Territories of New Mexico, Arizona, and Utah, shall be entitled to and receive fifteen cents for each mile necessarily traveled over any stage line or by private conveyance and five cents for each mile over any railway in going to and returning from said courts: Provided, That no constructive or double mileage fees shall be allowed by reason of any person being summoned both as witness and juror, or as witness in two or more cases pending in the same court and triable at the same term thereof.
FEES OF WITNESSES, ETC., IN EXTRADITION CASES.

Act of August 3, 1882 (chap. 378, sec. 4, 22 Stat., 215), provides:
That all witness fees and costs of every nature in cases of extradition, including the fees of the commissioner, shall be certified by the judge or commissioner before whom the hearing shall take place to the Secretary of State of the United States, who is hereby authorized to allow the payment thereof out of the appropriation to defray the expenses of the judiciary.

Note.—See act of August 3, 1882, ante, page 108, and section 5270, Revised Statutes, post page 155.

FEES OF WITNESSES IN PENSION CASES.

Act of July 25, 1882 (chap. 349, sec. 3, 22 Stat., 175), provides:
That, in addition to the authority conferred by section one hundred and eighty-four, title four of the Revised Statutes, any judge or clerk of any court of the United States in any State, District, or Territory shall have power, upon the application of the Commissioner of Pensions, to issue a subpoena for a witness, being within the jurisdiction of such court, to appear, at a time and place in the subpoena stated, before any officer authorized to take depositions to be used in the courts of the United States, or before any officer, clerk, or person from the Pension Bureau designated or detailed to investigate or examine into the merits of any pension claim and authorized by law to administer oaths and take affidavits in such investigation or examination, there to give full and true answers to such written interrogatories and cross interrogatories as may be propounded, or to be orally examined and cross-examined upon the subject of such claim; and witnesses subpoenaed pursuant to this and the preceding section shall be allowed the same compensation as is allowed witnesses in the courts of the United States, and paid in the same manner.

1. A witness for the Government in a trial at New Orleans claims mileage from the place of his residence. The accounting officers allow him mileage from the place where he was employed as chief clerk of a United States marshal. The order of a circuit court directing payment of a witness is authoritative upon the marshal and will protect him upon the auditing of his accounts, but does not conclude the accounting officers of the Government in a suit where its liability to the witness may be brought in question. (Duval v. United States, 23 C. Cls. R., 102.)

2. Witness fees in civil cases are not to be taxed over any greater distance than a subpoena would run; hence, where a witness, resident in one district, attends to have his deposition taken in another, he is not entitled to fees for travel before he reached the latter district. (Wooster v. Hill, 44 Fed. Rep., 819.)

3. An action will lie by the assignee of witness certificates on the bond of a marshal who has received the money to pay them in his official capacity, but has failed to do so. (Bollin v. Blythe, 46 Fed. Rep., 181.)
4. A party is not entitled to either witness fees or mileage when his presence has not been required by the opposite party. (Street v. The Progresso, 48 Fed. Rep., 239.)

5. In admiralty causes in the eastern district of Pennsylvania mileage will not be allowed to witnesses brought from beyond the district, except as to 100 miles of the distance. (Ibid.)

6. A party in a Federal court can only recover the actual amount of fees paid each witness, and only to the extent of the amount legally due such witness, and where he has paid some witnesses more and some less than their legal fees, the legal fees of all can not be grouped together to make the sum equal the amount paid all. (Burrow v. K. C., F. S. and M. R. R., 54 Fed. Rep., 278.)

7. Where a nonresident witness whose deposition has been taken attends in person and testifies on the trial the costs of taking his deposition can not be taxed. (Pinson v. A., T. and S. F. R. R., 54 Fed. Rep., 464.)

8. Where a witness who lives in another State more than 100 miles away and can not be served with subpoea voluntarily attends he is entitled to per diem fees and to mileage for 100 miles. (Ibid.)

9. The Federal court will allow witnesses their mileage and per diem fees where they attend and testify at the request of one of the parties, although no subpoea was issued. (Ibid.)

10. Where the witnesses come from without the State, at a greater distance than 100 miles, they are entitled to claim for mileage for the distance of 100 miles and no more, and also their per diems. (Ibid.)

11. If a witness subpoenaed by the Government has means to travel it is not necessary for the officer to tender his traveling expenses, and the court will attach a witness who on that ground neglects to attend. (United States v. Durling, 4 Biss., 509.)

12. It is the duty of the court, on application of the prisoner showing that he is unable to send for his witnesses, to summon them at the expense of the Government. (United States v. Kenneally, 5 Biss., 122.)

13. Witness fees can not be taxed in the Federal court unless the witness has been regularly subpoenaed. It is not sufficient that they attend at the request of a party. The act of Congress evidently contemplated some process of the court. (Sawyer v. Aultman & Taylor M'fg Co., 5 Biss., 165.)

14. The losing party can not be taxed with the fees of witnesses residing within or beyond the reach of a subpoena who voluntarily attend the trial at the request of the prevailing party. (Spaulding v. Tucker, 2 Saw., 50.)

15. Traveling fees of witnesses coming voluntarily upon the request of a party, without having been subpoenaed, from another district more than 100 hundred miles from the place of trial, and beyond the reach of a subpoena, can not be taxed as costs against the losing party. (Haines v. McLaughlin, 12 Saw., 126.)

16. Where a party is called as witness in his own behalf he is not entitled to travel and attendance as a witness. (Nichols v. Inhabitants of Brunswick, 3 Cliff., 88.)

17. Since the passage of the act of February 26, 1853, as well as before, costs have been allowed to the prevailing party for travel and attendance, and in cases where terms are imposed by the court as a condition to an order granting a continuance. (Nichols v. Inhabitants of Brunswick, 3 Cliff., 88.)

18. Fees and mileage of witnesses who attend voluntarily, without subpoena, whether coming from without or within the district, are not taxable under Revised Statutes, 848. (Haines v. McLaughlin, 12 Saw., 126; 29 Fed. Rep., 70 followed.) The right of taxation under such circumstances is not given by the
act of August 3, 1892, which merely provides a special rule in respect to mileage in certain Western States and Territories. (Lillienthal v. S. C. Ry. Co., 61 Fed. Rep., 622.)

19. Where persons are subpoenaed as witnesses, but are not introduced to testify, the presumption is that they were unnecessarily brought to court, and their fees are not taxable against the opposite party. (Simpkins v. A., T. and S. F. R. R. Co., 61 Fed. Rep., 999.)

20. Fees of persons who attend and testify on the request of a party, without subpoena, are taxable against the opposite party. (Simpkins v. A., T. and S. F. R. R. Co., 61 Fed. Rep., 999.)

21. A person subpoenaed as a witness in a personal injury case had a case of his own against the same defendant, growing out of the same accident and set for trial the same day. His case was first reached, and by agreement the other was made to depend on its result without a separate trial. It appeared that he was necessarily present looking after his own case, and as a material witness therein. Held, that his fee as a witness in the other case should not be taxed against the common defendant. (Simpkins v. A., T. and S. F. R. R. Co., 61 Fed. Rep., 1000.)

22. Fees of witnesses for Sunday, when compelled to remain over on that day, will be allowed if paid by the marshal under order of the court. (Comp. to James Blackburn, Feb. 26, 1895.)

23. The expenses of expert witnesses, the purchase and preparation of materials for exhibits, and the employment of persons to obtain and interview expert witnesses in customs suits may be paid from the appropriation for expenses of collecting the revenue from customs. (Comp. to Secretary, Feb. 25, 1895.)

24. Fees of witnesses whose depositions are taken to be used before the interstate commerce court should be paid from the appropriations for the Commission. When the Commission invokes the aid of the court such fees are payable from the court appropriations. (Dec. First Comp. Bowler, p. 68.)

25. See decisions of Comptroller in re account of Wallace Macfarlane, Nov. 2, 1894; and letter of Comptroller to Secretary, Feb. 25, 1895, under title "Expenses collecting revenue from customs," post page 159.

NOTE.—The witness should be sworn and examined orally as to his attendance and mileage. A written affidavit is not necessary, and no fee will be allowed for drawing affidavit or for jurat. When the witness has been so sworn the clerk gives him a certificate as to his attendance and mileage, which certificate he presents to the marshal and receives his fees. A witness is allowed only one per diem for any one day's attendance in behalf of the United States. A witness who is also a juror cannot receive mileage in both capacities.

NO OFFICER OF COURT TO HAVE WITNESS FEES.

SEC. 849. No officer of the United States courts, in any State or Territory, or in the District of Columbia, shall be entitled to witness fees for attending before any court or commissioner where he is officiating.

EXPENSES OF OFFICERS SENT AS WITNESSES.

SEC. 850. When any clerk or other officer of the United States is sent away from his place of business as a witness for the Government, his necessary expenses, stated in items and sworn to, in going, returning, and attendance on the court, shall be audited and paid; but no mileage,
or other compensation in addition to his salary, shall in any case be allowed.

1. When the United States are successful in a suit where one of their clerks or officers of the class described in Revised Statutes, 850, is sent away from his place of business to be a witness for the Government, the necessary expenses of such witness ordered by or under the direction of the court upon which he attends as a witness, takes the place, in the bill of costs, of the per diem and mileage which but for that section would have been taxed and allowed in their favor. (United States v. Sanborn, 135 U. S., 271.)

2. A marshal's clerk receiving a salary, subpoenaed as a witness for the Government, is entitled to his necessary expenses, but not to "mileage or other compensation in addition to his salary." The service of a deputy marshal is rendered for the Government, the marshal being the appointing power and the clerk an employee of the Government. (Duval v. United States 23 C. Cls. R., 102.)

3. A person employed by a postmaster who receives a fixed salary, without any allowance for clerk hire, is not "clerk or officer of the United States within the meaning of section 850." There is no such officer as deputy postmaster of the United States. (In re Waller, 49 Fed. Rep., 271.)

4. A marshal is entitled to witness fees paid by him to officers of the United States by order of the court, the payment of which has been ordered by the court under section 846, and for which no itemized account was presented or audited by such officers, notwithstanding the provisions of section 850, requiring them to furnish a sworn itemized account of such fees. (United States v. Hillyer, 58 Fed. Rep., 678.)

NOTE.—An itemized account must be made out by the officer, sworn to by him, and presented to the marshal for payment. The account must be supported by receipts for hotel bills and for all other expenses, where practicable. The fee for affidavit to this expense account should be paid by the officer making out the account and included by him as a charge therein.

FEES OF SEAMAN OR PERSON SENT FROM FOREIGN PORT TO TESTIFY.

SEC. 851. There shall be paid to each seaman or other person who is sent to the United States from any foreign port, station, sea, or ocean, by any United States minister, chargé d' affaires, consul, captain, or commander, to give testimony in any criminal case depending in any court of the United States, such compensation, exclusive of subsistence and transportation, as such court may adjudge to be proper, not exceeding one dollar for each day necessarily employed in such voyage, and in arriving at the place of examination or trial. In fixing such compensation, the court shall take into consideration the condition of said seaman or witness, and whether his voyage has been broken up, to his injury, by his being sent to the United States.

When such seaman or person is transported in an armed vessel of the United States no charge for subsistence or transportation shall be allowed. When he is transported in any other vessel, the compensation for his transportation and subsistence, not exceeding in any case fifty cents a day, may be fixed by the court, and shall be paid to the captain of said vessel accordingly.
FEES OF JURORS.

SEC. 852. For actual attendance at any court or courts, and for the time necessarily occupied in going to and returning from the same, three dollars a day during such attendance.

For the distance necessarily traveled from their residence in going to and returning from said court by the shortest practicable route, five cents a mile.

Act of June 30, 1879 (chap. 52, sec. 2, 21 Stat., 43), provides:

That the per diem pay of each juror, grand or petit, in any court of the United States, shall be two dollars.

MILEAGE OF JURORS IN COLORADO.

Act of June 16, 1880 (chap. 247, 21 Stat., 290), provides:

That jurors and witnesses in the district and circuit courts of the United States in and for the State of Colorado, shall be entitled to receive fifteen cents for each mile actually traveled in coming to or returning from said courts.

MILEAGE OF JURORS IN CERTAIN STATES AND TERRITORIES.

Act of August 3, 1892 (chap. 361, 27 Stat., 347), provides:

That jurors and witnesses in the United States courts in the States of Wyoming, Montana, Washington, Oregon, California, Nevada, Idaho, and Colorado, and in the Territories of New Mexico, Arizona, and Utah, shall be entitled to and receive fifteen cents for each mile necessarily traveled over any stage line or by private conveyance and five cents for each mile over any railway in going to and returning from said courts: Provided, That no constructive or double mileage fees shall be allowed by reason of any person being summoned both as witness and juror, or as witness in two or more cases pending in the same court and triable at the same term thereof.

PRINTERS' FEES.

SEC. 853. For publishing any notice, or order, required by law, or the lawful order of any court, Department, Bureau, or other person, in any newspaper, except as mentioned in sections 3823, 3824, and 3825, Title, "PUBLIC PRINTING, ADVERTISEMENTS, AND PUBLIC DOCUMENTS," forty cents per folio for the first insertion, and twenty cents per folio for each subsequent insertion. The compensation herein provided shall include the furnishing of lawful evidence, under oath, of publication, to be made and furnished by the printer or publisher making such publication.
Act of June 20, 1878 (chap. 359, par. 6, 20 Stat., 216), provides as follows:

Par. 6. That hereafter all advertisements, notices, proposals for contracts, and all forms of advertising required by law for the several Departments of the Government may be paid for at a price not to exceed the commercial rates charged to private individuals, with the usual discounts; such rates to be ascertained from sworn statements to be furnished by the proprietors or publishers of the newspapers proposing so to advertise: Provided, That all advertising in newspapers since the tenth day of April, eighteen hundred and seventy-seven, shall be audited and paid at like rates; but the heads of the several Departments may secure lower terms at special rates whenever the public interest requires it.

Note.—Vouchers for advertising must be accompanied by a copy of the advertisement and an affidavit of the publisher giving the number of insertions and the date of each insertion.

MEANING OF FOLIO.

SEC. 854. The term folio, in this chapter, shall mean one hundred words, counting each figure as a word. When there are over fifty and under one hundred words, they shall be counted as one folio; but a less number than fifty words shall not be counted, except when the whole statute, notice, or order contains less than fifty words.

FEES OF JURORS AND WITNESSES WHEN PAID BY THE MARSHAL.

SEC. 855. In cases where the United States are parties, the marshal shall, on the order of the court, to be entered on its minutes, pay to the jurors and witnesses all fees to which they appear by such order to be entitled, which sum shall be allowed him at the Treasury in his accounts.

FEES OF ATTORNEYS, MARSHALS, AND CLERKS—HOW PAID.

SEC. 856. The fees of district attorneys, clerks, marshals, and commissioners, in cases where the United States are liable to pay the same, shall be paid on settling their accounts at the Treasury.

FEES—HOW RECOVERED.

SEC. 857. The fees and compensations of the officers and persons hereinbefore mentioned, except those which are directed to be paid out of the Treasury, shall be recovered in like manner as the fees of the officers of the States respectively for like services are recovered.

1. The State practice as respects fees of the sheriff upon arrest of a vessel or other property by attachment or replevin, requiring the payment of the sheriff's fees by the person, the property is made applicable by section 857. (The Georgeanna, 31 Fed. Rep., 405.)
2. A defendant who has been discharged by the commissioner on preliminary examination and is afterwards indicted and convicted on the same charge should not be taxed with the costs of examination before the commissioner. (United States v. Leopold, 43 Fed. Rep., 785.)

SUBPOENAS FOR WITNESSES.

Sec. 876. Subpoenas for witnesses who are required to attend a court of the United States, in any district, may run into any other district: Provided, That in civil causes the witnesses living out of the district in which the court is held do not live at a greater distance than one hundred miles from the place of holding the same.

WITNESSES TO BE SUMMONED TO TESTIFY GENERALLY.

Sec. 877. Witnesses who are required to attend any term of a circuit or district court on the part of the United States, shall be subpoenaed to attend to testify generally on their behalf, and not to depart the court without leave thereof, or of the district attorney; and under such process they shall appear before the grand or petit jury, or both, as they may be required by the court or the district attorney.

Note.—The accounts of clerks must show compliance with this section.

WITNESSES FOR INDIGENT DEFENDANTS.

Sec. 878. Whenever any person indicted in a court of the United States makes affidavit, setting forth that there are witnesses whose evidence is material to his defense; that he can not safely go to trial without them; what he expects to prove by each of them; that they are within the district in which the court is held, or within one hundred miles of the place of trial; and that he is not possessed of sufficient means, and is actually unable to pay the fees of such witnesses, the court in term, or any judge thereof in vacation, may order that such witnesses be subpoenaed if found within the limits aforesaid. In such case the costs incurred by the process and the fees of the witnesses shall be paid in the same manner that similar costs and fees are paid in case of witnesses subpoenaed in behalf of the United States.

1. Revised Statutes, section 878, authorizing a judge to order witnesses to be subpoenaed in behalf of an indicted indigent person, gives no authority to order subpoenas for one against whom a bill of indictment is pending before a grand jury. (United States v. Stewart, 44 Fed. Rep., 483.)

RECOGNIZANCES OF WITNESSES.

Sec. 879. Any judge or other officer who may be authorized to arrest and imprison or bail persons charged with any crime or offense against the United States may, at the hearing of any such charge, require of any witness produced against the prisoner, on pain of imprisonment, a recognizance, with or without sureties, in his discretion, for his appear-
BONDS—BAIL—ATTORNEY’S COSTS.

Sec. 880. In the district of Vermont, all recognizances of witnesses, taken by any magistrate in said district, for their appearance to testify in any case cognizable either in the district or circuit court thereof, shall be to the circuit court next thereafter to be held in the said district.

RECOGNIZANCES OF WITNESSES ON APPLICATION OF DISTRICT ATTORNEY.

Sec. 881. Any judge of the United States, on the application of a district attorney, and on being satisfied by proof that the testimony of any person is competent and will be necessary on the trial of any criminal proceeding in which the United States are parties or are interested, may compel such person to give recognizance, with or without sureties, at his discretion, to appear to testify therein; and, for that purpose, may issue a warrant against such person, under his hand, with or without seal, directed to the marshal or other officer authorized to execute process in behalf of the United States, to arrest and bring before him such person. If the person so arrested neglects or refuses to give recognizance in the manner required, the judge may issue a warrant of commitment against him, and the officer shall convey him to the prison mentioned therein. And the said person shall remain in confinement until he is removed to the court for the purpose of giving his testimony, or until he gives the recognizance required by said judge.

BAIL AND AFFIDAVIT MAY BE TAKEN BY COMMISSIONERS.

Sec. 945. Bail and affidavits, when required or allowed in any civil cause in any circuit or district court, may be taken by a commissioner of the circuit court for the district; and such acknowledgments of bail and affidavits shall have the same effect as if taken before any judge of such courts.

WHEN DISTRICT ATTORNEY ENTITLED TO BUT ONE BILL OF COSTS FOR PROSECUTIONS.

Sec. 980. When a district attorney prosecutes two or more indictments, suits, or proceedings which should be joined, he shall be paid but one bill of costs for all of them.
1. Where several criminal charges against the same person might have been joined in one indictment, a district attorney can be paid but one bill of costs. (Hilborn v. United States, 27 C. Cls. R., 547.)

Note.—Where the district attorney prosecutes two or more cases which apparently should have been joined, he will be required to explain the nonjoinder.

NOT MORE THAN FOUR WITNESSES BEFORE COMMISSIONERS.

Sec. 981. In no case shall the fees of more than four witnesses be taxed against the United States, in the examination of any criminal case before a commissioner of a circuit court, unless their materiality and importance are first approved and certified to by the district attorney for the district in which the examination is had; and such taxation shall be subject to revision, as in other cases.

Note.—Where fees of more than four witnesses are charged the district attorney must certify on the pay roll, in such cases, that all of the witnesses were material and necessary. If such certificates are not furnished the accounting officers will allow the fees of only four witnesses.

ATTORNEY LIABLE FOR COSTS VEXATIOUSLY INCREASED BY HIM.

Sec. 982. If any attorney, proctor, or other person admitted to conduct causes in any court of the United States, or of any Territory, appears to have multiplied the proceedings in any cause before such court, so as to increase costs unreasonably and vexatiously, he shall be required, by order of the court, to satisfy any excess of costs so increased.

BILL OF COSTS—HOW TAXED.

Sec. 983. The bill of fees of the clerk, marshal, and attorney, and the amount paid printers and witnesses, and lawful fees for exemplifications and copies of papers necessarily obtained for use on trials in cases where by law costs are recoverable in favor of the prevailing party, shall be taxed by a judge or clerk of the court, and be included in and form a portion of a judgment or decree against the losing party. Such taxed bills shall be filed with the papers in the cause.

BILL OF COSTS TO BE SWORN TO.

Sec. 984. Before any bill of costs shall be taxed by any judge or other officer, or allowed by any officer of the Treasury, in favor of clerks, marshals, commissioners, or district attorneys, the party claiming such bill shall prove by his own oath, or that of some other person having a knowledge of the facts, to be attached to such bill, and filed therewith, that the services charged therein have been actually and necessarily performed, as therein stated.
MONEYS—CRIMINAL PROCEDURE.

MONEYS PAID INTO COURT—WHERE DEPOSITED.

SEC. 995. All moneys paid into any court of the United States, or received by the officers thereof, in any cause pending or adjudicated in such court, shall be forthwith deposited with the Treasurer, an assistant treasurer, or a designated depositary of the United States, in the name and to the credit of such court: Provided, That nothing herein shall be construed to prevent the delivery of any such money upon security, according to agreement of parties, under the direction of the court.

HOW MONEYS DEPOSITED TO BE WITHDRAWN.

SEC. 996. No money deposited as aforesaid shall be withdrawn except by order of the judge or judges of said courts respectively, in term or in vacation, to be signed by such judge or judges, and to be entered and certified of record by the clerk; and every such order shall state the cause in or on account of which it is drawn.

CRIMINAL PROCEDURE.

HOW OFFENDERS ARE ARRESTED AND REMOVED FOR TRIAL.

SEC. 1014. For any crime or offense against the United States, the offender may, by any justice or judge of the United States, or by any commissioner of a circuit court to take bail, or by any chancellor, judge of a supreme or superior court, chief or first judge of common pleas, mayor of a city, justice of the peace, or other magistrate, of any State where he may be found, and agreeably to the usual mode of process against offenders in such State, and at the expense of the United States, be arrested and imprisoned or bailed, as the case may be, for trial before such court of the United States as by law has cognizance of the offense. Copies of the process shall be returned as speedily as may be into the clerk's office of such court, together with the recognizances of the witnesses for their appearance to testify in the case. And where any offender or witness is committed in any district other than that where the offense is to be tried, it shall be the duty of the judge of the district where such offender or witness is imprisoned, seasonably to issue, and of the marshal to execute, a warrant for his removal to the district where the trial is to be had.

1. The provisions of section 1014, that offenders against the United States may be arrested, imprisoned, or bailed by certain officers named, including United States commissioners, "agreeably to the usual mode of process against offenders" in this particular, does not confer upon commissioners the power to punish for contempt, possessed by State officers, and they have no power to punish for contempt. (Ex parte Perkins, 29 Fed. Rep., 900.)

2. A commissioner, when engaged under section 1014, acts as a committing magistrate and must proceed according to the law of the State in similar cases. (United States v. Martin, 9 Saw., 90.)
3. The Revised Statutes of Indiana, 1881, section 1628, makes it the duty of a justice in a criminal proceeding to docket and hear the cause and either acquit, convict and punish, or hold to bail. Section 1634 requires a justice to recognize a defendant charged with a felony if, upon the hearing, he is of opinion that he should be held. Section 1639 provides that a justice shall not discharge a defendant against whom the proper offense has not been charged, but shall cause the proper offense to be charged and recognize him to answer it. These sections are made applicable to United States commissioners’ examinations held in Indiana by Revised Statutes, 1014. Held, that they contemplate a trial and hearing and the commissioner is not bound to accept an offer of the accused to waive examination, but he may suspend the examination or not as he deems best for the public interest. (Van Buren v. United States, 36 Fed. Rep., 77.)

4. An invalid bail bond is not binding on either principal or sureties. To make a bail bond valid it must be taken by competent legal authority; it must be in correct legal form. Bail was not allowed by the common law after conviction and sentence. Bail is a right which is secured by law. To secure it under the laws of the United States requires a statute guaranteeing it. A court cannot grant bail without authority to do so. (United States v. Hudson, 65 Fed. Rep., 68.)

5. A State statute cannot control an express law of Congress in relation to proceedings in Federal courts. The provisions of the Revised Statutes, section 1014, allowing criminal proceedings, agreeably to the usual mode of process against offenders in each State, refers to process and procedure not expressly regulated by Federal statutes. (Turner v. United States, 19 C. Cls. R., 629.)

6. The Revised Statutes, section 1014, requires commissioners to perform their duties agreeably to the usual mode of process in the State where they act. (Ravesies v. United States, 24 C. Cls. R., 224.)

7. The power to punish for contempt is not conferred upon commissioners of the circuit courts by law, nor can such power be given by a rule of court. By the Comptroller's decision of November 9, 1893, T., who had acted in good faith under an order of court which seemingly authorized commissioners to preserve order by the process of contempt, was allowed the fees claimed by him in such proceedings, under the authority of Van Buren v. United States (36 Fed. Rep., 77). His attention having been specifically called by the Auditor’s decision to the cases holding that commissioners have no power to punish for contempt, his present claim does not seem to come within the principles laid down in Van Buren v. United States, supra, and all fees now claimed by him in contempt proceedings will be disallowed. (Comp. in re accounts of L. M. Totten, Feb. 13, 1895.)

8. The act of July 12, 1894, providing that criminal proceedings instituted for the trial of offenders against the laws of the United States arising in the district of Minnesota shall be brought, had, and prosecuted in the division of said district in which such offenses were committed, does not apply to preliminary examinations before commissioners or other judicial officers, but such examinations are to be held before the nearest commissioner or the nearest judicial officer having jurisdiction under existing laws, as required by the act of July 31, 1894. (Comp., Mar. 4, 1895, in construction of act of July 12, 1894.)

**BAIL SHALL BE ADMITTED IN CASES NOT CAPITAL.**

Sec. 1015. Bail shall be admitted upon all arrests in criminal cases where the offense is not punishable by death; and in such cases it may be taken by any of the persons authorized by the preceding section to arrest and imprison offenders.
BAIL MAY BE ADMITTED IN CAPITAL CASES.

Sec. 1016. Bail may be admitted upon all arrests in criminal cases where the punishment may be death; but in such cases it shall be taken only by the Supreme Court or a circuit court, or by a justice of the Supreme Court, a circuit judge, or a judge of a district court, who shall exercise their discretion therein, having regard to the nature and circumstance of the offense, and of the evidence, and to the usages of law.

SURRENDER OF CRIMINALS BY BAIL.

Sec. 1018. Any party charged with a criminal offense and admitted to bail, may, in vacation, be arrested by his bail, and delivered to the marshal or his deputy, before any judge or other officer having power to commit for such offense; and at the request of such bail, the judge or other officer shall recommit the party so arrested to the custody of the marshal, and endorse on the recognizance, or certified copy thereof, the discharge and exoneratur of such bail; and the party so committed shall therefrom be held in custody until discharged by due course of law.

NEW BAIL TO BE GIVEN IN CERTAIN CASES.

Sec. 1019. When proof is made to any judge of the United States, or other magistrate having authority to commit on criminal charges as aforesaid, that a person previously admitted to bail on any such charge is about to abscond, and that his bail is insufficient, the judge or magistrate shall require such person to give better security, or, for default thereof, cause him to be committed to prison; and an order for his arrest may be endorsed on the former commitment, or a new warrant therefor may be issued, by such judge or magistrate, setting forth the cause thereof.

ARREST OF PERSONS CAUGHT IN AN ILLICIT DISTILLERY.

The act of March 1, 1879 (chap. 125, sec. 9, 20 Stat., 341), contains the following provision:

"Where any marshal or deputy marshal of the United States, within the district for which he shall be appointed, shall find any person or persons in the act of operating an illicit distillery, it shall be lawful for such marshal or deputy marshal to arrest such person or persons, and take him or them forthwith before some judicial officer named in section 1014 of the Revised Statutes who may reside in the county of arrest, or if none, in that nearest to the place of arrest, to be dealt with according to the provisions of sections 1014, 1015, and 1016 of the said Revised Statutes."
SEVERAL CHARGES TO BE JOINED IN ONE INDICTMENT.

Sec. 1024. When there are several charges against any person for the same act or transaction, or for two or more acts or transactions connected together, or for two or more acts or transactions of the same class of crimes or offenses, which may be properly joined, instead of having several indictments the whole may be joined in one indictment in separate counts; and if two or more indictments are found in such cases, the court may order them to be consolidated.

ONLY ONE WRIT WHEN SEVERAL INDICTMENTS AGAINST SAME PERSON.

Sec. 1027. When two or more charges are made, or two or more indictments are found against any person, only one writ or warrant shall be necessary to commit him for trial; and it shall be sufficient to state in the writ the name or general character of the offenses, or to refer to them only in very general terms.

COPY OF WRIT TO BE JAILOR'S AUTHORITY—ORIGINAL RETURNED.

Sec. 1028. Whenever a prisoner is committed to a sheriff or jailor by virtue of a writ, warrant, or mittimus, a copy thereof shall be delivered to such sheriff or jailor, as his authority to hold the prisoner, and the original writ, warrant, or mittimus shall be returned to the proper court or officer, with the officer's return thereon.

WRIT FOR REMOVAL FROM ONE DISTRICT TO ANOTHER.

Sec. 1029. Only one writ or warrant is necessary to remove a prisoner from one district to another. One copy thereof may be delivered to the sheriff or jailor from whose custody the prisoner is taken, and another to the sheriff or jailor to whose custody he is committed, and the original writ, with the marshal's return thereon, shall be returned to the clerk of the district to which he is removed.

NO WRIT NECESSARY TO BRING A PRISONER INTO COURT.

Sec. 1030. No writ is necessary to bring into court any prisoner or person in custody, or for remanding him from the court into custody; but the same shall be done on the order of the court or district attorney, for which no fees shall be charged by the clerk or marshal.

COPY OF INDICTMENT AND LIST OF JURORS AND WITNESSES.

Sec. 1033. When any person is indicted of treason, a copy of the indictment and a list of the jury, and of the witnesses to be produced on the trial for proving the indictment, stating the place of abode of each juror and witness, shall be delivered to him at least three entire
days before he is tried for the same. When any person is indicted of any other capital offense, such copy of the indictment and list of the jurors and witnesses shall be delivered to him at least two entire days before the trial.

**POOR CONVICTS—DISCHARGE, ETC.**

Sec. 1042. When a poor convict, sentenced by any court of the United States to pay a fine, or fine and cost, whether with or without imprisonment, has been confined in prison thirty days, solely for the non-payment of such fine, or fine and cost, he may make application in writing to any commissioner of the United States court in the district where he is imprisoned, setting forth his inability to pay such fine, or fine and cost, and after notice to the district attorney of the United States, who may appear, offer evidence, and be heard, the commissioner shall proceed to hear and determine the matter; and if on examination it shall appear to him that such convict is unable to pay such fine, or fine and cost, and that he has not any property exceeding twenty dollars in value, except such as is by law exempt from being taken on execution for debt, the commissioner shall administer to him the following oath:

"I do solemnly swear that I have not any property, real or personal, to the amount of twenty dollars, except such as is by law exempt from being taken on civil precept for debt by the laws of (state where oath is administered); and that I have no property in any way conveyed or concealed, or in any way disposed of, for my future use or benefit. So help me God." And thereupon such convict shall be discharged, the commissioner giving to the jailer or keeper of the jail a certificate setting forth the facts.

**NOTE.**—The commissioner is entitled to $5 a day for services under this section. He is not entitled to $5 for each convict discharged where more than one is discharged on the same day. (See sec. 5296, post page 155, and decisions quoted under paragraphs 11 and 12, commissioner's fees, ante, pages 117 to 119.)

**COURT OF CLAIMS.**

**APPOINTMENT, OATH, AND SALARIES OF JUSTICES.**

Sec. 1049. The Court of Claims, established by the act of February twenty-four, eighteen hundred and fifty-five, shall be continued. It shall consist of a chief justice and four judges, who shall be appointed by the President, by and with the advice and consent of the Senate, and hold their offices during good behavior. Each of them shall take an oath to support the Constitution of the United States, and to discharge faithfully the duties of his office, and shall be entitled to receive an annual salary of four thousand five hundred dollars, payable quarterly from the Treasury.

**NOTE.**—The salaries are paid monthly from the appropriation for salaries, judges, etc., Court of Claims. Salary is paid from the date of the oath of office.
Sec. 1053. The said court shall appoint a chief clerk, an assistant clerk, if deemed necessary, a bailiff, and a messenger. The clerks shall take an oath for the faithful discharge of their duties, and shall be under the direction of the court in the performance thereof; and for misconduct or incapacity they may be removed by it from office; but the court shall report such removals, with the cause thereof, to Congress, if in session, or, if not, at the next session. The bailiff shall hold his office for a term of four years, unless sooner removed by the court for cause.

Salaries of Clerk, Assistant, Bailiff, and Messenger.

Sec. 1054. The salary of the chief clerk shall be three thousand dollars a year, of the assistant clerk two thousand dollars a year, of the bailiff fifteen hundred dollars a year, and of the messenger eight hundred and forty dollars a year, payable quarterly from the Treasury.

Note.—Salaries are paid monthly from the appropriation for salaries, judges, etc., Court of Claims. In addition to the officers provided for in the above section Congress now (1896) appropriates for five clerks at $1,200 each.

Bond of Clerk.

Sec. 1055. The chief clerk shall give bond to the United States in such amount, in such form, and with such security as shall be approved by the Secretary of the Treasury.

Clerk to Disburse Contingent Fund.

Sec. 1056. The said clerk shall have authority, when he has given bond as provided in the preceding section, to disburse, under the direction of the court, the contingent fund which may from time to time be appropriated for its use; and his accounts shall be settled by the proper accounting officers of the Treasury in the same way as the accounts of other disbursing agents of the Government are settled.

Oath of Office.

Sec. 1757. Whenever any person who is not rendered ineligible to office by the provisions of the fourteenth amendment to the Constitution is elected or appointed to any office of honor or trust under the Government of the United States, and is not able, on account of his participation in the late rebellion, to take the oath prescribed in the preceding section, he shall, before entering upon the duties of his office, take and subscribe in lieu of that oath the following oath: "I, A B, do solemnly swear (or affirm) that I will support and defend the Constitution of the United States against all enemies, foreign and domestic; that I will bear true faith and allegiance to the same; that I take this
obligation freely, without any mental reservation or purpose of evasion; and that I will well and faithfully discharge the duties of the office on which I am about to enter. So help me God."

1. Section 1757 requires the oath therein specified to be taken by every person "elected or appointed to any office of honor or trust under the Government of the United States * * * before entering upon the duties of his office." Salary can not be allowed except from the date of the oath. (Dec. First Comp. Bowler, p. 193.)

UNAUTHORIZED OFFICE—NO SALARY.

SEC. 1760. No money shall be paid from the Treasury to any person acting or assuming to act as an officer, civil, military, or naval, as salary, in any office when the office is not authorized by some previously existing law, unless such office is subsequently sanctioned by law.

NO SALARY TO CERTAIN APPOINTEES DURING RECESS.

SEC. 1761. No money shall be paid from the Treasury, as salary, to any person appointed during the recess of the Senate, to fill a vacancy in any existing office, if the vacancy existed while the Senate was in session and was by law required to be filled by and with the advice and consent of the Senate, until such appointee has been confirmed by the Senate.

DOUBLE SALARY.

SEC. 1763. No person who holds an office, the salary or annual compensation attached to which amounts to the sum of two thousand five hundred dollars, shall receive compensation for discharging the duties of any other office, unless expressly authorized by law.

Act of July 31, 1894 (sec. 2, 28 Stat., 205):

No person who holds an office the salary or annual compensation attached to which amounts to the sum of two thousand five hundred dollars shall be appointed to or hold any other office to which compensation is attached unless specially heretofore or hereafter specially authorized thereto by law; but this shall not apply to retired officers of the Army or Navy whenever they may be elected to public office or whenever the President shall appoint them to office by and with the advice and consent of the Senate.

1. The above section does not prohibit the clerk of the district court of Alaska, whose salary is $2,500, from receiving, under a contract with the Department of Justice, $600 for medical services rendered by him to United States prisoners. (Comp., Mar. 9, 1895.)

EXTRA SERVICES.

SEC. 1764. No allowance or compensation shall be made to any officer or clerk, by reason of the discharge of duties which belong to any other officer or clerk in the same or any other Department; and no allowance
or compensation shall be made for any extra service whatever, which any officer or clerk may be required to perform, unless expressly authorized by law.

1. The pay of two offices is prohibited by the act of September 30, 1850 (9 Stat. L., p. 542, sec. 1), which provides that the accounting officers of the Treasury "shall in no case allow any pay to one individual of the salaries of two different offices on account of having performed the duties thereof." (Talbot v. United States, 10 C. Cls. R., 426.)

2. When the statutes directly or indirectly recognize the right of a person to hold separate offices, an implication arises that he may have the salary attached to each: (Collins v. United States, 15 C. Cls. R., 22.)

3. The Revised Statutes prohibit additional compensation to public officers, but do not apply to salaries of two offices properly held by the same person. (Ibid.)

4. Officers of the Government are not prohibited to receive extra compensation for services rendered entirely apart from their official functions, but only for services required of them within the scope of their employment. (United States v. Stowe, 19 Fed. Rep., 807.)

EXTRA ALLOWANCE.

SEC. 1765. No officer in any branch of the public service, or any other person whose salary, pay, or emoluments are fixed by law or regulations, shall receive any additional pay, extra allowance, or compensation, in any form whatever, for the disbursement of public money, or for any other service or duty whatever, unless the same is authorized by law, and the appropriation therefor explicitly states that it is for such additional pay, extra allowance, or compensation.

1. Under the act of August 23, 1842, one whose salary is fixed by law can hold no other office, and can receive no other or additional compensation for any service whatever. (Stansbury v. United States, 1 C. Cls. R., 123; Harvey v. United States, 3 C. Cls. R., 38; Jackson v. United States, 8 C. Cls. R., 353; U. S. Repts., 8 Wall, 33.)

OFFICERS IN ARREARS.

SEC. 1766. No money shall be paid to any person for his compensation who is in arrears to the United States, until he has accounted for and paid into the Treasury all sums for which he may be liable. In all cases where the pay or salary of any person is withheld in pursuance of this section, the accounting officers of the Treasury, if required to do so by the party, his agent or attorney, shall report forthwith to the Solicitor of the Treasury the balance due; and the Solicitor shall, within sixty days thereafter, order suit to be commenced against such delinquent and his sureties.

TAKING OATHS, ACKNOWLEDGMENTS, ETC.

SEC. 1778. In all cases in which, under the laws of the United States, oaths or acknowledgments may now be taken or made before any justice of the peace of any State or Territory, or in the District of Columbia, they may hereafter be also taken or made by or before any notary
public duly appointed in any State, district, or Territory, or any of the commissioners of the circuit courts, and, when certified under the hand and official seal of such notary or commissioner, shall have the same force and effect as if taken or made by or before such justice of the peace.

THE TERRITORIES.

SUPREME COURTS OF TERRITORIES.

SEC. 1864. The supreme court of every Territory shall consist of a chief justice and two associate justices, any two of whom shall constitute a quorum, and they shall hold their offices for four years, and until their successors are appointed and qualified. They shall hold a term annually at the seat of government of the Territory for which they are respectively appointed.

The act of May 17, 1884 (23 Stat., 24), provides for one judge in the Territory of Alaska. This act also provides that the district judge of Alaska shall be paid his actual necessary expenses when traveling in the discharge of his official duties. A detailed account of such expenses shall be rendered under oath and shall be approved by the Attorney-General.

Note.—This account is paid from the appropriation for traveling expenses, Territory of Alaska.

By act of February 28, 1887 (24 Stat., 428), the supreme court of the Territory of New Mexico is to consist of a chief justice and three associate justices, and by act of July 10, 1890 (26 Stat., 226), such court is to consist of a chief justice and four associate justices.

By act of June 25, 1888 (chap. 486, 25 Stat., 203), the supreme court of the Territory of Utah is to consist of a chief justice and three associate justices.

The act of March 1, 1889 (25 Stat., 783), provided for a judge in the Indian Territory and fixed his salary at $3,500. He is paid from the appropriation for salaries of district judges. (See Indian Territory, act of Mar. 1, 1895.)

By act of February 11, 1891 (chap. 131, sec. 1, 26 Stat., 747), the supreme court of Arizona is to consist of a chief justice and three associate justices.

By act of December 21, 1893 (chap. 5, 28 Stat., 20), the supreme court of Oklahoma is to consist of a chief justice and four associate justices.

JUDICIAL DISTRICTS.

SEC. 1865. Every Territory shall be divided into three judicial districts; and a district court shall be held in each district of the Territory by one of the justices of the supreme court, at such time and place as may be prescribed by law; and each judge, after assignment, shall reside in the district to which he is assigned.
OATH OF OFFICE.

Act of May 1, 1876 (chap. 88, 19 Stat., 43), provides:

And hereafter payment of salaries of all officers of the Territories of the United States appointed by the President shall commence only when the person appointed to any such office shall take the proper oath, and shall enter upon the duties of such office in such Territory; and said oath shall hereafter be administered in the Territory in which such office is held.

CLERKS OF TERRITORIAL COURTS.

SEC. 1870. The supreme court of each Territory shall appoint its own clerk, who shall hold his office at the pleasure of the court for which he is appointed.

SEC. 1871. Each judge of the supreme court of the respective Territories shall designate and appoint one person as clerk of the district over which he presides, where one is not already appointed, and shall designate and retain but one such clerk where more than one is already appointed, and only such district clerk shall be entitled to a compensation from the United States.

SEC. 1872. Every district clerk shall be also the register in chancery, and shall reside and keep his office at the place where the court is held.

DISTRICT ATTORNEYS IN TERRITORIES.

SEC. 1875. There shall be appointed in each Territory a person learned in the law, to act as attorney for the United States. He shall continue in office for four years, and until his successor is appointed and qualified, unless sooner removed by the President.

Note.—See act of May 1, 1876, quoted under section 1865.

MARSHALS IN TERRITORIES.

SEC. 1876. There shall be appointed a marshal for each Territory. He shall execute all process issuing from the Territorial courts when exercising their jurisdiction as circuit and district courts of the United States. He shall have the power and perform the duties, and be subject to the regulations and penalties, imposed by law on the marshals for the several judicial districts of the United States. He shall hold his office for four years and until his successor is appointed and qualified, unless sooner removed by the President.

Note.—See act of May 1, 1876, set out under section 1865.

TERRITORIAL OFFICERS—HOW APPOINTED.

SEC. 1877. The governor, secretary, chief justice, and associate justices, attorney, and marshal of every Territory shall be nominated and, by and with the advice and consent of the Senate, appointed by the President.
TERRITORIES—SALARIES.

SALARIES OF TERRITORIAL JUDGES.

SEC. 1879. The annual salary of the chief justice and associate justices of all the Territories now organized shall be three thousand dollars each.

1. The provision of the Constitution which declares that the judges of the supreme and inferior courts shall receive for their services a compensation which shall not be diminished does not extend to Territorial judges. (Fisher’s Case, 15 C. Cis. R., 323.)

2. The salaries of judicial and other officers appointed for the Territory of Michigan are to be paid until the State shall have been actually admitted into the Union by the proclamation of the President. (3 Op., 170.)

3. The salaries of the Territorial officers of Oregon date from the time of their appointment, but are not payable until they reach the Territory and enter upon their official duties. (5 Op., 219.)

4. Territorial judges absent from the Territory for a period of three months can obtain their salaries only on certificate of the President that the absence was for good cause. (6 Op., 57.)

5. The salaries of judges of all courts of the United States are due from the date of appointment; but the party does not become entitled to draw pay until he has entered upon the duties of his office, or at least taken his official oath; for, until then, though under commission, he is not actually in office, and in some cases, as that of the Territorial judges of Oregon, Washington, Kansas, and Nebraska, salary, though due from date of appointment, can not be drawn until the judge enters on duty in the Territory. (7 Op., 304.)

NOTE.—Salary is paid only from the date the judge takes the oath of office and enters upon the discharge of his duties. It is paid monthly from the appropriation for salaries, governor, etc., Territory of ——, on the receipt of a certificate of nonabsence. (See sec. 1884.) The oath must be taken in the Territory. (See act May 1, 1876, ante, page 144.) These salaries are paid by the disbursing clerk of the Department of Justice.

SALARIES OF TERRITORIAL DISTRICT ATTORNEYS.

SEC. 1880. The salary of the attorney of the United States for each Territory shall be at the rate of two hundred and fifty dollars annually. The United States attorney for the Territory of Alaska receives a salary of two thousand five hundred dollars per annum. (Act of May 17, 1884, chap. 53, sec. 9, 23 Stat., 24.)

NOTE.—Salary is paid quarterly from the appropriation for salaries, district attorneys, on the receipt of a certificate of nonabsence. Paid from date of oath of office, which must be taken in the Territory, and from the time the attorney enters upon the discharge of his duties. (See act May 1, 1876, ante, page 144.) The salary of the attorney for Alaska is paid monthly from the appropriation for salaries, governor, etc., Territory of Alaska. Salaries are paid by the disbursing clerk of the Department of Justice.

SALARIES OF MARSHALS IN THE TERRITORIES.

SEC. 1881. The salary of the marshal of the United States for each Territory shall be at the rate of two hundred dollars a year.
By act of May 17, 1884, the salary of the marshal of Alaska is $2,500.

NOTE.—The salary of the marshal of Alaska is paid monthly from the appropriation for salaries, governor, etc., Territory of Alaska. The salaries of all other marshals are paid quarterly from the appropriation for salaries, district marshals. Certificates of nonabsence must be forwarded before payment of salary. The salary is paid from the date when the oath of office is taken and the marshal enters upon the discharge of his duties. Salaries are paid by the disbursing clerk of the Department of Justice.

SALARIES TO BE PAID QUARTERLY.

Sec. 1882. The salaries provided for in this Title, to be paid to the governor, secretary, chief justices and associate justices, district attorney, and marshal of the several Territories, shall be paid quarter-yearly at the Treasury of the United States.

FEES OF CLERKS, ETC., IN THE TERRITORIES.

Sec. 1883. The fees and costs to be allowed to the United States attorneys and marshals, to the clerks of the supreme and district courts, and to jurors, witnesses, commissioners, and printers, in the Territories of the United States shall be the same for similar services for such persons as prescribed in chapter sixteen, Title “The Judiciary,” and no other compensation shall be taxed or allowed.

SALARY NOT TO BE PAID WHEN OFFICER IS ABSENT.

Sec. 1884. When any officer of a Territory is absent therefrom, and from the duties of his office, no salary shall be paid him during the year in which such absence occurs, unless good cause therefor be shown to the President, who shall officially certify his opinion of such cause to the proper accounting officer of the Treasury, to be filed in his office.

1. Certificates of nonabsence from the judicial officers of the Indian Territory are not required in order to authorize the payment of their salaries. (Comp. to Bragan, June 18, 1895.)

NOTE.—Salary will not be paid to any Territorial officer (except for the Indian Territory) until the officer has forwarded to the Attorney-General a certificate of nonabsence covering the period for which salary is to be paid. This certificate should state that the officer was not absent during the period covered, or if absent should give the reasons for leaving the Territory, the time during which he was absent, and by whom leave of absence was granted.

PENITENTIARIES IN TERRITORIES.

Sec. 1892. Any penitentiary which has been, or may hereafter be, erected by the United States in an organized Territory shall, when the same is ready for the reception of convicts, be placed under the care and control of the marshal of the United States for the Territory
or District in which such penitentiary is situated; except as otherwise provided in the case of the penitentiaries in Montana, Idaho, Wyoming, and Colorado.

RULES FOR GOVERNMENT OF PENITENTIARIES.

SEC. 1893. The Attorney-General of the United States shall prescribe all needful rules and regulations for the government of such penitentiary, and the marshal having charge thereof shall cause them to be duly and faithfully executed and obeyed, and the reasonable compensation of the marshal and his deputies for their service, under such regulations shall be fixed by the Attorney-General.

1. A marshal is not entitled to commissions on disbursements for the support of a penitentiary. (United States v. Baird, 150 U. S., 54.)

Note.—The compensation of the marshal, as fixed by the Attorney-General, is intended to cover his services in connection with the care of the penitentiary. He is not entitled to commissions on the amount disbursed for expenses of the penitentiary.

EXPENSES OF SUBSISTENCE OF PRISONERS.

SEC. 1894. The compensation, as well as the expense incident to the subsistence and employment of offenders against the laws of the United States, who have been, or may hereafter be, sentenced to imprisonment in such penitentiary, shall be chargeable on, and payable out of, the fund for defraying the expenses of suits in which the United States are concerned, and of prosecutions for offenses committed against the United States; but nothing herein shall be construed to increase the maximum compensation now allowed by law to those officers.

IMPRISONMENT IN PENITENTIARIES.

SEC. 1895. Any person convicted by a court of competent jurisdiction in a Territory, for a violation of the laws thereof, and sentenced to imprisonment, may, at the cost of such Territory, on such terms and conditions as may be prescribed by such rules and regulations, be received, subsisted, and employed in such penitentiary during the term of his imprisonment in the same manner as if he had been convicted of an offense against the laws of the United States.

CIVIL RIGHTS.

DISTRICT ATTORNEY TO PROSECUTE.

SEC. 1982. The district attorneys, marshals, and deputy marshals, the commissioners appointed by the circuit and Territorial courts, with power to arrest, imprison, or bail offenders, and every other officer who is especially empowered by the President, are authorized and required, at the expense of the United States, to institute prosecutions against
all persons violating any of the provisions of chapter seven of the Title "Crimes", and to cause such persons to be arrested, and imprisoned or bailed, for trial before the court of the United States or the Territorial court having cognizance of the offense.

COMMISSIONERS TO BE APPOINTED.

SEC. 1983. The circuit courts of the United States and the district courts of the Territories, from time to time, shall increase the number of commissioners, so as to afford a speedy and convenient means for the arrest and examination of persons charged with the crimes referred to in the preceding section; and such commissioners are authorized and required to exercise all the powers and duties conferred on them herein with regard to such offenses in like manner as they are authorized by law to exercise with regard to other offenses against the laws of the United States.

COMMISSIONERS MAY APPOINT SPECIAL DEPUTY MARSHALS.

SEC. 1984. The commissioners authorized to be appointed by the preceding section are empowered, within their respective counties, to appoint, in writing, under their hands, one or more suitable persons, from time to time, who shall execute all such warrants or other process as the commissioners may issue in the lawful performance of their duties, and the persons so appointed shall have authority to summon and call to their aid the bystanders or posse comitatus of the proper county, or such portion of the land or naval forces of the United States, or of the militia, as may be necessary to the performance of the duty with which they are charged; and such warrants shall run and be executed anywhere in the State or Territory within which they are issued.

MARSHAL TO OBEY PRECEPCTS.

SEC. 1985. Every marshal and deputy marshal shall obey and execute all warrants or other process, when directed to him, issued under the provisions hereof.

FEES IN CIVIL RIGHTS CASES.

SEC. 1986. The district attorneys, marshals, their deputies, and the clerks of the courts of the United States and Territorial courts shall be paid for their services, in cases under the foregoing provisions, the same fees as are allowed to them for like services in other cases; and where the proceedings are before a commissioner he shall be entitled to a fee of ten dollars for his services in each case, inclusive of all services incident to the arrest and examination.

1. Where a commissioner issues a warrant upon affidavits which do not show an offense the issuing of a warrant does not make a case within the meaning of
the Revised Statutes which provides that a commissioner “shall be entitled to a fee of ten dollars for his services in each case.” (Southworth v. United States, 19 C. Cls. R., 278.)

2. Commissioner took complaints and issued 8,283 warrants for violations of section 5512. Of the warrants 6,903 were not executed, 1,380 were arrested, 77 were held, and 1,303 discharged. Held, that the refusal of the circuit court to approve the account, though no bar to recovery, might be a matter for consideration in respect to the good faith of the transaction; that where defendant was arrested and tried, though discharged, the commissioner is entitled to the fee of $10; that when no arrest was made and no examination took place no case had arisen within the meaning of section 1986. (Southworth v. United States, 151 U. S., 179.)

3. Section 1983 provides that the United States circuit courts and the district courts of the Territories, from time to time, shall increase the number of United States commissioners so as to afford a speedy and convenient means for the arrest and examination of persons charged with violations of the election laws. Section 1984 empowers the commissioners authorized to be appointed by the preceding section, within their respective counties, to appoint one or more suitable persons from time to time, who shall execute all such warrants as the commissioner shall issue. Held, that since the appointment of commissioners was not authorized for the first time, but merely directed by section 1983, the power to appoint process servers, given by section 1984, must extend to all commissioners. In any case it would be impossible to distinguish from the rest the class in terms designated by this section. (In re Upchurch, 38 Fed. Rep., 25.)

ARREST IN INDIAN COUNTRY—POSSE.

Sec. 2153. In executing process in the Indian country, the marshal may employ a posse comitatus, not exceeding three persons in any of the States respectively, to assist in executing process by arresting and bringing in prisoners from the Indian country, and allow them three dollars for each day in lieu of all expenses and services.

1. Payment may be made though there is no arrest. (Comp.)

Note.—Each person employed as a posse must make affidavit setting forth the case, the number of days employed, and the places from and to which travel was made. This affidavit and the receipt of the posse must accompany the account of the marshal.

DUTY OF DISTRICT ATTORNEY TO PROSECUTE FOR VIOLATIONS OF REVENUE LAWS.

Sec. 3085. District attorneys, upon receiving the report of a collector, shall cause suit and prosecution to be commenced and prosecuted without delay for the fines and personal penalties by law in such case provided, unless upon inquiry and examination they shall decide that a conviction can not probably be obtained, or that the ends of public justice do not require that a suit or prosecution should be instituted, in which case they shall report the facts to the Secretary of the Treasury for his direction. For expenses incurred and services rendered in prosecutions for such fines and personal penalties, they shall receive such allowance as the Secretary of the Treasury shall deem just and
reasonable, upon the certificate of the judge before whom such prose­
cution was had. (Sec. 838.)

ASSIGNMENT OF CLAIMS—WHEN VOID.

SEC. 3477. All transfers and assignments made of any claim upon
the United States, or of any part or share thereof, or interest therein,
whether absolute or conditional, and whatever may be the considera­
tion therefor, and all powers of attorney, orders, or other authorities
for receiving payment of any such claim, or of any part or share thereof,
shall be absolutely null and void, unless they are freely made and exec­
cuted in the presence of at least two attesting witnesses, after the
allowance of such a claim, the ascertainment of the amount due, and
the issuing of a warrant for the payment thereof. Such transfers,
assignments, and powers of attorney, must recite the warrant for pay­
ment, and must be acknowledged by the person making them, before
an officer having authority to take acknowledgments of deeds, and shall
be certified by the officer; and it must appear by the certificate that the
officer, at the time of the acknowledgment, read and fully explained the
transfer, assignment, or warrant of attorney to the person acknowledg­
ing the same.

1. When the Government as lessee of real estate recognizes through its proper
officers a transfer of the property, and an assignment of the lease, and an assign­
ment of rent under it, and pays the rent, there is nothing in section 3477 respecting
transfers and assignments of claims against the United States which invalidates
that transaction for the benefit of a third party. (Freedman's Saving Co. v.
Shepherd, 127 U. S., 494.)

2. Payments should not be made under assignments or powers of attorney
which do not conform to the provisions of the section. The decision of the
Court of Claims leaves it with the accounting officers to recognize or not such
assignments. The marshal should not be directed to take up certificates.
(Letter of Comp. to Atty. Gen. in re claim of D. T. Hoskins, assignee of jurors'
certificates, Dec. 26, 1894.)

COLLECTORS TO PAY OVER PUBLIC MONEYS.

SEC. 3615. All collectors and receivers of public moneys of every
description, within the District of Columbia, shall, as often as they may
be directed by the Secretary of the Treasury or the Postmaster-General
so to do, pay over to the Treasurer of the United States, at the Treasury,
all public moneys collected by them or in their hands. All such col­
collectors and receivers of public moneys within the cities of New York,
Boston, Philadelphia, New Orleans, San Francisco, Baltimore, Charle­
ton, and Saint Louis shall, upon the same direction, pay over to the
assistant treasurers in their respective cities, at their offices, respec­
tively, all the public moneys collected by them, or in their hands; to
be safely kept by the respective depositaries, until otherwise disposed
of according to law. It shall be the duty of the Secretary and Post-
master-General, respectively, to direct such payments by the collectors and receivers at all the said places, at least as often as once in each week, and as much oftener as they may think proper.

HOW MARSHALS AND ATTORNEYS MAY PAY MONEYS.

SEC. 3616. All marshals, district attorneys, and other persons than those mentioned in the preceding section, having public money to pay to the United States, may pay the same to any depositary constituted by or in pursuance of law, which may be designated by the Secretary of the Treasury.

MONEYS RECEIVED TO BE DEPOSITED WITHOUT DEDUCTION.

SEC. 3617. The gross amount of all moneys received from whatever source for the use of the United States, except as otherwise provided in the next section, shall be paid by the officer or agent receiving the same into the Treasury, at as early a day as practicable, without any abatement or deduction on account of salary, fees, costs, charges, expenses, or claim of any description whatever. But nothing herein shall affect any provision relating to the revenues of the Post-Office Department.

PENALTY FOR WITHHOLDING MONEY.

SEC. 3619. Every officer or agent who neglects or refuses to comply with the provisions of section thirty-six hundred and seventeen shall be subject to be removed from office, and to forfeit to the United States any share or part of the moneys withheld, to which he might otherwise be entitled.

DUTY OF DISBURSING OFFICERS TO DEPOSIT MONEYS.

SEC. 3620. It shall be the duty of every disbursing officer having any public money intrusted to him for disbursement, to deposit the same with the Treasurer or some one of the assistant treasurers of the United States, and to draw for the same only as it may be required for payments to be made by him in pursuance of law (and draw for the same only in favor of the persons to whom payment is made;) and all transfers from the Treasurer of the United States to a disbursing officer shall be by draft or warrant on the Treasury or an assistant treasurer of the United States. In places, however, where there is no treasurer or assistant treasurer, the Secretary of the Treasury may, when he deems it essential to the public interest, specially authorize in writing the deposit of such public money in any other public depository, or, in writing, authorize the same to be kept in any other manner, and under such rules and regulations as he may deem most safe and effectual to facilitate the payments to public creditors.
PUBLIC MONEYS TO BE DEPOSITED AND RECEIPTS TAKEN.

SEC. 3621. Every person who shall have moneys of the United States in his hands or possession shall pay the same to the Treasurer, an assistant treasurer, or some public depositary of the United States, and take his receipts for the same, in duplicate, and forward one of them forthwith to the Secretary of the Treasury.

ACCOUNTS TO BE RENDERED MONTHLY.

SEC. 3622. Every officer or agent of the United States who receives public money which he is not authorized to retain as salary, pay, or emolument, shall render his accounts monthly. Such accounts, with the vouchers necessary to the correct and prompt settlement thereof, shall be sent by mail, or otherwise, to the Bureau to which they pertain, within ten days after the expiration of each successive month, and after examination there, shall be passed to the proper accounting officer of the Treasury for settlement. Disbursing officers of the Navy shall, however, render their accounts and vouchers direct to the proper accounting officer of the Treasury. In case of the non-receipt at the Treasury, or proper Bureau, of any accounts within a reasonable and proper time thereafter, the officer whose accounts are in default shall be required to furnish satisfactory evidence of having complied with the provisions of this section. The Secretary of the Treasury may, if in his opinion the circumstances of the case justify and require it, extend the time hereinbefore prescribed for the rendition of accounts. Nothing herein contained shall, however, be construed to restrain the heads of any of the Departments from requiring such other returns or reports from the officer or agent subject to the control of such heads of Departments, as the public interest may require.

Act of August 30, 1890 (chap. 837, sec. 4, 26 Stat., 413), provides:

That hereafter all disbursing officers of the United States shall render their accounts quarterly; and the Secretary of the Senate shall render his accounts as heretofore; but the Secretary of the Treasury may direct any or all such accounts to be rendered more frequently when, in his judgment, the public interests may require.

Note.—See act July 31, 1894, post page 88 which amends Sec. 3622.

DISTINCT ACCOUNTS UNDER EACH APPROPRIATION.

SEC. 3623. All officers, agents, or other persons, receiving public moneys, shall render distinct accounts of the application thereof, according to the appropriation under which the same may have been advanced to them.
FIRST COMPTROLLER TO INSTITUTE SUITS TO RECOVER MONEYS.

SEC. 3624. Whenever any person accountable for public money, neglects or refuses to pay into the Treasury the sum or balance reported to be due to the United States, upon the adjustment of his account, the First Comptroller of the Treasury shall institute suit for the recovery of the same, adding to the sum stated to be due on such account, the commissions of the delinquent, which shall be forfeited in every instance where suit is commenced and judgment obtained thereon, and an interest of six per cent per annum, from the time of receiving the money, until it shall be repaid into the Treasury.

1. A receiver of public moneys is not discharged from liability by being robbed. (Boyd en v. United States, 13 Wall., 17.)

2. Nor by causes which might perhaps discharge it, when the money taken from them by superior force would not have been in their hands at all to be so taken had they not kept it in their hands in violation of statutes which made it their duty to pay it over to the Government. (Bevans v. United States, 13 Wall., 56.)

3. An officer charged with the disbursement of public moneys is not liable for interest thereon if he has not converted them to his own use, nor neglected to disburse them pursuant to law, nor when thereunto required failed to account for or transfer them. (United States v. Donoir, 106 U. S., 536.)

MONEY TO BE APPLIED SOLELY TO THE OBJECT FOR WHICH APPROPRIATED.

SEC. 3678. All sums appropriated for the various branches of expenditure in the public service shall be applied solely to the objects for which they are respectively made, and for no others.

NOTE.—The marshal must not use money advanced from one appropriation to pay expenses incurred which are chargeable to a different appropriation. He must not use money advanced from the appropriation for one fiscal year to pay expenses incurred in another fiscal year.

FEES OF WITNESSES WHOSE TESTIMONY IS TAKEN TO BE USED IN FOREIGN COUNTRIES.

SEC. 4074. Every witness who shall so appear and testify shall be allowed, and shall receive from the party at whose instance he shall have been summoned, the same fees and mileage as are allowed to witnesses in suits depending in the district courts of the United States.

CLERK TO MAKE RETURN OF SUMS ALLOWED ATTORNEY AND PRIZE COMMISSIONERS.

SEC. 4644. The clerk of each district court shall render, to the Secretary of the Treasury and the Secretary of the Navy, a semi annual statement of all the sums allowed by the court, and ordered to be paid, within the previous half-year, to the district attorney and prize-com-
missioners for services, and to marshals for fees and commissions; and 
he shall, in all prize-causes in the district, for the purpose of the final 
decree of distribution, ascertain and keep an account of the amount 
deposited with the assistant treasurer, subject to the order of the court, 
in each prize-cause, and the amounts ordered to be paid therefrom as 
costs and charges, and the residue for distribution; and shall send 
copies of all final decrees of distribution to the Secretary of the Treas­
ury and the Secretary of the Navy; and shall draw the orders of the 
court for the payment of all costs and allowances, and for the distri­
bution of the residue. For these services he shall be entitled to receive 
the sum of twenty-five dollars in each prize-cause, which shall be in full 
for the services required by this action.

MARCIIAL'S FEES IN PRIZE-CAUSES.

SEC. 4645. The marshal shall be allowed his actual and necessary 
expenses for the custody, care, preservation, insurance, sale, or other 
disposal of the prize-property, and for executing any order of the court 
respecting the same, and shall have a commission of one-quarter of one 
per centum on vessels, and of one-half of one per centum on all other 
prize-property, calculated on the gross proceeds of each sale; and if, 
after he has had any prize-property in his custody, and has actually 
performed labor and incurred responsibility for the care and preserva­
tion thereof, the same is taken by the United States for its own use 
without a sale, or if it is delivered on stipulation to the claimants, he 
shall, in case the same is condemned, be entitled to one-half the above 
commissions on the amount deposited by the United States to the order 
of the courts, or collected upon the stipulation. No charges of the mar­
shall for expenses or disbursements shall be allowed, except upon his 
oath that the same have been actually and necessarily incurred for the 
purpose stated.

COMPENSATION OF DISTRICT ATTORNEY AND PRIZE COMMISSIONERS.

SEC. 4646. The district attorney and prize-commissioners, except the 
naval officer, shall be allowed a just and suitable compensation for their 
respective services in each prize-cause, to be adjusted and determined 
by the court, and to be paid as costs in the cause.

FEES OF SPECIAL COUNSEL IN PRIZE CASES.

SEC. 4649. Fees of special counsel in prize-cases incurred or author­
ized by any Department, or for the defense of captors against demands 
for damages made by claimants in the district court, not paid by claim­
ants, nor from the prize-fund in the particular cause, and audited and 
allowed by the Department incurring or authorizing them, and by the 
Solicitor of the Treasury, shall be a charge upon, and paid out of,
the funds appropriated for defraying the expenses of suits in which the United States is a party or interested.

WITNESSES IN PATENT OFFICE CASES.

Sec. 4906. The clerk of any court of the United States, for any district or Territory wherein testimony is to be taken for use in any contested case pending in the Patent-Office, shall, upon the application of any party thereto, or of his agent or attorney, issue a subpoena for any witness residing or being within such district or Territory, commanding him to appear and testify before any officer in such district or Territory authorized to take depositions and affidavits, at any time and place in the subpoena stated. But no witness shall be required to attend at any place more than forty miles from the place where the subpoena is served upon him.

FEES OF WITNESSES IN PATENT OFFICE CASES.

Sec. 4907. Every witness duly subpoenaed and in attendance shall be allowed the same fees as are allowed to witnesses attending the courts of the United States.

EXTRADITION.

Sec. 5270. Whenever there is a treaty or convention for extradition between the Government of the United States and any foreign government, any justice of the Supreme Court, circuit judge, district judge, commissioner, authorized so to do by any of the courts of the United States, or judge of a court of record of general jurisdiction of any State, may, upon complaint made under oath, charging any person found within the limits of any State, district, or Territory, with having committed within the jurisdiction of any such foreign government any of the crimes provided for by such treaty or convention, issue his warrant for the apprehension of the person so charged, that he may be brought before such justice, judge, or commissioner, to the end that the evidence of criminality may be heard and considered. If, on such hearing, he deems the evidence sufficient to sustain the charge under the provisions of the proper treaty or convention, he shall certify the same, together with a copy of all the testimony taken before him, to the Secretary of State, that a warrant may issue upon the requisition of the proper authorities of such foreign government, for the surrender of such person, according to the stipulations of the treaty or convention; and he shall issue his warrant for the commitment of the person so charged to the proper jail, there to remain until such surrender shall be made.

Note.—See act of August 3, 1882, regulating fees and practices in extradition cases, ante, page 108.
REMISSION OF FINE OF POOR CONVICT.

Sec. 5296. When a poor convict, sentenced by any court of the United States to be imprisoned and pay a fine, or fine and cost, or to pay a fine, or fine and costs, has been confined in prison thirty days, solely for the non-payment of such fine, or fine and costs, such convict may make application in writing to any commissioner of the United States court in the district where he is imprisoned, setting forth his inability to pay such fine, or fine and costs, and after notice to the district attorney of the United States, who may appear, offer evidence, and be heard, the commissioner shall proceed to hear and determine the matter. If on examination it shall appear to him that such convict is unable to pay such fine, or fine and costs, and that he has not any property exceeding twenty dollars in value, except such as is by law exempt from being taken on execution for debt, the commissioner shall administer to him the following oath: "I do solemnly swear that I have not any property, real or personal, to the amount of twenty dollars, except such as is by law exempt from being taken on civil process for debt by the laws of (naming the State where oath is administered;) and that I have no property in any way conveyed or concealed, or in any way disposed of, for my future use or benefit. So help me God." Upon taking such oath such convict shall be discharged, and the commissioner shall give to the keeper of the jail a certificate setting forth the facts.

Note.—See section 1042, Revised Statutes, ante, page 139, and decisions under paragraphs 11 and 12, ante, pages 117 to 119.

EXPENSES OF PRISONERS TO BE PAID BY UNITED STATES.

Sec. 5536. All the expenses attendant upon the transportation from place to place, and upon the temporary or permanent confinement of persons arrested or committed under the laws of the United States, as well as upon the execution of any sentence of a court thereof respecting them, shall be paid out of the Treasury of the United States in the manner provided by law.

PENITENTIARY SENTENCES—WHERE EXECUTED.

Sec. 5542. In every case where any criminal convicted of any offense against the United States is sentenced to imprisonment and confinement to hard labor, it shall be lawful for the court by which the sentence is passed to order the same to be executed in any State jail or penitentiary within the district or State where such court is held, the use of which jail or penitentiary is allowed by the legislature of the State for that purpose.
ACTUAL REASONABLE COSTS OF SUBSISTENCE TO BE PAID.

SEC. 5545. Hereafter there shall be allowed and paid by the Attorney-General, for the subsistence of prisoners in the custody of any marshal of the United States and the warden of the jail of the District of Columbia, such sum only as it reasonably and actually cost to subsist them. And it shall be the duty of the Attorney-General to prescribe such regulations for the government of the marshals and the warden of the jail in the District of Columbia, in relation to their duties under this chapter, as will enable him to determine the actual and reasonable expenses incurred.

DESIGNATION OF PENITENTIARY BY THE ATTORNEY-GENERAL.

SEC. 5546. All persons who have been, or who may hereafter be, convicted of crime by any court of the United States whose punishment is imprisonment in a District or Territory where, at the time of conviction, or at any time during the term of imprisonment, there may be no penitentiary or jail suitable for the confinement of convicts or available therefor, shall be confined during the term for which they have been or may be sentenced, or during the residue of said term, in some suitable jail or penitentiary in a convenient State or Territory, to be designated by the Attorney-General, and shall be transported and delivered to the warden or keeper of such jail or penitentiary by the marshal of the District or Territory where the conviction has occurred; and if the conviction be had in the District of Columbia, the transportation and delivery shall be by the warden or keeper of the jail of that District; the reasonable actual expense of transportation, necessary subsistence, and hire and transportation of guards and the marshal, or the warden of the jail in the District of Columbia, only, to be paid by the Attorney-General, out of the judiciary fund. But if, in the opinion of the Attorney-General, the expense of transportation from any State, Territory or the District of Columbia, in which there is no penitentiary, will exceed the cost of maintaining them in jail in the State, Territory, or the District of Columbia during the period of their sentence, then it shall be lawful so to confine them therein for the period designated in their respective sentences. And the place of imprisonment may be changed in any case, when, in the opinion of the Attorney-General, it is necessary for the preservation of the health of the prisoner, or when, in his opinion, the place of confinement is not sufficient to secure the custody of the prisoner, or because of cruel or improper treatment: Provided, however, That no change shall be made in the case of any prisoner on the ground of the unhealthiness of the prisoner, or because of his treatment, after his conviction and during his term of imprisonment, unless such change shall be applied for by such prisoner, or some one in his behalf.

1. Power to remove a United States prisoner from a penitentiary to a county jail is, under Revised Statutes, section 5546, with the Attorney-General. (United States v. Greenwald, 64 Fed. Rep., 6.)
ATTORNEY-GENERAL TO CONTRACT FOR SUBSISTENCE.

Sec. 5547. The Attorney-General shall contract with the managers or proper authorities having control of such prisoners, for the imprisonment, subsistence, and proper employment of them, and shall give the court having jurisdiction of such offenses notice of the jail or penitentiary where such prisoners will be confined.

COURT MAY ORDER SENTENCE EXECUTED IN HOUSE OF CORRECTION.

Sec. 5548. Whenever any person is convicted of any offense against the United States which is punishable by fine and imprisonment, or by either, the court by which the sentence is passed may order the sentence to be executed in any house of correction or house of reformation for juvenile delinquents within the State or district where such court is held, the use of which is authorized by the legislature of the State for such purpose.

CONFINEMENT OF JUVENILE OFFENDERS.

Sec. 5549. Juvenile offenders against the laws of the United States, being under the age of sixteen years, and who may hereafter be convicted of crime, the punishment whereof is imprisonment, shall be confined during the term of sentence in some house of refuge to be designated by the Attorney-General, and shall be transported and delivered to the warden or keeper of such house of refuge by the marshal of the district where such conviction has occurred; or if such conviction be had in the District of Columbia, then the transportation and delivery shall be by the warden of the jail of that district, and the reasonable actual expense of the transportation, necessary subsistence, and hire, and transportation of assistants and the marshal or warden, only, shall be paid by the Attorney-General, out of the judiciary fund.

ATTORNEY-GENERAL TO CONTRACT FOR THEIR SUBSISTENCE.

Sec. 5550. The Attorney-General shall contract with the managers or persons having control of such houses of refuge for the imprisonment, subsistence, and proper employment of all such juvenile offenders, and shall give the several courts of the United States and of the District of Columbia notice of the places so provided for the confinement of such offenders; and they shall be sentenced to confinement in the house of refuge nearest the place of conviction so designated by the Attorney-General.

CLOTHING AND MONEY TO DISCHARGED CONVICTS.

Act of March 3, 1875 (chap. 145, sec. 2, 18 Stat., 479), provides:

That on the discharge from any prison of any person convicted under the laws of the United States on indictment, he or she shall be pro-
vided by the warden or keeper of said prison with one plain suit of clothes and five dollars in money, for which charge shall be made and allowed in the accounts of said prison with the United States: Provided, That this section shall not apply to persons sentenced for a term of imprisonment of less than six months.

Act of March 3, 1891 (chap. 520, sec. 6, 26 Stat., 839), provides:
That every prisoner when discharged from the jail and prison shall be furnished with transportation to the place of his residence within the United States at the time of his commitment under sentence of the court, and if the term of his imprisonment shall have been for one year or more, he shall also be furnished with suitable clothing, the cost not to exceed twelve dollars, and five dollars in money.

EXPENSES COLLECTING REVENUE FROM CUSTOMS.

It was for many years the rule for attorneys, marshals, and clerks to make out separate accounts for fees in civil customs cases, which were paid from this appropriation. On November 2, 1894, in re account of Wallace Macfarlane, the Comptroller of the Treasury decided that fees of officers of United States courts in civil customs cases are payable from the regular appropriation for the fees of such officers and not from the appropriation for expenses of collecting revenue from customs. Attorneys, marshals, and clerks will now include charges for services in these cases in their regular accounts, except that charges for services performed by direction of the Secretary under sections 827 and 838 are rendered separately.

1. The Auditor for the Treasury Department has jurisdiction of accounts payable from the appropriation for expenses of collecting revenue from customs. (Comp. in re account of Wallace Macfarlane, Nov. 2, 1894.)

2. The expenses of expert witnesses, the purchase and preparation of materials for exhibits, and the employment of persons to obtain and interview expert witnesses in customs suits may be paid from the appropriation for expenses of collecting the revenue from customs. (Comp. to Secretary, Feb. 25, 1895.)

3. The expenses of the district attorney when traveling for the purpose of personally interviewing persons he may desire as expert witnesses in customs cases can not be paid by the Secretary, unless such expenses shall be certified as proper by the court in which the suits are pending as part of compensation of the district attorney, in which case, if approved by the Secretary, the entire compensation, including expenses, may be paid from the appropriation for expenses of collecting revenue from customs. (Comp. to Secretary, Feb. 25, 1895.)

ENFORCEMENT OF THE CHINESE EXCLUSION ACT.

EXPENSES OF MARSHALS.

The actual expenses of United States marshals incurred in transporting Chinese persons, found to be unlawfully in the United States, to the frontier or seacoast for deportation, is paid from this appropriation. The costs incident to the arrest and prosecution of Chinese
persons accused of being unlawfully in the United States are paid as
in other criminal cases, only the cost of transportation being paid from
the appropriation for the enforcement of the Chinese exclusion act. In
transporting Chinese persons for deportation the marshal is acting as
the agent of the Secretary of the Treasury and must obey the direc­
tions of the Secretary.

The Secretary of the Treasury has issued the following circular in
relation to the payment of expenses of deporting Chinese:

"The expense of the deportation of Chinese convicted of unlawfully
being within the United States will be paid from the appropriation for
the 'Enforcement of the Chinese exclusion act,' under the control of
the Treasury Department.

"United States marshals and their deputies will be allowed only their
actual and necessary expenses incurred in going from the place of
conviction to the port from which the Chinese are to be deported and
return and the actual and necessary expenses incurred in transporting
the prisoners from the place of conviction to such port. Where, in the
opinion of the marshals or their deputies, the presence of guards is
necessary, authority to employ them should first be obtained from
the Secretary of the Treasury, to whom the names of the persons to
be designated as guards should be submitted. A per diem allowance
not to exceed $2, with their actual and necessary traveling expenses,
will be paid to persons acting as guards. All accounts must be made
on blank forms furnished by this Department to collectors of customs
at ports of deportation. Such accounts must be itemized and sworn
to by marshals or their deputies, and accompanied, whenever prac­
ticable, by subvouchers for all expenditures and a copy of the order of
deporation.

"When the route to the Pacific coast is via the Union Pacific Railroad
between Council Bluffs, Iowa, and Ogden, Utah; the Southern Pacific
Railroad between Ogden, Utah, and San Jose, Cal., or the Kansas
Pacific Railway between Kansas City, Mo., and Denver, Colo., money
paid by marshals for tickets will not be reimbursed. On application to
the Secretary of the Treasury orders for transportation over the lines
above named will be issued to the marshal, and upon submission by
him to the ticket agents of either or all of the above-named railroads,
railway tickets will be promptly furnished. Applications for transpor­
tation orders should state the number of deputies or guards, as well as
the number of prisoners and their names, and the date and place of
sentence.

"All actual and necessary expenditures by marshals, including trans­
portation of guards and prisoners where the route is by other than the
above-named lines of railroad, will be paid by collectors of customs at
ports of deportation upon presentation of accounts in duplicate made
upon the blanks hereinbefore referred to and in the manner indicated.
All correspondence of United States marshals or other persons in
relation to the deportation of Chinese after sentence has been passed should be with the Secretary of the Treasury and not with the Department of Justice."

The above directions must be complied with. Marshals will note particularly that (1) only actual expenses are allowed; (2) authority to employ guards must be obtained from the Secretary; (3) vouchers must be furnished for amounts paid guards and for all other expenses where practicable; (4) transportation orders must be obtained when travel is to be over lines mentioned; (5) expenses are paid by the collector of customs at port of deportation; (6) the marshal should include in his account, and should be paid by the collector, the necessary expense to be incurred by the marshal or deputy and guards in returning from the port of deportation to the place from which the convict was taken for deportation.

1. The expenses incurred in the enforcement of the order of the court in cases where Chinese are deported to other countries than China is payable from the appropriation for the enforcement of the Chinese exclusion act. (Comp. to Secretary, Feb. 7, 1895.)

CIRCUIT COURTS OF APPEALS.

ADDITIONAL CIRCUIT JUDGES—APPOINTMENT AND SALARIES.

Act of March 3, 1891 (chap. 517, 26 Stat., 826), provides:

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That there shall be appointed by the President of the United States, by and with the advice and consent of the Senate, in each circuit an additional circuit judge, who shall have the same qualifications, and shall have the same power and jurisdiction therein that the circuit judges of the United States, within their respective circuits, now have under existing laws, and who shall be entitled to the same compensation as the circuit judges of the United States in their respective circuits now have.

CIRCUIT COURT OF APPEALS—APPOINTMENT AND SALARIES OF MARSHAL AND CLERK—FEES.

Sec. 2. That there is hereby created in each circuit a circuit court of appeals, which shall consist of three judges, of whom two shall constitute a quorum, and which shall be a court of record with appellate jurisdiction, as is hereafter limited and established. Such court shall prescribe the form and style of its seal and the form of writs and other process and procedure as may be conformable to the exercise of its jurisdiction as shall be conferred by law. It shall have the appointment of the marshal of the court with the same duties and powers under the regulations of the court as are now provided for the marshal of the Supreme Court of the United States, so far as the same may be appli-
The court shall also appoint a clerk, who shall perform and exercise the same duties and powers in regard to all matters within its jurisdiction as are now exercised and performed by the clerk of the Supreme Court of the United States, so far as the same may be applicable. The salary of the marshal of the court shall be twenty-five hundred dollars a year, and the salary of the clerk of the court shall be three thousand dollars a year, to be paid in equal proportions quarterly. The costs and fees in the Supreme Court now provided for by law shall be costs and fees in the circuit courts of appeals; and the same shall be expended, accounted for, and paid for, and paid over to the Treasury Department of the United States in the same manner as is provided in respect of the costs and fees in the Supreme Court.

The court shall have power to establish all rules and regulations for the conduct of the business of the court within its jurisdiction as conferred by law.

JUSTICE OR JUDGE TO PRESIDE.

SEC. 3. That the Chief-Justice and the associate justices of the Supreme Court assigned to each circuit, and the circuit judges within each circuit, and the several district judges within each circuit, shall be competent to sit as judges of the circuit court of appeals within their respective circuits in the manner hereinafter provided. In case the Chief-Justice or an associate justice of the Supreme Court should attend at any session of the circuit court of appeals he shall preside: and the circuit judges in attendance upon the court in the absence of the Chief-Justice or associate justice of the Supreme Court shall preside in the order of the seniority of their respective commissions.

EXPENSES OF JUDGES TO BE PAID BY MARSHAL.

SEC. 8. That any justice, or judge, who, in pursuance of the provisions of this act, shall attend the circuit court of appeals held at any place other than where he resides shall, upon his written certificate, be paid by the marshal of the district in which the court shall be held his reasonable expenses for travel and attendance, not to exceed ten dollars per day, and such payments shall be allowed the marshal in the settlement of his accounts with the United States.

DISTRICT MARSHALS TO PROVIDE ROOMS—CRIERS, CLERKS, BAILIFFS, AND MESSENGERS.

SEC. 9. That the marshals of the several districts in which said circuit court of appeals may be held, shall, under the direction of the Attorney-General of the United States, and with his approval, provide such rooms in the public buildings of the United States as may be necessary, and pay all incidental expenses of said court, includingcriers, bailiffs and messengers: Provided, however, That in case proper
rooms cannot be provided in such buildings, then the said marshals, with the approval of the Attorney-General of the United States, may, from time to time, lease such rooms as may be necessary for such courts. That the marshals, clerks, bailiffs, and messengers shall be allowed the same compensation for their respective services as are allowed for similar services in the existing circuit courts.

NO MARSHAL TO BE APPOINTED—DISTRICT MARSHALS TO PERFORM DUTIES.

Act of July 16, 1892 (chap. 196, 27 Stat., 222), provides:
That so much of section two of the act approved March 3, 1891, to establish circuit courts of appeals, as authorizes the appointment of a marshal to each of said courts at a salary of two thousand five hundred dollars be and the same is hereby repealed, and the duties and powers imposed upon said marshals under the said act shall be performed by the United States marshals in and for the districts where the terms of said courts may be held, and to this end said marshals shall be the marshals of said circuit courts of appeals.

EMOLUMENT RETURN OF CLERK.

Act of March 2, 1895 (chap. 177, 28 Stat., 805), provides:
That said clerks shall make annually within thirty days after the thirtieth day of June to the Secretary of the Treasury a return of all costs collected by them in cases disposed of during the preceding year by said courts, and after deducting the incidental expenses of their respective offices, including clerk hire and their compensation as provided by section nine of the act of March third, eighteen hundred and ninety-one, establishing the circuit court of appeals, not exceeding five hundred dollars, said expenses to be certified by the senior circuit judge of the proper circuit, shall pay any surplus of such costs that may remain into the Treasury of the United States at the time of making said returns. That each circuit court of appeals shall be entitled to retain and have expended, under the direction of the Attorney-General for law books for its use one-half of such surplus accrued therein for the fiscal year eighteen hundred and ninety-six.

1. The clerk of a circuit court does not vacate his office within the meaning of the act of June 20, 1874 (sec. 2, 18 Stat., 109), by merely accepting the position of clerk of the circuit court of appeals for the same circuit. (United States v. Harsha, Cir. Ct. Apps., 56 Fed. Rep., 963.)

2. Revised Statutes, 1763, does not prohibit a person receiving $3,000 per annum as clerk of a circuit court of appeals from receiving further compensation as clerk of a circuit court when he lawfully holds both offices. (Ibid.)

3. The clerk of the circuit court of appeals is entitled to retain from the fees and emoluments of his office, after payment of all other expenses, a sum not exceeding $500, in addition to his salary of $3,000. (Morton v. United States, 59 Fed. Rep., 349.)
4. A clerk of a circuit court of appeals is entitled to receive his annual salary of $3,000 and to retain from his fees his office expenses and $500, making his annual compensation $3,500. (United States v. Morton (C. C. A.), 65 Fed. Rep., 204.)

5. The salary provided for the clerk of the circuit court of appeals is exclusive, and no per diem, fees, mileage, or other compensation can be allowed. He may be allowed, as part of the necessary expenses of his office, when approved by the court, his actual expenses in going to attend the sittings of the court. (Dec. First Comp. Bowler, p. 98.)

6. The clerk of a circuit court of appeals is entitled to 15 cents a folio for services in comparing proof where the record is printed, that being the fee allowed the clerk of the Supreme Court of the United States for this service. (Dec. First Comp. R. B. Bowler, p. 255.)

**NOTE.—Salaries.**—The salaries of the judges and clerks are paid monthly from an appropriation for salaries, circuit courts of appeals, the nine judges at the rate of $6,000, and the nine clerks at the rate of $3,000 a year.

**Expenses.**—The expenses of the justices and judges holding the circuit courts of appeals certified by them (not exceeding $10 a day) are paid by the marshal of the district in which the court is held and included as vouchers in his account for pay of bailiffs, etc., United States courts.

**Clerks.**—The clerks of the circuit courts of appeals must each render yearly emolument returns charging themselves with all costs collected in cases disposed of during the preceding fiscal year. They will credit themselves with $500 personal compensation and with incidental expenses, including clerk hire. This return must be sworn to by the clerk and approved by the senior circuit judge of the proper circuit. The return must be made within thirty days after the 30th day of June, and the balance of costs, if any, after deducting $500 and office expenses, must be paid into the Treasury at the time of making the return.

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**COURT OF PRIVATE LAND CLAIMS.**

**JUSTICES, CLERK, DEPUTY CLERK, AND STENOGRAPHER.**

Act of March 3, 1891 (chap. 539, 26 Stat., 854), provides:

**Sec. 1.** That there shall be, and hereby is, established a court to be called the court of private land claims, to consist of a chief justice and four associate justices, who shall be, when appointed, citizens and residents of some of the States of the United States, to be appointed by the President, by and with the advice and consent of the Senate, to hold their offices for the term expiring on the thirty-first day of December, anno Domini eighteen hundred and ninety-five; any three of whom shall constitute a quorum. Said court shall have and exercise jurisdiction in the hearing and decision of private land claims according to the provisions of this act. The chief justice and associate justices shall each receive a compensation of five thousand dollars per year, payable monthly, and their necessary traveling and personal expenses while engaged in the performance of their duties. The said court shall appoint a clerk, at a salary of two thousand dollars a year, who shall attend all the sessions of the court, and a deputy clerk, where regular terms of the court are held, at a salary of eight hundred dollars a year.
The court shall also appoint a stenographer, at a salary of fifteen hundred dollars a year, who shall attend all the sessions of the court, and perform the duties required of him by the court.

ATTORNEY AND INTERPRETER.

SEC. 2. That there shall also be appointed by the President, by and with the advice and consent of the Senate, a competent attorney, learned in the law, who shall when appointed be a resident and citizen of some State of the United States, to represent the United States in said court. Such attorney shall receive a compensation of three thousand five hundred dollars per year, payable monthly, and his necessary traveling and personal expenses while engaged in the discharge of his duties. And there shall be appointed by the said court a person who shall be when appointed a citizen and resident of some State of the United States, skilled in the Spanish and English languages, to act as interpreter and translator in said court, to attend all the sessions thereof, and to perform such other service as may be required of him by the court. Such person shall be entitled to a compensation of one thousand five hundred dollars per year, payable monthly, and his necessary traveling and personal expenses while engaged in the discharge of his duties.

The act of March 2, 1895, extends the court until December 31, 1897.

NOTE.—Salaries.—Only such portions of the act are copied above as relate to the appointment and salaries of the officials of the court. The salaries of the justices, etc., are paid monthly from an appropriation for salaries, Court of Private Land Claims, as follows: Chief justice and four associate justices at the rate of $5,000 each; clerk, $2,000; stenographer, $1,500; attorney, $3,500; interpreter and translator, $1,500; deputy clerks as required by the act creating the court, $800 each per annum. The stenographer, interpreter, and translator, and the deputy clerks must furnish certificates from one of the justices as to service before salary will be paid.

Expenses.—The traveling expenses of the chief justice, associate justices, attorney, and interpreter and translator must be itemized, supported by vouchers for hotel bills and other expenses where practicable, sworn to, and approved by the chief justice. They are then forwarded to the Attorney-General, and when approved by him are paid out of the appropriation for miscellaneous expenses, United States courts.

February 19, 1895.—The Comptroller of the Treasury, in a letter to the Attorney-General, holds that the officers of the Court of Private Land Claims must use Government transportation orders when traveling over bond-aided railroads.

TERRITORY OF ALASKA.

DISTRICT COURT—JUDGE.

Act of May 17, 1884 (chap. 53, 23 Stat. L., 24), provides:

SEC. 3. That there shall be, and hereby is, established a district court for said district, with the civil and criminal jurisdiction of district courts of the United States, and the civil and criminal jurisdiction of district courts of the United States exercising the jurisdiction of circuit courts,
and such other jurisdiction, not inconsistent with this act, as may be established by law; and a district judge shall be appointed for said district, who shall during his term of office reside therein and hold at least two terms of said court therein in each year, one at Sitka, beginning on the first Monday in May, and the other at Wrangel, beginning on the first Monday in November. He is also authorized and directed to hold such special sessions as may be necessary for the dispatch of the business of said court, at such times and places in said district as he may deem expedient, and may adjourn such special session to any other time previous to a regular session. He shall have authority to employ interpreters, and to make allowances for the necessary expenses of his court.

CLERK, ATTORNEY, AND MARSHAL.

SEC. 4. That a clerk shall be appointed for said court, who shall be ex-officio secretary and treasurer of said district, a district attorney, and a marshal, all of whom shall during their terms of office reside therein. The clerk shall record and preserve copies of all the laws, proceedings, and official acts applicable to said district. He shall also receive all moneys collected from fines, forfeitures, or in any other manner except from violations of the custom laws, and shall apply the same to the incidental expenses of the said district court and the allowances thereof, as directed by the judge of said court, and shall account for the same in detail, and for any balances on account thereof, quarterly, to and under the direction of the Secretary of the Treasury. He shall be ex officio recorder of deeds and mortgages and certificates of location of mining claims and other contracts relating to real estate and register of wills for said district, and shall establish secure offices in the towns of Sitka and Wrangel, in said district, for the safe keeping of all his official records, and of records concerning the reformation and establishment of the present status of titles to lands, as hereinafter directed; Provided, That the district court hereby created may direct, if it shall deem it expedient, the establishment of separate offices at the settlements of Wrangel, Oonalashka, and Juneau City, respectively, for the recording of such instruments as may pertain to the several natural divisions of said district most convenient to said settlements, the limits of which shall, in the event of such direction, be defined by said court; and said offices shall be in charge of the commissioners respectively as hereinafter provided.

COMMISSIONERS.

SEC. 5. That there shall be appointed by the President four commissioners in and for the said district who shall have the jurisdiction and powers of commissioners of the United States circuit courts in any part of said district, but who shall reside, one at Sitka, one at Wrangel, one at Oonalashka, and one at Juneau City. Such commissioners shall
exercise all the duties and powers, civil and criminal, now conferred on justices of the peace under the general laws of the State of Oregon, so far as the same may be applicable in said district, and may not be in conflict with this act or the laws of the United States. They shall also have jurisdiction, subject to the supervision of the district judge, in all testamentary and probate matters, and for this purpose their courts shall be opened at stated terms and be courts of record, and be provided with a seal for the authentication of their official acts. They shall also have power to grant writs of habeas corpus for the purpose of inquiring into the cause of restraint of liberty, which writs shall be made returnable before the said district judge for said district; and like proceedings shall be had thereon as if the same had been granted by said judge under the general laws of the United States in such cases. Said commissioners shall also have the powers of notaries public, and shall keep a record of all deeds and other instruments of writing acknowledged before them and relating to the title to or transfer of property within said district, which record shall be subject to public inspection. Said commissioners shall also keep a record of all fines and forfeitures received by them, and shall pay over the same quarterly to the clerk of said district court.

MARSHAL.

Sec. 6. That the marshal for said district shall have the general authority and powers of the United States marshals of the States and Territories. He shall be the executive officer of said court, and charged with the execution of all process of said court and with the transportation and custody of prisoners, and he shall be ex officio keeper of the jail or penitentiary of said district. He shall appoint four deputies, who shall reside severally at the towns of Sitka, Wrangel, Oonalashka, and Juneau City, and they shall respectively be ex officio constables and executive officers of the commissioners’ courts herein provided, and shall have the powers and discharge the duties of United States deputy marshals, and those of constables under the laws of the State of Oregon now in force.

LAWS OF OREGON—WRITS OF ERROR.

Sec. 7. That the general laws of the State of Oregon now in force are hereby declared to be the law in said district, so far as the same may be applicable and not in conflict with the provisions of this act or the laws of the United States; and the sentence of imprisonment in any criminal case shall be carried out by confinement in the jail or penitentiary hereinafter provided for. But the said district court shall have exclusive jurisdiction in all cases in equity or those involving a question of title to land, or mining rights, or the constitutionality of a law, and in all criminal offenses which are capital. In all civil cases,
at common law, any issue of fact shall be determined by a jury, at the instance of either party; and an appeal shall lie in any case civil or criminal, from the judgment of said commissioners to the said district court where the amount involved in any civil case is two hundred dollars or more, and in any criminal case where a fine of more than one hundred dollars or imprisonment is imposed, upon the filing of a sufficient appeal bond by the party appealing, to be approved by the court or commissioner. Writs of error in criminal cases shall issue to the said district court from the United States circuit court for the district of Oregon in the cases provided in chapter one hundred and seventy-six of the laws of eighteen hundred and seventy-nine; and the jurisdiction thereby conferred upon circuit courts is hereby given to the circuit court of Oregon. And the final judgments or decrees of said circuit and district court may be reviewed by the Supreme Court of the United States as in other cases.

PRESIDENT TO APPOINT GOVERNOR, ATTORNEY, JUDGE, MARSHAL, AND COMMISSIONERS—SALARIES, FEES, AND EXPENSES.

SEC. 9. That the governor, attorney, judge, marshal, clerk, and commissioners provided for in this act shall be appointed by the President of the United States, by and with the advice and consent of the Senate, and shall hold their respective offices for the term of four years, and until their successors are appointed and qualified. They shall severally receive the fees of office established by law for the several offices the duties of which have been hereby conferred upon them, as the same are determined and allowed in respect of similar offices under the laws of the United States, which fees shall be reported to the Attorney-General and paid into the Treasury of the United States. They shall receive respectively the following annual salaries. The governor, the sum of three thousand dollars; the attorney, the sum of two thousand five hundred dollars; the marshal, the sum of two thousand five hundred dollars; the judge, the sum of three thousand dollars; and the clerk, the sum of two thousand five hundred dollars, payable to them quarterly from the Treasury of the United States. The District Judge, Marshal, and District Attorney shall be paid their actual, necessary expenses when traveling in the discharge of their official duties. A detailed account shall be rendered of such expenses under oath and as to the marshal and district attorney such account shall be approved by the judge, and as to his expenses by the Attorney-General. The commissioners shall receive the usual fees of United States commissioners and of justices of the peace for Oregon, and such fees for recording instruments as are allowed by the laws of Oregon for similar services, and in addition a salary of one thousand dollars each. The deputy marshals, in addition to the usual fees of constables in Oregon, shall receive each a salary of seven hundred and fifty dollars, which salaries shall also be payable quarterly out of the Treasury of the United
States. Each of said officials shall, before entering on the duties of his office, take and subscribe an oath that he will faithfully execute the same, which said oath may be taken before the judge of said district or any United States district or circuit judge. That all officers appointed for said district, before entering upon the duties of their offices, shall take the oaths required by law and the laws of the United States, not locally inapplicable to said district and not inconsistent with the provisions of this act are hereby extended thereto; but there shall be no legislative assembly in said district, nor shall any Delegate be sent to Congress therefrom. And the said clerk shall execute a bond, with sufficient sureties, in the penalty of ten thousand dollars, for the faithful performance of his duties, and file the same with the Secretary of the Treasury before entering on the duties of his office; and the commissioners shall each execute a bond, with sufficient sureties, in the penalty of three thousand dollars, for the faithful performance of their duties, and file the same with the clerk before entering on the duties of their office.

1. The district judge of Alaska has no legal rights different from those of other Territorial judges. Though termed in his commission “United States district judge,” he is subject to suspension and removal, and is not a United States judge holding “during good behavior.” (McAllister v. United States, 22 C. Cis. R., 318.)

2. Under act of May 17, 1884 (24 Stat., 24), when a commissioner in Alaska performs duties in cases arising for violations of the Federal statutes, he is entitled to the fees prescribed by the Revised Statutes, but when the commissioners act as a justice of the peace, that is, when the offense is criminal under the Oregon statute, the fee shall be that of a justice of the peace in Oregon. (Jewett v. United States, 27 C. Cis. R., 519.)

3. Under the organic act of Alaska United States commissioners have jurisdiction in the first instance, subject to the supervision of the district judge, in all testamentary and probate matters, in accordance with the laws of Oregon, applicable to that Territory, and are vested with the jurisdiction of the county court of Oregon pertaining to probate courts. (Ex parte Emma, 48 Fed. Rep., 211.)

4. Under act of May 17, 1884, fixing the salary of the United States marshal in Alaska at $2,500 per annum, and providing that he shall pay the fees received by him into the Treasury of the United States, he is required to pay over all fees received by him, whether for services rendered to the Government or for those rendered to private litigants. (United States v. Hillyer, Cir. Ct. Apps., 58 Fed. Rep., 678.)

5. Provision is made by Congress in the annual appropriation acts for the salaries of certain deputy marshals in Alaska, and there is no law authorizing payment to others for services as deputies, or as ex officio constables of the commissioners' courts. (Comp. in re account of L. L. Williams, Feb. 9, 1895.)

6. Section 2 of the act of July 31, 1894, prohibiting any person who holds an office the salary or compensation attached to which is $2,500 or more per annum from holding any other office to which compensation is attached, etc., does not prohibit the clerk of the district court of Alaska, whose salary is $2,500, from receiving, under a contract with the Department of Justice, $600 for medical services rendered by him to United States prisoners. (Comp., Mar. 9, 1895.)
7. R. C. Rogers, United States commissioner for Alaska, collected $56 in fines and forfeitures which was destroyed by fire. *Held*, that a fire is not the act of God or a public enemy, and that R. must pay this sum to the clerk of the court. (Dec. Comp., Feb. 2, 1895.)

**Note.**—The salaries of the judge, marshal, clerk, deputy marshals, and commissioners are paid monthly from an appropriation for salaries, governor, etc., Territory of Alaska. The only prerequisite to the payment of salaries is that certificates of nonabsence, as required by section 1884, Revised Statutes, shall be furnished. The appropriation for 1896 provides for five commissioners and six deputy United States marshals.

**The judge.**—The judge is entitled, in addition to his salary, to his actual expenses when traveling in the discharge of his official duty. He must make out an itemized account of such expenses, with vouchers where practicable, make oath to same, and forward to the Attorney-General. If approved by the Attorney-General it is paid from an appropriation for traveling expenses, Territory of Alaska. This account should be made out quarterly.

**District attorney.**—The United States attorney for the Territory of Alaska is restricted to his salary of $2,500 per annum, and must account for and pay over all fees received by him as such attorney. He is entitled to his traveling expenses when in the discharge of his official duty. His account should be made out quarterly, sworn to, and approved by the judge. It is paid from the appropriation for traveling expenses, Territory of Alaska.

**The marshal.**—The United States marshal for Alaska is restricted to his salary of $2,500 per annum, and must pay over all fees received by him for personal services. He is entitled to his actual traveling expenses when traveling in the discharge of his official duty (except to serve process), to be paid from an appropriation for traveling expenses, Territory of Alaska. This account must be sworn to by the marshal and approved by the judge. It should be rendered quarterly. In his account of fees and expenses, which must be rendered quarterly, the marshal is allowed credit for his actual and necessary expenses incurred in serving process in behalf of the Government and for the earnings of his deputies for service in behalf of the Government (the accounts of the deputies for services being included as vouchers in the account of the marshal).

**Deputy marshal.**—Each deputy marshal is entitled to his salary and all fees earned by him. He should make out, swear to, and present to the marshal a quarterly account for services performed by him in cases for violations of the laws of the United States. In this account he should charge the fees and expenses provided under section 829, Revised Statutes. In a separate voucher he should charge for services performed in behalf of the Government in prosecutions for violations of the laws of Oregon, charging the fees allowed to constables in Oregon for similar services. A deputy marshal in Alaska is entitled to all fees earned by him in all cases.

**Clerk of the district court.**—The clerk is restricted to his salary of $2,500, and must account for and pay over all fees received by him from whatever source. He renders a semiannual return, as other clerks. He also renders quarterly an account of fines and forfeitures, in which he charges himself with all sums received by him for fines and forfeitures during the quarter. He credits himself with such incidental expenses of the court as may be directed and approved by the judge. He is allowed his traveling expenses while in the discharge of his official duties. (See appropriation for 1896.)

**Commissioners.**—Each United States commissioner in Alaska should render two accounts quarterly. In one account he should charge the fees allowed to commissioners under section 847 for services in all cases for violations of the laws of the United States. In the other account he should charge the fees
allowed to justices of the peace in Oregon for similar services for all prosecutions for violations of the laws of the State of Oregon.

Rent and incidental expenses.—There is an appropriation made each year for rent of offices for the marshal, district attorney, and commissioners, furniture, fuel, books, stationery, and other incidental expenses. Permission should be obtained from the Attorney-General before incurring expenses under this head. An itemized bill must be made out and forwarded to the Attorney-General, who approves, payable from the appropriation for rent and incidental expenses, Territory of Alaska.

THE DISTRICT OF COLUMBIA.

[Revised Statutes of the District of Columbia.]

SUPREME COURT.

Sec. 750. There shall be a supreme court of the District, which shall consist of a chief justice and four associate justices, who shall severally be appointed by the President, by and with the advice and consent of the Senate, and shall hold their offices during good behavior.

Act of February 25, 1879 (20 Stat., 320, chap. 99, sec. 1), provides:

There shall be appointed by the President, by and with the advice and consent of the Senate, one additional associate justice of the supreme court of the District of Columbia.

SALARIES OF JUSTICES.

Sec. 751. The chief justice shall receive an annual salary of four thousand five hundred dollars, and the associate justices an annual salary of four thousand dollars each, payable quarterly at the Treasury of the United States.

Act of February 9, 1893 (27 Stat., 436, chap. 74, sec. 14), provides:

The justices of the supreme court of the District of Columbia shall hereafter receive an annual salary of five thousand dollars each, payable quarterly at the Treasury of the United States.

Sec. 752. Each justice, before he enters upon the duties of his office, shall take the oath prescribed to be taken by judges of the courts of the United States.

Note.—Salaries paid monthly from appropriation for salaries, supreme court, District of Columbia.

FEES OF JURORS.

Sec. 873. Jurors are entitled to the same compensation as received for their attendance in the circuit and district courts of the United States by the act of February twenty-sixth, eighteen hundred and fifty-three.

Note.—They are paid $2 a day.
FEES OF WITNESSES FOR DEFENDANT.

Sec. 839. In all criminal trials the supreme court, or the judge trying the case, may allow such number of witnesses on behalf of the defendant as may appear necessary; the fees thereof, with the costs of service, to be paid in the same manner as Government witnesses are paid.

FEES OF WITNESSES.

Sec. 880. Witnesses are entitled to the same compensation as received for their attendance in the circuit courts of the District prior to July seventh, eighteen hundred and thirty-eight.

Note.—Witnesses in the courts of the District of Columbia receive $1.25 a day.

FEES OF CLERK, MARSHAL, AND DISTRICT ATTORNEY.

Sec. 897. The fees of the clerk, of the marshal, and of the United States district attorney, except in each case, so far as differently specified in this chapter, shall be the same as the fees respectively allowed to clerks of the district and circuit courts, marshal, attorneys, solicitors, and proctors, by chapter sixteen, “Fees” of Title XIII, “The Judiciary” of the Revised Statutes.

PER DIEM OF MARSHAL AND CLERK.

Sec. 898. The marshal and the clerk shall receive their daily compensation for attending court.

MARSHAL AND CLERK TO MAKE TABLE OF FEES.

Sec. 899. It shall be the duty of the marshal and clerk to make a table of their respective fees in dollars and cents, according to law, and to keep a copy thereof, at all times, exposed to public view in their respective offices.

ATTORNEY, MARSHAL, AND CLERK TO ATTEND CRIMINAL COURT.

Sec. 900. The district attorney, marshal, and clerk shall attend the special term sitting as a criminal court, and perform all the duties required of them by law in relation to the criminal business of the court.

FEES OF JURORS AND WITNESSES AT INQUESTS.

Sec. 901. There shall be paid to the coroner of the District and to the jurors and witnesses who may be lawfully summoned in any inquest, the same fees and compensation as paid the marshal and the jurors attending the supreme court.
PAYMENTS TO BAILIFFS AND CRIERS.

SEC. 902. The marshal shall pay to each bailiff and crier who shall be required to attend upon the district, circuit, and criminal terms of the supreme court, three dollars and fifty cents for each day's attendance, respectively.

Act of July 1, 1882 (chap. 259, 22 Stat., 127):
That the supreme court of the District of Columbia be, and is hereby, authorized and empowered to appoint two additional criers to attend the sessions of the said court, in its different branches, to which they may be severally assigned by the chief justice thereof. The compensation of the said criers shall be each four dollars per day during actual attendance upon the said court, payable as the other officers of the court are paid.

ATTORNEY'S DOCKET FEE.

SEC. 903. In suits at common law in the supreme court, the taxable fee to an attorney shall be five dollars only.

DISTRICT ATTORNEY.

SEC. 904. There shall be appointed an attorney of the United States for the District who shall take the oath and perform all the duties required of district attorneys of the United States.

NO COMPENSATION TO DISTRICT ATTORNEY FOR ASSISTANT.

SEC. 906. There shall not be allowed to the district attorney any compensation for any permanent assistant or deputy, nor any sum for office expenses, clerk hire, fuel, stationery, or other incidental expenses.

DISTRICT ATTORNEY TO PAY HIS ASSISTANTS, CLERK HIRE, ETC.

SEC. 907. He shall pay to his deputies or assistants not exceeding in all, four thousand dollars per annum, also his clerk hire not exceeding twelve hundred dollars per annum, office rent, fuel, stationery, printing and other incidental expenses out of the fees of his office.

The act of August 8, 1890 (chap. 729, 26 Stat., 313):
Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That section 907 of the Revised Statutes of the United States, relating to the District of Columbia, be amended to read as follows:

"SEC. 907. He shall pay to his deputies or assistants, not exceeding in all, ten thousand dollars per annum; also his clerk hire, not exceeding two thousand four hundred dollars per annum; office rent, fuel, stationery, printing, and other incidental expenses out of the fees of his office,"
DISTRICT ATTORNEY TO BE PAID QUARTERLY.

Sec. 908. Such fees shall be paid him quarterly at the Treasury of the United States, on the first days of January, April, July, and October in each year, upon a return in writing made to the Secretary of the Treasury, in such form as the Secretary shall prescribe, embracing all the fees and emoluments of his office, under the oath of the district attorney, and certificate of a judge or justice of the court wherein the services may have been rendered, that the services for which fees are charged have been performed.

EMOLUMENT RETURN OF DISTRICT ATTORNEY.

Act of December 14, 1877 (Stat. L., vol. 20, p. 7, chap. 1), provides as follows:

That the emolument returns of the attorney of the United States for the District of Columbia shall be returned to the Attorney-General, and the accounts of the said attorney shall be rendered, audited, and paid in the same manner as accounts of all other district attorneys are rendered, audited, and paid.

Note.—The attorney for the District of Columbia renders an account for fees as other United States attorneys. During each quarter he presents two accounts for fees, each amounting to about $1,500. At the close of each quarter he sends in his account for all fees earned during the quarter which have not already been allowed. He also renders an emolument account of all fees and expenses for the quarter. He is allowed out of his earnings for the quarter his maximum compensation of $1,500 for the quarter, pay of his assistants or deputies not exceeding $2,500 for the quarter, clerk hire not exceeding $600 for the quarter, and such amount for office, fuel, stationery, printing, and other incidental expenses incurred during the quarter as may be approved by the Attorney-General. If his earnings for the year are not sufficient to pay his maximum compensation and expenses, he is allowed same only to the extent of such earnings.

MARSHAL.

Sec. 910. There shall be a marshal for the District, who shall be appointed for the same term, take the same oath, give a bond with sureties in the same manner, and have generally, within the District, the same powers, and perform the same duties, as provided for marshals of the United States.

FEES OF MARSHAL.

Sec. 911. For the service of any warrant, attachment, summons, capias, or other writ, (except execution, venire, or a summons or subpoena for a witness) the marshal shall be allowed one dollar, and no more, for each person on whom such service may be made.
MARSHAL TO EXECUTE AND LEVY EXECUTIONS.

Sec. 912. The marshal, or his deputies, may execute and levy executions issued by justices of the peace, for small debts, out of court, when the same are put into their hands for that purpose, and for executing or levying such executions are entitled to the same commission, and no more, as allowed to constables in such cases.

FAILURE OF MARSHAL TO PAY MONEY TO PLAINTIFF.

Sec. 913. Where the marshal shall have received money on any judgment or execution, not exceeding twenty dollars by virtue of the preceding section, and shall fail or omit to pay the same to the plaintiff, or his agent, when thereto demanded, or shall omit or fail to return any execution within the time limited for such return, it shall be lawful for the supreme court of the District, on motion made, five days previous notice being given to the marshal, to enter up judgment, instanter, against him for the amount so received, with interest and costs.

MARSHAL MAY DEMAND FEES IN ADVANCE IN CIVIL CASES.

Sec. 914. The marshal, in all civil cases, may demand and receive payment of his fees before serving any process, except in cases in which the United States may be a party, or of fieri facias, or where the court or any justice thereof may order suit to be instituted without prepayment of costs.

NOTE.—The marshal of the District of Columbia, in addition to the usual accounts of marshals, renders an account payable from an appropriation for salaries of employees, court-house, Washington, D. C.

CLERK OF THE SUPREME COURT.

Sec. 915. The supreme court shall have power to appoint a clerk, who shall take the oath, and give a bond with sureties, in the manner prescribed by law for clerks of district courts of the United States.

FEES OF CLERK.

Sec. 921. All costs and fees for services rendered by the clerk, and chargeable to others than the United States, shall be payable immediately after the services are performed, and shall be collected by such rules and regulations, not incompatible with law, as may be prescribed by the court, but shall in no case be paid by the United States.

Sec. 922. The fees specified in this section, and no more, shall be allowed to the clerk for the following services:

For all services rendered to the United States, in cases in which the United States is a party of record, five dollars.
For each marriage license, one dollar.
For each certificate of official character, including the seal, fifty cents.

EMOLUMENT RETURN OF CLERK.

Sec. 923. The clerk shall make semi-annual returns of the amount of fees received by him to the Secretary of the Treasury.
Sec. 924. The salary, emoluments, and fees of the clerk shall not exceed the sum of six thousand dollars per annum, and the excess of fees collected by him, after defraying the necessary expenses of his office, shall be paid into the Treasury of the United States. (See act Mar. 3, 1883; 22 Stat., 631, set out after sec. 839, R. S., U. S., ante, page 98.)

DISTRICT ATTORNEY TO PROSECUTE IN POLICE COURT.

Sec. 1069. It shall be the duty of the United States attorney for the District, in person or by one or more of his assistants or deputies, to attend to the prosecution in the police court of such offenses as were cognizable in the criminal court of the District prior to June seventeenth, eighteen hundred and seventy.

FEES OF DISTRICT ATTORNEY IN POLICE COURT.

Sec. 1070. For such service he shall be paid the same fees as are allowed for similar service in the supreme court.

COURT OF APPEALS, DISTRICT OF COLUMBIA.

[Act of February 9, 1893, chap. 74, 27 Stat., 424.]

APPOINTMENT OF JUSTICES.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That there shall be, and there is hereby, established in the District of Columbia a court, to be known as the court of appeals of the District of Columbia, which shall consist of one chief justice and two associate justices, who shall be appointed by the President, by and with the advice and consent of the Senate, and shall hold office during good behavior.

SALARIES OF JUSTICES.

Sec. 2. That the said justices shall each receive an annual salary of six thousand dollars, payable quarterly at the Treasury of the United States, except the chief justice, who shall receive six thousand five hundred dollars.

OATH OF JUSTICES.

Sec. 3. That each of said justices before he enters upon the duties of his office, shall take the oath prescribed by law to be taken by the judges of the courts of the United States.
CLERK—SALARY, BOND, FEES, AND EXPENSES.

SEC. 4. That there shall be a clerk of said court of appeals, to be appointed by the court, who shall receive as compensation for his services, in the discretion of the court, an annual salary not to exceed the sum of three thousand dollars, payable quarterly at the Treasury of the United States, and who shall give bond, such as the court may determine to be satisfactory, for the faithful performance of his duties; and his duties shall be such as the court may from time to time prescribe. The court shall regulate from time to time the fees to be charged by the said clerk, which shall be accounted for at least once in each quarter and paid into the Treasury of the United States; and said clerk shall receive such allowance for clerical assistance and necessary expenditures in the conduct of his office as the court may determine by special or general order in the premises, but not to exceed the sum of two thousand dollars in any one year, payable as aforesaid at the Treasury of the United States.

CRIER AND MESSENGER.

SEC. 5. That said court of appeals may appoint a crier at a compensation not to exceed one hundred dollars a month, and a messenger at a compensation not to exceed sixty dollars a month, both payable at the Treasury of the United States, who shall perform such duties as may be assigned them by the court.

The act of March 2, 1895, making appropriation for legislative, executive, and judicial expenses for 1896 (28 Stat., 806), provides:

"The duties of crier of the court of appeals of the District of Columbia shall hereafter be performed by the United States marshal or one of his deputies.

Note.—An appropriation is made each year for salaries and expenses, court of appeals, District of Columbia. For 1896 the appropriation is for chief justice, $6,500; two associate justices, $6,000 each; clerk, $3,000; deputy clerk, $2,000; messenger, $720, and for necessary expenditures in the conduct of the clerk's office, $500. The salaries are paid monthly. The $500, or so much thereof as may be necessary, is advanced to the clerk, who must render an account, sworn to and approved by the court, with vouchers for all expenses incurred.

THE TERRITORY OF UTAH.

[Act of June 23, 1874, chap. 469, 18 Stat., 253.]

DUTIES, ETC., OF MARSHAL.

SEC. 1. That it shall be the duty of the United States marshal of the Territory of Utah, in person or by deputy, to attend all sessions of the supreme and district courts in said Territory, and to serve and execute all process and writs issued out of, and all orders, judgments, and decrees made by, said courts, or by any judge thereof, unless said court or judge shall otherwise order in any particular case. All process,
writs, or other papers left with said marshal, or either of his deputies, shall be served without delay, and in the order in which they are received, upon payment or tender of his legal fees therefor; and it shall be unlawful for said marshal to demand or receive mileage for any greater distance than the actual distance by the usual routes from the place of service or execution of process, writ or other paper, to the place of return of the same, except that when it shall be necessary to convey any person arrested by legal authority out of the county in which he is arrested, said marshal shall be entitled to mileage for the whole distance necessarily traveled in delivering the person so arrested before the court or officer ordering such arrest. Said marshal is hereby authorized to appoint as many deputies as may be necessary, each of whom shall have authority, in the name of said marshal, to perform any act with like effect and in like manner as said marshal; and the marshal shall be liable for all official acts of such deputies, as if done by himself. Such appointment shall not be complete until he shall give bond to said marshal, with sureties, to be by him approved, in the penal sum of ten thousand dollars, conditioned for the faithful discharge of his duties; and he shall also take and subscribe the same oath prescribed by law to be taken by said marshal, and said appointment, bond and oath shall be filed and remain in the office of the clerk of the supreme court of said Territory. In actions brought against said marshal for the misfeasance or non-feasance of any deputy it shall be lawful for the plaintiff at his option, to join the said deputy and the sureties on his bond with said marshal and his sureties. Any process either civil or criminal returnable to the supreme or district courts, may be served in any county, by the sheriff thereof or his legal deputy, and they may also serve any other process which may be authorized by act of the territorial legislature.

DISTRICT ATTORNEY.

Sec. 2. That it shall be the duty of the United States attorney in said Territory in person or by an assistant, to attend all the courts of record having jurisdiction of offenses as well under the laws of said Territory as of the United States, and perform the duties of prosecuting officer in all criminal cases arising in said courts, and he is hereby authorized to appoint as many assistants as may be necessary, each of whom shall subscribe the same oath as is prescribed by law for said United States attorney and the said appointment and oath shall be filed and remain in the office of the clerk of the supreme court of said Territory. The United States attorney shall be entitled to the same fees for services rendered by said assistants as he would be entitled to for the same services if rendered by himself. The territorial legislature may provide for the election of a prosecuting attorney in any county; and such attorney, if authorized so to do by such legislature, may commence prosecutions for offenses under the laws of the Territory.
within such county, and if such prosecution is carried to the district court by recognizance or appeal, or otherwise may aid in conducting the prosecution in such court. And the costs and expenses of all prosecutions for offenses against any law of the territorial legislature shall be paid out of the treasury of the Territory.

COMMISSIONERS.

SEC. 6. That the supreme court of said Territory is hereby authorized to appoint commissioners of said court, who shall have and exercise all the duties of commissioners of the circuit courts of the United States, and to take acknowledgments of bail; and, in addition, they shall have the same authority as examining and committing magistrates in all cases arising under the laws of said Territory as is now possessed by justices of the peace in said Territory.

ACT OF LEGISLATURE DISAPPROVED.

SEC. 7. That the act of the territorial legislature of the Territory of Utah entitled "An act in relation to marshals and attorneys," approved March third, eighteen hundred and fifty-two, and all laws of said Territory inconsistent with the provisions of this act, are hereby disapproved. The act of the Congress of the United States entitled "An act to regulate the fees and costs to be allowed clerks, marshals, and attorneys of the circuit and district courts of the United States and for other purposes," approved February twenty-sixth, eighteen hundred and fifty-three, is extended over and shall apply to the fee of like officers in said Territory of Utah. But the district attorney shall not by fees and salary together receive more than thirty-five hundred dollars per year; and all fees or moneys received by him above said amount shall be paid into the Treasury of the United States.

NOTE.—The attorney, marshal, clerk, and commissioners in Utah render accounts for services in United States cases, which are audited and paid as in other districts. They also render accounts for services in Territorial cases which are paid from an appropriation for expenses of Territorial courts in Utah. The attorney for Utah is allowed to charge for services rendered by his assistants. (As to his account for excess of emoluments see notes under that head.) The commissioners must charge for services in Territorial cases the fees allowed justices of the peace in Utah for similar services.

THE INDIAN TERRITORY.

JUDICIAL DISTRICTS.

Act of March 1, 1895 (28 Stat., 693), provides:

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the territory known as the Indian Territory, now within the jurisdiction of the United States court in said Territory, is hereby divided into three judicial districts,
to be known as the northern, central, and southern districts, and at least two terms of the United States court in the Indian Territory shall be held each year at each place of holding court in each district at such regular times as the judge for such district shall fix and determine.

The northern district shall consist of all the Creek country, all of the Seminole country, all of the Cherokee country, all of the country occupied by the Indian tribes in the Quapaw Indian Agency, and the town site of the Miami Townsite Company, and the places of holding courts in said districts shall be at Vinita, Miami, Tahlequah, and Muskogee.

The central district shall consist of all the Choctaw country, and the places of holding courts in said district shall be at South McAlester, Atoka, Antlers, and Cameron.

The southern district shall consist of all the Chickasaw country, and the places of holding courts in said district shall be at Ardmore, Purcell, Pauls Valley, Ryan, and Chickasha.

**APPOINTMENT, SALARIES, AND EXPENSES OF JUDGES.**

**SEC. 2.** That there shall be appointed by the President, by and with the advice and consent of the Senate, two additional judges of the United States court in said Indian Territory, who shall hold their respective offices for the term of four years from the date of their appointment, unless sooner removed as provided by law, one of whom shall be the judge of the northern district and the other shall be the judge of the southern district; and the judge of the United States court now in office shall, from and after said appointments, be the judge of the central district, and shall hold his office for the term for which he was appointed, and during the period of their service said judges shall reside in the judicial districts for which they are appointed; and said judges of the northern and southern districts shall each take the oath of office required by law to be taken by the judges of the district courts of the United States. The judge for each district shall be paid a salary of five thousand dollars per annum, and allowed his necessary expenses when holding court away from home, the same to be paid from the Treasury of the United States in like manner as the salaries and allowances of the judges of the United States district courts. If the appointment of said judges, or any of them, shall not be made during the present session, the President of the United States shall be, and is hereby, empowered to make such appointment during the recess of the Senate, by granting commissions which shall expire at the end of the next session.

The judges shall have, within the judicial districts for which they are appointed, all such authority, both in term time and vacation, as to all matters and causes, both criminal and civil, pending or that may be brought in said districts, and shall have the same superintending control over commissioners' courts therein, and the same authority in the
judicial districts, to issue writs of habeas corpus and prohibition, injunction, mandamus, certiorari, and other remedial and final process as is now by law vested in the judge of the United States court in the Indian Territory, or in the circuit and district courts of the United States. The judge of each district is authorized and empowered to hold court in any other district, for the trial of any case which the judge to said other district is disqualified from trying, and the disqualifications under this Act shall be the same as are provided by the laws of the State of Arkansas to disqualify the circuit judges of that State, except that no judge shall be disqualified by the filing of an affidavit of his prejudice. And whenever on account of sickness, or for any other reason, the judge of any district is unable to perform the duties of his office, either of the other judges may act in his stead, in term time or in vacation.

Until the appointment and qualification of said judges of the northern and southern districts, respectively, the judge of the United States court in the Indian Territory shall continue to perform all the duties and exercise all the authority that is now, or hereafter may be, conferred upon him as such judge.

DISTRICT ATTORNEYS, MARSHALS, AND DEPUTY MARSHALS.

There shall be appointed by the President an attorney and marshal for said court in each of said districts, who shall continue in office for four years, and until their successors shall be duly appointed and qualified, and they shall discharge the like duties as other United States attorneys and marshals. Each of said marshals shall appoint one or more deputies, who shall have the same powers, perform the like duties, and be removable in like manner as other deputy United States marshals; and said marshals shall give bond, with two or more sureties, to be approved by the judge for said district, in the sum of ten thousand dollars, conditioned as by law required in regard to the bonds of other United States marshals. The United States attorney for the Indian Territory shall be the district attorney for the northern district as herein created, and the marshal in the Indian Territory shall be the marshal for said central district after this Act goes into effect.

Each of the district attorneys in said Territory shall receive a salary of four thousand dollars per annum, and each of the marshals shall receive a salary of four thousand dollars per annum; and each of his deputies, not exceeding four in number, unless a greater number be specially authorized by order of the district judge, entered of record, shall receive a salary of one thousand two hundred dollars per annum and his reasonable and necessary expenses of travel and subsistence while on duty, to be approved by the judge for the district for which he is appointed: Provided, That, in case of emergency, either of said judges may authorize the appointment of as many deputy marshals as
he may deem necessary for the enforcement of law and the suppression of crime, and such deputies shall receive the same rate of pay and expenses of travel for the time they may serve as regular deputy marshals. And provided further, That the Attorney-General of the United States may, if in his judgment it shall be necessary, appoint an assistant attorney for each of said districts.

CLERKS AND DEPUTY CLERKS.

SEC. 3. That the clerk of the United States court, in the Indian Territory, now in office, shall be clerk of the southern district, and the clerks of the central and northern districts shall be appointed by the respective judges thereof, and the clerk of each district shall reside and keep his office at one of the places of holding court in his district. He shall perform the same duties and be subject to the same liabilities as clerks of district courts of the United States, and, before entering upon his duties, he shall give bond in the sum of five thousand dollars, with two or more sureties, to be approved by the judge of the district conditioned that he will faithfully discharge his duties as required by law. Each of said clerks shall appoint a deputy clerk for each court in his district where he himself does not reside. Such deputy clerk shall keep his office and reside at the place appointed for holding the court for which he is appointed, and shall keep the records of said court and shall receive a salary of one thousand two hundred dollars per annum: Provided, That the appointment of such deputy shall be approved by the judge of the district, and may be annulled by said judge for cause, which shall be stated on the records of the court, and the clerk shall be responsible for the official acts and negligence of his deputies. Each of the clerks in said Territory shall receive a salary of three thousand dollars per annum, and in all cases where said clerks are authorized or required to perform duties other than those performed by the clerks of the district and circuit courts of the United States, they shall be entitled to retain, for their own use and benefit, such fees as may be allowed by law for such services.

COMMISSIONERS.

SEC. 4. That each judge of said court shall have the powers conferred by law upon the United States circuit courts to appoint commissioners within the district in which he presides, who, at the time of their appointment, shall be duly enrolled, attorneys of some court of record of the United States or of some State, and shall be competent and of good standing, and shall be known as United States commissioners, but not exceeding six commissioners shall be appointed for any district hereinbefore constituted: Provided, That the present commissioners
shall be included in that number and shall hold office under their existing appointments, subject to removal by the judge of the district where said commissioners reside, for causes prescribed by law. The judge for each district may fix the place where, or the time when, each commissioner shall hold his regular terms of court.

The order appointing such commissioners shall be in writing and shall be spread upon the records of one of the courts of the district for which they are appointed; and such order shall designate, by metes and bounds, the portion of the district for which they are appointed. They shall have all the powers of commissioners of the circuit courts of the United States. They shall be ex officio notaries public and ex officio justices of the peace within and for the portion of the district for which they are appointed, and shall have the power as such to solemnize marriages.

LAWS OF ARKANSAS.

The provisions of chapter forty-five of Mansfield's Digest of the General Laws of Arkansas, entitled "Criminal law," except as to the crimes and misdemeanors mentioned in the proviso of this section, and chapter forty-six of said laws of Arkansas, contained in said digest, entitled "Criminal procedure," and chapter ninety-one of said general laws, regulating the jurisdiction and procedure before justices of the peace in civil cases, be, and they are hereby, extended to and put in force in the Indian Territory; and the jurisdiction to enforce said provisions is hereby conferred upon the United States court in the Indian Territory: Provided, That in all cases where the laws of the United States and the said criminal laws of Arkansas have provided for the punishment of the same offenses the laws of the United States shall govern as to said offenses, except for the crime of larceny, the punishment for which shall be that prescribed by the laws of the State of Arkansas, any law in force in said Indian Territory to the contrary notwithstanding.

COMMISSIONERS ACTING AS JUSTICES OF THE PEACE.

The original jurisdiction of such commissioners as justices of the peace in civil cases shall, in all those classes of cases where jurisdiction is by this Act conferred upon the United States court in the Indian Territory, be exclusive where the amount or value of the demand or of the property or thing in controversy does not exceed one hundred dollars.

That said commissioners, acting as justices of the peace in criminal cases, shall have jurisdiction to hold preliminary examinations and discharge, hold to bail, or commit in cases of offenses which, under the laws applicable to the Territory, amount to felonies.
Appeals may be taken to the United States court in the Indian Ter­ritory, in said districts, respectively, from the final judgment of said commissioners, acting as justices of the peace, in all cases; and such appeals shall be taken in the manner that appeals may be taken from the final judgments of the justices of the peace under the provisions of said chapter ninety-one in civil cases and chapter forty-six in criminal cases of the laws of Arkansas: Provided, That no appeal shall be allowed in civil cases where the amount of the judgment, exclusive of cost, does not exceed twenty dollars. Each of said commissioners in said Territory shall receive a salary of one thousand five hundred dollars per annum, and all fees collected by him shall be paid over to the clerk of the district.

SEC. 5. That the judge in each district may appoint a constable for each of said commissioners' districts so designated by the court, which appointments shall be in writing and spread upon the records of one of the courts in said district, and the constable so appointed shall perform all the duties required of constables by the laws of the State of Arkansas, chapter twenty-four of Mansfield's Digest. Each of said constables shall receive a salary of six hundred dollars per annum. Each of said commissioners and constables shall keep a careful account of all fees, fines, and costs collected by him, and shall settle with and pay the same to the clerk of the district at the end of every quarter, who shall pay the same into the Treasury of the United States. Said commissioners and constables, before entering upon the discharge of their duties, shall execute to the United States, for the security of the public, a good and sufficient bond in the sum of two thousand dollars, to be approved by the judge appointing him, conditioned that he will faithfully discharge the duties of his office and account for all moneys coming into his hands; and he shall take an oath to support the Constitution of the United States and to faithfully perform the duties required of him, which bond and oath shall be filed with the clerk in the district for which the appointment is made.

SEC. 6. That jurors for each term of said court in each district shall be selected and summoned in the manner provided by the statute laws of the State of Arkansas now in force in said Territory.

PROSECUTIONS FOR CRIMES AND OFFENSES.

SEC. 7. That all prosecutions for crimes or offenses of which the United States court in the Indian Territory shall have jurisdiction, shall be had within the district in which said offense shall have been com-
mitted, and in the court nearest or most convenient to the locality where it is committed, to be determined by the judge on motion to transfer the trial of the case from one court to another. All civil suits shall be brought in the district in which the defendant or defendants reside or may be found; but if there are two or more defendants residing in different districts the action may be brought in any district in which either of the defendants may reside or be found; and if a resident, in the court nearest to his residence. All cases shall be tried in the court to which the process is returnable, unless a change of venue is allowed, in which case the court shall change the venue to the nearest place of holding court, within the district, and any civil cause may be removed to another district for trial if the court shall so order, on the application of either party.

SEC. 8. That any person, whether an Indian or otherwise, who shall, in said Territory, manufacture, sell, give away, or in any manner, or by any means furnish to anyone, either for himself or another, any vinous, malt, or fermented liquors, or any other intoxicating drinks of any kind whatsoever, whether medicated or not, or who shall carry, or in any manner have carried, into said Territory any such liquors or drinks, or who shall be interested in such manufacture, sale, giving away, furnishing to anyone, or carrying into said Territory any of such liquors or drinks, shall, upon conviction thereof, be punished by fine not exceeding five hundred dollars and by imprisonment for not less than one month nor more than five years.

SEC. 9. That the United States court in the Indian Territory shall have exclusive original jurisdiction of all offenses committed in said Territory, of which the United States court in the Indian Territory now has jurisdiction, and after the first day of September, eighteen hundred and ninety-six, shall have exclusive original jurisdiction of all offenses against the laws of the United States, committed in said Territory, except such cases as the United States court at Paris, Texas, Fort Smith, Arkansas, and Fort Scott, Kansas, shall have acquired jurisdiction of before that time; and shall have such original jurisdiction of civil cases as is now vested in the United States court in the Indian Territory, and appellate jurisdiction of all cases tried before said commissioners, acting as justices of the peace, where the amount of the judgment exceeds twenty dollars.

All laws heretofore enacted conferring jurisdiction upon United States courts held in Arkansas, Kansas, and Texas, outside of the limits of the Indian Territory, as defined by law, as to offenses committed in said Indian Territory, as herein provided, are hereby repealed, to take effect on September first, eighteen hundred and ninety-six; and the jurisdiction now conferred by law upon said courts is hereby given from and after the date aforesaid to the United States court in the Indian Territory: Provided, That in all criminal cases where said courts outside of the Indian Territory shall have, on September first, eighteen
hundred and ninety-six, acquired jurisdiction, they shall retain jurisdic-
tion to try and finally dispose of such cases. Every case, civil or crimi-
nal, pending in the United States court in the Indian Territory shall
be tried and disposed of by the court where the same is pending, unless
the venue therein be changed, as herein provided.

COURT ROOMS AND OFFICES.

SEC. 10. That it shall be the duty of the marshals appointed under
this act to provide, under the direction and with the approval of the
judge of the district, suitable buildings and rooms for holding said
courts in their respective districts. They shall also procure suitable
offices for the clerks and marshals. Any contract for these purposes
shall be approved by the judge only after personal inspection of the
premises leased, and any contract for a period longer than six months
shall be reported to the Attorney-General for his approval. Said
marshals shall also provide suitable prisons in each district at the places
of holding said court for the confinement and safe-keeping of all pris-
oners committed by said court and the commissioners appointed under
this act, and all other prisoners in legal custody.

COURT OF APPEALS—CLERK—SALARY.

SEC. 11. That the judges of said court shall constitute a court of
appeals, to be presided over by the judge oldest in commission as chief
justice of said court; and said court shall have such jurisdiction and
powers in said Indian Territory and such general superintending con-
trol over the courts thereof as is conferred upon the supreme court of
Arkansas over the courts thereof by the laws of said State, as pro-
vided by chapter forty of Mansfield’s Digest of the Laws of Arkansas,
and the provisions of said chapter, so far as they relate to the jurisdic-
tion and powers of said supreme court of Arkansas as to appeals
and writs of error, and as to the trial and decision of causes, so far as
they are applicable, shall be, and they are hereby, extended over and
put in force in the Indian Territory; and appeals and writs of error
from said court in said districts to said appellate court, in criminal
cases, shall be prosecuted under the provisions of chapter forty-six of
said Mansfield’s Digest, by this act put in force in the Indian Territory.
But no one of said judges shall sit in said appellate court in the deter-
mination of any cause in which an appeal is prosecuted from the decision
of any court over which he presided. In case of said presiding judge
being absent; the judge next oldest in commission shall preside over
said appellate court, and in such case two of said judges shall constitute
a quorum. In all cases where the court is equally divided in opinion,
the judgment of the court below shall stand affirmed.

Writs of error and appeals from the final decision of said appellate
court shall be allowed, and may be taken to the circuit court of appeals
for the eighth judicial circuit in the same manner and under the same regulations as appeals are taken from the circuit courts of the United States. Said appellate court shall appoint its own clerk, who shall hold his office at the pleasure of said court, and who shall receive a salary of one thousand two hundred dollars per annum. The marshal of the district wherein such appellate court shall be held shall be marshal of such court. Said appellate court shall be held at South McAlester, in the Choctaw Nation, and it shall hold two terms in each year, at such times and for such periods as may be fixed by the court.

FEES.

Sec. 12. That there shall be allowed to said attorneys, marshals, and clerks of the court of appeals and district courts the same fees as are allowed to like officers in chapter sixteen, title judiciary, of the Revised Statutes of the United States, and as are allowed in chapter sixty-three of the Laws of Arkansas, in all cases where such fees or taxed costs are paid by individuals or corporations, and they shall each keep careful account of all such fees collected by him, and account to the clerk of the court of appeals for all of the same in excess of their respective salaries, making settlement therefor with said clerk at the end of each quarter of the fiscal year. And the said clerk of the court of appeals shall at the end of each quarter pay the moneys or fees so received by him to the assistant treasurer of the United States in Saint Louis, Missouri.

LAWS IN FORCE.

Sec. 13. That none of the provisions of any other acts, or of any of the laws of the United States, or of the State of Arkansas, heretofore put in force in said Indian Territory, except so far as they come in conflict with the provisions of this act, are intended to be repealed, or in any manner affected by this act, but all such acts and laws are to remain in full force and effect in said Territory.

1. The judges, marshals, and district attorneys in the Indian Territory can not be paid salaries until confirmed by the Senate. The clerks, deputy clerks, and commissioners may be paid monthly. No appropriation for constables. (Comp. to Branagan, Apr. 6, 1895.)

2. Certificates of nonabsence from the judicial officers of the Indian Territory are not required in order to authorize the payment of their salaries. (Comp. to Branagan, June 18, 1895.)

3. The fact that a deputy marshal in the Indian Territory is paid a salary does not alter his status. In order to become an officer of the United States he must be appointed by the President, the head of a Department, or by a court. He is not required to take the oath prescribed by section 1757. (Comp. to Branagan, June 18, 1895.)
The act of July 31, 1894 (28 Stat., 162), has the following provisions:

**AUDITORS.**

Sec. 3. The Auditors of the Treasury shall hereafter be designated as follows: The First Auditor as Auditor for the Treasury Department; the Second Auditor as Auditor for the War Department; the Third Auditor as Auditor for the Interior Department; the Fourth Auditor as Auditor for the Navy Department; the Fifth Auditor as Auditor for the State and other Departments; the Sixth Auditor as Auditor for the Post-Office Department.

*DUTIES OF THE AUDITOR FOR THE STATE AND OTHER DEPARTMENTS.*

Sec. 7. The Auditor for the State and other Departments shall receive and examine all accounts of salaries and incidental expenses of the offices of the Secretary of State, the Attorney-General, and the Secretary of Agriculture, and of all bureaus and offices under their direction; all accounts relating to all other business within the jurisdiction of the Departments of State, Justice, and Agriculture; all accounts relating to the diplomatic and consular service, the judiciary, United States courts, judgments of United States courts, Executive Office, Civil Service Commission, Interstate Commerce Commission, Department of Labor, District of Columbia, Fish Commission, Court of Claims and its judgments, Smithsonian Institution, Territorial Governments, the Senate, the House of Representatives, the Public Printer, Library of Congress, Botanic Garden, and accounts of all boards, commissions and establishments of the Government not within the jurisdiction of any of the Executive Departments. He shall certify the balances arising thereon to the Division of Bookkeeping and Warrants, and send forthwith a copy of each certificate, according to the character of the account, to the Secretary of the Senate, Clerk of the House of Representatives, Sergeant-at-Arms of the House of Representatives, or the chief officer of the Executive Department, commission, board, or establishment concerned.

1. The Auditor for the State and other Departments can not have jurisdiction of an account payable from the appropriation for expenses, collecting revenue from customs, that appropriation being under the Treasury Department. (Comp. in re account of Wallace Macfarlane, Nov. 2, 1894.)

Note.—Where any service is performed by an officer of the United States courts compensation for which is paid from an appropriation not under the control of the Attorney-General, the account for such services is not audited by the Auditor for the State and other Departments, but is examined by the Auditor having jurisdiction over the appropriation from which payment is made. Thus the Auditor for the Treasury Department examines accounts of district attorneys.
CERTIFICATION—APPEAL—PAYMENT—WARRANT.

for services under sections 827 and 838, and the Auditor for the Post-Office Department examines accounts for services in civil post-office cases, such accounts being paid, respectively, from appropriations under the control of the Secretary of the Treasury and the Postmaster-General.

CERTIFICATION OF BALANCES—APPEAL TO COMPTROLLER.

SEC. 8. The balances which may from time to time be certified by the Auditors to the Division of Bookkeeping and Warrants, or to the Postmaster-General, upon the settlements of public accounts, shall be final and conclusive upon the Executive Branch of the Government, except that any person whose accounts may have been settled, the head of the Executive Department, or of the board, commission, or establishment not under the jurisdiction of an Executive Department, to which the account pertains, or the Comptroller of the Treasury, may, within a year, obtain a revision of the said account by the Comptroller of the Treasury, whose decision upon such revision shall be final and conclusive upon the Executive Branch of the Government: Provided, That the Secretary of the Treasury may, when in his judgment the interests of the Government require it, suspend payment and direct the re-examination of any account.

Upon a certificate by the Comptroller of the Treasury of any differences ascertained by him upon revision the Auditor who shall have audited the account shall state an account of such differences, and certify it to the Division of Bookkeeping and Warrants, except that balances found and accounts stated as aforesaid by the Auditor for the Post-Office Department for postal revenues and expenditures therefrom shall be certified to the Postmaster-General.

ACCEPTING PAYMENT—SUSPENSIONS—WARRANT.

Any person accepting payment under a settlement by an Auditor shall be thereby precluded from obtaining a revision of such settlement as to any items upon which payment is accepted; but nothing in this Act shall prevent an Auditor from suspending items in an account in order to obtain further evidence or explanations necessary to their settlement. When suspended items are finally settled a revision may be had as in the case of the original settlement. Action upon any account or business shall not be delayed awaiting applications for revision: Provided, That the Secretary of the Treasury shall make regulations fixing the time which shall expire before a warrant is issued in payment of an account certified as provided in sections seven and eight of this Act.

1. When a claimant has accepted payment under a settlement by an Auditor the Comptroller has no jurisdiction under the act of July 31, 1894, to entertain an appeal as to any items upon which payment has been accepted. (Dec. Comp. in re appeal of R. G. and W. Ry. Co.)
AUDITORS TO PRESERVE ACCOUNTS.

The Auditors shall, under the direction of the Comptroller of the Treasury, preserve, with their vouchers and certificates, all accounts which have been finally adjusted.

DECISIONS OF AUDITORS.

All decisions by Auditors making an original construction or modifying an existing construction of statutes shall be forthwith reported to the Comptroller of the Treasury, and items in any account affected by such decisions shall be suspended and payment thereof withheld until the Comptroller of the Treasury shall approve, disapprove, or modify such decisions and certify his actions to the Auditor. All decisions made by the Comptroller of the Treasury under this Act shall be forthwith transmitted to the Auditor or Auditors whose duties are affected thereby.

COMPTROLLER TO GIVE OPINIONS TO DISBURSING OFFICERS AND OTHERS.

Disbursing officers, or the head of any Executive Department, or other establishment not under any of the Executive Departments, may apply for and the Comptroller of the Treasury shall render his decision upon any question involving a payment to be made by them or under them, which decision, when rendered, shall govern the Auditor and the Comptroller of the Treasury in passing upon the account containing said disbursement.

1. Section 8 of the act of July 31, 1894, authorizing the head of a Department to apply to the Comptroller for a decision "upon any question involving a payment to be made" under him, does not confer on the Comptroller jurisdiction to pass upon an account of a clerk of a United States court in advance of action by the Auditor. (Comp. to Atty. Gen., Mar. 13, 1895.)

NOTE.—Under the above section attorneys, marshals, clerks, and others whose accounts have been settled by the Auditor, who receive statements of disallowances and suspensions should carefully examine each statement, and as to the suspensions contained therein should make to the Auditor an explanation of such suspended items, giving as to each item the reasons why, in the opinion of the claimant, such item should be allowed. The Auditor will then allow such suspended item or disallow it. If the claimant is dissatisfied with the action of the Auditor in disallowing any part of his claim, he should address a letter to the Comptroller of the Treasury giving the number of the report, the name of the claimant, the nature of the account or claim, and asking the Comptroller to review the decision of the Auditor. This letter should give the reasons why the officer or claimant thinks the action of the Auditor should be reversed. The appeal must be taken within one year from the date of the decision of the Auditor. It should be taken as soon as convenient after the decision of the Auditor. Where part of an item is allowed and part disallowed, the claimant, if he desires to appeal to the Comptroller, should refuse to accept the part of such item which has been allowed. By accepting payment he is precluded from
obtaining a revision of such settlement. This applies only to the acceptance of part payment on an item, and does not apply to cases where an account is made up of various items, some of which are allowed and others disallowed. Before paying any voucher which is to be included in his disbursement account a marshal may submit such voucher to the Comptroller for his decision thereon. The decision of the Comptroller, when so given, is binding upon the accounting officers.

FORWARDING ACCOUNTS—REQUISITIONS TO BE DISALLOWED, ETC.

SEC. 12. All monthly accounts shall be mailed or otherwise sent to the proper officer at Washington within ten days after the end of the month to which they relate, and quarterly and other accounts within twenty days after the period to which they relate, and shall be transmitted to and received by the Auditors within twenty days of their actual receipt at the proper office in Washington in the case of monthly, and sixty days in the case of quarterly and other accounts. Should there be any delinquency in this regard at the time of the receipt by the Auditor of a requisition for an advance of money, he shall disapprove the requisition, which he may also do for other reasons arising out of the condition of the officer's accounts for whom the advance is requested; but the Secretary of the Treasury may overrule the Auditor's decision as to the sufficiency of these latter reasons: Provided, That the Secretary of the Treasury shall prescribe suitable rules and regulations, and may make orders in particular cases, relaxing the requirement of mailing or otherwise sending accounts, as aforesaid, within ten or twenty days, or waiving delinquency, in such cases only in which there is, or is likely to be, a manifest physical difficulty in complying with the same, it being the purpose of this provision to require the prompt rendition of accounts without regard to the mere convenience of the officers, and to forbid the advance of money to those delinquent in rendering them: Provided, further, That should there be a delay by the administrative Departments beyond the aforesaid twenty or sixty days in transmitting accounts, an order of the President in the particular case shall be necessary to authorize the advance of money requested: And provided further, That this section shall not apply to accounts of the postal revenue, and expenditures, therefrom, which shall be rendered as now required by law.

The legislative, executive, and judicial appropriation act of March 2, 1895 (28 Stat., 807), provides:

Sec. 4. The second proviso of section twelve of the legislative, executive and judicial appropriation act, approved July 31, 1894, is hereby amended to read as follows:

"That should there be a delay by the administrative Departments beyond the aforesaid twenty or sixty days in transmitting accounts, an order of the President, or, in the event of the absence from the seat of Government or sickness of the President, an order of the Secretary
of the Treasury, in the particular case, shall be necessary to authorize
the advance of money requested."

Note.—The Auditor, having no discretion in the matter, must in all cases dis-
allow a requisition if there is a delinquency in the rendition of accounts. The
marshal must present his accounts to the court in time to enable the court to
approve and the clerk to forward same within twenty days after the close of each
quarter. When neither the United States circuit or district court is in session
in a district at any time during the twenty days within which accounts should
be forwarded, the marshal can not have his accounts approved and forwarded
within the time required. Under such circumstances the Secretary of the Treas-
ury will waive the delinquency. In all other cases where a marshal’s accounts
have not been forwarded within the prescribed time, if he seeks an advance, he
should show a manifest physical difficulty in complying with the law. The
delinquency is not cured when accounts are forwarded if they were not sent
within the time prescribed. Although accounts may have been forwarded
to the Attorney-General and by him transmitted to the Auditor, that officer will
disallow a requisition if such accounts were not sent until after the expiration
of the time allowed.

1. The advance of funds is within the jurisdiction of the Auditors and not of
the Comptroller. (Comp., Apr. 27, 1895.)

SECRETARY TO REPORT BALANCES AND DELINQUENCIES.

The Secretary of the Treasury shall, on the first Monday of January
in each year, make report to Congress of such officers as are then
delinquent in the rendering of their accounts or in the payment of
balances found due from them for the last preceding fiscal year.

Note.—A marshal must pay over all balances found due from him for the last
preceding fiscal year on or before the first Monday of January in each year. For
failure to pay over such balances the marshal will be reported to Congress.
This provision does not apply to cases where the marshal has funds with which
to pay claims still outstanding and unsettled. It only applies to balances on
appropriations where final accounts have been rendered.

SECTIONS 250 AND 272 REPEALED.

Sections two hundred and fifty and two hundred and seventy-two of
the Revised Statutes are repealed.

SECTION 3622 AMENDED.

Section thirty-six hundred and twenty-two of the Revised Statutes
is amended by striking therefrom the following words: “The Secretary
of the Treasury may, if in his opinion the circumstances of the case
justify and require it, extend the time hereinbefore prescribed for the
rendition of accounts.”

ACCOUNTS TO BE SENT TO THE ATTORNEY-GENERAL—PAYMENT OF
SALARIES OF JUDGES AND OTHERS.

Sec. 13. Before transmission to the Department of the Treasury, the
accounts of district attorneys, assistant attorneys, marshals, commis-
sioners, clerks, and other officers of the courts of the United States,
except consular courts, made out and approved as required by law, and accounts relating to prisoners convicted or held for trial in any court of the United States, and all other accounts relating to the business of the Department of Justice or of the courts of the United States other than consular courts, shall be sent with their vouchers to the Attorney-General and examined under his supervision.

Judges receiving salaries from the Treasury of the United States shall be paid monthly by the disbursing officer of the Department of Justice, and to him all certificates of nonabsence or of the cause of absence of judges in the Territories shall be sent. Interstate Commerce Commissioners and other officers, now paid as judges are, shall be paid monthly by the proper disbursing officer or officers.

Note.—Clerks of United States courts must forward all accounts approved by their respective courts to the Attorney-General. All accounts and claims relating to the business of the courts of the United States must be sent to the Attorney-General. (See sec. 846, Rev. Stat., the act of February 22, 1875, and the notes thereon, ante, pages 101 to 107.)

DECISIONS RELATING TO VARIOUS MATTERS.

APPROPRIATION, LIMITED EFFECT OF.

1. An employee of the Government is entitled to the salary allowed by law, and is not limited to the amount appropriated by Congress. (Graham's Case, 1 C. Cis. R., 380.)

2. The compensation of public officers depends upon general continuing laws, irrespective of annual appropriation acts. (Collin's Case, 15 C. Cis. R., 22.)

3. The provision in certain appropriation acts that a less amount than the salary fixed by law should be "in full compensation" of certain officers for those years was a compromise between those who favored a permanent reduction and those who were opposed to any reduction whatever. (Fisher's Case, 15 C. Cis. R., 323.)

4. Congress appropriated a less amount than the salary fixed by law. Held, that "when a salary is fixed by law, the Government contracts to pay that amount to the officer and is not discharged therefrom by the payment of a part only." (Mitchell et al. v. United States, 18 C. Cis. R., 281.)

5. A public officer may recover the lawful compensation of his office, notwithstanding that he accepted a less amount and receipted in full therefor. (Adams v. United States, 20 C. Cis. R., 115.)

6. It has been the custom of Congress, when intending to reduce, temporarily, the salary of a public officer, to appropriate the reduced amount, coupled with the condition that it be "in full satisfaction of the salary." (Langston v. United States, 21 C. Cis. R., 10.)

7. A naked appropriation of an insufficient sum neither repeals a statute fixing the salary of an officer nor precludes the incumbent from seeking the balance. (Langston v. United States, 21 C. Cis. R., 10.)

8. A statute which fixes the annual salary of a public officer at a designated sum, without limitation as to time, is not abrogated or suspended by subsequent enactments appropriating a less amount for his services for a particular fiscal year, but containing no words which expressly or impliedly modify or repeal it. (United States v. Langston, 118 U. S., 389.)
APPROPRIATION, LIMITED EFFECT OF—Continued.

9. When Congress appropriates a sum "in full compensation" of the salary of a public officer, the incumbent cannot recover an additional sum in the Court of Claims, notwithstanding a prior statute fixes the salary at a larger amount than the sum appropriated. (United States v. Fisher, 109 U. S., 143.)

BONDS, OFFICIAL.

10. The condition of an official bond that the official who gives it will "well and truly" execute the duties of his office, includes not only honesty, but reasonable skill and diligence. If the duties are performed negligently and unskillfully, if they are violated from want of capacity or want of care, they can never be said to have been "well and truly" executed. (Minor v. The Mechanics Bank of Alexandria, 1 Peters, 46.)

11. The claim of the United States upon an official bond and upon all parties thereto is not released by the laches of the officer to whom the assertion of the claim is intrusted by law. Such laches have no effect whatsoever on the rights of the United States as well against the sureties as the principal in the bond. (Ibid.)

12. A bond given by a paymaster to execute the duties of his office faithfully, the conditions of which did not in the very terms conform to the law of the United States, but which required no duties to be performed which were not in conformity to the duties of his office, is valid. (United States v. Bradley, 10 Peters, 343.)

13. When a collector is continued in office for more than one term, but gives different sureties, the liability of the sureties is to be estimated just as if a new person had been appointed to fill the second term. (United States v. Eckford's Executors, 1 How., 250.)

14. The returns of a receiver of public money to the Treasury are not conclusive evidence in an action by the Government against the sureties on the receiver's bond. If the sums of money stated in such returns were not actually in the hands of the receiver, the sureties are allowed to show how the fact was. (United States v. Boyd, 5 How., 29.)

15. The act of March 2, 1779, requires the bond of a collector of customs to be approved by the Comptroller of the Treasury. The date of such approval is not conclusive evidence of the commencement of the period when the bond began to run. On the contrary, it begins to be effective from the moment when the collector and his sureties part with it in the course of transmission. Surety dies July 24; bond approved July 31. To relieve the surety it must appear that the bond remained in the hands of the collector or the sureties until after July 24. (Broome v. United States, 15 How., 143.)

16. Sureties are responsible only for moneys received by their principal while in office. Not chargeable with draft that was not paid until principal went out. (Bryan v. United States, 1 Black, 140.)

17. The loss of public money by a receiver and disbursar of it through felonious taking away, though without fault on his part, does not discharge him or his sureties from obligation on his official bond. (United States v. Dashiel, 4 Wall., 182.)

18. Duties imposed upon an official different from those he was required to perform at the time his official bond was executed, do not render it void as an undertaking for the faithful performance of those which he at first assumed. It will still remain a binding obligation for what it was originally given to secure. (Gaussen v. United States, 97 U. S., 584.)

19. A., in whose favor an allowance was made, being then indebted as surety on an official bond given to the United States, the amount of such indebtedness was properly retained by the Treasury Department as a set-off to await the final
BONDS—COMMISSIONS—COSTS.

BONDS, OFFICIAL—Continued.

adjustment and settlement of the accounts of his principal. (McKnight v. United States, 98 U.S., 179.)

20. Account rendered by paymaster when he left the service. He died shortly afterwards. Account stated and balance found due, but no demand therefor was made of his personal representatives, and the sureties had no notice of the claim before suit brought. The adjustment is the only evidence of the sum due. Held, that the United States is entitled to recover that sum, but with interest only from the date of service of writ. (United States v. Curtis, 100 U.S., 119.)

21. Where a statutory bond goes beyond the requirements of the statute it is for the excess, without obligatory force. (Mr. Justice Field in United States v. Ellis, 4 Saw., 590.)

22. Where appointment is made during recess, bond given, officer confirmed, and new appointment made, the sureties on the (first) bond are not liable for acts of their principal done after he accepted his new appointment. (Ibid.)

23. In the absence of any statute upon the subject a bond voluntarily given the United States to secure the payment of a debt or the performance of official duty is valid. (United States v. Humason, 5 Saw., 537.)

24. Where an officer is required by his superior, colore officii, to give a bond with stipulations or provisions in the condition thereof not required by statute, the bond is void in toto. (United States v. Humason, 6 Saw., 199.)

25. The parties to an official bond for the safe keeping or accounting for public money are not liable for the loss of same when such loss is caused by the act of God or the public enemy. (Ibid.)

26. In an action upon an official bond, if the execution thereof is denied, it can not be proved by a certificate by the Secretary of the Treasury under section 882, but a copy, certified by the Register under the seal of the Department under section 886, is sufficient proof of execution, it being declared to have the same force as the original when duly authenticated or proved in court. (United States v. Humason, 7 Saw., 252.)

COMMISSION OF OFFICE.

27. President John Adams appointed various persons justices of the peace for the District of Columbia, the office being for the term of five years. Commissions were signed and sent to the State Department, where the seal was affixed by the Secretary of State. After Madison became Secretary of State under Jefferson he refused to deliver the commissions. Marbury petitioned the Supreme Court for a mandamus to compel the Secretary to deliver to him his commission. The court held that when an officer is removable at the will of the President the commission may be withheld; that where the office is for a fixed term, when the commission is signed by the President and the seal affixed by the Secretary of State, it can not be withheld or revoked, and that Marbury has a legal right to the office; that he is entitled to the remedy for which he applies; that a mandamus may issue against the Secretary of State; that the Supreme Court of the United States has not power to issue a mandamus to a Secretary of State of the United States (notwithstanding the act of Congress), it being an exercise of original jurisdiction not warranted by the Constitution. (Marbury v. Madison, 1 Cranch, 137.)

28. A commission bears date and the salary of the officer commences from his appointment, not from the transmission or acceptance of his commission. (Marbury v. Madison, 1 Cranch, 161.)

COSTS.

29. Costs in admiralty are within the sound discretion of the court, and no appellate court should interfere with that discretion, unless under peculiar circumstances. (United States v. Brig Malek. Adhel., 2 How., 210.)
Costs—Continued.

30. The United States are not liable for costs. (United States v. Boyd, 5 How., 30.)

31. When a case is dismissed for want of jurisdiction this court can not give judgment for costs. (Strader v. Graham, 18 How., 602.)

32. A court has no power to award costs in criminal proceedings, unless some statute has conferred it. (Phillips v. Gaines, 131 U. S., Appendix, 169.)

33. An officer of a State sued in his official capacity, and charged with no official delinquency, is not liable for costs. (Hauenstein v. Lynham, 131 U. S., Appendix, 191.)

34. An officer must look to the party or his attorney who employed him for his fees; he has no claim upon the opposite party. (Zeib v. Hill, 1 Saw., 268.)

35. Both before and since the passage of the act of February 6, 1863, costs have been allowed in this court to the prevailing party for travel and attendance. (Nichols v. Inhabitants of Brunswick, 3 Cliff., 88.)

36. Where the defendant has persistently fought the validity of the complainant's patent and the question of infringement as well as the amount of damages, the court will award all the costs against the defendant. (Calkins v. Bertrand, 10 Biss., 445.)

37. Where the infringement is neither malicious nor willful, and the defendants offer at the outset to pay the complainant the amount of net profits realized by them, which offer is rejected, the defendant will not be required to pay the costs unnecessarily accumulated by the complainant. (Ford v. Kurtz, 11 Biss., 324.)

38. The costs of printing briefs for submission to the circuit court are not taxable in the ninth circuit, as there is no rule requiring briefs to be printed. (Gird et al. v. California Oil Co., 60 Fed. Rep., 1011.)


40. Costs do not go as a matter of common right with a judgment against the Government, and a party suing the United States can not recover costs unless he shows by the act under which he sues that the United States has consented to pay costs. (Marine v. Lyon (C. C. A.), 62 Fed. Rep., 153.)

41. In cases appealed from the Board of General Appraisers, under the act of June 10, 1890, neither the costs of the circuit court nor the costs of a subsequent appeal to the circuit court of appeals are recoverable against the United States. (Ibid.)

42. Where the printed record is unnecessarily prolix, but it does not appear from the record itself which party is responsible therefor, the facts on that point may be presented to the court of appeals by affidavit or other proof, so that the unnecessary costs may be taxed to the proper party. (U. S. Sugar Refinery v. Providence Steam and Gas Pipe Co. (C. C. A.), 62 Fed. Rep., 375.)

43. 27 Statutes, 252, provides that any citizen entitled to commence any action in any United States court who is unable to prepay fees or give security for costs may have process and all rights of other litigants and counsel, free of charge, by making a sworn statement in writing showing such facts. Held, that such sworn statement must show that plaintiff is a citizen, and that there is no person interested who is able to pay or secure the costs. (Boyle v. Great Nor. Ry. Co., 63 Fed. Rep., 559.)

44. Examiners' fees are restricted in the second circuit to $3 a day and 30 cents a folio for typewritten testimony, the same being intended to cover both examiners' and stenographers' fees. (Edison Electric Light Co. v. Mather Electric Co., 63 Fed. Rep., 559.)
45. A respondent who succeeds in defeating an application for preliminary injunction is entitled to have taxed the cost of the notarial certificates and seals attached to the affidavits used by him on the hearing, but not the expense of writing the affidavit in the form of depositions. (Atwood v. Jacques, 63 Fed. Rep., 561.)

46. The expense of printing evidence and abstract of record is not taxable in the circuit court, in the absence of any rule of court or special order requiring such printing to be done. (Atwood v. Jacques, 63 Fed. Rep., 561.)

47. Payment to stenographer for making carbon copies of testimony for the use of a party or his counsel is not taxable as costs. (Atwood v. Jacques, 63 Fed. Rep., 561.)

48. In the absence of legislation by Congress authorizing costs against the Government, they can not be imposed in any suit to which it is a party; and neither the act of June 1, 1872 (Rev. Stat., 914), confirming the practice of the Federal courts to that of the States where they are held, nor the act of August 1, 1888, authorizing condemnation proceedings, gives such authority. (Carlisle v. Cooper, (C. C. A.), 64 Fed. Rep., 472.)

49. An award of costs against the United States and an allowance to an attorney appointed to represent defendants not served in a suit for condemnation of lands under act of August 1, 1888, is unauthorized. (Carlisle v. Cooper, 64 Fed. Rep., 472.)

50. Costs incurred in taking the depositions of witnesses to be used before the Interstate Commerce Commission should be paid from the appropriations for the Commission. (Dec. First Comp., R. B. Bowler, p. 68.)

JURY COMMISSIONER.

51. The office of jury commissioner was created by the act of June 30, 1879, but no compensation was attached thereto until the act of July 7, 1884. In the deficiency bills of March 30 and October 19, 1888, there were items appropriated to the payment of jury commissioners, but they did not state that they were to apply to any particular years. Held, that they applied only to the current year, and could not inure to the benefit of one who served as jury commissioner in 1882, 1883, and 1884. (Kinney v. United States, 60 Fed. Rep., 883.)

52. A person serving as jury commissioner is not entitled to payment, independent of appropriations, on the ground that such services were part of the miscellaneous expenses of courts, for the imposition of a service of this character upon an individual gives rise to no implied obligation to pay for it in the absence of specific provision therefor. (Kinney v. United States, 60 Fed. Rep., 883.)

53. A marshal who retains in his hands money belonging to the United States would have no right when sued therefor to a set-off or counterclaim for money claimed to be due him for services rendered as a jury commissioner, and therefore the fact that the Government delayed suing him would not prevent the statute of limitations from running as against his demand. (Kinney v. United States, 60 Fed. Rep., 883.)

54. The fact that one having a claim for services as jury commissioner had no right to sue the Government in the circuit courts prior to the act of March 3, 1887, did not prevent the statute of limitations from running against his claim prior to that date, for he might at any time have presented it to the Court of Claims. (Kinney v. United States, 60 Fed. Rep., 883.)

OFFICER, REMOVAL OF.

55. All offices the term of which is not fixed by the Constitution or limited by law must be held either during good behavior or (which is the same thing in
REMOVAL, ETC., OF OFFICERS.

contemplation of law) during the life of the incumbent, or must be held at the will and discretion of some Department of the Government, and subject to removal at pleasure. In the absence of all constitutional provision or statutory regulation, it would seem to be a sound and necessary rule to consider the power of removal as incident to the power of appointment. (Ex parte Duncan N. Hennen, 13 Peters, 259.)

56. The question whether or not the President has power to remove a Territorial judge, argued but not decided. (United States v. Guthrie, 17 How., 284.)

57. A court of equity has no jurisdiction of a bill to restrain the removal of a public officer. (In re Sawyer, 124 U. S., 200.)

OFFICER, DE FACTO.

58. An officer de facto, holding the office in good faith, and not as a usurper, can not be required to pay back salary received for services rendered. (Miller v. United States, 19 C. Cls. R., 338.)

OFFICER, CLAIMING TO BE.

59. Where one claiming to be an officer rendered no service and held no official relation with the Government, money paid him for salary may be recovered. (Miller v. United States, 19 C. Cls. R., 338.)

60. If an officer sues for his salary he must show a legal title to the office; but if he in good faith performed service for which he was paid, it is money which in equity and good conscience he may retain, though not an officer de jure. (Bennett v. United States, 19 C. Cls. R., 379.)

61. An officer can not maintain an action for his salary unless he has a legal title to the office; mere occupancy is not sufficient. (Runkle v. United States, 19 C. Cls. R., 396.)

OFFICER, INCUMBENT.

62. The incumbent of an office is prima facie entitled to the lawful compensation thereof so long as he holds the office, though disabled by disease from performing the functions. (Sleigh v. United States, 9 C. Cls. R., 369.)

OFFICER, SUSPENDED.

63. An officer suspended under the Revised Statutes (1768) is not entitled to the salary of the office during the period of suspension, though no person be nominated for the place or appointed to discharge its duties. (Barbour's Case, 17 C. Cls. R., 149.)

OFFICER, POWER OF.

64. The burden of proof that the officer exceeded his power is upon the party complaining, the rule of law being that the actions of a public officer upon public matters within his jurisdiction and where he has a discretion are to be presumed legal until shown by others to be unjustifiable. It is not enough to show that he committed an error in judgment, but it must have been a willful and malicious error. (Wilkes v. Dinsman, 7 How., 89.)

TITLE TO OFFICE.

65. An information for a quo warranto to try the title to an office can not be maintained but at the instance of the Government, and the consent of the parties will not give jurisdiction in such case. (Wallace v. Anderson, 5 Wheat., 291.)

JURISDICTION, SUPREME COURT.

66. On an examination of the record in this case it appears that the amount due the United States is less than the penalty of the bond given by the clerk for the faithful performance of the duties of his office, viz, $517.07, and possibly a small amount of interest, and as the jurisdiction of this court in an action on such a bond depends upon the amount due for the breach of the condition, the court is without jurisdiction. (United States v. Hill, 123 U. S., 681.)
WRITS TO OTHER DISTRICTS.

67. The circuit court of each district sits within and for that district, and is bounded by its limits. It can only exercise jurisdiction within the limits of the district. Congress might have authorized civil process from any circuit court to run in any State, but it has not done so. It has not in terms authorized any civil process to run in any other district, with the single exception of subpoenas to witnesses within a limited distance. (Toland v. Sprague, 12 Peters, 300.)

68. Where the United States were plaintiffs and a verdict was rendered according to the practice in Pennsylvania, that they were indebted to the defendant, and an application was made for a mandamus to compel the Secretary to credit the defendant upon the books of the Treasury with the amount of the verdict and to pay the same, the mandamus was properly refused by the circuit court. (Reeside v. Walker, 11 How., 272.)

69. The circuit court of the United States for the District of Columbia had not the power to issue a writ of mandamus commanding the Secretary of the Treasury to pay a judge of the Territory of Minnesota his salary for the unexpired term of his office, from which he had been removed by the President of the United States. A mandamus can issue only where the act to be done is merely ministerial, and with regard to which nothing like judgment or discretion in the performance of his duties is left to the officer. (United States v. Guthrie, 17 How., 284.)

70. No court has the power to command the withdrawal of money from the Treasury of the United States to pay any individual claim whatever. (Ibid.)

71. Taxes for State purposes can not be imposed on the salaries or fees allowed by the laws of the United States to officers in the service of the United States. (Dobbins v. The Commissioners of Erie County, 16 Peters, 435.)

72. An Indian agent was commissioned on September 28, 1872. He gave bond, took the oath of office, and was ready for duty October 15. November 4 he received orders and started for his destination. He arrived at his post and reported for duty January 11, 1873, and on January 20 he took charge of the agency. He is entitled to the salary from the time he actually went to work for the Government. (United States v. Roberts, 10 Fed. Rep., 540.)

73. When the words of a statute prescribing compensation of a public officer are loose and obscure and admit of two interpretations, they should be construed liberally in favor of the officer and not strictly in favor of the United States. (McKinstry v. United States, 40 Fed. Rep., 813.)

74. Where a statute allowing an officer compensation admits of two interpretations the words should be construed strictly in favor of the United States and not in favor of the officer. (United States v. Clough, Cir. Ct. Apps., 55 Fed. Rep., 373.)

75. It seems that under the act to provide for bringing suits against the United States (Sup. Rev. Stat., 559) it is the duty of a court before which such suit is brought to examine into the evidence to sustain the claims, even if the pleading interposed on behalf of the Government presents no defense. (McDonald v. United States, 66 Fed. Rep., 255.)
INSTRUCTIONS TO UNITED STATES ATTORNEYS, MARSHALS, CLERKS, AND COMMISSIONERS OF UNITED STATES COURTS RELATIVE TO STATEMENTS OF DIFFERENCES IN THEIR ACCOUNTS.

TREASURY DEPARTMENT, OFFICE OF THE AUDITOR FOR THE STATE AND OTHER DEPARTMENTS, April 25, 1895.

DISALLOWANCES.

Explanations to disallowances made by the Auditor can not be considered except by the Comptroller of the Treasury on appeal, which must be taken within twelve months.

SUSPENSIONS.

1. Explanations must be addressed to the AUDITOR FOR THE STATE AND OTHER DEPARTMENTS.

2. Different accounts must be explained in separate communications, so that the explanations may be filed with the proper accounts, separate accounts being stated under each appropriation and fiscal year. The fiscal year ends on the 30th of June.

3. Refer to accounts by certificate number as well as appropriation and date.

4. Explanations should be sworn to. If not sworn to when questions of fact are involved they will be returned for correction.

5. Explain each item separately and in regular order, referring to item number and giving amount claimed under each item. Conceded items should be so indicated.

6. In marshals’ accounts when suspensions outstanding are brought forward from a prior account under the same appropriation and fiscal year, and explanations are made, always refer to the number of the account in which suspensions were originally made, and not to the subsequent account in which the differences appear as brought forward.

7. All the items in an account must be explained at one time.

8. Explanations should be made within sixty days so that the items allowed may be included in the next quarterly account. Further time will be allowed only when good reasons are shown for the delay.

9. Items suspended and remaining unexplained for one year will be disallowed.

10. Explanations made to this office need not be in duplicate.

THOMAS HOLCOMB,
Auditor for the State and other Departments.

Note.—When disallowances are made by the Auditor and the claimant wishes to appeal from the decision of the Auditor to the Comptroller of the Treasury he should address a communication to the Comptroller, setting forth the number of the report in which the disallowances were made, the name of the claimant, the appropriation, and the reasons why the items disallowed should be allowed.
INSTRUCTIONS

to

United States Marshals, Attorneys, Clerks, and Commissioners,

AS TO THEIR DUTIES AND THE RENDITION
OF THEIR ACCOUNTS.

Sec. 362, R. S. The Attorney-General shall exercise general superintendence and direction over the attorneys and marshals of all the districts in the United States and the Territories as to the manner of discharging their respective duties, and the several district attorneys and marshals are required to report to the Attorney-General an account of their official proceedings and the state and condition of their respective offices in such time and manner as the Attorney-General may direct.
To United States Marshals, Attorneys, Clerks, and Commissioners:

The following instructions are issued for your guidance in performing the duties of your office and rendering your accounts to the Government. A careful observance of these requirements will obviate the necessity for much of the correspondence which is now found necessary relative to your duties and the rendition of your accounts.

Respectfully,

Judson Harmon,
Attorney-General.
INSTRUCTIONS AND FORMS FOR UNITED STATES MARSHALS.

On taking the oath of office and filing their official bonds, all marshals will immediately advise the Attorney-General, the Solicitor of the Treasury, and the Commissioner of Internal Revenue by letter to that effect. They will each at the earliest practicable period obtain from their respective predecessors in office the books and other property of the United States in their hands.

Unless already furnished with them, each marshal will at once apply to the Attorney-General for authority to purchase a well-bound docket, daybook, ledger, and letter book, properly labeled and marked "The property of the United States." These books will be carefully preserved by the marshals and handed to their successors. They will make minute entries in their dockets of the time of receiving and serving papers and process and of whatever is done by them in United States cases of all kinds, with correct dates. The letter books will contain full and true copies of all letters written by such officers officially relating to suits or matters in which the United States are interested. In the daybooks and ledgers full and accurate accounts will be kept of all moneys received and paid out on account of the United States.

The entries in the dockets and account books will be so full, clear, and definite that they can be easily understood.

All official letters relating to United States cases received by marshals not needed by them as vouchers for the payment of money will be preserved as public property and delivered to their successors. Where the originals are essential to them as vouchers they will leave copies in their places.

OFFICE EXPENSES AND CLERK HIRE.

The earnings of the office go, first, to pay the necessary expenses of the office, and, second, to the extent allowed by law, to compensate the marshal. The marshal is allowed to retain of the earnings of his office, over and above necessary expenses, $6,000 per annum. He will be allowed credit in his emolument return for all proper and necessary expenses of his office. Before incurring an expense in excess of $10, application must be made to the Attorney-General for authority. When applying for authority, state the items of expense which are to
be incurred, with the cost of each. In items involving an expenditure of $10 or over, bids from two or three reputable dealers must be submitted. If clerical assistance is necessary, application should be made to the Attorney-General, setting forth the circumstances and condition of work that necessitates the employment and the salaries necessary to be paid in order to secure efficient services. And if the clerk is to act also as deputy, state the maximum amount he will be paid per year for services as deputy.

REQUISITIONS.

Marshals are the disbursing officers of the courts.

Congress annually appropriates money for the maintenance of the United States courts under the following heads, viz: Fees of jurors; fees of witnesses; support of prisoners; pay of bailiffs, etc., and miscellaneous expenses. Advances are made to marshals upon their requisitions sent to the Attorney-General, under each of the appropriations. Funds so advanced must be kept separate and not used except to defray expenses incurred under the appropriation from which advanced. Limited advances are also made on account of fees and expenses of marshals.

Requisitions for funds should be made by marshals, by mail, in ample time. Only one requisition should be made for each term of court, unless the exigencies of the service require more frequent calls for funds. Requisitions should be made on forms as follows, which are furnished by the Department of Justice upon application:

![Form](image)


<table>
<thead>
<tr>
<th>Item</th>
<th>Year</th>
<th>Estimated</th>
<th>On hand</th>
<th>Required</th>
</tr>
</thead>
<tbody>
<tr>
<td>1. Fees and expenses of marshals</td>
<td>189-</td>
<td>$</td>
<td>$</td>
<td>$</td>
</tr>
<tr>
<td>2. Fees of jurors</td>
<td>189-</td>
<td>$</td>
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</tr>
<tr>
<td>3. Fees of witnesses</td>
<td>189-</td>
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<tr>
<td>4. Support of prisoners</td>
<td>189-</td>
<td>$</td>
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<tr>
<td>5. Pay of bailiffs, etc.</td>
<td>189-</td>
<td>$</td>
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</tr>
<tr>
<td>6. Miscellaneous expenses</td>
<td>189-</td>
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<td>8.</td>
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</tbody>
</table>

Total

Care must be taken in preparing estimates for funds that neither unnecessary nor inadequate amounts are called for.
Advances can only be made to the amount of the marshal's bond. If it should appear that under the usual bond of $20,000 sufficient money can not be advanced to defray the expenses of the court, the Attorney-General will require (as provided by the act of February 22, 1875) a bond in a larger amount. No advance can be made while an emolument return is in arrears or when marshals are delinquent in forwarding their quarterly accounts, as required by the act of July 31, 1894.

**PUBLIC FUNDS.**

Forms have been adopted by the Department of Justice for a report to be made by United States marshals at the close of each week of the amount of public funds on deposit and on hand.

This report will be made up and forwarded promptly at the close of business on Saturday. A strict observance of this duty is enjoined, as the practice of some United States marshals in delaying for several weeks these statements to make them all at once for a month or longer period has caused serious embarrassment, and tends to defeat the object of the regulation. They will, therefore, avoid this practice.

Particular attention is called to the series of notes at the bottom of the printed form upon which reports are to be made. These reports are to be forwarded regularly, whether public funds are in hand or not, and if they are in arrears when funds are required for court purposes none will be advanced.

The following circulars issued from time to time by the Secretary of the Treasury are still in force and should be observed by marshals:


**CIRCULAR INSTRUCTIONS RELATIVE TO PUBLIC MONEYS AND OFFICIAL CHECKS OF UNITED STATES DISBURSING OFFICERS.**

TREASURY DEPARTMENT,
Washington, D. C., August 24, 1876.

The following sections of the Revised Statutes are published for the information and guidance of all concerned:

**SECTION 3620.** It shall be the duty of every disbursing officer having any public money intrusted to him for disbursement, to deposit the same with the Treasurer or some one of the Assistant Treasurers of the United States, and to draw for the same only as it may be required for payments to be made by him in pursuance of law; and all transfers from the Treasurer of the United States to a disbursing officer shall be by draft or warrant on the Treasury or an Assistant Treasurer of the United States. In places, however, where there is no Treasurer or Assistant Treasurer, the Secretary of the Treasury may, when he deems it essential to the public interest, specially authorize in writing the deposit of such public money in any other public depository, or, in writing, authorize the same to be kept in any other manner, and under such rules and regulations as he may deem most safe and effectual to facilitate the payments to public creditors.

**SECTION 5488.** Every disbursing officer of the United States who deposits any public money intrusted to him in any place or in any manner, except as authorized by law, or converts to his own use in any way whatever, or loans with or without interest, for any purpose not prescribed by law withdraws from the Treasurer or any Assistant Treasurer, or any authorized depository, or for any purpose not prescribed by law transfers or applies any portion of the public money intrusted to him, is, in every such act, deemed guilty of an embezzlement of the money so deposited, ...
converted, loaned, withdrawn, transferred, or applied; and shall be punished by imprisonment with hard labor for a term not less than one year nor more than ten years, or by a fine of not more than the amount embezzled or less than one thousand dollars, or by both such fine and imprisonment.

In accordance with the provisions of the above sections, any public money advanced to disbursing officers of the United States must be deposited immediately to their respective credits, with either the United States Treasurer, some assistant treasurer, or designated depositary, other than a national bank depositary, nearest or most convenient, or, by special direction of the Secretary of the Treasury, with a national bank depositary, except—

(1) Any disbursing officer of the War Department, specially authorized by the Secretary of War, when stationed on the extreme frontier or at places far remote from such depositaries, may keep, at his own risk, such moneys as may be intrusted to him for disbursement.

(2) Any officer receiving money remitted to him upon specific estimates may disburse it accordingly, without waiting to place it in a depository, provided the payments are due, and he prefers this method to that of drawing checks.

Any check drawn by a disbursing officer upon moneys thus deposited must be in favor of the party, by name, to whom the payment is to be made, and payable to "order" or "bearer," with these exceptions:

(1) To make payments of individual pensions, checks for which must be made payable to "order," (2) to make payments of amounts not exceeding $20, (3) to make payments at a distance from a depository, and (4) to make payments of fixed salaries due at a certain period; in either of which cases, except the first, any disbursing officer may draw his check in favor of himself or bearer for such amount as may be necessary for such payment, but in the last-named case the check must be drawn not more than two days before the salaries become due.

Any disbursing officer or agent drawing checks on moneys deposited to his official credit must state on the face or back of each check the object or purpose to which the avails are to be applied, except upon checks issued in payment of individual pensions, the special form of such checks indicating sufficiently the character of the disbursement.

Such statement may be made in brief form, but must clearly indicate the object of the expenditure, as, for instance, "pay," "pay roll," or "payment of troops," adding the fort or station; "purchase of subsistence," or other supplies; "on contract for construction," mentioning the fortification or other public work for which the payment is made; "payments under $20," "to pay foreign pensions," etc.

Checks will not be returned to the drawer after their payment, but the depositary with whom the account is kept shall furnish the officer with a monthly statement of his deposit account.

No allowance will be made to any disbursing officer for expenses charged for collecting money on checks.

In case of the death, resignation, or removal of any disbursing officer, checks previously drawn by him will be paid from the funds to his credit, unless such checks have been drawn more than four months before their presentation, or reasons exist for suspecting fraud.

Every disbursing officer when opening his first account, before issuing any checks, will furnish the depositary on whom the checks are drawn with his official signature duly verified by some officer whose signature is known to the depositary.

For every deposit made by a disbursing officer, to his official credit, a receipt in form as below shall be given, setting forth, besides its serial number and the place and date of issue, the character of the funds, i.e., whether coin or currency; and if the credit is made by a disbursing officer's check transferring funds to another disbursing officer, the essential items of the check shall be enumerated; if by a Treasury draft, like items shall be given, including the warrant number; the title of each officer shall be expressed, and the title of the disbursing account shall also show for what branch of the public service the account is kept, as it is essential for the
proper transaction of Departmental business that accounts of moneys advanced from different bureaus to a disbursing officer serving in two or more distinct capacities be kept separate and distinct from each other, and be so reported to the Department both by the officer and the depositary—the receipt to be retained by the officer in whose favor it is issued:

No. —.

Office of the U. S. (Assistant Treasurer or Depositary),

Received of —— dollars, consisting of ———, to be placed to his credit as ———, and subject only to his check in that official capacity.

U. S. (Assistant Treasurer or Depositary).

These regulations are intended to supersede those of January 2, 1872.

Chas. F. Conant,
Acting Secretary.

[Circular No. 7. Division of Public Moneys.]

REGULATIONS FOR THE DEPOSIT OF PUBLIC MONEYS.

To collectors and surveyors of customs, collectors of internal revenue, receivers of public moneys for lands, marshals, clerks of courts, and all other officers or agents of the United States engaged in collecting, depositing, or transmitting public moneys:

The following regulations, based upon specific provisions of existing laws, for the violation of which penalties of a severe character are provided, are hereby prescribed, and a strict compliance therewith enjoined:

COLLECTIONS.

Collectors and surveyors of customs, collectors of internal revenue, and receivers of public moneys, living in the same city or town with an assistant treasurer or designated depositary, must deposit their receipts at the close of each day. Officers at such a distance from a depository that daily deposits are impracticable, must forward their receipts as often as they amount to $1,000, and at the end of each month without regard to the amount then accumulated.

All collections must be deposited to the credit of the Treasurer of the United States, except moneys received by collectors of internal revenue from sales under section 3460, Revised Statutes of the United States, or from offers of compromises when received prior to the acceptance of the offer, which must be deposited to the credit of the Secretary of the Treasury as heretofore.

District attorneys, marshals, and clerks of courts who receive public moneys accruing to the United States from fines, penalties, and forfeitures, fees, costs (including costs in criminal suits for violations of the postal laws), forfeitures of recognizances, debts due the United States, interest on such debts, sales of public property, or from any other sources, will deposit the same in accordance with the foregoing paragraphs, except moneys accruing from customs (including navigation) and internal-revenue cases, which should be paid to the collector or surveyor of customs or collector of internal revenue of the district in which the case arose, and moneys accruing from civil post-office suits, and fines in criminal cases for violation of the postal laws, which should be deposited to the Treasurer’s credit for the use of the Post-Office Department.

The Department encourages the practice of a deputy collector or agent depositing directly with a depository in the name of his principal, believing that greater economy and dispatch will thereby be attained. In such cases the depositor will take certificates of deposit in the name of the collector or other officer whose agent he is, or for whom he is acting, to whom the certificates should be forwarded for disposition as hereinafter provided.
PUBLIC MONEYS.

DISBURSING FUNDS.

All moneys advanced from the Treasury to any officer or agent of the Government for disbursement, or coming into his hands, must be deposited to his official credit as such disbursing officer or agent, and drawn upon only in his official capacity.

Deposits of such moneys may be made with the Treasurer, an assistant treasurer, or any designated depository of the United States, if specially authorized by the Secretary of the Treasury for that purpose under the provisions of section 3620, Revised Statutes of the United States, and not otherwise. In case no such special authority has been given to a convenient depository, application should be made to the Secretary of the Treasury for such authorization.

CERTIFICATES OF DEPOSIT.

Hereafter the originals of all certificates of deposit for the deposit of any and all public moneys of every character and description, except as stated in the next succeeding paragraph, should be forwarded to the Secretary of the Treasury immediately upon their receipt by the depositors, who, before transmitting them, should see that their amounts correspond with the amounts actually deposited by them.

EXCEPTIONS.

Those issued to disbursing officers for disbursing funds deposited to their official credit, subject to the payment of their checks, and more properly called disbursing officers' receipts, should be retained in their own possession; those issued for the transfer of funds from one Government depository to another, and on account of silver coin, or the 5 per cent national-bank redemption fund, should be forwarded to the Treasurer of the United States; and those issued for moneys deposited to the credit of the Treasurer of the United States for use of the Post-Office Department should be forwarded to the Third Assistant Postmaster-General.

RECEIPTS.

Receipts given to district attorneys, marshals, or clerks for moneys paid by them to collectors and surveyors of customs should be sent to the Solicitor of the Treasury, and similar receipts from collectors of internal revenue should be sent to the Commissioner of Internal Revenue.

Receipts given to an officer for deposits of his disbursing funds to his own credit should be retained by him for his own security as above stated.

Reference is hereby made to Department's circulars of April 3, 1879, relative to the transportation of public moneys by express; August 24, 1876, relative to disbursing funds; November 28, 1879, and June 2, 1882, relative to offers of compromise, and January 21, 1874, concerning the issue and disposition of certificates. Also, to sections 3216, 3218, 3617, 3620, 3621, 3625, and 5481 to 5505, inclusive, of the Revised Statutes of the United States.

This circular supersedes circular regulations for the deposit of public moneys dated January 3, 1876.

C. S. FAIRCHILD,
Secretary.
The following sections of the Revised Statutes of the United States and the subsequent Regulations are published for the information and guidance of all concerned:

"SECTION 306. At the termination of each fiscal year all amounts of moneys that are represented by certificates, drafts, or checks, issued by the Treasurer, or by any disbursing officer of any Department of the Government, upon the Treasurer or any assistant treasurer, or designated depository of the United States, or upon any national bank designated as a depository of the United States, and which shall be represented on the books of either of such offices as standing to the credit of any disbursing officer, and which were issued to facilitate the payment of warrants, or for any other purpose in liquidation of a debt due from the United States, and which have for three years or more remained outstanding, unsatisfied, and unpaid, shall be deposited by the Treasurer, to be covered into the Treasury by warrant, and to be carried to the credit of the parties in whose favor such certificates, drafts, or checks were respectively issued, or to the persons who are entitled to receive pay therefor, and into an appropriation account to be denominated 'outstanding liabilities.'"

"SECTION 308. The payee or the bona-fide holder of any draft or check, the amount of which has been deposited and covered into the Treasury pursuant to the preceding sections, shall, on presenting the same to the proper officer of the Treasury, be entitled to have it paid by the settlement of an account and the issuing of a warrant in his favor, according to the practice in other cases of authorized and liquidated claims against the United States.

"SECTION 309. The amounts, except such as are provided for in section three hundred and six, of the accounts of every kind of disbursing officer, which shall have remained unchanged, or which shall not have been increased by any new deposit thereon, or decreased by drafts drawn thereon, for the space of three years, shall in like manner be covered into the Treasury, to the proper appropriation to which they belong; and the amounts thereof shall, on the certificate of the Treasurer that such amount has been deposited in the Treasury, be credited by the proper accounting officer of the Department of the Treasury on the books of the Department, to the officer in whose name it had stood on the books of any agency of the Treasury, if it appears that he is entitled to such credit.

"SECTION 310. The Treasurer, each assistant treasurer, and each designated depository of the United States, and the cashier of each of the national banks designated as such depositories, shall, at the close of business on every thirtieth day of June, report to the Secretary of the Treasury the condition of every account standing, as in the preceding section specified, on the books of their respective offices, stating the name of each depositor, with his official designation, the total amount remaining on deposit to his credit, and the dates, respectively, of the last credit and the last debit made to each account. And each disbursing officer shall make a like return of all checks issued by him, and which may then have been outstanding and unpaid for three years and more, stating fully in such report the name of payee, for what purpose each check was given, the office on which drawn, the number of the voucher received therefor, the date, number, and amount for which it was drawn, and, when known, the residence of the payee."
PUBLIC MONEYS—COURT ROOMS.

REGULATIONS.

(1) Hereafter any Treasury draft or any check drawn by a public disbursing officer still in service, which shall be presented for payment before it shall have been issued three full fiscal years, will be paid in the usual manner by the office or bank on which it is drawn, and from funds to the credit of the drawer. Thus, any such draft or check issued on or after July 1, 1873, will be paid as above stated until June 30, 1877, and the same rule will apply for subsequent years.

Any such draft or check which has been issued for a longer period than three full fiscal years will be paid only by the settlement of an account in this Department, as provided in section 308, Revised Statutes, above published; and for this purpose the draft or check will be transmitted to the Secretary of the Treasury for the necessary action.

(2) At the close of each fiscal year, the Treasurer, the several assistant treasurers, and national-bank depositaries, will render to the Secretary of the Treasury, as required by section 310, also above published, a list of all disbursing officers' accounts still unclosed which have remained unchanged on the books of their respective offices or banks, either by debit or credit, more than three fiscal years, giving in each case the name and official designation of the officer, the date when the account with him was opened, the date of last debit and last credit, and the balance remaining to his credit.

(3) Every disbursing officer will, on the 30th of June of each year, as also required by section 310, make a return to the Secretary of the Treasury of all checks drawn by him which have been outstanding and unpaid for three full fiscal years, stating the number of each check, its date, amount, in whose favor, on what office or bank and for what purpose drawn, the number of the voucher in payment of which it was drawn, and, if known, the residence of the payee.

(4) Whenever any disbursing officer of the United States shall cease to act in that capacity he will at once inform the Secretary of the Treasury whether he has any public funds to his credit in any office or bank; and if so, what checks, if any, he has drawn against the same which are still outstanding and unpaid. Until satisfactory information of this character shall have been furnished, the whole amount of such moneys will be held to meet the payment of his checks properly payable therefrom.

(5) In case of the death, resignation, or removal of a public disbursing officer, any check previously drawn by him and not presented for payment within four months of its date will not be paid until its correctness shall have been attested by the Secretary or Assistant Secretary of the Treasury.

(6) If the object or purpose for which any check of a public disbursing officer is drawn is not stated thereon, as required by Departmental regulations, or if any reason exists for suspecting fraud, the office or bank on which such check is drawn will refuse its payment.

These regulations are intended to supersede those of February 25, 1890, on this subject.

CHARLES FOSTER,
Secretary.

COURT ROOMS, OFFICES, FURNITURE, AND REPAIRS.

Section 830 of the Revised Statutes of the United States prohibits any United States marshal from incurring any expenditure of more than $20 in any one year for furniture, or $50 for rent of buildings and making improvements thereon, without first submitting a statement and estimates to the Attorney-General and getting his instructions in the premises.
This provision limits the marshal in his expenditures, in all his district, to the sum of $50 for rent and repairs, and $20 for furniture, in any one year, unless previous authority shall be obtained by him for the expenditure of a greater sum; and unless such authority shall have been given the Department will not approve expenditures made by a marshal for these purposes in excess of the sums named.

Whenever, for any reason, it may become necessary to provide accommodations for the United States courts or their offices at any point where the circuit or district courts are held, either in the States or Territories, the Department requires the marshal to examine and ascertain what suitable buildings or rooms can be procured, and the rent demanded therefor; to select the rooms that furnish or the building which furnishes the most ample accommodations at the lowest rate, and report such selection and the terms to the Department, with a plan or diagram exhibiting the dimensions of the respective rooms, upon which floor, and how they are relatively situated, and indicating the purpose for which each is proposed to be occupied; and, if in a city, upon what street or streets the same is or are located; to certify that the same is or are conveniently located and suitable in all respects for the purpose for which they are required, and that the terms upon which they are offered are more favorable to the Government than those of any similar accommodations that can be obtained.

He is also required to furnish the certificate of the United States district judge and district attorney to the same effect.

Whenever practicable, heat, light, and janitor services should be furnished by the lessors.

Blank forms for the leases can be obtained by application to the Department of Justice.

Where applications are made for authority to provide accommodations for the court or courts, of a temporary character, the marshal should state the number of days the court or courts have been in session at the place where they are required during the previous calendar year, and all the circumstances going to show the necessity of providing them.

In all such cases not only heat, light, and janitor services must be furnished by the owners of the property, but also all necessary fixtures, furniture, etc., when practicable.

Applications for furniture are required to be accompanied by a detailed estimate, showing the proposed cost of each article, and the certificate of the marshal to the effect that each article named in such estimate is necessary to the convenient transaction of the public business, and that the estimate of cost is reasonable. These, also, are to be accompanied by the certificate of the district judge and attorney to the same effect. When the expenditure involved is $10 or more, bids from two or three reputable dealers must be submitted.
Payments for rent of court rooms will be made direct from the Treasury. The marshal will cause accounts to be rendered by the lessor covering the rent due. Each account must bear indorsement of the marshal's official approval, and contain reference to the lease under which the claim is submitted or the authority given by the Attorney-General for incurring the expense.

DEPUTIES.

A marshal may appoint necessary deputies. He should employ only such a number as he has work for in serving process issued in well-founded cases, rather than a large number for whom he has not sufficient work, but who are tempted to instigate prosecutions on frivolous or groundless charges for the sake of the fees to be earned. This, in the past, has been a great source of evil and must be remedied.

Immediately upon receipt of these instructions each marshal will report to the Attorney-General the name and address of each of his deputies, with the terms of the contract under which he serves. Hereafter when a deputy is appointed the Attorney-General must be notified, giving the name, location of the deputy, and the terms of the contract with him, and when any deputy is discharged the marshal should notify the Department.

The proportion of fees and emoluments which the deputy is to receive must be fixed definitely in advance. The practice that has obtained in some districts of making contracts with deputies on a sliding scale, so that the compensation of the deputy depends upon the total earnings of the marshal’s office, rather than the service performed by him, thus managing to dispose of a surplus that would otherwise exist, is not warranted by law.

The acts of a deputy are the acts of a marshal, who will be held strictly responsible for them. The marshal should carefully scrutinize the accounts of his deputies to see that all charges are legal, and that all services charged for have been performed as stated.

FALSE ACCOUNTS.

Because of irregularities that have occurred in the rendition of accounts it is necessary to impress upon marshals the fact that whenever an account is presented to the Government, except for fees, it must represent money actually and fully paid. The personal obligation of the marshal to the payee is not regarded as payment, nor are certificates issued showing that certain amounts are due.

The oath of the marshal that the account has been “fully paid in lawful money” must be literally exact.

In fee accounts each service charged must represent service actually performed by the person claimed to have performed it, and each item of expense for which credit is claimed must represent money actually paid out.

The failure to fully observe the above renders a marshal liable to dismissal and to criminal prosecution. (See section 5438, R. S.)
When the term of a marshal expires, or for any other reason he retires from office, he should not undertake to disburse any Government money remaining in his hands. His powers and duties as marshal cease, except to serve process remaining in his hands, as soon as he goes out of office, and he should at once deposit all money remaining in his hands and take the proper steps for closing all balances due the United States.

When a marshal goes out of office he should take a receipt from his successor for all Government property turned over to him, such as books and office furniture. This receipt he should forward to the Attorney-General.

He should also, as soon as practicable, procure from each of the clerks of the courts in his district a certificate showing that he has returned all process and accounted properly for all money collected by him on executions, or otherwise, and forward same to the Auditor for the State and other Departments.

BONDS AND OFFICIAL OATHS.

1. The bond should be executed by the principal and sureties before the United States district judge, and each should sign his first name in full.

2. The sureties should be approved by the said judge; and it should be made to appear on the face of the bond, or be certified by the said judge, that they are inhabitants and freeholders of the district.

3. The bond should be filed and recorded in the office of the clerk of the district or circuit court of the district.

4. A copy of the bond, certified by the clerk under the seal of the district or circuit court, should be at once forwarded to the Auditor for the State and other Departments, and the Department of Justice notified of the same. The clerk must also certify that the original is filed and recorded in his office.

5. An oath of office as required by sections 782 and 1757 of the Revised Statutes should be taken before the district judge and filed with the bond, and a certified copy of the same forwarded with the copy of the bond, and a like copy of said oath sent to the Department of Justice.

Until these copies are received at the Auditor's office no advance can be made to defray expenses of courts.

The oath of office should be in the following form:

UNITED STATES OF AMERICA,

District of ———:

I, ——— ———, do solemnly swear (or affirm) that I will faithfully execute all lawful precepts directed to the marshal of the ——— district of ———, under the authority of the United States, and true returns make, and in all things well and truly, and without malice or partiality, perform the duties of the office of marshal (or marshal's deputy, as the case may be) of the district during my continuance in
said office, and take only my lawful fees; and that I will support and defend the Constitution of the United States against all enemies, foreign and domestic; that I will bear true faith and allegiance to the same; and I take this obligation freely, without any mental reservation or purpose of evasion, and that I will well and faithfully discharge the duties of the office on which I am about to enter. So help me God.

Subscribed and sworn (or affirmed) to before the undersigned, this—day of—, 18—.

When the marshal or deputy affirms, the words "so help me God" should be omitted.

Copies of the oaths of deputies (unless they are paid salaries by the United States) should not be forwarded to the Auditor for the State and other departments, nor to the Attorney-General, but the original should be filed in the district court. If a deputy gives bond to a marshal no copy thereof should be forwarded.

It is provided in section 782, Revised Statutes:

That when any person who is appointed deputy marshal resides and is more than twenty miles from the place where the district judge resides and is, the said oath of office may be taken by him before any judge or justice of any State court within the same district, or before any justice of the peace having authority therein, or before any notary public duly appointed in such State, or before any commissioner of a circuit court for such district, and shall, when certified by such officer to the said district judge, be as effectual as if taken before such district judge.

The legislative, judicial, and executive appropriation act, approved March 2, 1895, provides:

Hereafter every officer required by law to take and approve official bonds shall cause the same to be examined at least once every two years for the purpose of ascertaining the sufficiency of the sureties thereon; and every officer having power to fix the amount of an official bond shall examine it to ascertain the sufficiency of the amount thereof and approve or fix said amount at least once in two years and as much oftener as he may deem it necessary.

Hereafter every officer whose duty it is to take and approve official bonds shall cause all bonds to be renewed every four years after their dates, but he may require such bonds to be renewed or strengthened oftener if he deem such action necessary.

In the discretion of such officer the requirement of a new bond may be waived for the period of service of a bonded officer after the expiration of a four-year term of service pending the appointment and qualification of his successor: Provided, That the nonperformance of any requirement of this section on the part of any official of the Government shall not be held to affect in any respect the liability of principal or sureties on any bond made or to be made to the United States: Provided further, That the liability of the principal and sureties on all official bonds shall continue and cover the period of service ensuing until the appointment and qualification of the successor of the principal: And provided further, That nothing in this section shall be construed to repeal or modify section thirty-eight hundred and thirty-six of the Revised Statutes of the United States.

SALARIES.

The salaries allowed by law to judicial officers are paid monthly by the disbursing officer of the Department of Justice.

A receipt in the following form should be executed and forwarded to the disbursing clerk of the Department of Justice by each officer in time to reach Washington by the last day of each month:
Voucher No. —. —— ——, 189.—.

Received of ———, disbursing clerk, Department of Justice, ——— dollars, being in full of my salary as ——— of the United States for the ——— District of ——— for the month of ———, 189.—.

Paid by Check No. ———.

Section 1761, Revised Statutes, provides as follows:

No money shall be paid from the Treasury, as salary, to any person appointed during the recess of the Senate, to fill a vacancy in any existing office, if the vacancy existed while the Senate was in session and was by law required to be filled by and with the advice and consent of the Senate, until such appointee has been confirmed by the Senate.

Section 1884, Revised Statutes, provides:

When any officer of a Territory is absent therefrom and from the duties of his office, no salary shall be paid him during the year in which such absence occurs, unless good cause therefor be shown to the President, who shall officially certify his opinion of such cause to the proper accounting officer of the Treasury, to be filed in his office.

Territorial officers must accompany their salary receipts with a certificate in the following form:

I, ———, ——— of the Territory of ———, do hereby certify that I have not been absent from said Territory during the month of ———, 189,—, without leave from the Department of Justice.

—the Territory of ———.

LEAVE OF ABSENCE.

The act of June 20, 1874, provides:

Sec. 2. That every clerk of the circuit or district court of the United States, United States marshal, or United States district attorney, shall reside permanently in the district where his official duties are to be performed, and shall give his personal attention thereto; and in case any such officer shall remove from his district, or shall fail to give personal attention to the duties of his office, except in case of sickness, such office shall be deemed vacant: Provided, That in the southern district of New York said officers may reside within twenty miles of their districts.

Before absenting themselves from their districts for any purpose, marshals must obtain leave from the Attorney-General.

ACCOUNTS.

All accounts of marshals must be rendered quarterly and be transmitted to the Department of Justice within twenty days after the close of the quarter.

The quarters of a fiscal year end, respectively, September 30, December 31, March 31, and June 30.

Accounts for fees should be made upon paper 8½ inches wide and 14 inches long. Only one side of the paper must be used.

Printed blanks must be used in all cases where practicable.
Marshals must render all accounts on accounts current furnished by the Department of Justice. The first account current under each appropriation in each fiscal year must be numbered “One,” and all others in order. Care must be taken to credit the United States with all advances made and to carry the proper balance from one account to the next. Balances should not, however, be carried from one fiscal year to another, nor from an account stated under an old bond to an account stated under a new one. Always carry the balance found by the marshal, and not the balance found by the Auditor.

Disallowances made by the Auditor which are conceded should not be credited in marshals’ accounts current, nor should errors made in a previous account be charged or credited.

It is proper for the marshal to charge the United States with amounts deposited to the credit of the Treasurer of the United States where such deposits have been made to the personal credit of the marshal.

When a marshal whose appointment has not been previously confirmed by the Senate is confirmed, a new commission is issued to him and a new bond must be given.

When a new bond is given, the services rendered and disbursements made under the old and new bonds must be rendered in entirely separate accounts, as though they pertained to different fiscal years. All fees earned prior to the date of the new bond should be included in one account, and those subsequently, in the same quarter, in another. As soon as the new bond is executed all money in the marshal’s hands advanced under the old one on account of disbursement appropriations should be deposited and all balances due the United States closed. A requisition for necessary funds should be made under the new bond at once.

Each disbursement account should include, as far as possible, all expenses incurred by the United States under that appropriation during the quarter covered by the account; that is, there should be but one account current for each quarter under each appropriation. If, however, for any reason it is necessary to render a supplemental account for any quarter, the period covered by the disbursements will be clearly designated in the account current, which must be accompanied by a sworn statement, showing why the charges were not included in the regular quarterly account, and that credit has not heretofore been claimed.

Receipts should always be dated and entirely filled out and show the exact amount paid. Receipts “in full” or for “the above amount” are not proper ones. No signs of alteration or erasure should appear upon a pay roll or receipt. Evidence of such must always be fully explained.

The act of February 22, 1875 (18 Stats., 333), requires that accounts and vouchers of clerks, marshals, and district attorneys be made in duplicate, to be marked, respectively, “original” and “duplicate.” The
original must be forwarded to the Attorney-General and the duplicates retained in the office of the clerk, where they shall be open to public inspection at all times. The duplicate filed in the office of the clerk must, in fact, be a duplicate of the account transmitted to the Attorney-General and not merely a copy. Especial attention is directed to all of the requirements of this act.

When any part of an account is not approved by the court, the item or items not approved should be specified. This matter is especially called to the attention of district attorneys.

Seals to copies of orders approving accounts are required, but seals of clerks to affidavits and to copies of orders relative to subvouchers are not required and charges therefor are not allowed.

Explanations to suspensions made in an account by an Auditor of the Treasury should not be sent to the Department of Justice, but should be sent directly to the Auditor who made the suspensions.

Responses to calls from the Department of Justice for information relative to accounts should be made in duplicate, and when required they should also be under oath. Such responses should always be promptly forwarded in order that the Department may comply with the requirements of the act of July 31, 1894.

FEES OF JURORS.

Jurors should be paid on pay rolls 14 inches wide and 17 inches long, in the following form:

Pay roll of— in attendance at the United States— court for the— district of— during the quarter ending— 189—. Sitting at—.

|--------|------------|----------------------|----------------|--------|-----------------|--------|--------------|---------------------|

The clerk should attach to the pay roll the following certificate:

--- DISTRICT OF---.

--- Division, ss:

I, ————, clerk of the ——— court of the ——— district of ———, do certify that the marshal for said district was ordered by the court to pay the several ——— above named the amounts set opposite their names, as appears from the records of the court.

———, Clerk.

This certificate may be at the bottom of the pay roll or on the back thereof. The seal of the court is not necessary to the certificate of the clerk, and no fee will be allowed therefor. It is not necessary to
forward with the account a copy of the order to pay the jurors, the certificate of the clerk being received as evidence that such an order was entered. It is not necessary for the marshal to make affidavit to each pay roll, his affidavit to the account as a whole being sufficient.

The pay roll should be folded and indorsed as follows:

Voucher No. —. —— District of ——. Pay roll of —— in attendance upon —— court, held at ——, during the quarter ending ——, 18—.

In those districts where jurors are allowed additional mileage for travel by stage or private conveyance, this form should be altered to suit requirements.

Grand and petit jurors should be on separate rolls.

Care should be taken that jurors' names as signed on the pay roll agree with the court's order to pay. The post-office of the jurors, and not merely the county, should be given. In case mileage is allowed for a greater distance than from the post-office to the place of holding court, the distance and direction the juror resides from the post-office should be shown.

Jurors may be allowed per diems for the time necessarily occupied in going to and returning from court.

The number of miles for which travel is allowed should in all cases be the number of miles actually traveled going from the place of residence of the juror to the place where he attended court, and returning, at 5 cents a mile, not one way at 10 cents.

Signatures by cross (x) marks on pay rolls of jurors should be attested by some person other than the marshal himself or his office deputy.

The marshal must keep a record of all payments to jurors and witnesses, showing the dates for which payment was made. These dates of attendance must be shown on the pay rolls.

The marshal should be careful to see that computations are correctly made. The amount of the roll should be carried into the account current, or if not sufficient space therein, to an abstract, the total of which should be carried to the account current. In numbering the vouchers of an account use only one series of numbers and not a separate series for grand and petit jurors or different courts.

FEES OF WITNESSES.

Witnesses who attend before United States circuit or district courts should be paid on a pay roll similar to that prescribed for jurors. They should not, like jurors, receive pay for time occupied in going to and returning from court. The same instructions as to attestation of signatures by cross marks (x) on pay rolls, computations, residence, dates of attendance, mileage, and numbering of vouchers given under head of "Fees of jurors" apply to witness accounts.

Marshals are authorized to pay the fees of witnesses who have attended, in United States cases, before justices of the peace or other
State officers who are authorized to hold preliminary examinations, when such fees are properly taxed by the officers. They should also pay witnesses who attend before examiners of the Pension Bureau in the manner prescribed by the act of July 25, 1882. (2d Supp. R. S., 360.)

The pay rolls of witnesses before commissioners should be on paper 8½ by 14 inches, and should be as follows:

### Pay roll of witnesses before commissioner.

<table>
<thead>
<tr>
<th>United States v.</th>
<th>Charge</th>
<th>before</th>
<th>U. S. circuit court commissioner for the</th>
<th>district of</th>
<th>at</th>
<th>on</th>
<th>189-</th>
</tr>
</thead>
</table>

<table>
<thead>
<tr>
<th>Names of witnesses</th>
<th>Residence</th>
<th>Dates of attendance</th>
<th>Number of days</th>
<th>Amount</th>
<th>Miles</th>
<th>Amount</th>
<th>Total</th>
</tr>
</thead>
</table>

<table>
<thead>
<tr>
<th>Received of</th>
<th>U. S. marshal for the</th>
<th>district of</th>
<th>the amount set opposite our names</th>
<th>Witness to cross marks</th>
</tr>
</thead>
</table>

Having sworn and examined the above-named persons, I certify that they attended as witnesses in behalf of the United States in the above-entitled cause, and are each entitled to the sums set opposite their respective names for attendance and travel as such witnesses, amounting in the aggregate to dollars and cents. It is therefore ordered that the marshal pay said witnesses accordingly this 189-.

U. S. Commissioner.

Certificate of district attorney, under section 981:

I certify that all of the above witnesses were material and important.

U. S. Attorney.

The commissioner's pay roll should be folded and indorsed as follows:

Voucher No. United States v. commissioner. 189- $-

The total of each of these rolls should be carried into an abstract in the order of time when the certificates were issued by the commissioners. The total of the abstract should be carried into the account current.

When more than four witnesses attend before a commissioner in a case, whether they all attend the same day or not, the marshal must not pay the fees of more than four until the district attorney has certified to the materiality and importance of the witnesses, as required by section 981, Revised Statutes.

In those districts where witnesses are allowed additional mileage when travel is by private conveyance or stage to attend upon United States courts, only the usual mileage of 5 cents a mile should be allowed for travel to attend before commissioners.

Signatures by cross mark (x) on pay rolls of witnesses before commissioners should be attested by some responsible person who is not interested in the payment. Neither the commissioner who draws the order for payment nor the deputy marshal who is officiating before the commissioner in the case in which the order is drawn should attest the signatures.
Marshals should impress upon commissioners the importance of promptly forwarding to them their orders to pay witnesses.

No fees should be paid to clerks or other salaried employees of the United States who are sent away from their places of business as witnesses for the Government, but they should receive their actual expenses as provided by section 850, Revised Statutes. This does not, however, apply to officers who are compensated by fees, who are entitled to the ordinary compensation of witnesses. There are certain Government employees for whose expenses, when called as witnesses for the Government in those cases wherein they are employed by direction of their respective Bureaus or Departments, special provisions are made, and who should not be paid by the marshal either fees or actual expenses. These are special agents of the Post-Office Department, special agents of the Pension Office, special agents of the Treasury Department, and Internal Revenue agents. Government officials in rendering actual expense accounts under section 850, Revised Statutes, must itemize and swear to same, and furnish receipts for hotel and livery bills, and all expenditures for which it is practicable to obtain receipts. The affidavits to accounts of this character must include the statement that the witness has not received, and is not entitled, by the regulations of the Bureau or Department in whose service he is or was employed, to claim or receive, and will not claim, from such Bureau or Department, any allowance whatever for those expenses.

These expenses must be passed upon and ordered paid by the court the same as fees to other witnesses.

Care should be taken that no witness fees are paid to officers of United States courts in violation of section 849, Revised Statutes.

EXPERT SERVICES AND TESTIMONY.

The entire compensation of persons serving the Government in the capacity of experts is payable from the appropriation for miscellaneous expenses, United States courts, upon the receipt of proper authority for their employment and payment, and in all such cases no regular per diems or mileage as witnesses should be paid.

The accounts of national bank examiners who may render services as experts, must be supported by an affidavit including the statement that the claimant has not received, is not entitled to receive, and will not claim, compensation for the services or reimbursement for the expenses, from any other source.

SUPPORT OF PRISONERS.

Vouchers of jailers and others for subsistence, etc., of United States prisoners must be made out quarterly on blanks furnished by the Department of Justice. These vouchers must be approved by the
district attorney and the marshal, paid by the marshal, and included in his quarterly account under the appropriation for support of prisoners, United States courts.

Marshals should impress upon jailers the importance of making out their vouchers promptly at the close of each quarter.

The law (act of March 3, 1875, 2d Supp. R. S., 89) provides that on the discharge from any prison of any person convicted under the laws of the United States on indictment and sentenced for a term of imprisonment of not less than six months he or she shall be provided by the warden or keeper of said prison, with one plain suit of clothes and $5 in money, for which charge shall be made and allowed in the accounts of said prison with the United States.

A regulation of the Department of Justice limits the price of the suit of clothes to $15. The receipt of the prisoner for the clothing and cash and for the transportation authorized by the annual appropriation act must accompany the account. The warden or keeper must also certify that these gratuities have been furnished as shown in the account and that the prices charged for clothing represent the actual market values of the articles supplied.

Marshals should scrutinize accounts of jailers, etc., with the utmost care and see that no items are included that are not properly allowable. If in doubt as to the propriety of any particular charge, or if expenses at all unusual are deemed necessary, marshals should ask and obtain authority from the Attorney-General before incurring them.

PAY OF BAILIFFS, ETC.

In this account must be included (1) payments made to bailiffs andcriers, not exceeding three bailiffs and one crier for each court except in the southern district of New York, (2) expenses of district judges while holding courts outside of their districts, (3) expenses of the judges of the circuit courts of appeals, (4) meals and lodging for jurors and bailiffs in charge of jurors in United States cases, when ordered by the court, (5) pay of jury commissioners, $5 a day, not exceeding three days for any one term of the court. In the southern district of New York one crier and five bailiffs for each court may be paid.

Bailiffs and criers can only be paid for actual personal attendance. They can not employ substitutes. They shall be deemed to be in actual attendance when they attend upon the order of the court, but shall not be employed during vacation.

The account must show on what court each bailiff and crier attended and the name of the judge holding same. If charge is made for the attendance of bailiffs and criers at the same time and place on both the circuit and district courts, it must be shown that both courts were in session and presided over by different judges.
The voucher must give each day for which attendance is charged. Each bailiff and crier should make affidavit as to his attendance, which may be as follows:

**UNITED STATES OF AMERICA,**

--- **District of ---**:--- makes oath before --- ---, clerk of the United States --- court for said district, that he actually attended said court as --- on each of the days for which a charge is made, and that he is justly entitled to the amount charged.

Sworn to and subscribed before me this --- day of ---, 18---.

--- ---

Clerk.

The expenses of district judges holding court outside of their districts must be itemized and certified to.

The expenses of judges of the circuit courts of appeal, not exceeding $10 per day, may be paid upon their certificates, which should be in the following form:

**UNITED STATES OF AMERICA,**

--- **District of ---**:---

I, --- ---, of the ---, do hereby certify that I attended the --- term, 18---, of the United States circuit court of appeals, held at the city of ---, the same being a place other than where I reside, and that I attended said term --- days, commencing on the --- day of ---, 18---; and also that the number of days engaged in attending said court, going to and coming from said court, were at least ---; and that my reasonable expenses for travel and attendance amounted to the sum of --- dollars, which sum is justly due me for such expense of travel and attendance at said term of court.

Dated ---, 18---.

Received of --- ---, United States marshal for the --- district of ---, the sum of --- dollars, in full of the above account.

Meals and lodging for jurors and bailiffs in charge of jurors can only be allowed in United States cases and when ordered by the court. Vouchers must be itemized and accompanied by a copy of the order directing the marshal to furnish meals. Such order may be as follows:

**UNITED STATES**

It is ordered by the court that the marshal furnish meals to the --- --- jurors engaged in the trial of this case.

A true copy from the minutes.

--- ---

Clerk.

The voucher of a jury commissioner must give the court for which service was performed and the dates for which per diems are charged. The voucher should be sworn to by the jury commissioner.

Messengers are not payable from this appropriation, but from the appropriation for miscellaneous expenses, United States courts.
MISCELLANEOUS EXPENSES, UNITED STATES COURTS.

GENERAL DIRECTIONS.

Marshals must be careful to obtain authority before incurring expenses under this appropriation. Emergencies may arise when it will be impossible to first obtain authority from the Department, but in such cases the facts must be clearly set forth and these particular expenditures specially approved by the court. When applying for authority to incur an expense the amount of the same must always be given. A failure to do this will occasion delay.

Vouchers of disbursements under “Miscellaneous expenses, United States courts” must be rendered on amended Form 9, copies of which will be furnished upon application to the Department of Justice. Forward the abstract of disbursements with regular account current. The date when each item of expense was incurred and the date of payment must appear on the voucher. Form 9 will not be presented as heretofore for a preliminary approval by the Attorney-General.

PER DIEMS, ETC.

Per diems of jury commissioners, criers, and bailiffs, expenses of a judge holding a term of court outside of his judicial district, and meals and lodging for jurors in United States cases and of bailiffs in attendance upon the same, are not payable from this appropriation.

FUEL, LIGHTS, ETC., IN GOVERNMENT BUILDINGS.

Where the United States court rooms are located in United States buildings the following expenditures are allowed by the Treasury Department, and application therefor should be made to the custodian of the building, who will refer the matter to the Secretary of the Treasury for approval: Safes, furniture and repairs; carpets, fuel, light, water, ice; miscellaneous supplies for janitors and firemen in the care of the furniture, buildings, and heating apparatus; washing towels for United States court officials; services of janitors, laborers, and watchmen, in connection with the care of the rooms occupied by court officials. Towels, toilet soap, and matches, however, are not furnished by the Treasury Department for the use of court officials, and authority for their purchase must be obtained.

RECORDS.

Applications for the purchase of records must state the character of the books, for whose use, and for what purpose they are needed, accompanied with a statement from the presiding judge that such records are needed by the officer who applies for them, and that they are for the use of the court.

Authority must be obtained from the Department of Justice before any expense is incurred for books needed for official use. This requirement must be strictly observed.
Marshals will be authorized to purchase for the official use of the clerks of the several courts only those court records to the application for which there is attached a certificate of the court to the effect that they are absolutely necessary for recording the proceedings of the court and come within the purview of section 830, Revised Statutes. Separate requests should be submitted by clerks for authority to purchase any books which may be needed other than the court records above mentioned.

**BIDS.**

If the proposed expenditure, the amount of which must be stated in every instance, is in excess of $10, bids from two or more prominent dealers must accompany the application.

**STATIONERY.**

Stationery will not be supplied to the marshal, district attorney, or a clerk of the court from this appropriation. When a judge needs stationery, including envelopes, for his official use he should make out an itemized list, which the marshal should forward to the Department of Justice. The act of January 12, 1895, contains the following proviso:

All blanks and letter heads for use by the Judges and other officials of the United States courts other than such as are required to be paid for by any of these officers out of the emoluments of their offices shall be printed at the Government Printing Office upon forms prescribed by the Department of Justice, and shall be distributed by it upon requisition.

Under this provision the blanks and letter heads mentioned will be furnished by the Department of Justice. They will not be paid for when not printed at the Government Printing Office. Requisitions should be accompanied with samples and the number of each desired must be stated.

When the marshal delivers stationery to the judge he must obtain the receipt of the judge for same.

Requests for stationery for a term of court must state the time and place where court is to be held and the probable duration of the term. The list must be itemized and the lowest price of each article given. This stationery when purchased is for public use during the term of court and is to be kept in the official custody of the marshal.

Expenses for stationery must be as economical as possible, both in amounts and prices. Unnecessary and unusual articles must not be purchased, and the marshal will be expected to include in his application only such items as are absolutely needed in the transaction of public business. Any application for fancy articles or items for personal use will be disapproved.

**LIGHTS, FUEL, AND ICE.**

Lights, fuel, and ice, used by the court or in the office of the judge (in rented rooms) during the intermission of court, will be authorized.
STENOGRAPHERS, EXPERTS, AND INTERPRETERS.

Authority to employ stenographers, experts, and interpreters, must be obtained in advance. If, however, an emergency should arise requiring the temporary employment of such persons, in causes in which the United States is interested, bills for their services will be considered on their merits, upon the special approval of the court and a proper showing of the existence of the emergency.

JANITORS, LABORERS, AND MESSENGERS.

Janitors for rooms rented for court purposes, laborers at a term of court, and messengers for a judge can only be paid upon authority previously given by the Attorney-General.

TELEGRAMS.

(1) The use of the telegraph by attorneys, marshals, and clerks in communicating on the business of their respective offices is payable from their official emoluments at the rates fixed by the Postmaster-General.

(2) The mail must be used in communicating with the Department of Justice about the business of the courts, unless otherwise directed. Messages from the Attorney-General, not on business of the courts, and answers, are paid by the Department of Justice at Washington.

(3) Messages sent by a marshal asking for or about an advance of funds, or about the condition of an appropriation, or his accounts, or the failure to receive a draft, should be sent only in case of an emergency, and the expenses thereof are payable from his emoluments. The marshal must make requisition for funds by mail in advance of a term of court, early enough to avoid the use of the telegraph.

(4) Concerning matters of importance that admit of no delay an attorney or marshal may telegraph to the Department. Whether the cost of the message is to be paid by the Department or not will depend upon the character of the message.

(5) If the cost is properly payable, the original message and the return message will be paid by the marshal out of miscellaneous expenses of courts, under rates established by the Postmaster-General, copy of which can be obtained by applying to the Postmaster-General; if payable by the officer he will pay it out of his emoluments.

(6) Copies of telegrams must always be furnished.

(7) Messages from a judge to the Department on court business and the return message will be paid by the marshal as a miscellaneous expense, as will messages from a judge to another judge, solely on his judicial business.

(8) Telegrams must be in the fewest words consistent with their meaning.

(9) Telegraphic rates are regulated by the Postmaster-General.
Telegrams sent in violation of the above rules will be at the cost of the sender individually, and will in no instance be paid by the Government.

FURNITURE.

No furniture for rented rooms is to be purchased without previous authorization, except as provided in section 830, Revised Statutes United States.

TELEPHONES.

Telephone rentals will not be authorized from “Miscellaneous expenses, United States courts.”

FEES AND EXPENSES OF MARSHALS, UNITED STATES COURTS.

The marshal and each deputy should make out a voucher for all services for which the United States is liable, payable from this appropriation, performed by such marshal or deputy during the quarter. The voucher of the marshal for personal services should be No. 1, and should contain all charges for services of the marshal, except commissions on disbursements, which should not be included in the voucher, as they are charged separately in the account current.

Each sheet must show the title of the case, the name of the officer making the service, the offense charged, the date of the issuance of the writ, by whom issued; if a warrant, by whom complaint was made, and his official title, if he have any, place and date of receiving the writ, when and from what place travel to serve was made, date of service, place of service, showing the county and distance and direction from the post-office nearest the place of service, and where return was made. Each page must contain fees earned in one case only. Only one side or page of each sheet must be used, the pages numbered, the date when each item of service was performed given on the left-hand margin of the page (do not “ditto”), each item of service definitely stated, the items of charge on each page footed and the footing carried to the next page or into an abstract for that voucher. The pages of the voucher should follow consecutively—that is, in the order of time as the several cases were disposed of. All the charges for services of a deputy during a quarter should be included in one voucher, and where he renders service in a case in which he did not make the arrest, reference should be made to the voucher and page where the charge for arrest appears and to all vouchers which contain any charges in the same case. The several pages of a voucher should be neatly fastened together with the affidavit of the officer, and the footing of the voucher carried to the general abstract of the account.

The following is a form for charging fees earned in serving a warrant, which is approved by the Attorney-General and the accounting officers of the Treasury:
The United States of America to --- ---, U. S. marshal, Dr., for services by Deputy --- ---, in case of The United States vs. --- ---.

Residence, --- ---. Offense charged, --- ---. Warrant issued, --- ---, 189-, by --- ---, U. S. commissioner at --- ---. Complaint made by --- ---. Warrant received by Deputy --- ---, at ---, 189-. Warrant executed --- ---, 189-, in --- County, --- miles --- from --- P. O. Warrant returned, with the defendant, --- ---, 189-, before U. S. Commissioner --- ---, at --- ---.

<table>
<thead>
<tr>
<th>Dates.</th>
<th>In the above case fees were earned and expenses incurred, as follows.</th>
<th>Dolls.</th>
<th>Cts.</th>
</tr>
</thead>
<tbody>
<tr>
<td>189</td>
<td></td>
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</tr>
<tr>
<td></td>
<td>1. Travel, in going only, to serve warrant, from ......... (travel actual and necessary), .... miles, at 6 cents per mile.</td>
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<td>2. Expenses incurred while endeavoring to arrest:</td>
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<td>Total</td>
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<td>Maximum allowed by law for .... days.</td>
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<td>3. Serving warrant (defendant taken into custody)</td>
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<td>4. Mileage, transporting self and prisoner .... miles, and .... guard, .... miles, 10 cents per mile each.</td>
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<td></td>
<td>5. Actual expenses feeding prisoners, as follows:</td>
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<td></td>
<td>Total charged in account.</td>
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<td></td>
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<td>6. Committing defendant to jail temporarily.</td>
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<tr>
<td></td>
<td>7. Transporting prisoner to jail at .... miles at 10 cents per mile for deputy, prisoner, and .... guards.</td>
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<td></td>
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<tr>
<td></td>
<td>8. Committing defendant.</td>
<td></td>
<td></td>
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<tr>
<td></td>
<td>10. Discharging defendant.</td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td>11. Attendance of Deputy .... days before Commissioner</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

Memo. of subpoena service.

<table>
<thead>
<tr>
<th>Issued.</th>
<th>Received.</th>
<th>Travel.</th>
<th>Place of service.</th>
<th>Served on.</th>
</tr>
</thead>
<tbody>
<tr>
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</tbody>
</table>

Amount carried to abstract.

Remarks: ..... Voucher No. ..... page.
A similar form, altered to meet the requirements by giving the same information as to the issuance of the writ, date, place, and time of service, can be used for the service of court warrants and subpoenas.

**ATTENDANCE ON COURT.**

The account must show the place of attendance, whether it was on the circuit or district court, and the days for which charge is made. If the marshal was absent and attendance was by deputy, the name of the deputy and the dates he attended must be shown. The order of approval must show that on each day for which attendance is charged the court was open for the transaction of business and business was actually transacted in court, or the attendance was under sections 583, 584, 671, 672, or 2013, Revised Statutes.

**MILEAGE.**

When mileage is charged, the place from and to which travel was made must be given. When the marshal travels to attend court from a place other than his residence, he must give the reason for such travel. When travel is made to serve process, the account must show where, when, and by whom the writ was issued; where it was received by the marshal or deputy making the service, and the place from and to which travel was made. Locate the place by reference to the nearest post-office, showing distance and direction therefrom. When travel is by other than the nearest route, give the reasons therefor.

Marshals in "double-fee" districts are not entitled to charge double mileage to attend court, the Supreme Court of the United States having held that such mileage is not a fee which is to be accounted for in an emolument return, but is given in lieu of expenses to travel to attend court. (See case of Thomas Smith v. The United States, decided May 20, 1895.)

When two or more writs are served upon the same trip only one mileage can be allowed. No mileage can be allowed upon any writ not executed or when the travel was without cost to marshal or deputy. When an arrest is made without process no mileage to serve can be allowed. No transportation mileage can be allowed when defendants are not taken before the nearest circuit court commissioner or the nearest judicial officer having jurisdiction under existing laws for a hearing, commitment, or taking bail for trial, as provided by the act of August 18, 1894.

Under the provisions of this act the marshal has the choice of two officers before whom he may take a person charged with crime, namely, (1) the circuit court commissioner nearest to the place where the arrest is made, or (2) the judicial officer having jurisdiction under existing laws nearest to the place where the arrest is made. No mileage will be allowed marshals who do not comply with this provision as above explained.
When an officer has two or more writs in his hands which can be executed upon the same trip it is his duty to do so, and in such cases only one mileage will be allowed.

When a warrant is executed, and the witnesses in the case can be served upon the same trip, mileage for the additional travel necessary to serve them will be allowed.

**EXPENSES ENDEAVORING TO ARREST AND FOR SUBSISTENCE OF PRISONER.**

Marshals and deputies are required to furnish itemized statements of expenses incurred while engaged in endeavoring to arrest on criminal warrants, and of expenses incurred in subsistence of prisoners while in custody. Receipts must be furnished for such expenses whenever it is practicable to obtain them. If impracticable, satisfactory explanation must be made as to each item. It is considered practicable to obtain receipted bills for hotel and livery expenses in every instance. The receipts must be attached to the page of the voucher to which they relate. It is suggested that the marshal have printed, and furnish to his deputies, small tablets or books in the following form:

<table>
<thead>
<tr>
<th>Prisoner</th>
<th>Deputy</th>
<th>Place</th>
<th>Date</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
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<td></td>
<td>189</td>
</tr>
<tr>
<td>Horse hire</td>
<td>Breakfast</td>
<td>Dinner</td>
<td>Supper</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Place</td>
<td>Date</td>
<td></td>
<td>189</td>
</tr>
<tr>
<td>Breakfast</td>
<td>Dinner</td>
<td>Supper</td>
<td>Lodging</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Received payment</td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

The total expenses incurred in endeavoring to arrest should be given, but only $2 of the expense for each day should be charged in the account.

No expense can be allowed as an expense endeavoring to arrest after the arrest has been made. The maximum allowance for any one day in double-fee districts is $2, the same as in single-fee districts. Expenses endeavoring to arrest can be allowed even though the arrest
is not made, but in such cases it must be shown just what was done by the officer on each day.

When prisoners are placed in jail, no fees or charges of the jailer should be paid from this appropriation. Such charges are properly payable from the appropriation for support of prisoners, United States courts, upon vouchers rendered by the jailer in the usual manner.

Prisoners in the custody of an officer must be subsisted in the most economical manner. Extravagant charges will not be allowed.

**GUARDS.**

Guards are allowable only where it is actually necessary for the safe transportation of the prisoner. The practice of employing train hands or drivers of vehicles as guards is not approved by the Attorney-General. When a charge is made for transportation of a guard, a certificate must accompany the voucher, which should be in the following form:

```
Place ---,
Date ---,
I certify that I was employed and acted as guard over ---, a United States prisoner in charge of ---, United States marshal, on ---, 189-, from --- to ---, a distance of --- miles.

P. O. address, ---.
Occupation, ---.

Guard.
```

Whenever a guard is employed the circumstances which required such assistance must be shown under the head of "remarks."

The marshal is entitled to 10 cents a mile for the transportation of necessary guards, from which he must pay the guard.

No per diem fee can be allowed for the attendance of a guard upon an examination before a commissioner or other committing magistrate.

**ACTUAL EXPENSES IN LIEU OF MILEAGE.**

For any travel for which a marshal is entitled to charge mileage, actual expenses, in lieu of such mileage, may be charged if the marshal so elects. He can not, however, be allowed mileage for part of a trip and expenses in lieu of mileage for part of the same trip. He must elect to take either all mileage or all expenses.

Where expenses are charged they must be itemized and supported by proper receipts.

**EXPENSES TRANSPORTING CONVICTS TO PENITENTIARIES OUTSIDE OF THE DISTRICT.**

Marshals are allowed actual expenses only incurred in transporting convicts to penitentiaries outside of their districts. Accounts for these expenses are rendered on "Criminal Form No. 6," supplied by the Department of Justice. Prior to October, 1894, it was the practice to
have these accounts approved separately by the court and to forward them to the Department of Justice for preliminary approval. This is no longer necessary, but they will be rendered in the manner indicated by the instructions contained in the "Criminal Form No. 6" referred to.

ARRESTS OUTSIDE OF DISTRICT.

Writs of arrest do not run outside of the district in which they are issued. No mileage or expense can be allowed for travel made outside of the district to serve such writs. As a rule a marshal of one district has no right to go into another district to make an arrest. If, however, he takes the proper papers into another district, upon which a warrant is there issued, he may, if deputized by the marshal of that district, serve the warrant; and if the fees are waived, charge the same in his account. The deputization and waiver of fees must accompany the account. In such a case a warrant of removal must be issued as provided by section 1014, Revised Statutes. No fees can be allowed in such a case for any service performed prior to the time the writ was received in the district in which served.

While the above fees are allowable, the better practice, and the one approved by the Attorney-General, is to send the necessary papers to the proper official in the district in which the defendant is located, and have process there issued and served by the marshal for that district.

VENIRES.

The fees for serving writs of venire facias for any one term of court are limited to $50, and this limit applies to double-fee as well as single-fee districts.

In charging such fees the term of court, and whether for petit or grand jury, or for the district or circuit court, for which venire was issued, must be shown. Also the name and place of residence of each person served, and the number of miles traveled to serve him. Whenever charges appear in more than one place in an account, or in two or more accounts, for the same term, reference should be made from one to the other.

ATTENDANCE BEFORE COMMISSIONERS.

A marshal is entitled to a per diem fee of $2 for his own and the attendance of each deputy not exceeding two necessarily attending before commissioners upon examinations of prisoners charged with crime. He can not, nor can a deputy, earn more than one fee for attendance in more than one case on any one day. Attendance of guard can not be allowed for. It must be in person or by deputy who has taken the oath prescribed by law. Only necessary deputies can be allowed for. Usually not more than one officer is necessary, and when more are charged for the necessity must be shown.
KEEPING PROPERTY ATTACHED ON MESNE PROCESS.

When compensation for keeping property attached on mesne process is allowed by the court, a copy of the petition and order of the judge must accompany the account.

FEES FOR SERVING FINAL PROCESS.

When any charges are made under paragraph 6 of section 829, Revised Statutes, full explanation should be made, and where services are charged for under the fee bill of any State, specific reference to the provision of State law relied upon must be made.

ARRESTS UPON CAPIAS OR BENCH WARRANT.

The act of March 3, 1887 (2d Supplement, Rev. Stat., 564), provides:

Hereafter no part of the appropriations made for the payment of fees for United States marshals or clerks shall be used to pay the fees of United States marshals or clerks upon any writ or bench warrant for the arrest of any person or persons who may be indicted by any United States grand jury, or against whom an information may be filed, where such person or persons is or are under a recognizance taken by or before any United States commissioner, or other officer authorized by law to take such recognizance, requiring the appearance of such person or persons before the court in which such indictment is found or information is filed, and when such recognizance has not been forfeited or said defendant is not in default, unless the court in which such indictment or information is pending orders a warrant to issue.

In all cases where charge is made for serving a capias or bench warrant it must be shown whether the defendant was already in custody or on bail, and if the latter it must be shown whether the recognizance was forfeited or the defendant in default, or whether the warrant was issued upon the order of the court in which the indictment or information is pending. It is not sufficient that fees may be allowed that the warrant was issued under a general practice of the court or by the direction of the district attorney, but must be upon the order of the court.

INTERNAL-REVENUE CASES.

The act of August 18, 1894, contains the following provision:

And hereafter no part of any money appropriated to pay any fees to the United States commissioners, marshals, or clerks shall be used for any warrant issued or arrest made, or other fees in prosecutions under the internal-revenue laws, unless said fees have been taxed against and collected from the defendant, or unless the prosecution has been commenced upon a sworn complaint setting forth the facts constituting the offense and alleging them to be within the personal knowledge of the affiant, or upon a sworn complaint by a United States district attorney, collector, or deputy collector of internal revenue or revenue agent, setting forth the facts upon information and belief, and approved either before or after such arrest by a circuit or district judge or the attorney of the United States in the district where the offense is alleged to have been committed or the indictment is found.

The certificate of the district attorney in the form indicated on the account current for fees and expenses of marshals must accompany marshals' accounts for fees and expenses whenever any charges are made for services rendered in prosecutions for violations of the internal-revenue laws.
CIVIL CASES TO WHICH THE UNITED STATES IS A PARTY.

Whenever charge is made for fees earned in a civil case to which the United States is a party, the nature of the proceedings and the cause of action must be shown.

If the fees were earned in an action brought upon the bond of a postmaster or mail contractor, they should not be charged in the account rendered under the appropriation for "Fees and expenses of marshals, United States courts," but separate accounts should be rendered quarterly under the appropriation for "Mail depredations and post-office inspectors."

FEES AND COSTS IN EXTRADITION CASES.

Fees and costs incurred in extradition cases are not payable from the regular appropriations for the United States courts, but from an appropriation under the control of the Secretary of State, entitled "Fees and costs in extradition cases." Such fees and costs should be rendered in separate accounts and forwarded to the Department of Justice for proper action and reference.

AFFIDAVIT OF DEPUTY TO VOUCHER.

The deputy must swear to his voucher. The affidavit should be in the following form:

--- DISTRICT OF ---:
---, deputy United States marshal for said district, being duly sworn, deposes and says that the above account for --- dollars and --- cents for services performed and expenses incurred by him from --- to ---, 189--, is true and correct; that the services therein charged for were actually and necessarily rendered; that the expenses charged were actually and necessarily incurred and paid by him in lawful money; that in each case where an arrest was made the defendant was taken before the nearest circuit court commissioner, or the nearest judicial officer having jurisdiction under existing laws, and that all mileage charged is for travel made with cost to the marshal or deputy.

---,
Deputy Marshal.

Sworn to and subscribed before me this the --- day of ---, 189-.
---,
Clerk.

This affidavit must be executed before an officer having general authority to administer oaths, and must be on or attached to the last page of the voucher. It is not necessary to swear to each page of the voucher, but one oath as to all the services and charges of the deputy during a quarter is sufficient. If any fees for making arrests or for travel are made by the marshal, he also must make affidavit as to the defendants having been taken before the nearest commissioner or judicial officer, and that the travel was not without cost.
The act of June 20, 1878 (2d Supp. R. S., 202), provides:

That hereafter all advertisements, notices, proposals for contracts, and all forms of advertising required by law for the several departments of the government may be paid for at a price not to exceed the commercial rates charged to private individuals, with the usual discounts; such rates to be ascertained from sworn statements to be furnished by the proprietors or publishers of the newspapers proposing so to advertise.

When a charge for a payment to a publisher appears in a marshal’s account he must furnish a copy of the advertisement with the affidavit of the publishers setting forth the rates, and that same are not in excess of the commercial rates charged to private individuals with the usual discounts.

Section 833 of the Revised Statutes provides:

Every district attorney, clerk of a district court, clerk of a circuit court, and marshal, shall, on the first days of January and July, in each year, or within thirty days thereafter, make to the Attorney-General, in such form as he may prescribe, a written return for the half year ending on said days, respectively, of all the fees and emoluments of his office, of every name and character, and of all the necessary expenses of his office, including necessary clerk-hire, together with the vouchers for the payment of the same for such last half year. He shall state separately in such returns the fees and emoluments received or payable under the bankrupt act; and every marshal shall state separately therein the fees and emoluments received or payable for services rendered by himself personally, those received or payable for services rendered by each of his deputies, naming him, and the proportion of such fees and emoluments which, by the terms of his service, each deputy is to receive. Said returns shall be verified by the oath of the officer making them.

Attention is also directed to sections 834, 837, 841, 842, 843, and 844 of the Revised Statutes.

If these returns are not rendered within the time prescribed by law no further advances of money for court purposes, nor any payments on account of fees earned, can be made to marshals so long as they are delinquent.

The form prescribed by the Attorney-General, and which will be used hereafter by marshals in making their returns, is as follows:

Return of fees and emoluments of ————, marshal of the United States for the ———— district of ————, from ———— to ————, and of moneys paid out by him during the same period for the services of his deputies, and for the necessary expenses of his office.

DEBIT.

First. Fees and emoluments earned from the United States, as shown by accounts rendered under the appropriation for "Fees and expenses of marshals, United States courts" $ .......................... 

Second. Fees and emoluments earned from the United States in suits brought by the United States on bonds of postmasters and mail contractors, as shown by accounts rendered under the appropriation for "Mail depredations and post-office inspectors" $ ..........................
Third. Fees and emoluments earned from the United States and included in accounts rendered under the appropriation for "Fees and costs in extradition cases" .................................................................

Fourth. Fees and emoluments earned from the United States and included in accounts rendered under appropriations not herein otherwise stated........

Fifth. Fees and emoluments earned from the United States and not included, or to be included, in any account rendered to the United States ........

Sixth. Fees and emoluments earned from individuals and corporations .........

Seventh. Fees and emoluments earned in the performance of any duty imposed by any provision of law not herein otherwise stated............................

Eighth. For salary during same period ...........................................

Total emoluments earned by marshal and deputies ....................

Credit.

For the amount of expenses incurred by marshal in serving process, as per accompanying itemized statement ..........................................

For the amount paid deputies for their services and expenses, as per accompanying Abstract A .............................................................

For the amount of mileage to attend court, as charged in accounts rendered to the United States ........................................

For the amount of clerk hire, as per voucher No. ——

For the amount paid for rent of office, as per voucher No. ——

For the amount paid for furniture for same, as per voucher No. ——

For the amount paid for stationery, as per voucher No. ——

For the amount paid for telegrams, as per accompanying abstract marked ——, and receipts No. ——

For the amount paid for fuel, as per voucher No. ——

For the amount paid for lights, as per voucher No. ——

Total credits..................................................................................

Total net emoluments ..................................................................

Maximum compensation allowed by law, at the rate of $6,000 per annum

Balance (if any) due the United States, a certificate of deposit for which (if received) is herewith ....................................................

I, ———, marshal of the United States for the ——— district of ———, do solemnly swear that the foregoing return with all vouchers and abstracts accompanying, is in all respects just and true, according to the best of my knowledge and belief; and that I have neither received, directly or indirectly, nor directly or indirectly agreed to receive, or be paid, for my own or another's benefit, any other money, article, or consideration than therein stated; nor am I entitled to any emoluments for the period therein mentioned other than those therein stated. So help me God.

Signed and sworn to before me this ——— day of ———, 189—.

UNITED STATES OF AMERICA,

I, ———, judge of the ——— court for the ——— district of ———, do hereby certify that I have carefully examined the vouchers referred to in the foregoing return; that the disbursements charged therein for clerk hire and office expenses were necessary to the convenient transaction of the business of the marshal's office, and that the sums paid therefor are, in my opinion, reasonable.

Blank forms for these returns will be furnished by the Department of Justice.
The gross amounts of the accounts shown under the several headings of the debit side of the return will be given, without any deductions for expenses. For instance, if a marshal renders two accounts current under the appropriation for fees and expenses of marshals, United States courts, during a half year, in each of which he claims $5,000, the proper amount to be carried into the emolument return for that half year under the heading "Fees and emoluments earned from the United States as shown by accounts rendered under the appropriation for fees and expenses of marshals, United States courts," is $10,000. The only exception to this is when amounts paid witnesses, etc., are included in the same account with fees earned in an extradition case. Here only the amount of the fees and the expenses in earning those fees which are claimed in the account should be given. Under the headings "Fees and emoluments earned from the United States and not included or to be included in any account rendered to the United States," "Fees and emoluments earned from individuals and corporations," and "Fees and emoluments earned in the performance of any duty imposed by any provision of law not herein otherwise stated," the gross amounts, without any deductions of expenses, should be given. No distinction is to be made between fees received and not received. All fees earned are to be returned. No deductions should be made on account of disallowances made in accounts by the accounting officers. Upon the settlement of emolument returns by the Treasury Department proper credits are made on account of disallowances.

An abstract, to be marked A, showing the gross amount of fees and emoluments, received or payable for services rendered by the marshal personally, the amount of expenses incurred by him in the service of process, and the gross earnings, expenses, net earnings, etc., of each deputy must be furnished. This abstract must be in the following form:

*Statement of the gross earnings, expenses, net earnings, etc., of the United States marshal for the—district of—during the period from— to —, 189—.*

<table>
<thead>
<tr>
<th>Name of officer</th>
<th>Gross earnings from the United States</th>
<th>Expenses incurred in earning fees from the United States</th>
<th>Net earnings from the United States</th>
<th>Gross earnings from individuals and corporations</th>
<th>Expenses incurred in earning fees from individuals and corporations</th>
<th>Net earnings from individuals and corporations</th>
<th>Total gross earnings</th>
<th>Total expenses as per separate itemized and sworn statement</th>
<th>Total net earnings</th>
<th>Proportion of fees and emoluments which, by terms of his service, deputy is to receive</th>
<th>Deputy’s share of fees</th>
<th>Paid deputy’s fees and expenditures</th>
<th>Receipt number</th>
</tr>
</thead>
<tbody>
<tr>
<td>Total</td>
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</tbody>
</table>
Blank abstracts in the above form will be furnished by the Department of Justice.

The amount of expenses incurred by the marshal personally in serving process should be carried into the credit side of the emolument return under the head, "Expenses incurred by marshal in serving process as per accompanying itemized statement." Only expenses incurred in serving process should be included in this statement, and not office expenses, nor expenses incurred in traveling to and attending upon court.

The total amount paid deputies as shown by Abstract A should be carried into the credit side of the emolument return under the head, "Paid deputies for their services and expenses as per accompanying Abstract A."

Deputies must receive for the amounts paid them as fees and expenses, which receipts should be numbered in the order their names appear in the abstract. Receipts may be in the following form:

Received of ————, United States marshal for the ———— district of ————, ———— dollars and ———— cents in full for my services and expenses as a deputy marshal, for the period from ———— to ————, 189—.

—————, Deputy.

No credit can be allowed a marshal for a payment to a deputy who has not been regularly appointed and taken the oath of office prescribed by section 782, Revised Statutes.

No more than 75 per cent of the net earnings of a deputy can be paid, and the proportion of fees and emoluments which the deputy is to receive must be fixed definitely in advance. This proportion, whether one-half, two-thirds, etc., of the net earnings, must be shown in Abstract A.

The Attorney-General has prescribed a limit of $3,000 to be paid any deputy as his share of net earnings during any calendar year, or that rate for any part of a year. If a deputy's net earnings during the first half of a year are $2,500, and he should not actively engage in the performance of duties during the entire second half of the year, he should only be paid an amount in proportion to the time actively employed at the rate of $3,000 per annum or the rate fixed for his compensation.

In view of the intimation in the decision of the United States Supreme Court in the case of Thomas Smith v. The United States (decided May 20, 1895), a marshal is not to be charged with the mileage earned by him in traveling to attend court. Therefore, as such mileage has been charged on the debit side of the return, he is entitled to take credit for the total amount of such mileage appearing in his accounts, and he should carry such amount into the credit side of the return under the head, "Amount of mileage to attend court as charged in accounts rendered to the United States."
The expenses incurred in the service of process, for which credit is claimed in the emolument return, must be itemized and sworn to. The following is a form which it is believed will answer the purpose in most districts:

**Expense account.**

<table>
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<tr>
<th>Date</th>
<th>Case</th>
<th>Endeavoring</th>
<th>Horse hire</th>
<th>Rail-road fare</th>
<th>Subsistence</th>
<th>Total</th>
<th>Expenses after arrest</th>
<th>Horse hire</th>
<th>Rail-road fare</th>
<th>Subsistence en route</th>
<th>Paid guard</th>
<th>Total expenses</th>
</tr>
</thead>
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</tbody>
</table>

**UNITED STATES OF AMERICA,**

**District of _______**:

I, ________, a deputy United States marshal for the _______ district of _______, being duly sworn, depose and say that the foregoing itemized account of actual expenses is just and true, and that every item therein charged was actually necessary and paid by me as rendered.

______, Deputy.

Sworn to and subscribed before me this _______ day of _______, 189_.

If for any reason this form should not be suitable in any particular district, it may be altered to meet requirements.

An abstract to be marked B must be furnished, showing all accounts rendered for services performed during the half year, the appropriation under which rendered, the amount for which each was rendered, and the period covered by each. This does not refer to disbursement accounts, but only accounts containing fees need be given.

An abstract to be marked C will show list of all fees that have been collected in United States cases:

1. From clerks of United States courts.
2. From Army paymasters.
3. From all other sources.
4. How accounted for.

In this connection attention is invited to sections 3617 and 3619, Revised Statutes, which require that the gross amount of all moneys coming into the hands of officers be deposited without deduction for fees, costs, etc.

An abstract to be marked D, showing all fees earned, whether received or not, from individuals and corporations, must be furnished. This must show:

1. The case.
2. Term of court.
3. The total amount.
The total amount of the fees and expenses shown by this abstract should agree with the total of the column of Abstract A, headed “Gross earnings from individuals and corporations.”

OFFICE EXPENSES.

The marshal is entitled to take credit for proper office expenses, including necessary clerk hire.

Vouchers must be furnished for expenses of every nature, and the amounts carried into the emolument return under the proper heads.

The date of letters of authority from the Attorney-General should be shown on the vouchers.

Charges for telegrams must be for those only sent or received relating strictly to matters of public business, at Government rates, and where the use of the mails would not answer. Copies of telegrams must be furnished in every instance. Receipts for amounts paid must be taken and all abstracted, the total of the abstract being carried to the emolument return.

GENERAL DIRECTIONS.

Just as much care will be observed in rendering an emolument return when the emoluments do not reach the maximum as when there is an excess.

When the return shall have been stated, as hereinafter required, the marshal will verify the same by his oath or affirmation precisely in the printed form. Should he affirm before the oath be administered by any officer other than a judge or clerk of a United States court, the official character of such officer, his authority to administer oaths and affirmations, and the genuineness of his signature are required to be certified to by the clerk of a court of record under the seal of such court, and such certificate to be attached to and forwarded with the return.

The marshal’s first return will embrace the time beginning with the day of his entry upon the duties of his office, and extending to and including the day upon which that half year terminates. So, when his term expires or he be superseded, his last return will commence with the half year and end with the day upon which his official character shall have terminated.

The marshal will in no case include in his regular return any fees or emoluments earned during any period of time other than the proper half year or fraction thereof, as required by law.

Should a vacancy occur by the death of the marshal, the deputy having charge of his office will be permitted to state and verify all the emolument returns due from the deceased marshal; but in all other cases the returns must be verified by the oath or affirmation of the marshal himself, and, to this end, his accounts should be kept in such a manner as to enable him, without hesitation or delay, to complete his return, and to verify the same.
The following are regulations prescribed by the Solicitor of the Treasury, under authority of Sections 377 and 379, Revised Statutes, which must be fully and carefully complied with:

1. On taking the oath of office and filing their official bonds, all marshals will immediately advise the Solicitor of the Treasury by letter to that effect. They will each, at the earliest practicable period, obtain from their respective predecessors in office, the books and the other property of the United States in their hands.

2. On the receipt of each process in civil United States cases (except subpoenas for witnesses), marshals will report the same to this office, stating the title and nature of the suit, and the name of the process, and, if an execution, distress warrant, or other writ requiring the collection of money, or the sale or seizure of property, the amount of the debt, or a description of the property to be sold or seized, and the amount of the costs, with the time from which they are directed to collect interest. They will also give to the United States attorney duplicate receipts expressing the above particulars.

3. Where a marshal, in a United States case, makes a seizure or a levy, he will report to the Solicitor a full description of the property seized or levied upon, in whose possession found, where, how, by whom, and upon what terms kept, and how long it will be necessary to keep it. If, at the time of sale, no one bids to the amount of the execution, or one-half of the cash value of the property offered, he will postpone the sale, and give notice to the Solicitor of the Treasury, except in cases where by such postponement the lien would be lost, or the interest of the Government otherwise seriously jeopardized. In the latter case, if he shall deem it necessary, to save the debt, he will consider the United States as bidding such amount, not greater than one-half the cash value of the property, as he shall deem proper for its interest. Should the United States become the purchaser of the property, the marshal will take care of the same, and will make immediate report of his doings in relation thereto.

4. When real estate shall be purchased at a marshal's sale by or for the United States, the marshal will immediately transmit to this office his certificate of sale, according to the law and usages in his district; and when the purchaser shall be entitled thereto, such marshal shall execute his deed for the property to the United States, and cause the same to be placed on record, and immediately thereafter he will transmit such deed to the Solicitor of the Treasury. If the real estate sold is not redeemed, he will immediately notify this office of the fact.

5. On receiving money in United States cases, marshals will immediately report the same to the United States attorney and to the Solicitor of the Treasury, fully and particularly stating when, from whom, and on what account the same was received.

6. All moneys collected by marshals upon any process for the use of the United States must be paid over by them to the proper authority as soon as practicable after the receipt by them of the same, and without any abatement or deduction on account of salary, fees, costs, charges, expenses, or claims of any description whatsoever, and for every such payment triplicate receipts will be taken, specifying the case in which the money has been received, and one of such receipts will at once be forwarded to this office. Post-office cases are excepted.

This course is expressly required by sections 3617 and 3618 of the Revised Statutes.
7. In cases where fines, penalties, and forfeitures are incurred under the customs revenue laws, and where the property seized is sold by the marshal, or the fine or penalty collected by him, he will pay the balance to the clerk or other proper officer, after deducting the proper charges allowed by the court as required by sections 3087 and 3090 of the Revised Statutes.

8. On the first day of October in each year, marshals will report to the Solicitor of the Treasury the situation of all judgment debtors of the United States within their respective districts, so far as they have any knowledge upon the subject, and will advise such proceedings in the premises as they shall deem proper.

9. Marshals will give notice, in writing, to the United States attorney of the proper district of all acts of trespass, and all breaches of the revenue or other laws, whereby pecuniary penalties in favor of the United States have been incurred by the wrongdoers, which shall come to the knowledge of such officer, or of which he shall be credibly informed, stating the particular act, with the time when committed, and the names of the witnesses, if known, and will immediately forward to this office a copy of such notice.

10. These instructions must not be understood as applying to internal-revenue cases, such cases not being under the control of this office.

11. Marshals will report as to all post-office cases, as required of United States attorneys by paragraph 10, on page 7.

MISCELLANEOUS.

1. United States attorneys, marshals, and clerks will report to the Solicitor the existence and situation of any property belonging to the United States which is not in the care of any officer or agent of the Government, to the end that it may be protected and preserved. If either of them shall discover that any claim in favor of the Government, not in his hands, can be collected, he will report to the Solicitor, and recommend the best mode of proceeding. They will also report immediately to the Solicitor any default of a United States attorney, marshal, clerk, collector, or other person engaged in the collection of any debt due to the United States, or of the revenue, or in the disbursement of any money belonging to the Government.

2. Letters to this office will be on ordinary sized letter paper, with a margin on all sides of an inch in width, so as to admit of binding.

All letters will be enclosed in envelopes. Each distinct subject will be communicated in a separate letter, under a separate envelope. Such letters should be endorsed on the back thus:

(Name of party writing.)

(Official designation of writer.)

(Date of letter.)

(Brief of contents.)

3. In all cases, when desired, triplicate receipts for moneys or papers received will be executed by the party receiving them.

4. In all cases where receipts, notices, returns, or other papers are required to be sent to the Solicitor's office, they must be forwarded by the first mail.
INSTRUCTIONS AND FORMS FOR UNITED STATES ATTORNEYS.

On taking the oath of office, United States attorneys will immediately transmit a copy thereof to the Department of Justice. They will, at the earliest practicable period, obtain from their predecessors in office the books, papers, and other property of the United States in their hands. Whenever a district attorney retires from office he should make a complete inventory of all books in his office belonging to the United States, taking receipts in duplicate from his successor, one of which must be sent to the Department of Justice before a final settlement of his accounts can be made.

Unless already furnished with them, each attorney will procure a well-bound docket and letter book, properly labeled and marked, inside and outside, "The property of the United States," with suitable indexes. He will make full and minute entries in these dockets of the time of issuing and receiving papers and process, and of whatsoever is done by him in United States cases of all kinds, with correct dates. The letter book will contain full and true copies of all letters written by him officially, relating to suits or to matters in which the United States are interested.

All official letters relating to United States cases, received by United States attorneys, will be preserved as public property. Whenever such letters accumulate sufficiently to make a volume, the officer having them in possession will cause the same to be bound according to their dates, and the expense thereof will be allowed in his emolument returns. All papers and documents used by, or coming to the United States attorney during the progress of a suit and relating thereto, shall be properly filed and kept in a bundle with the other papers relating to the cause, and these, together with the books referred to above and other public property, shall be delivered to his successor in office.

NOTICE OF APPEAL, ETC.

In every civil case or proceeding, to or in which the United States is a party or is interested, the district attorney in charge must promptly notify the Attorney-General of every important step therein, especially of every decision, interlocutory or final; such notification to be followed by copies of the decision and any opinion of the court, and briefs of counsel, together with such other information or suggestions as may aid the Attorney-General. In addition, section 10 of chapter 359, acts of 1887, must be complied with, except that the transcript of evidence need not be sent unless expressly directed. Whenever any appeal or
writ of error is directed, the transcript of record should be sent to the Attorney-General for examination before filing with clerk of appellate court; and in all cases in the circuit court of appeals copies of the printed record and all printed briefs should be furnished the Attorney-General.

APPROVAL OF ACCOUNTS.

An act of Congress entitled "An act regulating fees, and for other purposes," provides for the approval of the accounts of attorneys, clerks, and marshals in the presence of the district attorney or his sworn assistant. The same act requires the accounts of United States commissioners to be forwarded to the district attorney to be by him submitted for approval in open court.

The evident purpose of this legislation is that such accounts shall be carefully examined by the district attorney or his sworn assistant, and that full information shall be given to the court, relative to such accounts, in order that no illegal charge or improper expense may be approved by the court.

Each account should be carefully examined by the district attorney or his assistant.

It is believed that much unnecessary expense is incurred by reason of the issuance of alias and pluries, writs of capias, when there is no expectation of service; upon fieri facias issued after returns of nulla bona on former writs; and upon writs of seire facias, when there is no expectation of recovering anything. This should be prevented.

District attorneys should see to it that bonds taken by a United States commissioner shall be sufficient to secure the attendance of defendants, and if any commissioner shall take bonds without sufficient sureties, the matter should be called to the attention of the court in order that the commissioner may be required to take proper bonds.

Frivolous and unnecessary prosecutions should be prevented.

As section 846 provides "that no account of fees or costs paid to any witness or juror upon the order of any judge or commissioner shall be so reexamined as to charge any marshal for an erroneous taxation of such fees or costs," it is very necessary that the district attorney shall, so far as possible, see to it that all orders for the payment of witnesses and jurors are correct, and that witnesses shall not be allowed per diems for time spent in coming to or returning from court, and that neither a witness nor a juror residing at the place of holding court is allowed a per diem for a Sunday, holiday, or other day upon which he was not required to be present.

The district attorney should be very careful that only necessary witnesses are subpoenaed, and that all witnesses subpoenaed at the expense of the United States are discharged as soon as their attendance is no longer necessary, and he should see to it that mileage of witnesses and jurors is allowed for only actual and necessary travel correctly computed.
DISTRICT ATTORNEYS—ABSENCE—SALARY.

LEAVE OF ABSENCE.

The act of June 20, 1874, provides:

Sec. 2. That every clerk of the circuit or district court of the United States, United States marshal, or United States district attorney, shall reside permanently in the district where his official duties are to be performed, and shall give his personal attention thereto; and in case any such officer shall remove from his district, or shall fail to give personal attention to the duties of his office, except in case of sickness, such office shall be deemed vacant: Provided, That in the southern district of New York said officers may reside within twenty miles of their districts.

Before absenting themselves from their districts for any purpose district attorneys must obtain leave from the Attorney-General.

SALARIES.

The salaries allowed by law to judicial officers are paid monthly by the disbursing officer of the Department of Justice.

A receipt in the following form should be executed and forwarded to the disbursing clerk of the Department of Justice by each officer in time to reach Washington by the last day of each month:

[Voucher No. ——.]

$—.]

Received of —— ——, disbursing clerk, Department of Justice, —— dollars, being in full of my salary as —— of the United States for the —— district of —— for the month of ——, 189—.

Paid by check No. ——.

Section 1761, Revised Statutes, provides as follows:

No money shall be paid from the Treasury, as salary, to any person appointed during the recess of the Senate, to fill a vacancy in any existing office, if the vacancy existed while the Senate was in session and was by law required to be filled by and with the advice and consent of the Senate, until such appointee has been confirmed by the Senate.

Section 1884, Revised Statutes, provides:

When any officer of a Territory is absent therefrom, and from the duties of his office, no salary shall be paid him during the year in which such absence occurs, unless good cause therefor be shown to the President, who shall officially certify his opinion of such cause to the proper accounting officer of the Treasury, to be filed in his office.

Territorial officers must accompany their salary receipts with a certificate in the following form:

I, —— ——, —— of the Territory of ——, do hereby certify that I have not been absent from said Territory during the month of ——, 189—, without leave from the Department of Justice.

—— ——,

—— of the Territory of ——.
All accounts of district attorneys must be rendered quarterly and be transmitted to the Department of Justice within twenty days after the close of the quarter.

The quarters of a fiscal year end, respectively, September 30, December 31, March 31, and June 30.

An account must include all charges for services rendered during the quarter covered by the account which are payable from the appropriation under which rendered.

Separate accounts must be rendered for fees earned in civil cases on bonds of postmasters and mail contractors.

Accounts should be made up on paper 8½ inches wide and 14 inches long. Only one side of the paper must be used.

The pages of an account or voucher must be numbered in the lower left-hand corner, the footing of the first page carried to the top of the next page, and so on to the last page of the account or voucher, or each page must be footed and the amount carried to an abstract.

Accounts of district attorneys should be in the following form:

Account of ————, United States attorney for the ———— district of ————, for the quarter ending ————, 189—.
1. Travel to attend court.
2. Attendance on court, giving each day for which a per diem is charged.
3. Return travel.
4. Docket fees, counsel fees, and charges for depositions taken, admitted in evidence.
5. Charges for travel and attendance before United States commissioners in the order of time when the services were rendered.

Give the date when each item of service was rendered, the place from which and to which travel was made, the name of the defendant, the offense charged, whether the prosecution was by indictment or information, whether the case was tried by a jury, or by the court without a jury, and the result of the trial.

All services rendered under sections 824 and 825 or as provided by section 299 should be included in one account.

For services rendered under section 825 the district attorney is entitled to only the compensation provided by said section, and such compensation is payable from the appropriation for fees of district attorneys, United States courts.

The account must show the amount realized in each case.

Separate accounts must be rendered for service in civil cases upon the bonds of postmasters and mail contractors, and for services rendered under section 827 or 838.

In charging for sciés facias and other proceedings on recognizances, the account must show that such proceedings were final.

In charging for depositions taken, it must be shown that each deposition was admitted in evidence in the cause.
In charging an extra counsel fee, a conviction on indictment must be shown.

A district attorney can be allowed a per diem only for his own personal attendance, and in order that per diems may be allowed it must be shown that he was personally present in court, or before a committing magistrate (as the case may be), on each day for which a per diem is charged.

When attendance upon a court held at the district attorney's place of abode is charged, it must be shown that the attendance on each day was necessary.

In charging for attendance upon court or before a committing magistrate, the day or days of attendance must be given, and if the attendance was before a committing magistrate, his name must be given.

No mileage is allowable for travel to and from the residence of the district attorney when the court is adjourned from a Saturday to the next Monday, or over a legal holiday.

For travel by a district attorney in person, or by his assistant, to attend before a United States commissioner or other committing magistrate, only one round trip is allowable in a case.

When it is necessary to attend an examination at the place of abode of the district attorney, he should attend in person, and if the examination is held at the place of abode of an assistant, that assistant should attend.

Mileage is allowable only for actual and necessary travel, and only one mileage is allowable for each mile of such travel.

District attorneys should verify their accounts by their affidavits, following the form given below:

I, __________, district attorney for the ______ district of ______, being duly sworn, depose and say that the foregoing account, amounting to $______, is just and true as therein stated, that no payment has been received by me on account thereof, that all of the per diems charged therein are for my personal attendance, that all of the per diems charged for attendance upon a court, held at the place of my abode, are for necessary attendance, that the services therein charged have been actually and necessarily performed as therein stated, and that all mileage charged is for actual and necessary travel.

__________
District Attorney.

Subscribed and sworn to before me this ____ day of ______, 189__.

ORDER OF APPROVAL, ACCOUNT OF DISTRICT ATTORNEY.

In the matter of the approval of the account of ______, United States attorney.

Whereas ______, United States attorney for the ______ district of ______, has this day presented to the court an account for fees due from the United States for services rendered by him from ______ to ______, 189__, and in the presence of the assistant United States attorney for said district has proven on oath to the satisfaction of the court that the services therein charged for were actually and necessarily
DISTRICT ATTORNEYS—EMOLUMENT RETURNS.

performed as stated in said account; and whereas said charges appear to be just and according to law; and it is certified that on each of the days for which a per diem is charged for attendance on court the court was opened by the judge for business, and business was actually transacted in court; or that he attended under sections 583, 584, 671, or 672, Revised Statutes United States, and that in the — cases in which counsel fees are charged the prosecutions were by indictment, and such counsel fees were allowed by the court: It is therefore ordered by the court that said account, amounting to the sum of —— dollars, be, and the same is hereby, approved.

When any part of an account is not approved by the court, the item or items not approved should be specified. This matter is especially called to the attention of district attorneys.

Seals to copies of orders approving accounts are required, but seals of clerks to affidavits and to copies of orders relative to subvouchers are not required and charges therefor are not allowed.

Explanations to suspensions made in an account by an auditor of the Treasury should not be sent to the Department of Justice, but should be sent directly to the Auditor who made the suspensions.

Responses to all calls from the Department of Justice for information relative to accounts should be made in duplicate, and when required they should also be under oath. Such responses should always be promptly forwarded in order that the Department may comply with the requirements of the act of July 31, 1894.

EMOLUMENT RETURNS OF DISTRICT ATTORNEYS.

Proper blanks for such returns are furnished by the Department of Justice, and the returns must be in the form indicated by such blanks. (See sec. 833, R. S.)

The sections of the Revised Statutes relative to such returns are as follows:

Sec. 833. Every district attorney, clerk of a district court, clerk of a circuit court, and marshal, shall, on the first days of January and July, in each year, or within thirty days thereafter, make to the Attorney-General, in such form as he may prescribe, a written return for the half year ending on said days, respectively, of all the fees and emoluments of his office, of every name and character, and of all the necessary expenses of his office, including necessary clerk hire, together with the vouchers for the payment of the same for such last half year. He shall state separately in such returns the fees and emoluments received or payable under the bankrupt act; and every marshal shall state separately therein the fees and emoluments received or payable for services rendered by himself personally, those received or payable for services rendered by each of his deputies, naming him, and the proportion of such fees and emoluments which, by the terms of his service, each deputy is to receive. Said returns shall be verified by the oath of the officer making them.

Sec. 834. The preceding section shall not apply to the fees and compensation allowed to district attorneys by sections 825 and 827. All other fees, charges, and emoluments to which a district attorney or a marshal may be entitled, by reason of the discharge of the duties of his office, as now or hereafter prescribed by law, or in any case in which the United States will be bound by the judgment rendered therein, whether prescribed by statute or allowed by a court, or any judge thereof, shall be included in the semiannual return required of said officers by the preceding section.
SEC. 835. No district attorney shall be allowed by the Attorney-General to retain of the fees and emoluments of his office which he is required to include in his semi-annual return, for his personal compensation, over and above the necessary expenses of his office, including necessary clerk hire, to be audited and allowed by the proper accounting officers of the Treasury Department, a sum exceeding six thousand dollars a year, or exceeding that rate for any time less than a year.

SEC. 836. There shall be paid to the district attorney for the southern district of New York, in addition to his salary, at the rate of six thousand dollars a year, such sum as shall be necessary, together with the costs and fees allowed him by law, to pay such amount as may be fixed by the Attorney-General for the proper expenses of his office. But nothing in this or the preceding section shall forbid the allowance of additional compensation for services in prize causes, as provided in title "Prize."

SEC. 837. The district attorneys and marshals for the districts of Oregon and Nevada shall be entitled to receive, for the like services, double the fees hereinbefore provided; but neither of them shall be allowed to retain of such fees any sum exceeding the aggregate compensation of such officer as hereinbefore provided.

SEC. 843. The allowances for personal compensation of district attorneys, clerks, and marshals, for each calendar year, shall be made from the fees and emoluments of that year, and not otherwise.

SEC. 844. Every district attorney, clerk, and marshal shall, at the time of making his half-yearly return to the Attorney-General, pay into the Treasury or deposit to the credit of the Treasurer, as he may be directed by the Attorney-General, any surplus of the fees and emoluments of his office which said return shows to exist over and above the compensation and allowances authorized by law to be retained by him.

SEC. 846. The district attorney and prize commissioners, except the naval officer, shall be allowed a just and suitable compensation for their respective services in each prize cause, to be adjusted and determined by the court, and to be paid as costs in the cause.

SEC. 4647. Each district attorney and prize commissioner, except the naval officer, shall render to the Attorney-General an annual account of all sums he shall have received for all services in prize causes within the previous year, and the district attorney shall be allowed to retain therefrom a sum not exceeding three thousand dollars a year in addition to the maximum compensation allowed to be retained by him, under the provisions of Title XIII, "The Judiciary," or in addition to any salary he may receive in lieu of such maximum compensation; and each such prize commissioner shall be allowed to retain a sum not exceeding three thousand dollars a year, which shall be in full for all his official services in prize causes; and any excess over those respective amounts shall be paid by the officer receiving the same into the Treasury of the United States and shall be credited to the fund for paying naval pensions.

It is to be noticed that while section 833 declares that all fees and emoluments must be included in such returns, section 834 provides that section 833 shall not apply to the fees and compensation allowed to district attorneys by sections 825 and 827, Revised Statutes.

Sections 4646 and 4647 provide for compensation to district attorneys in prize causes and for the rendition to the Attorney-General of annual accounts of all sums received for all services in prize causes within the previous year.

In the case of Thomas Smith v. The United States (decided by the Supreme Court of the United States May 20, 1895) it was decided that mileage allowed a district attorney is not to be charged to him in his returns of official emoluments.
District attorneys will not, in their semiannual returns of official emoluments, charge themselves with the mileage included in their quarterly accounts nor with the fees and compensation allowed to them under sections 825 and 827, nor the compensation provided by section 4646.

As mileage is not to be charged to a district attorney in his returns of official emoluments, neither are the expenses of travel to be credited to him in such returns.

No money can be paid from the Treasury of the United States to any district attorney while he is in arrears as to any return of official emoluments. When necessary to the convenient transaction of the business of his office, reasonable expenditures for the rent of an office, furniture for same, necessary clerk hire, fuel, light, and stationery will be allowed; but such expenditures can only be made from his official emoluments. For such expenditures the district attorney must forward, with each of his returns, properly itemized and receipted vouchers.

A district attorney is allowed to retain for his own compensation not exceeding $6,000 per calendar year, and not exceeding that rate for a less period. The attorney should be careful to forward, with his returns, proper vouchers for his expenditures for the purposes named, whether his earnings shall or shall not exceed the maximum.

Before employing a clerk in his office, the attorney should make application to the Department of Justice for authority to do so, explaining the necessity for the employment of the clerk and the compensation to be allowed.

Before incurring an expense exceeding $10, application must be made to the Attorney-General for authority. When applying for authority, state the items of expense which are to be incurred, with the lowest cost of each. In all items involving expenditure of $10 or over, bids from two or three reputable dealers must be submitted.

The first return of a district attorney will cover the period from and including the day he entered on his official term to and including the last day of that half year. His last return will end on the day previous to the day on which his term of office expired.

The semiannual returns of official emoluments must be rendered within thirty days after the close of the half year, and the return including the end of the attorney's term of office should be rendered as soon as possible, in order that his accounts may be settled and any balance due him may be paid.

FORM OF EMOLUMENT RETURN TO BE MADE BY DISTRICT ATTORNEYS.

(Should the return be verified before any officer other than a judge or a clerk of a court of the United States, the additional certificate of authentication should be appended as the printed instructions require. Similar blanks will be furnished for each semiannual return.)
Return of fees and emoluments of ________, attorney of the United States for the ________ district of ________, from ________ to ________, and of moneys paid out by him during the same period for the expenses of his office:

<table>
<thead>
<tr>
<th>Fees and emoluments earned from the United States of every kind whether received or not received, except fees and compensation provided by sections 825, 827, and 4646 Revised Statutes</th>
<th>$</th>
</tr>
</thead>
<tbody>
<tr>
<td>Salary during same period</td>
<td></td>
</tr>
<tr>
<td>Total gross emoluments earned</td>
<td></td>
</tr>
<tr>
<td>Mileage charged in quarterly accounts but not included in the above amount</td>
<td>$</td>
</tr>
<tr>
<td>Compensation earned under section 825, R. S., charged in quarterly accounts but not charged to the district attorney in this return</td>
<td></td>
</tr>
</tbody>
</table>

*These amounts are not to be carried into the footings.

Allowances to be deducted from the gross earnings and retained by the attorney.

<table>
<thead>
<tr>
<th>For amount paid for rent of office</th>
<th>as per voucher No. 1</th>
<th>$</th>
</tr>
</thead>
<tbody>
<tr>
<td>Do. do. necessary furniture for same</td>
<td>do.</td>
<td>2</td>
</tr>
<tr>
<td>Do. do. clerk hire</td>
<td>do.</td>
<td>3</td>
</tr>
<tr>
<td>Do. do. stationery</td>
<td>do.</td>
<td>4</td>
</tr>
<tr>
<td>Do. do. fuel</td>
<td>do.</td>
<td>5</td>
</tr>
<tr>
<td>Do. do. lights</td>
<td>do.</td>
<td>6</td>
</tr>
<tr>
<td>Total amount of allowances</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Total net emoluments</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

Maximum compensation allowed by law, at the rate of $6,000 per annum.

Balance (if any) due the United States, a certificate of deposit for which is herewith.

I, ________, attorney for the United States for the ________ district of ________, do solemnly swear that the foregoing account is in all respects just and true, according to my best knowledge and belief; and that I have neither received, directly or indirectly, nor directly or indirectly agreed to receive, or be paid, for my own or another's benefit, any other money, article, or consideration than therein stated; nor am I entitled to any emolument for the period therein mentioned other than those therein specified except fees and compensation provided by sections 825, 827, and 4646, R. S. U. S. So help me God.

Signed and sworn to before me this ________ day of ________, 18____.

I, ________, judge of the ________ court for the ________ district of ________, do hereby certify that I have carefully examined the vouchers referred to in the foregoing return; that the disbursements charged therein for clerk hire and office expenses were necessary to the convenient transaction of the business of the district attorney's office; and that the sums paid therefor are, in my opinion, reasonable.

Note.—No money can be paid to any attorney of the United States on account of fees or per diems while his emolument return is in arrear.

REGULATIONS OF THE SOLICITOR OF THE TREASURY.

The following are regulations prescribed by the Solicitor of the Treasury under authority of sections 377 and 379, Revised Statutes, which must be fully and carefully complied with:

1. No United States attorney will commence or defend a civil suit or proceeding in court, in the name or for the benefit of the United States, without instructions from this office or by direction of the Attorney-General or some person or court authorized by law so to direct, except in extraordinary cases, where some material
interest of the United States would, in his opinion, be lost or endangered by delay; and in such cases, he will immediately report his action with his reasons therefor.

2. Whenever a United States attorney shall receive from a public officer, or shall in any other manner become possessed of information which shall lead him to believe that a trespass upon the property of the United States, or an infraction of its revenue or other laws, has been committed, he will immediately report such information to this office, with his opinion as to the propriety of instituting suit; or, in case the remedy of the United States would, in his opinion, be lost or endangered by delay, he may immediately commence a suit, and report the same, with his reasons for such proceeding.

3. On the receipt of papers on which to commence suit, the United States attorney will closely examine and see if there is any defect in them, or if any explanation is wanted; and, if so, he will immediately report the same to this office, or to the person from whom the papers were received, with such suggestions as may seem to him proper. If, before the commencement, or during the progress of a cause, questions shall arise in relation to which it may, in his opinion, be desirable that he should take counsel, he will state such questions, with the authorities bearing upon them, and also his own views.

4. The commencement of all civil suits in which the United States is interested, excepting suits for violation of internal revenue laws, must be reported by United States attorneys to this office immediately after process shall be issued. At the end of every term of the district and circuit courts, they will make a general report containing a list of all such suits commenced by them since the close of the last preceding term of the court, with a full statement of the cause of the action and all proceedings therein; and also of all such proceedings since the close of the last term in causes previously commenced, so as to furnish a full history of what has been done since the previous term, including any trial, verdict, decision, or judgment, and the issuing of any execution, with the time when issued. Blank forms for reports under this rule will be furnished from this office. The term reports should also include all criminal cases in which fines have been imposed, except those for violation of internal revenue laws.

5. As required by section 773 of the Revised Statutes, United States attorneys will, on the Ist of October of each year, transmit to this office reports showing all civil suits or proceedings in which the United States is a party or has an interest, commenced, pending, and determined within their respective districts, during the fiscal year (ending June 30) next preceding the date of such returns. These returns should be as full as practicable, and should be rendered punctually in order to enable the Solicitor of the Treasury to prepare his annual report required by the act aforesaid.

In the report called for by this section, it is required that the cases shall be classified as follows, viz:

(a) Suits on Treasury transcripts.

(b) Suits for fines, penalties, and forfeitures, under the customs revenue, navigation, and kindred laws, embracing suits of whatever nature arising out of frauds upon the customs.

(c) Suits upon custom-house bonds.

(d) Suits against collectors of customs, or other officers or agents of the United States, for refund of moneys exacted, or for acts performed in the line of official duty.

(e) Suits for fines, penalties, etc., under postal laws.

(f) Miscellaneous suits, including those on forfeited recognizances, and for the recovery of duties on imported merchandise, and all criminal cases in which fines have been imposed, excepting those under internal-revenue laws and all other cases not embraced in the before-mentioned classes.

It is required that all proceedings had during the fiscal year shall be noted; particularly all decrees or judgments, whether for or against the United States, and the
nature, amount, and date of the same; and that all executions or orders of sale issued during that period shall be specified, with their date of issue and return, and the nature of the marshal's return thereof.

It is required, also, that all collections made during the year shall be reported, whether in respect of cases commenced during the year, or of those instituted prior thereto.

6. When a suit shall have been commenced, either by direction of a public officer or otherwise, it will be the duty of the United States attorney having such suit in charge to press the same to a judgment at as early a day as possible, consistent with the interest of the United States.

In this connection the attention of United States attorneys is called to the provisions of section 957 of the Revised Statutes.

In all such suits judgment must be demanded, and should be entered at the return term, unless defendants shall have taken all the steps required by this statute to obtain a continuance. United States attorneys are directed, as far as may be in their power, to see that its provisions are strictly complied with and enforced.

7. Where a suit shall have been continued, he will, in his next return, state upon whose motion and on what grounds the continuance was directed. No attorney will discontinue a suit, or consent to a dismissal thereof, or suspend proceedings, or agree that a judgment or decree shall be taken for a less amount than is claimed by the United States, without express instructions from the Solicitor of the Treasury, unless such attorney shall be of opinion that the suit has been improperly brought, that an error has been committed in the pleadings or proceedings which may be fatal or hazardous to the interests of the Government, or that the evidence in his power to produce is insufficient to support the action, and there shall not be sufficient time to communicate with and receive instructions, and, in all cases of such agreement, consent, discontinuance, suspension, or dismissal, the attorney will immediately report upon the facts and reasons for his action.

8. As early as practicable, after the perfecting of judgment, execution will be placed in the hands of the marshal by the United States attorney, who will take duplicate receipts therefor, one of which he will transmit to this office. He will see that the marshal does his duty zealously in searching for property, in making levy, sale, and return, or in any other usual and proper efforts for the collection of the money. At the commencement of every term of the court, the attorney will carefully examine and ascertain whether the marshal has properly returned all process placed in his hands, the return of which is due. If he shall find that the proper return has not been made, it will be his duty to take prompt and efficient measures to compel a return; in which case he will report to this office the steps taken and their result. The vigilance of the United States attorney should not cease until every resource looking to the collection of the judgment is exhausted.

9. United States attorneys will not receive payment of any demand due the United States, except where specially authorized by law. If a defendant shall desire to make a payment previous to judgment, or at any time when the execution is not in the hands of the marshal, the proper course for him will be, to cause the money to be deposited in the registry of the court, taking triplicate certificates therefor, stating particularly the name and the nature of the suit. On the receipt of two of these certificates, the attorney will cause the proper allowance to be made, and will transmit one of the certificates, with a special report upon the subject, to this office and retain the other.

10. The Solicitor of the Treasury having been designated by the Attorney-General to superintend the collection of all debts due to the Post Office Department, including all penalties and forfeitures imposed on postmasters for failing to make returns or pay over the proceeds of their offices, and to direct suits and legal proceedings, and take all such measures as may be authorized by law to enforce the prompt payment thereof, these instructions are to be understood as applying to all suits or proceedings concerning debts, penalties, and forfeitures of the foregoing description.
United States attorneys will accordingly report as to all such suits or proceedings, and also as to all prosecutions for mail depredations and penal offenses against the postal laws. In all cases, when practicable, the name of the post office where the suit or prosecution originated should be stated.

11. These instructions must not be understood as applying to suits arising under the internal revenue laws, such suits being by law under the direction of the Commissioner of Internal Revenue.

MISCELLANEOUS.

1. United States attorneys, marshals, and clerks will report to the Solicitor the existence and situation of any property belonging to the United States which is not in the care of any officer or agent of the Government, to the end that it may be protected and preserved. If either of them shall discover that any claim in favor of the Government, not in his hands, can be collected, he will report to the Solicitor, and recommend the best mode of proceeding. They will also report immediately to the Solicitor any default of a United States attorney, marshal, clerk, collector, or other person engaged in the collection of any debt due to the United States, or of the revenue, or in the disbursement of any money belonging to the Government.

2. Letters to this office will be on ordinary sized letter paper, with a margin on all sides of an inch in width, so as to admit of binding.

All letters will be enclosed in envelopes. Each distinct subject will be communicated in a separate letter, under a separate envelope. Such letters should be endorsed on the back thus:

(Name of party writing.)

(Official designation of writer.)

(Date of letter.)

(Brief of contents.)

3. In all cases, when desired, triplicate receipts for moneys or papers received will be executed by the party receiving them.

4. In all cases where receipts, notices, returns, or other papers, are required to be sent to the Solicitor's office, they must be forwarded by the first mail.
INSTRUCTIONS AND FORMS FOR THE CLERKS OF THE COURTS OF THE UNITED STATES.

Upon taking the oath of office and filing their official bonds, clerks of the different courts of the United States should immediately advise the Department of Justice by letter to that effect.

All official letters relating to United States cases, received by clerks, not needed by them as vouchers for the payment of money, will be preserved as public property, and delivered to their successors. Where the originals are essential to them as vouchers, they will leave copies in their places. Whenever such letters accumulate in number sufficient to make a volume, the officer having them in possession will cause the same to be bound according to their dates, and the expense thereof will be allowed in his emolument returns.

ACCOUNTS.

All accounts of clerks of United States courts must be rendered quarterly and be transmitted to the Department of Justice within twenty days after the close of the quarter.

The quarters of a fiscal year are, respectively, September 30, December 31, March 31, and June 30.

An account must include all charges for services rendered during the quarter covered by the accounts.

Separate accounts must be rendered for fees earned in civil cases on bonds of postmasters and mail contractors.

Accounts should be made up on paper 8½ inches wide and 14 inches long. Only one side of the paper must be used. Printed blanks must be used in all cases where practicable.

The pages of an account or voucher must be numbered in the lower left-hand corner, the footing of the first page carried to the top of the next page, and so on to the last page of the account or voucher, or each page must be footed and the amount carried to an abstract.

Accounts of clerks of United States courts should be made out substantially as follows:

Account of ————, clerk of the United States ——— court for the ——— district of ——— for the quarter ending ———, 189—.

1. Travel to attend court (giving the places from which and to which travel was made).
2. Attendance on court (give each day for which a per diem is charged, and if a Sunday or holiday is charged for, it must be shown that court was open and business transacted therein on each Sunday or holiday).

3. Return travel.

4. Miscellaneous services not rendered in a particular case.

5. Services in cases.

The account must be itemized, giving date of each item of service, the character of each paper filed, the folios contained in each bond or other paper drawn and in each entry made on the minutes of the court.

When services in cases are charged, the title and character of the case must be given, and when a docket fee is charged it must be shown that the case was finally disposed of.

When final record is charged, the account must specify each paper and journal entry copied into such record and the number of folios in each.

No mileage is allowable for travel to and from the residence of a clerk when the court is adjourned from a Saturday to the next Monday, or over a legal holiday.

Attention is called to the following sections of the Revised Statutes of the United States:

SEC. 877. Witnesses who are required to attend any term of a circuit or district court on the part of the United States shall be subpœnaed to attend to testify generally on their behalf, and not to depart the court without leave thereof or of the district attorney; and under such process they shall appear before the grand or petit jury, or both, as they may be required by the court or district attorney.

SEC. 829 (paragraph 25). * * * To save unnecessary expense it shall be the duty of the clerk to insert the names of as many witnesses in a cause in such sub¬pœna as convenience in serving the same will permit.

Your accounts must show compliance with said sections.

The sundry civil act, approved August 18, 1894, contains the following provision:

And hereafter no part of any money appropriated to pay any fees to the United States commissioners, marshals, or clerks shall be used for any warrant issued or arrest made, or other fees in prosecutions under the internal-revenue laws, unless said fees have been taxed against and collected from the defendant, or unless the prosecution has been commenced upon a sworn complaint setting forth the facts constituting the offense and alleging them to be within the personal knowledge of the affiant, or upon a sworn complaint by a United States district attorney, collector, or deputy collector of internal revenue or revenue agent, setting forth the facts upon information and belief, and approved either before or after such arrest by a circuit or district judge or the attorney of the United States in the district where the offense is alleged to have been committed or the indictment is found.

When fees in internal-revenue cases are charged, a certificate by the district attorney or his assistant, in the following form, must be attached to the account:

I, ———, United States district attorney for the ——— district of ———, hereby certify that in each prosecution under the internal-revenue laws, fees for which are charged in this account, said fees have been taxed against and collected
from the defendant, or the prosecution was commenced upon a sworn complaint setting forth the facts constituting the offense, and alleging them to be within the personal knowledge of the affiant, or upon a sworn complaint by a United States district attorney, collector or deputy collector of internal revenue, or revenue agent, setting forth the facts upon information and belief, and approved either before or after arrest by a circuit or district judge, or the attorney of the United States for said district.

Your attention is also invited to the act of March 3, 1887 (2d Supp. R. S., 564), which provides:

Hereafter no part of the appropriations made for the payment of fees for United States marshals or clerks shall be used to pay the fees of United States marshals or clerks upon any writ or bench warrant for the arrest of any person or persons who may be indicted by any United States grand jury, or against whom an information may be filed, where such person or persons is or are under a recognizance taken by or before any United States commissioner, or other officer authorized by law to take such recognizance, requiring the appearance of such person or persons before the court in which such indictment is found or information is filed, and when such recognizance has not been forfeited or said defendant is not in default, unless the court in which such indictment or information is pending orders a warrant to issue.

Where charge is made for issuing a capias or bench warrant it must be shown whether the defendant was already in custody or on bail, and if on bail whether the writ was issued in accordance with the above provision of law.

Clerks of United States courts should verify their accounts by their affidavits, following the form given below:

I, --- ---, clerk of the --- court for the district of ---, being duly sworn, depose and say that the foregoing account, amounting to $---, is just and true as therein stated; that no payment has been received by me on account thereof; that the services therein charged have been actually and necessarily performed as therein stated, and that all mileage charged is for actual and necessary travel.

--- ---, Clerk --- Court.

Subscribed and sworn to this --- day of ---, 189-.

ORDER OF APPROVAL, ACCOUNT OF CLERK UNITED STATES COURT.

--- ---, 189-.

Whereas --- ---, clerk of the United States --- court for the --- district of ---, has rendered to this court an account for his official services from the --- day of ---, 189-, to the --- day of ---, 189-, with the items and vouchers thereof, in the presence of the district attorney, and has, by his oath, attached to the account, proved to the satisfaction of the court that the services therein charged have been actually and necessarily performed as therein stated; and whereas said charges appear to be just and according to law, it is hereby ordered that said account, amounting to --- ($---) dollars, be, and the same is hereby approved. And it is hereby certified that upon each of the days for which a per diem is charged the court was opened for business and business was actually transacted in court or the clerk attended as provided by sections 583, 584, 671, or 672, Revised Statutes, United States.

When any part of an account is not approved by the court the item or items not approved should be specified. This matter is especially called to the attention of district attorneys.
Seals to copies of orders approving accounts are required, but seals of clerks to affidavits and to copies of orders relative to subvouchers are not required, and charges therefor are not allowed.

Explanations to suspensions made in an account by an Auditor of the Treasury should not be sent to the Department of Justice, but should be sent directly to the Auditor who made the suspensions.

Responses to all calls from the Department of Justice for information relative to accounts should be made in duplicate, and when required they should also be under oath. Such responses should always be promptly forwarded in order that the Department may comply with the requirements of the act of July 31, 1894.

EMOLUMENT RETURNS OF CLERKS OF UNITED STATES DISTRICT AND CIRCUIT COURTS.

The sections of the Revised Statutes relative to such returns are as follows:

SEC. 833. Every district attorney, clerk of a district court, clerk of a circuit court; and marshal, shall, on the first days of January and July, in each year, or within thirty days thereafter, make to the Attorney-General, in such form as he may prescribe, a written return for the half year ending on said days, respectively, of all the fees and emoluments of his office, of every name and character, and of all the necessary expenses of his office, including necessary clerk-hire, together with the vouchers for the payment of the same for such last half year. He shall state separately in such returns the fees and emoluments received or payable under the bankrupt act; and every marshal shall state separately therein the fees and emoluments received or payable for services rendered by himself personally, those received or payable for services rendered by each of his deputies, naming him, and the proportion of such fees and emoluments which, by the terms of his service, each deputy is to receive. Said returns shall be verified by the oath of the officer making them.

SEC. 839. No clerk of a district court, or clerk of a circuit court, shall be allowed by the Attorney-General, except as provided in the next section, and in section eight hundred and forty-two to retain of the fees and emoluments of his office, or, in case both of the said clerkships are held by the same person, of the fees and emoluments of the said offices, respectively, for his personal compensation, over and above his necessary office expenses, including necessary clerk-hire, a sum exceeding three thousand five hundred dollars a year for any such district clerk or for any such circuit clerk, or exceeding that rate for any time less than a year.

SEC. 840. The clerks of the several circuit and district courts in California, Oregon, and Nevada shall be entitled to charge and receive double the fees hereinbefore allowed to clerks, and shall be allowed, respectively, by the Attorney-General, to retain of the fees so received by them, for their personal compensation, over and above the necessary expenses of their offices, including the salaries of deputy clerks and necessary clerk-hire, to be audited by the proper accounting officers of the Treasury Department, any sum not exceeding seven thousand five hundred dollars a year for any such district clerk or for any such circuit clerk, or exceeding that rate for any time less than a year: Provided, That whenever, in either of the said districts, the same person holds the office of clerk of both the circuit and district courts, he shall be allowed by the Attorney-General to retain for his personal compensation, as aforesaid, only such sum as is herein allowed to be retained by a person holding the office of clerk of only one of the said courts.

SEC. 842. Clerks and marshals may be allowed to retain, for all official services in prize causes, an additional compensation not exceeding in amount one-half of
the maximum compensation allowed to them, respectively, by the three preceding sections.

Sec. 843. The allowances for personal compensation of district attorneys, clerks, and marshals, for each calendar year, shall be made from the fees and emoluments of that year, and not otherwise.

Sec. 844. Every district attorney, clerk, and marshal shall, at the time of making his half-yearly return to the Attorney-General, pay into the Treasury, or deposit to the credit of the Treasurer, as he may be directed by the Attorney-General, any surplus of the fees and emoluments of his office, which said return shows to exist over and above the compensation and allowances authorized by law to be retained by him.

Proper blanks for such returns will be furnished by the Department of Justice and the returns must be in the form indicated by such blanks. (See sec. 833, R. S. U. S.)

In his emolument returns the clerk must charge himself with all of the fees earned by him, whether received or not received, but mileage is not to be included. (See the case of Thomas Smith v. The United States, decided by the Supreme Court of the United States, May 20, 1895.)

A clerk is entitled to retain out of his earnings $3,500 per calendar year, or at that rate for a less period, for his own compensation, over and above allowances for his office expenses. Should his earnings, after the deduction of necessary office expenses, exceed said sum, the surplus, if not withheld by the Treasury Department, must be paid into the Treasury of the United States. In a few States a clerk may lawfully retain more than $3,500 per annum for his personal compensation. (See section 842 as to additional compensation in prize causes.)

Reasonable expenditures, necessary for the transaction of the business of his office, will be allowed, for rent of an office, furniture for same, clerk hire, fuel, light, and stationery; but these expenditures can only be made out of his official emoluments, and in order that the same may be allowed, the clerk must forward with each return properly itemized and receipted vouchers for such expenditures.

A clerk should be careful to forward with his returns proper vouchers for his expenditures for the purposes above named, whether his earnings shall or shall not exceed the maximum.

Before employing a deputy, or other assistant, the clerk should apply to the Department of Justice for authority to do so, explaining fully the necessity for the employment and the compensation to be paid.

Before incurring an expense exceeding $10, application must be made to the Attorney-General for his authority. When applying for authority, state the items of expense which are to be incurred, with the lowest cost of each. For all items involving an expenditure of $10 or over, bids from two or three reputable dealers must be submitted.

The first return will include the day upon which he entered upon the duties of his office and end with the half year, and his last return will end on the day previous to the day upon which his term of office expired.
The semiannual returns of official emoluments must be rendered within thirty days after the close of the half year and the return including the end of the clerk's term of office should be rendered as soon as possible, in order that his accounts may be settled and any balance due him may be paid.

FORM OF EMOLUMENT RETURN.

Return of fees and emoluments of ———, clerk of the ——— court of the United States for the ——— district of ———, from ——— to ———, and of moneys paid out by him during the same period for the expenses of his office:

CIRCUIT COURT.

Fees and emoluments earned from the United States, whether received or not received ......................................................... $  
Compensation in prize causes .................................................................  
Fees and emoluments earned from individuals, whether received or not received .................................................................  
Total gross emoluments earned in the circuit court ..............................................  
Mileage amounting to $———, not included in above amount  

DISTRICT COURT.

Fees and emoluments earned from the United States, whether received or not received ......................................................... $  
Compensation in prize causes .................................................................  
Fees and emoluments earned from individuals, whether received or not received .................................................................  
Total gross emoluments earned in the district court ..............................................  
Mileage amounting to $———, not included in above amount.

Office expenses paid out of gross emoluments, as authorized by law and regulations.

<table>
<thead>
<tr>
<th>Office expenses paid out of gross emoluments</th>
<th>Circuit court</th>
<th>District court</th>
</tr>
</thead>
<tbody>
<tr>
<td>Amount paid for rent of office</td>
<td>Voucher No. 1</td>
<td>Voucher No. 7</td>
</tr>
<tr>
<td>Do. do. furniture for office</td>
<td>do. 2</td>
<td>do. 8</td>
</tr>
<tr>
<td>Do. do. clerk hire</td>
<td>do. 3</td>
<td>do. 9</td>
</tr>
<tr>
<td>Do. do. fuel</td>
<td>do. 4</td>
<td>do. 10</td>
</tr>
<tr>
<td>Do. do. lights</td>
<td>do. 5</td>
<td>do. 11</td>
</tr>
<tr>
<td>Do. de. stationery</td>
<td>do. 6</td>
<td>do. 12</td>
</tr>
<tr>
<td>Total amount of office expenses</td>
<td></td>
<td></td>
</tr>
<tr>
<td>$</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

RECAPITULATION.

<table>
<thead>
<tr>
<th>Total amount of earnings, received and not received, brought down</th>
<th>Circuit court</th>
<th>District court</th>
</tr>
</thead>
<tbody>
<tr>
<td>Deduct amount paid for necessary office expenses</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Net amount of emoluments earned</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Deduct maximum personal compensation</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Balance due the United States</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

I, ———, clerk of the ——— court of the United States for the ——— district of ———, do solemnly swear that the foregoing account is, in all respects, just and true, according to my best knowledge and belief; and that I have neither received, directly or indirectly, nor directly or indirectly agreed to receive, or be paid, for my...
own or another's benefit, any other money, article, or consideration than therein stated; nor am I entitled to any emoluments for the period therein mentioned other than those therein specified; and that I have taken all reasonable pains to collect from individuals amounts due to the United States for services in my office. So help me God.

Signed and sworn to before me this — day of ——, 189—.

I, —— ——, judge of the —— court for the —— district of ——, do hereby certify that I have carefully examined the vouchers referred to in the foregoing return; that the disbursements charged therein for clerk hire and office expenses were necessary to the convenient transaction of the business of the clerk's office; and that the sums paid therefor are, in my opinion, reasonable.

NOTE 1.—No money can be paid from the Treasury to any clerk while his emolument return shall remain in arrear.

NOTE 2.—If the officer making these returns be clerk of both the circuit and district courts, he will separate, or apportion, the vouchers for office expenses so as to show as nearly as practicable the amount expended in each court.

REGULATIONS OF THE SOLICITOR OF THE TREASURY.

The following are regulations prescribed by the Solicitor of the Treasury, under authority of sections 377 and 379, Revised Statutes, which should be fully and carefully complied with:

1. Upon taking the oath of office, and filing their official bonds, clerks of the different courts of the United States are requested immediately to advise the Solicitor of the Treasury by letter to that effect.

2. When a suit is commenced in behalf of the United States in any district or circuit court, the clerk of such court will promptly report the fact to this office, the time of commencement, the character of the action, and the parties thereto, according to the form prescribed for that purpose.

3. Within thirty days after the adjournment of each term of the district and circuit courts, the respective clerks will forward to the Solicitor a list of all judgments and decrees entered in said courts, respectively, since the close of the term next preceding the one so adjourned, showing the amount adjudged or decreed for or against the United States, specifying separately the amount of debt or damages and costs; showing also, in each case, whether execution has been issued, the time when issued, and whether it has been returned; and, if returned, setting forth the time when the return was made, and the substance thereof. Blank forms for returns under this and the preceding regulations will be furnished from this office.

4. All moneys received by clerks of courts, from whatever source, for the use of the United States, must be paid over by them, as directed by law, as soon as practicable after being received, and without any abatement or deduction on account of salary, fees, costs, charges, expenses, or claim of any description whatever. (This course is pointed out by sections 3617 and 3618 of the Revised Statutes.)

5. In customs-revenue cases moneys, when withdrawn from the registry of the court for the use of the United States, must be turned over to the proper collector or surveyor of customs whose receipt therefor should be sent to the Solicitor. In civil post-office cases, as a general rule, they should be deposited with a United States depositary to the credit of the Treasurer of the United States, FOR THE USE OF THE POST-OFFICE DEPARTMENT. If the suit, however, was for the recovery of money-order funds, the proceeds should be paid over to a postmaster having charge of a money-order office. In criminal cases for violation of postal laws, the fines
should be deposited for the use of the Post-Office Department, but the costs should be deposited to the credit of the Treasurer's general account.

Clerks of courts should strictly follow this instruction, which is in accordance with law, for a departure therefrom will entail much trouble in causing the necessary correction to be made thereafter and great confusion and delay in adjusting accounts in the Treasury Department.

6. Upon paying over to a depositary, Treasurer, or Assistant Treasurer, any moneys which have been received for the use of the United States, the clerk will take duplicate receipts therefor, specifying on what account they were deposited, the original of which he will send to the Secretary of the Treasury, and notify this office thereof.

7. Clerks will report respecting all post-office cases, as required of United States attorneys by paragraph 10, on page 7.

8. Internal-revenue cases are not to be reported to the Solicitor of the Treasury.

MISCELLANEOUS.

1. United States attorneys, marshals, and clerks will report to the Solicitor the existence and situation of any property belonging to the United States which is not in the care of any officer or agent of the Government, to the end that it may be protected and preserved. If either of them shall discover that any claim in favor of the Government, not in his hands, can be collected, he will report to the Solicitor, and recommend the best mode of proceeding. They will also report immediately to the Solicitor any default of a United States attorney, marshal, clerk, collector, or other person engaged in the collection of any debt due to the United States, or of the revenue, or in the disbursement of any money belonging to the Government.

2. Letters to this office will be on ordinary sized letter paper, with a margin on all sides of an inch in width, so as to admit of binding. All letters will be enclosed in envelopes. Each distinct subject will be communicated in a separate letter, under a separate envelope. Such letters should be endorsed on the back thus:

   (Name of party writing.)
   ________________________________
   (Official designation of writer.)
   ________________________________
   (Date of letter.)
   ________________________________
   (Brief of contents.)

3. In all cases, when desired, triplicate receipts for moneys or papers received will be executed by the party receiving them.

4. In all cases where receipts, notices, returns, or other papers, are required to be sent to the Solicitor's office, they must be forwarded by the first mail.
ACCOUNTS OF UNITED STATES COMMISSIONERS.

All accounts of United States commissioners must be rendered quarterly and be transmitted to the Department of Justice within twenty days after the close of the quarter.

The quarters of a fiscal year end, respectively, September 30, December 31, March 31, and June 30.

Accounts of United States commissioners must include all charges for services rendered during the quarter covered by the account.

Accounts should be made up on paper 8½ inches wide and 14 inches long. Only one side of the paper must be used.

Printed blanks must be used in all cases where practicable.

FOOTING, PAGING, ETC.

The pages of an account or voucher must be numbered in the lower left-hand corner, the footing of the first page carried to the top of the next page, and so on to the last page of the account or voucher, or each page must be footed and the amount carried to an abstract.

Make an entry on the first page of the account as follows, with the blank spaces filled:

Account of ————, United States commissioner for the ———— district of ————, residing at ————, for the quarter ending ————, 189—.

Give the title of each case, the name of the complaining witness and his official title, if he have any, the offense charged, mentioning the section violated, the place where and the time when the offense was committed, the place of arrest, and the disposition of the case. The commissioner should then enter the several items of service rendered in the case during the quarter, being very careful to give dates on the left hand margin, opposite the several charges.

The several cases should be entered in the account in the order of time when each was disposed of, but all charges for services must be made in the account for the quarter in which the services were rendered.

When a mittimus issued and a bond taken in a case on the same day are charged, the necessity for both must be shown.

And when a temporary mittimus is issued, or a temporary bond or recognizance is taken on the day upon which the case is disposed of, the necessity for the same must be explained.

When a case is continued the necessity for such continuance must be shown.
Charges for copies of process must state what papers were copied and the folios in each, and should not be made when the defendant was not held for court. The names and residences of witnesses for the United States and of the sureties on the bonds of defendants must be given at the foot of the page.

Only one case should be put on a page.

Form of affidavit by a United States commissioner to his account:

UNITED STATES OF AMERICA,

-- District of --:

I, -- --, United States commissioner for the -- district of --, being duly sworn, depose and say that the foregoing account, amounting to $ --, is just and true, as stated therein; that no payment has been received by me on account thereof, and that the services therein charged have been actually and necessarily performed as stated; that in each internal-revenue case mentioned therein the complaint was sworn to by a United States district attorney, collector or deputy collector of internal revenue, or revenue agent, or that such complaint alleged personal knowledge on the part of the affiant of the commission of the offense charged, and that the prosecution in each case was approved by a circuit or district judge or by the United States district attorney.

United States Commissioner.

Subscribed and sworn to before the undersigned this -- day of --, 189--.

CERTIFICATE OF DISTRICT ATTORNEY AS TO INTERNAL-REVENUE CASES.

I, -- --, United States district attorney for the -- district of --, hereby certify that in each prosecution under the internal-revenue laws, fees for which are charged in this account, said fees have been taxed against and collected from the defendant, or the prosecution was commenced upon a sworn complaint setting forth the facts constituting the offense and alleging them to be within the personal knowledge of the affiant, or upon a sworn complaint by a United States district attorney, collector or deputy collector of internal revenue, or revenue agent, setting forth the facts upon information and belief, and approved either before or after arrest by a circuit or district judge, or the attorney of the United States in the district where the offense was alleged to have been committed or the indictment was found.

United States Attorney.

Form of order approving an account of a United States commissioner:

Whereas -- --, United States commissioner for the -- district of --, has forwarded an account for his official services for the quarter ending --, 189--, duly certified by oath attached to the account, and the district attorney has submitted said account for approval in open court, and it appearing to the satisfaction of the court that the services therein charged have been actually and necessarily performed as therein stated, and whereas said charges appear to be just and according to law, it is ordered that said account, amounting to $(--) dollars, be, and the same is hereby, approved this -- day of --, 189--.

When any part of any account is not approved by the court, the item or items not approved should be specified. This matter is especially called to the attention of district attorneys.
Seals to copies of orders approving accounts are required, but seals of clerks to affidavits and to copies of orders relative to subvouchers are not required, and charges therefor are not allowed.

Explanations to suspensions made in an account by an Auditor of the Treasury should not be sent to the Department of Justice, but should be sent directly to the Auditor who made the suspensions.

Responses to all calls from the Department of Justice for information relative to accounts should be made in duplicate, and when required they should also be under oath. Such responses should always be promptly forwarded in order that the Department may comply with the requirements of the act of July 31, 1894.

**ACCOUNTS OF JUSTICES OF THE PEACE AND OTHER COMMITTING MAGISTRATES OF STATES AND TERRITORIES.**

When such committing magistrate renders service in a case wherein the defendant is charged with a violation of a law of the United States he should charge the fees to which he would be entitled under the laws of his State or Territory for like services.

He should make out his account in all respects as that of a United States commissioner, except that instead of the fees provided for United States commissioners he should charge the fees provided by the State or Territorial law. The account must be verified by his affidavit, forwarded to the United States attorney for his district, to be by him presented to the court for approval.

There is no law of the United States fixing the fees of justices of the peace, or other committing magistrates of a State or Territory, for such services, and the Comptrollers have invariably held that charges therefor must be made under the State or Territorial fee bill. It will facilitate the examination of their accounts if they will cite the law under which their fees are taxed.

If an account is not properly rendered it will be returned for correction or restatement.
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To be summoned to testify generally.

To appear before grand or petit jury or both.

To be summoned for indigent defendant.

May be required to give bond.

For accused may be required to give bond in certain cases.

Subpoenas may run to other districts for.

Subpoenas in civil causes not to run more than 100 miles.

Recognizances of.

Recognizance in Vermont.

Not more than four before commissioner.

Recognizances to be returned to court.

When list is to be furnished defendant.

In Patent-Office cases.

For defendant in the District of Columbia.

Accounts for fees of.

Fees—

Before Department or Bureau.

Attendance on court or before officer.

Double mileage not to be allowed.

When detained in prison.

Mileage in Colorado.


In pension cases.

In extradition cases.

Notes on.

Officers of courts not entitled to.

Seamen or persons sent from foreign country.

To be paid by marshal on orders.

When summoned for indigent defendant.

Of more than four before commissioner.

To be taxed by judge or clerk.

When testimony taken to be used in foreign countries.

In Patent-Office cases.

In the District of Columbia.

For defendant in District of Columbia.

At inquests, District of Columbia.

Warden, District of Columbia:

Attorney-General to prescribe rules, etc.

To be paid for subsistence of prisoners.

Washington, mileage of witnesses and jurors in.

Wisconsin, clerks in western district.

Writ, not necessary to bring prisoner into court.

Writ of commitment:

Only one necessary against same person.

Copy to be jailer's authority.

Original to be returned.

Writ of removal:

Only one necessary to remove prisoner.

Copy for sheriff or jailer.

Writs to other districts, decisions relating to.

Wyoming, mileage of witnesses and jurors in.