

ported decree of condemnation. If this sweeping and arbitrary power is conceded to the officers of the department, they could as well have made the deficiency twice or three times as great as it is. They have only to make a charge, no matter how unfounded it may be, and have it certified, and the postmaster and his bondsmen are without remedy. Of course the foregoing suggestion is made merely by way of illustration, without intending to intimate that such abuse of power has ever taken place; in the case at bar the officials unquestionably acted with entire good faith. It is thought, however, that it was not the intention of the law that executive officers should be clothed with the power thus to usurp the province of court and jury and decide, finally and irrevocably, questions of fact upon *ex parte* and hearsay statements. Such power is not found in the sections of the statute referred to. They were intended to promote the convenience of the departments and the courts. If the original of a paper, book or account is evidence, a copy properly certified, is equally admissible. It was not the intention of congress to admit incompetent evidence under the guise of a certificate. The following authorities are in accord with these views: *U. S. v. Jones*, 8 Pet. 375; *U. S. v. Forsythe*, 6 McLean, 584; *U. S. v. Buford*, 3 Pet. 12; *Hoyt v. U. S.*, 10 How. 109; *U. S. v. Smith*, 35 Fed. Rep. 490; *Cox v. U. S.*, 6 Pet. 172, 202; *Smith v. U. S.*, 5 Pet. 292; *U. S. v. Edwards*, 1 McLean, 467; *U. S. v. Patterson*, Gilp. 47; *U. S. v. Battie*, Id. 97; *Bruce v. U. S.*, 17 How. 437, 440; *U. S. v. Eckford's Ex'rs*, 1 How. 250.

Again, it is said that the provisions of the act of June 17, 1878, which authorize the postmaster-general to withhold commissions on returns which he is satisfied are false, do not permit him to charge a postmaster with commissions on alleged false returns where the accounts have, in the due course of business, been settled and allowed. He may withhold commissions, but having allowed them, he cannot recover them without due process of law. There is great force in this position. *U. S. v. Hutcheson*, 39 Fed. Rep. 540; *U. S. v. Johnston*, 124 U. S. 237, 8 Sup. Ct. Rep. 446.

It follows that the verdict must be set aside, and a new trial granted.

In re WALLER.

(District Court, W. D. South Carolina. February 12, 1892.)

1. WITNESSES—FEES—POST-OFFICE.

A person employed by a postmaster who receives a fixed salary, without any allowance for clerk hire, is not a "clerk or officer of the United States," within the meaning of Rev. St. U. S. § 850, declaring that such persons shall receive only their necessary expenses when summoned as witnesses in behalf of the government.

2. POST-OFFICE.

There is no such office as deputy-postmaster of the United States.

Application of Lewis Waller for witness' fees. Allowed.

SIMONTON, District Judge. Lewis Waller, styling himself deputy-postmaster at Greenwood, S. C., is attending this court as a witness for a defendant. This defendant, being unable to pay his witnesses, obtained an order under section 878, Rev. St., and his witnesses, among them Waller, were summoned, and will be paid by the United States. Waller, being about to be discharged, claims the usual mileage and *per diem* of witnesses. Were he an officer of the United States, and summoned on behalf of the government, he would be entitled only "to his necessary expenses, stated in items, and sworn to, in going, returning, and attendance on the court." Rev. St. § 850. The same rule would be observed when an officer of the United States is summoned, and attends as a witness for the defendant, at the expense of the United States. Section 878, Rev. St., after stating the conditions under which the court may order witnesses to be summoned in behalf of an impecunious defendant, goes on: "In such case, the costs incurred by the process and 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." If he would be paid similar costs and fees as he would have secured had he been subpoenaed in behalf of the United States, he would get only his actual expenses. But this man calls himself deputy-postmaster. No such office is provided for in the acts of congress. It appears that the postmaster at Greenwood gets a fixed salary, out of which he pays such clerks as he may appoint. He need not appoint any. Under these circumstances, Waller cannot be called an officer of the United States. *U. S. v. Mouat*, 124 U. S. 303, 8 Sup. Ct. Rep. 505. Let him have the mileage and *per diem* of a witness, under section 848, Rev. St.

In re ROESSLER & HÄSSLACHER CHEMICAL CO.

In re W. J. MATHESON & Co., Limited.

(Circuit Court, S. D. New York. November 25, 1891.)

1. CUSTOMS DUTIES—CLASSIFICATION—PREPARATIONS OF COAL-TAR.

Where the determining characteristic of a product is something which it has derived from coal-tar the same is dutiable at 20 per cent. *ad valorem* as a "preparation of coal-tar," under the tariff act of March 3, 1883, (Tariff Ind., New, par. 83,) instead of as a "chemical compound," under paragraph 92, notwithstanding that some of the constituents of coal-tar have been eliminated and other materials added.

2. SAME.

Under this rule, "naphthionate of soda" and toluidine base are dutiable as "preparations of coal-tar."

Appeals from Decision of the Board of United States Appraisers. Reversed.

The report of the district attorney to the secretary of the treasury in the *Roessler & Hasslacher Chemical Company Case* is as follows: