

further into the future than the term for which all the members of the board hold their office. In support of this view citation is made to decisions of the state courts of Illinois. Undoubtedly that doctrine is supported by the decisions of that state. An examination into the grounds of those decisions, however, discloses the fact that they are based upon the interpretation given to the statute of Illinois. The statute there provides that at the annual election of directors the course of study for the ensuing scholastic year shall be determined by ballot of the electors. The courts have held it to be a necessary inference that no contract could be made for the employment of a teacher until it should be known what service was to be contracted for. In other states, where there is no statute limiting expressly or by implication the time for which such a contract may be made, the decisions uniformly concede the power to the directors to enter into agreements for a period longer than their term of office. *Gates v. School Dist.*, (Ark.) 14 S. W. Rep. 656; *Reubelt v. School Town*, 106 Ind. 480, 7 N. E. Rep. 206. In this state there is no such limitation by statute, and it is not perceived that any principle of public policy would prohibit the making of a contract for a period of two scholastic years.

Neither is the contract void for want of certainty as to the terms of payment. That is certain which may be rendered certain. It does not appear from the complaint that the compensation to be paid the plaintiff was not capable of being rendered certain by reference to a fixed and definite standard of compensation established by the directors of another district. The practice of so expressing the rate of compensation in a contract may be justly open to criticism when it is considered that the directors are trustees of the people, and owe to them full and accurate information as to the terms of all contracts; yet upon a demurrer to a complaint filed to recover compensation under such a contract, after the same has been executed, the court will not be justified in holding the contract void. The demurrer is overruled.

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UNITED STATES v. CLOUGH.

(Circuit Court of Appeals, Sixth Circuit. February 6, 1893.)

No. 26.

- 1 CLAIMS AGAINST THE UNITED STATES—COMMISSIONER'S FEES—AFFIXING SEAL. Rev. St. § 1014, requires the process issued by a United States commissioner to be the same as that issued against offenders under the state law by examining magistrates. In Tennessee the seal of the magistrate is necessary to validate the process. Rev. St. § 828, allows clerks for issuing and entering every process, with certain exceptions, \$1, and a further allowance of 20 cents for affixing the seal of the court to any instrument when required. Rev. St. § 847, allows commissioners the same fee as is allowed the clerks for like services. *Held*, that the allowance of 20 cents applies only to those instruments for which specific provisions are not made, and that a commissioner in Tennessee is not entitled to such fee for affixing his seal to warrants, writs of mittimus, etc., issued by him upon preliminary examinations, since such action is a necessary part of the issuance of the process, and is paid for by the fee for the process. 47 Fed. Rep. 791, reversed.

**2. SAME—STATUTES—CONSTRUCTION.**

Where a statute allowing an officer's compensation admits of two interpretations, the words should be construed strictly in favor of the United States, and not liberally in favor of the officer. 40 Fed. Rep. 813, disapproved.

Appeal from the Circuit Court of the United States for the Western Division of the Western District of Tennessee.

Petition by John B. Clough for the recovery from the United States of fees claimed by him for services as commissioner. A decree was rendered for the petitioner. 47 Fed. Rep. 791. The United States appeal. Modified.

S. W. Hawkins, for the United States.  
John B. Clough, pro se.

Before JACKSON and TAFT, Circuit Judges, and SWAN, District Judge.

TAFT, Circuit Judge. This was an appeal from a decree of the circuit court for the western district of Tennessee adjudging the United States to be indebted to John B. Clough, a United States commissioner, the plaintiff below, in the sum of \$405.75 for fees earned by him as such commissioner. The petition was filed under an act of congress approved March 3, 1887, entitled "An act to provide for the bringing of suits against the government of the United States," (chapter 359, 24 St. at Large, p. 505,) which conferred upon district and circuit courts of the United States a jurisdiction similar to that exercised by the court of claims over suits brought against the United States. The judgment rendered covered and included fees for a number of items, only one of which is objected to and assigned for error on this appeal. The court below held that the plaintiff was entitled to a fee of 20 cents for affixing his commissioner's seal to warrants, writs of mittimus, etc., issued by him upon preliminary examinations, amounting in the aggregate to \$141.40.

Under section 847 of the Revised Statutes, commissioners are entitled to the same fees as are allowed to clerks for like services; and under section 828 of the Revised Statutes the clerks are allowed for affixing the seal of the court to any instrument when required, 20 cents. Under section 1014 of the Revised Statutes the process issued by the commissioner is required to be the same as that issued against offenders under the state law by examining magistrates. In Tennessee the seal of the magistrate is necessary to validate his warrant or mittimus. *Tackett v. State*, 3 Yerg. 392. And it is therefore essential to the validity of a warrant of the United States commissioner, exercising jurisdiction in Tennessee, that his writs shall have his seal affixed.

It is contended by counsel for the appellee that it necessarily follows from the foregoing that the commissioner should be allowed 20 cents for affixing his seal to each writ. Were the foregoing all of the statute law bearing on the subject, the argument would be sound, but, in our opinion, the other provisions of section 828 show that it cannot be supported. By section 828, clerks are allowed

“for issuing and entering every process, commission, summons, capias, execution, warrant, attachment, or other writ, except the writ of venire or a summons or subpoena for a witness, one dollar.” And under section 847 United States commissioners are allowed, “for issuing any warrant or writ, and for any other service, the same compensation as is allowed to clerks for like services.”

If the seal of a United States commissioner is essential to make a legal warrant or a writ of mittimus within the state of Tennessee, then we are clearly of the opinion that such service is included in the issuing of such warrant or writ, and that the one dollar provided by statute for issuing pays also for the affixing of the seal.

The provision in section 828, allowing 20 cents for affixing the seal of the court to any instrument when required, applies only to those instruments the issuing or preparation of which are not specifically allowed in the previous provisions of the same sections, and on which a seal may be needed. The provision allowing 15 cents a folio for making any record, certificate, return, or report has application to writings some of which might need a seal, and in charging for such record or certificate or other paper 20 cents should be allowed for affixing the seal, because the 15 cents a folio is obviously only for the writing required in the body of the paper. But where the fee is for issuing and entering a particular writ the service to be paid for is the issuing and entering a lawful writ with all that that includes. The learned judge below, in objecting to this view, says:

“The argument that section 828 of the Revised Statutes, giving a fee of one dollar for issuing and entering every process, etc., covers every charge in respect of and concerning the writ, is wholly untenable, because the subsequent part of the section in terms provides a fee for entering the return of it, and this service may just as well be said to be embraced in the one dollar as the fee for affixing the seal, also expressly given.”

There is involved in this statement, it seems to us, a non sequitur. The issuing and entering of a process is one thing, and entering of the return of the process is another. The process is valid and complete in the hands of the executing officer without any return, and the entering of the return is therefore a service entirely separate from the issuing and entering of the process, and could not, it seems to us, by any force of reasoning, be held to include the entering of the return. We do not concur in the opinion of the court in *McKinstry v. U. S.*, 40 Fed. Rep. 813, as to the principle to be followed in the construction of the fee bill. We do not know any rule of public policy or of practical experience which requires that where a statute allowing an officer's compensation “admits of two interpretations, the words should be construed liberally in favor of the officer, and not strictly in favor of the United States.” The well-known abuses under the fee system, by which the government has been defrauded of large amounts through unconscionable charges, and the lax administration of the law in this respect, would seem to require a strict interpretation in favor of the United States, rather than in favor of the officer. The decree of the court below will be modified in accordance with this opinion.

## In re ADUTT.

(Circuit Court, N. D. Illinois. April 18, 1893.)

## 1. FEDERAL COURTS—CIRCUIT COURT—JURISDICTION—HABEAS CORPUS—UNITED STATES COMMISSIONER.

On a writ of habeas corpus, in behalf of one committed by a United States commissioner to the custody of the marshal to await action of the executive on demand of a foreign government for his extradition on the charge of forgery, the circuit court can inquire only as to the jurisdiction of the commissioner over the subject-matter, and whether there was legal evidence before him, supporting the judgment.

## 2. EXTRADITION—PROCEEDINGS—NECESSITY OF REQUISITION.

The initiative of proceedings for the extradition of an alleged criminal does not necessarily rest on a demand or requisition by the foreign government upon our government; but such proceedings may be commenced by the arrest of the person charged, under a warrant issued by a United States commissioner on complaint of a foreign consul. In re Kaine, 14 How. 103; Benson v. McMahon, 8 Sup. Ct. Rep. 1240, 127 U. S. 457,—followed.

## 3. FORGERY—UTTERING FORGED PAPER—TREATY.

The crime of uttering forged papers is included in the common-law definition of forgery, and in the term "forgery" as used in the treaty between Austria-Hungary and the United States.

## 4. SAME—FRAUD BY MEANS OF FORGERY.

The term "forgery," as used in the treaty, should have, so far as our government is concerned, its common-law definition, which includes forgery of commercial paper, though the crime of forgery, as known to the law of Austria-Hungary, comprehends the falsification of public obligations, and though the crime of forging commercial paper, charged against the prisoner, is there classified as "fraud by means of forgery."

## 5. EXTRADITION—PLEADING—COMPLAINT BY FOREIGN CONSUL.

Where the complaint states that complainant is the duly-accredited official agent of the foreign government, it is not necessary that a complainant should swear positively in the jurat that he is consul.

## 6. SAME.

The complaint, to give jurisdiction, need not have the precision and particularity of an indictment, but should set forth the substantial and material features of the offense, so that the court can see that the particular crime charged is one enumerated in the treaty.

## 7. SAME—WARRANT.

A warrant charging the prisoner with forgery and uttering forged paper is not objectionable as charging two offenses, since both are comprehended within the crime of forgery at common law.

Petition by Jacques Licco Adutt for writ of habeas corpus. Petitioner remanded.

A. Moses, for petitioner.

John C. Richberg, for Austrian Government.

JENKINS, Circuit Judge. The petitioner, upon complaint of the consul, at Chicago, of the Austria-Hungary government, was, by the United States commissioner, committed to the custody of the marshal to await the action of the executive upon demand of the Austria-Hungary government for his extradition, upon the charge of forgery. He thereupon sued out this writ of habeas corpus to obtain his discharge, and a writ of certiorari to the commissioner to bring up the proceedings before him.