This court, in another part of the opinion, say:

"Nor is the undeterminateness of the damages, and the difficulty of ascertaining their precise amount by any certain or fixed standard, a sufficient answer. The same difficulty occurs in many other classes of action undoubtedly maintainable."

In this case the Tennessee statute makes the sheriff civilly responsible for the acts of the jailer whom he appoints, and as we have seen the United States may sue, and a cause of action is alleged in the declaration, the demurrer should have been overruled. The measure or extent of damages is not now before this court, and we do not indicate an opinion thereon. The judgment of the district court sustaining the demurrer to the declaration and dismissing the action is reversed, and the district court is directed to set aside said order, and proceed in conformity with this opinion.

TAFT, Circuit Judge (concurring). I concur in the foregoing opinion, and only wish to add that negligence of the sheriff resulting in the escape of Boalen, which made the duty of the United States as a government to apprehend and punish him more onerous in a pecuniary way, was a breach of the bond, and a pecuniary injury to the United States, for which they may recover damages. The last count in the declaration is for $1,000 expended in Boalen's recapture after his escape from the sheriff's custody, and that, even if there is no other averment of recoverable damages, as to which no opinion will be expressed, is sufficient to make the declaration good.

GIRD et al. v. CALIFORNIA OIL CO.

(Circuit Court, S. D. California. April 2, 1894.)

No. 302.

COSTS IN CIRCUIT COURT—TAXATION—PRINTING BRIEFS.

The costs of printing briefs for submission to the circuit court are not taxable in the ninth circuit, as there is no rule requiring briefs to be printed.

This is an appeal from the action of the clerk in taxing in the defendant's bill of costs an item for "printing brief, $40."

Samuel Minor and Edward Lynch, for plaintiffs.
John D. Pope, for defendant.

ROSS, District Judge. There is in this circuit no rule of court requiring briefs to be printed, nor was there any special order to that effect made in the case. And, as neither the statutes nor the rules in equity adopted by the supreme court require it to be done, the brief in question must be taken to have been voluntarily printed by the defendant. Under such circumstances, the prevailing party cannot recover of the losing one the costs of such printing. Neff v. Pennoyer, 3 Sawy. 336, Fed. Cas. No. 10,084; Hussey v. Bradley, 5 Blatchf. 212, Fed. Cas. No. 6,946; Dennis v. Eddy, 12 Blatchf. 198, Fed. Cas. No. 3,793; Ferguson v. Dent, 46 Fed. 93. The item in question must, therefore, be disallowed. So ordered.

UNITED STATES v. ALBERT et al.

(Circuit Court of Appeals, Second Circuit. April 19, 1894.)

CUSTOMS DUTIES—CLASSIFICATION—DOTTED SWISSES.

"Swiss Muslins" or "Dotted Swisses," being cotton goods in which the threads can be counted independently of the dots, the dots being woven at the same time with the cloth, but consisting of threads distinct from both warp and filling, are dutiable under the countable provisions of paragraph 346 of the act of October 1, 1890, and not under paragraph 355, as "manufactures of cotton not specially provided for." 57 Fed. 192, reversed. Hedden v. Robertson, 14 Sup. Ct. 434, 151 U. S. 520, followed.

Appeal from a Decision of the Circuit Court for the Southern District of New York (57 Fed. 192), sustaining the decision of the board of general appraisers, which overruled the classification by the collector of merchandise known as "Swiss Muslin."

Thomas Greenwood, Asst. U. S. Dist. Atty.
W. Wickham Smith, for appellee.

Before WALLACE and SHIPMAN, Circuit Judges.

SHIPMAN, Circuit Judge. In the year 1891 the firm of Albert, Haager & Co. imported into the port of New York sundry invoices of manufactures of cotton known in trade as "Dotted Swisses" or "Swiss Muslins." The collector classified them for duty at 60 per cent. ad valorem, as embroideries, or articles embroidered by machinery, which are composed of cotton, under the provisions of paragraph 373 of the tariff act of October 1, 1890. As the claim that the articles were embroideries has now been abandoned, because the testimony abundantly sustained the theory of the importers upon that question of fact, no further attention need be paid to the embroidery paragraph. The importers protested, claiming that the merchandise was not in fact embroidered, and was not commercially known as "embroideries," and that it was either dutiable at 40 per cent. ad valorem, as a manufacture of cotton not specially provided for, under paragraph 355 of the tariff act of October 1, 1890, or that it was dutiable as bleached cottons, according to the number of threads to the square inch, and the value, at the respective rates provided in the paragraphs from 344 to 348, inclusive, in the same act. Paragraph 355 is as follows:

"Cotton damask, in the piece or otherwise, and all manufactures of cotton, not specially provided for in this act, forty per centum ad valorem."

Paragraph 346, which, among that series of paragraphs specified in the protest, is the one which is applicable to the case, is as follows:

"Cotton cloth, not bleached, dyed, colored, stained, painted, or printed, exceeding one hundred, and not exceeding one hundred and fifty threads to the square inch, counting the warp and filling, three cents per square yard; if bleached, four cents per square yard; if dyed, colored, stained, painted, or printed, five cents per square yard: provided, that on all cotton cloth exceeding one hundred, and not exceeding one hundred and fifty threads, to the square inch, counting the warp and filling, not bleached, dyed, colored, stained, painted, or printed, valued at over seven and one half cents per