

on account of his poverty, he is unable to pay or secure the costs of a suit, section 3538, Code Va. 1887, provides that he may sue *in forma pauperis*. There are no words of restriction in this statute that preclude a non-resident poor person from its privileges. *Heckman v. Mackey*, 32 Fed. Rep. 574.

In the first case we have in hand (*Miller's Adm'r v. Norfolk & Western R. Co.*) counsel for plaintiff insist that security for costs cannot be required of the plaintiff, because, as such administrator, he has given bond before a state court, and that he and his sureties on his official bond are liable for the costs, should there be a judgment in favor of the defendant. This position cannot be sustained. The administrator and his sureties are only liable to the extent of assets received, or that should have been received by the administrator in the proper discharge of his duties. The court is of opinion that, if the non-resident administrator plaintiff have assets in his hands, or the estate is solvent, and sufficient to pay the costs, or if the beneficiaries in the suit are persons of sufficient means to pay the costs, they should be required to secure the same. If, however, there is no estate out of which the administrator can pay the costs, and the suit is one that it is his duty to prosecute, and the beneficiaries are poor persons, such as are contemplated by section 3538, Code Va. 1887, he should be allowed to sue *in forma pauperis*, on proper petition being filed.

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GOODRICH v. UNITED STATES.

(Circuit Court, E. D. Arkansas. June 24, 1891.)

**1. CLERK DISTRICT COURT—FEES.**

The clerk of the district court is entitled to fees from the government for making reports to the solicitor of the treasury, for entering appearances, arraignments, and appointments of supervisors of elections, for making certified copies of such appointments, for issuing *præcipes* to jury commissioners, for entering orders appointing attorneys to defend, for filing discharges of government witnesses, for drawing complaints, for entering returns of warrants and subpoenas, and for taking acknowledgments of recognizances.

**2. SAME—DEPUTY-CLERK—JURY COMMISSIONER.**

The deputy-clerk at Texarkana is entitled to fees for his services as jury commissioner.

At Law.

*U. M. & G. B. Rose*, for Goodrich.

*Charles C. Waters*, Dist. Atty., for the United States.

WILLIAMS, J. Upon the trial of this case the court makes the following findings: (1) The charges of 60 cents and 45 cents for reports to the solicitor of the treasury are required by section 797 of the Revised Statutes and by the instructions issued by the solicitor of the treasury, page 7, cl. 2. (2) The items for entering appearance, arraignment, etc., \$1.50, \$3.45, and \$5.10, and the item for proceedings on jury trial, \$1.50, are

shown to be for services actually and in good faith rendered to the government, and the charge therefor is not excessive. (3) The items \$448.65 for entering appointments of supervisors of elections for 997 townships, and \$1,576.30 for certified copies of appointments for 2,044 supervisors, are for services performed by the clerk under the orders of the court. They are a proper charge. *Goodrich v. U. S.*, 35 Fed. Rep. 193. (4) The *præcipes* to jury commissioners are necessary to inform them of their appointment, and the clerk is entitled to recover therefor under section 828, cl. 1, of the Revised Statutes, the \$2.50 claimed. (5) The item of \$1.75 for entering orders appointing attorneys to defend is proper. *Goodrich v. U. S.*, 42 Fed. Rep. 393. (6) The item of \$56.40 for filing 564 discharges of United States witnesses is proper. It is necessary that such discharges should be given by the district attorney, in order that the clerk may know when the witnesses are entitled to a discharge, and the amount of fees to be paid them for attendance; and it is proper that these discharges should be filed and preserved. (7) The item of \$10 for services of the deputy-clerk at Texarkana as jury commissioner is proper. *Marvin v. U. S.*; 44 Fed. Rep. 405; *Goodrich v. U. S.*, 42 Fed. Rep. 393; *Erwin v. U. S.*, 37 Fed. Rep. 470. (8) The item for drawing complaints, \$23.40, is shown to have been for necessary and proper services, and is allowed. *U. S. v. Ewing*, 11 Sup. Ct. Rep. 743; *U. S. v. Barber*, Id. 749; *Goodrich v. U. S.*, 42 Fed. Rep. 393; *Rand v. U. S.*, 36 Fed. Rep. 671. (9) The item \$27.90 for entering returns of warrants and subpoenas is shown to have been for services actually rendered and essential, and is allowed. (10) The item \$13.75 for taking acknowledgments of recognizances is proper. *U. S. v. Barber*, 11 Sup. Ct. Rep. 749; *U. S. v. Ewing*, Id. 743; *Goodrich v. U. S.*, 42 Fed. Rep. 392.

It is therefore ordered that judgment be entered in favor of the plaintiff for these items, and that there is due the plaintiff the sum of \$2,173.25.

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### EDWARDS v. TOWN OF POCAHONTAS.

(Circuit Court, W. D. Virginia. May 19, 1891.)

#### 1. MUNICIPAL CORPORATIONS—LIABILITY FOR NEGLIGENCE OF OFFICERS.

A distinction exists as to their liability for the negligence of their officers between municipal corporations proper, such as chartered towns and cities, which voluntarily assume a part of the sovereignty of the state for purposes of local government, and counties, which are arbitrary political divisions of the state established by general laws for general governmental purposes; and the former can be held liable for the negligence of its officers in keeping a filthy and unhealthy prison, whereby injury results to a person confined therein.

#### 2. SAME—CONDITION OF TOWN JAIL.

Code Va. 1887, § 927, provides that every town having no jail of its own may use the county jail. Sections 928-930, applicable only to counties and cities, provide that the jailer shall keep the jail always clean, that jails shall be inspected under direction of the county court, and that the jailer may be summarily punished for failure in his duty. *Held*, that a town which used a jail of its own was liable for