

especially when taking him from the shore outside the ship. *Holladay v. Kennard*, 12 Wall. 254.

The declaration of the winchman that he was deaf, made in connection with a request to the plaintiff to blow loud and in the course of their employment, was a part of the *res gestæ*, and evidence that he was in fact deaf and unable to hear the signals as usually given. *Eddy v. Davis*, 34 Vt. 209. And the fact that the draft was lowered too fast suddenly, after being taken too high, contrary to the signals, was evidence of want of hearing or of skill. *Stokes v. Saltonstall*, 13 Pet. 181. These considerations, in connection with the testimony of the plaintiff that the winchman apparently did not hear, seem to at least have entitled the plaintiff to go to the jury, and to have called for evidence on the part of the defendant. The testimony of many witnesses, including the winchman himself, was produced in behalf of the defendant, which tended to show that he was not deaf, nor deficient in skill or attention. When the evidence was all in, the weight and balancing of it were for the jury; and their conclusion upon it in respect to its preponderance, when fairly reached, is not re-examinable. Amend. Const. U. S. art. 7. When a case is such that it must be submitted to the jury, conclusiveness of the verdict must follow. *Insurance Co. v. Doster*, 106 U. S. 30, 1 Sup. Ct. Rep. 18. Motion for new trial denied.

CALDERON v. O'DONAHUE.

(Circuit Court, S. D. New York. July 23, 1891.)

1. EVIDENCE—DECLARATIONS—RES GESTÆ.

Where the issue presented is as to whether a lawyer took a contract in his own name for the benefit of his client, anything which he may have said about the transaction to others, which was no part of it, is not admissible as part of the *res gestæ*.

2. DOCUMENTS—RIGHT OF INSPECTION.

The fact that counsel in cross-examination hands the witness documents for identification, does not give opposing counsel the right to see them. When the same are not offered in evidence, or the contents gone into, there is no ground for inspection.

At Law.

Roger Foster, for plaintiff.

George Bliss, for defendant.

WHEELER, J. On the trial the principal question was whether a lawyer, who executed a contract in writing in his own name for the purchase from the plaintiff of a concession for a bank in Nicaragua, was the agent of the defendant in that transaction, and was held out to be such agent by the defendant, and in fact purchased the concession for him. The plaintiff, after some proof of such agency, offered to show what the attorney said about the transaction, during the time of it, to others than

those with whom it was made, in the absence of the defendant. If the declarations had been made in the course of the transaction, carrying it on, they would have been admissible as a part of the *res gestæ*; but as they were only made about the transaction, and were not any part of it, they were mere hearsay, and do not appear to have been admissible at that stage of the case. 1 Greenl. Ev. §§ 113, 114; Best, Ev. (Wood's Ed.) § 531, note.

The defendant's counsel, in cross-examination of some of the plaintiff's witnesses, showed letters and documents which were marked for identification. The plaintiff's counsel claimed the right to see them, which was denied. If the defendant's counsel had offered them in evidence, or gone into their contents further than to have them identified, the plaintiff's counsel would have been entitled to see them for the purposes of objection and re-examination of the witnesses; but the mere identification of them by the witnesses, which required some description, does not appear to have given that right. The plaintiff has moved for a new trial because of the exclusion of this evidence, and of this denial of examination. Neither of these grounds appears to be sufficient for granting the motion. Motion for new trial denied. Stay continued to first day of next term for filing exceptions.

BASHAW v. UNITED STATES.

(Circuit Court, E. D. Missouri, E. D. June 15, 1891.)

1. DISTRICT ATTORNEYS—COMPENSATION.

Services rendered by a United States 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 while in office fall within Rev. St. U. S. § 824, and he cannot recover as compensation for such services more than \$10, the amount fixed by said section for fees of attorneys in actions at law.

2. SAME—VIOLATION OF REVENUE LAWS.

Rev. St. U. S. § 838, makes it the duty of a district attorney to institute proceedings for the violation of internal revenue laws, reported to him by the collector, "unless upon inquiry and examination he shall decide that such proceedings cannot possibly be sustained, or that the ends of public justice do not require that such proceedings be instituted," and provides that in such cases the district attorney shall receive such sum as the secretary of the treasury shall deem just and reasonable, on the certificate of the judge before whom such cases are tried and disposed of. *Held*, that a district attorney may recover reasonable compensation for services rendered and expenses incurred in making an examination into alleged violations of the internal revenue laws, reported to him by the collector, though no proceedings are instituted in court. Following *In re Account of District Attorney*, 23 Fed. Rep. 26.

3. SAME—VIOLATION OF IMMIGRATION LAWS.

The district attorney is not entitled to fees for services performed in actions instituted by him to recover penalties for alleged violation of the immigration laws by the importation of aliens under a contract to labor, where such suits were eventually compromised and dismissed by the government without any judgment being rendered; there being no statute giving fees in such cases.

4. SAME—FORFEITURE—CHARTER OF NATIONAL BANK.

For services performed by the 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 fees prescribed by section 824; there being no other law of the United States giving a compensation to a district attorney for such services.