chasers of this property, which they did not assume, and cannot be held to have assumed, when they bought the property at the receiver's sale.

The conclusion is that this is not a case where the court is required by law to tax counsel fees of the complainant against the defendant, and, in the absence of any such requirement, and considering the question under the general rule applicable in courts of equity, such a case is not made as the court would, in its discretion, give it that direction. But the court will leave the matter of compensation of complainant's solicitors open until the fund is brought into court derived from the sale of the property under the decree which has been directed, and will then make such order for the payment of counsel fees, and for such amount, as may be proper. An order may be taken sustaining the demurrer upon the ground above stated.

BISHOP *v.* AMERICAN PRESERVERS' CO. *et al.*

(*Circuit Court, N. D. Illinois.* June 8, 1892.)

1. CONTRACTS IN RESTRAINT OF TRADE—TRUST COMBINATIONS.
   Act Cong. July 2, 1890, (26 St. at Large, p. 209,) which forbids combinations in restraint of interstate commerce, and gives a right of action to any person injured by acts in violation of its provisions, does not authorize suit where the only cause of action is the bringing of two suits which have not been decided.
2. SAME—PLEADING.
   A declaration in such an action which does not aver that the goods manufactured by plaintiff, and in respect of which he claims to be injured, are a subject of interstate commerce, or that the acts complained of have anything to do with any contract in restraint of trade, or that the parties are citizens of different states, is demurrable.

At Law. On demurrer to declaration.

Action by Andrew D. Bishop against the American Preservers' Company, Bernard E. Ryan, and T. E. Dougherty, for injuries alleged to have been sustained in his business and property by reason of acts of the defendants in violation of the "Anti-Trust Law," (26 St. at Large, p. 209.) That act makes illegal all combinations "in restraint of trade or commerce among the several states," and provides that "any person who shall be injured in his business or property by any other person or corporation, by reason of anything forbidden or declared to be unlawful by this act, may sue therefor, and recover threefold damages."

Lyndon Evans and *Frederick Orrnd*, for plaintiff.

Kraus, Mayer & Stein, for defendants.

BLODGETT, District Judge, (*orally.*) This suit is now before the court on a demurrer to the declaration by the defendants, the American Preservers' Company, Bernard E. Ryan, and T. E. Dougherty.

Plaintiff charges that in 1888 he was engaged in the business of man-

ufacturing fruit butter, jellies, preserves, etc., in the city of Chicago, and that, at the instance of others engaged in the same business, he entered into an agreement with them for the formation of a trust or combination for the purpose of advancing and maintaining the prices of such goods, and that a trust or combination called the "American Preservers' Trust" was organized for that purpose, of which plaintiff became a member, and to which he conveyed his property and plant which he had used in said business; that afterwards the managers of the organization decided to take in more manufacturers and their property, and adopt the form of organizing under a charter granted under the laws of West Virginia for the purpose of conducting the business of said trust, and that he assigned and transferred his property used in said business to the said company, the American Preservers' Company, one of the defendants herein; that, after he had so transferred his property to the said trust and company, differences arose between himself and the managers of said trust, and the said trust known as the "American Preservers' Company" brought a suit of replevin in one of the courts of the city of Chicago, and took possession of the property and plant, books, etc., which plaintiff had used in the management of his business in connection with said trust, and that said defendant, the American Preservers' Company, has also brought suit at law in this court against plaintiff, claiming to recover the sum of $3,000. This is the substance of the declaration.

It is sufficient for the purposes of this demurrer to say:

1. This declaration does not show that the suits complained of are yet decided. It may on trial be shown and decided that the defendant has the right to maintain both these actions against plaintiff.

2. As a rule an action at law cannot be maintained for bringing even a false and fictitious action against a person. The commencement of a suit at law is an assertion of the right in a manner provided by law, and persons so commencing suits cannot be subjected to other actions or penalties by reason of their having done so, or for asserting or prosecuting what they claim as a legal right. The remedy of the party so sued is in defending the suit, and, if he is successful in his defense, he recovers costs, and sometimes damages. *Gorton* v. *Brown*, 27 Ill. 489; *Speer* v. *Skinner*, 35 Ill. 282; *Wetmore* v. *Mellinger*, 64 Iowa, 741, 18 N. W. Rep. 870.

It is clear from the allegations in this declaration that the plaintiff has attempted to bring this suit under the provisions of the act of congress entitled "An act to protect trade and commerce against unlawful restraints and monopolies," approved July 2, 1890, (26 St. p. 209.) But the injuries complained of are not such as give a right of action under this statute. Although this defendant, the American Preservers' Company, may be an illegal organization, it may have a valid right in the property replevied, as against plaintiff, and the right to sue and collect the $3,000 for which suit is brought. If, from difficulties growing out of the organization and management of the alleged trust, an altercation and quarrel had ensued between plaintiff and the other members or officers of the trust, and plaintiff had been assaulted by the persons he was so associ-

ated with, it is very clear he would have had no right of action under this statute. Further, it is not averred in the declaration that the goods manufactured by plaintiff are a subject of interstate commerce. Neither does it appear that the suits complained of had anything to do with the alleged contract in restraint of trade. Certainly, as it seems to me, until the decision of the suits complained of, plaintiff has sustained no damage for which he cannot be adequately compensated by the costs and damages to be awarded in the determination of those cases, if it shall be held there was no right of action. Can a party to an illegal contract bring suit? *Miller* v. *Ammon*, 12 Sup. Ct. Rep. 884, (decided by the supreme court May 16, 1892.) Do not deem it necessary to pass on that question at this time. The declaration is also fatally defective in not averring the citizenship of the parties to be such as gives this court jurisdiction. The demurrer is sustained.

In re SHERMAN, Supervisor.

(*Circuit Court, N. D. Illinois.* July 29, 1892.)

SUPERVISORS OF ELECTIONS—COMPENSATION—INDEX.

Rev. St. § 2031, which declares what fees shall be paid the chief supervisor "for entering and indexing the records of his office," does not authorize payment of such fees for making an "index" of the lists of registered voters, consisting merely of a consolidation of the entire contents of such lists, especially when such "index" is not completed till three years after the election for which the lists were made.

Accounting of E. B. Sherman, chief supervisor of elections for the northern district of Illinois.

E. B. Sherman, for chief supervisor.

T. E. Milchrist, U. S. Dist. Atty.

GRESHAM, Circuit Judge. Prior to the general elections of 1888, federal supervisors were duly appointed to guard and scrutinize the registration and voting in the city of Chicago, city of Lake View, village of Hyde Park, and town of Lake. These officers, by requirement of the chief supervisor, prepared and delivered to him duplicate lists or registers of persons who registered and voted in their respective precincts at such elections. These reports showed the residence, name, nativity, color, whether naturalized, and, if so, in what court and when, date of application to be registered, term of residence, and other facts required by the laws of Illinois. In 1888 the chief supervisor prepared an account for certain services, some of the items of which were approved and others disapproved by the circuit judge. That account, however, embraced no item for "entering and indexing the records of his office," and Mr. Sherman now presents a claim for that work, being 61,482 folios, at 15 cents per folio, amounting to $9,222.30, and for necessary stationery, $210.35. Section 2031 of the Revised Statutes, which, it is claimed, authorized the allowance of these amounts, reads:

"There shall be allowed and paid to the chief supervisor for his services as such officer the following compensation apart from and in excess of all fees allowed by law for the performance of any duty as circuit court commissioner: For filing and caring for every return, report, record, document, or other paper required to be filed by him under any of the preceding provisions, 10 cents; for affixing a seal to any paper, record, report, or instrument, 20 cents; for entering and indexing the records of his office, 15 cents per folio; and for arranging and transmitting to congress, as provided for in section No. 2020, any report, statement, record, return, or examination, for each folio, 15 cents, and for any copy thereof, or of any paper on file, a like sum."

The so-called "index," for the making of which compensation is now claimed, is simply a copy or consolidation of the precinct registers. The chief supervisor prepared large books for this purpose, with headings and lines corresponding to the precinct registers; and his so-called "index" shows only what appears in the precinct registers. This is neither entering nor indexing the records of his office, within the meaning of the section referred to. Instead of being an index of the precinct registers, it shows their entire contents. It is now more than three years since the election of 1888. The work charged for has just been completed, and it can serve no useful purpose. For these reasons I decline to approve the account.

In re PANZARA *et al.*

(District Court, E. D. New York. June 1, 1892.)

1. IMMIGRATION — SUPERINTENDENT'S DECISION — HABEAS CORPUS — JURISDICTIONAL QUESTION.
   The power of the federal superintendent of immigration to return passengers is confined to "alien immigrants," and the question whether persons ordered to be returned are of that description is jurisdictional, and may be determined by the courts on *habeas corpus*.
2. SAME—UNNATURALIZED RESIDENTS RETURNING FROM VISIT.
   One who is a resident of the United States, though of foreign birth, and not naturalized, and who is returning from a visit to the country of his birth, is not an alien immigrant within the meaning of the laws regulating immigration.

At Law. Application of Angelo Panzara and others for a writ of *habeas corpus*. Petition discharged.

The United States District Attorney, for superintendent of immigration.

David Humphreys, for petitioners.

Wing, Shoudy & Putnam, for master of the Cheribon.

BENEDICT, District Judge. The petitioners, six in number, joined in a petition for a writ of *habeas corpus* addressed to the master of the ship Cheribon, in order that the legality of their detention by that master might be inquired into by this court. The master produced the petitioners in accordance with the writ, and made return that "the above-named persons had been placed in his custody as master of said steam-

ship, and on board thereof, by the direction of the superintendent of immigration of the port of New York, to be sent back to Italy." To this return the petitioners made answer that they are not alien immigrants, but are residents of the United States, where they have acquired a domicile; and that, when returning to their respective homes in the United States from a voyage to Italy, undertaken by them with the intention of returning to the United States, they were unlawfully detained and directed to be sent back to Italy by the superintendent of immigration. Thereupon it was directed that the testimony of each petitioner be taken by the clerk, and that notice of the time and place of taking such testimony be given to the master of the ship, and also to the superintendent of immigration. The testimony of each of the petitioners was thereupon taken before the clerk; the master of the ship being there represented, but no one appearing for the superintendent of immigration. Upon the testimony of the petitioners so taken the hearing was had. At the hearing, the assistant district attorney being present and speaking for the superintendent of immigration, leave was given to cross-examine any of the petitioners. The assistant district attorney declining to cross-examine any of the petitioners, the hearing proceeded upon the uncontradicted testimony of the respective petitioners. The only argument made was in behalf of the petitioners. The question to be decided is whether this testimony shows a case where the superintendent of immigration had jurisdiction to direct the return of these petitioners to Italy. No other question can be determined by this court. From the testimony it appears in respect to each petitioner that he is not an alien immigrant, but a resident of the United States; that when detained by order of the superintendent of immigration he was on his way from Italy to his place of abode in the United States; and that his voyage to Italy was undertaken with intent to return to the United States, where he resided. Upon this testimony it must be held to have been shown in regard to each petitioner that he was not an alien immigrant; and, that fact appearing, even if it be assumed that the petitioner was born in Italy, and had never been naturalized, it must nevertheless be held that the order of the superintendent of immigration set up in the master's return is void for want of jurisdiction. The statute conferring power upon the superintendent of immigration to order the return of persons arriving in the United States from foreign countries confines his power to alien immigrants. He has no jurisdiction to direct the return to a foreign country of a person not an alien immigrant. The question whether the petitioner is an alien immigrant is therefore a jurisdictional one, and the finding of the commissioner upon that question is not conclusive upon the courts. That question, when presented to the court by a petition for *habeas corpus*, must be decided by the court upon the evidence presented to the court in such proceeding. And when, as here, the uncontradicted testimony presented shows in respect to each of the petitioners that he is not an alien immigrant, it becomes the duty of the court to declare the order of the superintendent of immigration that the petitioner be returned to Italy to be void, and therefore

affording no legal ground for the detention of the petitioners by the master of the ship. The petitioners must therefore be discharged, but the order will not be carried into effect until sufficient time has elapsed to enable an appeal to be taken from this decree. In case an appeal be taken, any petitioner may be released on giving a recognizance with surety in the sum of $100 for appearance to answer the judgment of the appellate court.

In re MARSH.

(*District Court, S. D. California.* July 5, 1892.)

1. FEDERAL COURTS—JURISDICTION—HABEAS CORPUS—UNITED STATES MARSHALS.
On petition for a writ of *habeas corpus* to release a United States marshal from custody under state process the court cannot inquire into the truth or justice of the charges against him, but is limited to the question whether his alleged unlawful acts were done in pursuance of a law of the United States.

2. SAME.
A federal court cannot release by *habeas corpus* a United States marshal held in custody under state process on the charge of kidnapping and carrying into Mexico a person named, though the marshal claimed to have been executing the law against the immigration of Chinese; for there is no law of the United States which would authorize such an act.

Petition of A. W. Marsh, by George E. Gard in his behalf, for a writ of *habeas corpus*. Denied.

James L. Copeland and *C. C. Stephens*, for petitioner.

Ross, District Judge. The petition for the writ sets forth that Marsh is illegally restrained of his liberty in this judicial district by the sheriff of San Diego county under and by virtue of an order made on the 6th day of June, 1892, by W. A. SLOANE, as justice of the peace for San Diego township, in San Diego county, Cal., holding the said Marsh, together with one Smallcomb, to answer before the superior court of that county for the crime of kidnapping, and admitting them to bail in the sum of $1,000 each. The proceeding in which the order was made was instituted on the 11th day of April, 1892, by the filing, pursuant to the provisions of a statute of California, of an affidavit by one Edward Crosthwaite, in which it was averred that on the 29th of January, 1891, Smallcomb, Marsh, and one Cruz, at Tia Juana, in San Diego county, Cal., "did willfully and feloniously forcibly steal and take affiant and carry him into another country, to wit, the republic of Mexico, without having first established a claim so to do according to the laws of the United States or of the state of California," contrary to the provisions of the state statute. Upon the filing of the affidavit a warrant was issued for the arrest of the parties against whom the charge was thus preferred, and, the matter coming on for hearing before the justice of the peace, testimony was taken, upon which the order holding them to answer was based. A copy of that testimony is annexed