delay, I shall sustain the demurrer on the question of the statute of limitations, to the end that the parties may secure a ruling from the court of appeals upon the questions involved before incurring the expense necessarily attending a jury trial.

ANDERSON v. LOUISVILLE & N. R. CO.

(Circuit Court, D. Kentucky. June 4, 1894.)

1. CIVIL RIGHTS — DISCRIMINATION AGAINST NEGROES — SEPARATE RAILROAD CARS.
   Act Ky. May 24, 1892, requiring separate cars to be furnished for white and colored passengers on railroads of the state, but prohibiting any discrimination in the quality, convenience, or accommodations in the cars set apart for each, does not contravene the fourteenth amendment of the United States constitution, which secures equality of rights, not the joint and common enjoyment of rights.

2. INTERSTATE COMMERCE—REGULATION BY STATES.
   But as the language of the act is so comprehensive as to embrace all passengers, whether their passage commences and ends within the state or otherwise, its provisions dividing them into classes according to color violate the interstate commerce clause of the United States constitution, and render the entire act invalid.

This was an action by Anderson against the Louisville & Nashville Railroad Company for damages for ejection from defendant's trains. Defendant demurred to plaintiff's petition.

John Feland & Son and J. H. Lott, for plaintiff.
Wilbur F. Browder and Reuben A. Miller, for defendant.

BARR, District Judge. The plaintiff, who is a colored man and a citizen and resident of the state of Indiana, sues the defendant, the Louisville & Nashville Railroad Company, a Kentucky corporation, which is operating, as a common carrier, a railway between St. Louis, Mo., and Nashville, Tenn., and several other railways in the state of Kentucky, for an alleged wrongful act in putting him and his wife off of its trains on two separate occasions. He alleges that he and his wife, who desired to go from Evansville, Ind., to Madisonville, Ky., purchased, at Evansville, two full first-class railroad tickets on defendant's road from Evansville to Madisonville, and then entered the defendant's car, at Evansville, usually designated the ladies' car, where they had a right to be, and that this right was recognized by the conductor of the train by taking up their tickets and exchanging them for the usual conductor's check. He alleges that they remained seated in said car undisturbed so long as the train was without the state of Kentucky, but, when the train came into that state, said conductor required of plaintiff and his wife to give up their seats in said car, and go into a compartment in a car immediately in front, which had been set apart for colored persons exclusively. He alleged that he and his wife refused to occupy said compartment, and thereupon said conductor wrongfully refused to carry them further on said train, and put

them off, without right and against their consent. In the second paragraph the plaintiff alleges that on another occasion he and his wife purchased over defendant's railroad two full first-class tickets from Henderson, Ky., to Madisonville, in same state, and that they entered the defendant's train, and seated themselves in the car designated for white persons exclusively, and that afterwards the conductor of the train took up their tickets and exchanged them for the usual conductor's checks, and then required that they should give up their said seats, and go into a compartment of a car which was and had been designated for colored persons exclusively; but that plaintiff and his wife refused to go into said compartment, and thereupon said conductor refused to carry them any further, and wrongfully put them off said train at Robard's Station, which was 30 miles distant from Madisonville, the place of his destination. The defendant has demurred to both of these paragraphs of plaintiff's petition, and thus raises the question of the constitutionality of an act of the Kentucky legislature entitled "An act to regulate the travel or transportation of the white and colored passengers on the railroads of this state," approved May 24, 1892. The 1st, 2d, 3d, 5th, 6th, and 7th, sections of that statute are as follows:

"Section 1. Any railroad company or corporation, person or persons, running or otherwise operating railroad cars, or coaches by steam or otherwise, on any railroad line or track within this state, and all railroad companies, person or persons, doing business in this state, whether upon lines of railroads owned in part or whole, or leased by them; and all railroad companies, person or persons, operating railroad lines that may hereafter be built under existing charters, or charters that may hereafter be granted in this state; and all foreign corporations, companies, person or persons organized under charters granted or that may hereafter be granted by any other state; who may be now, or may hereafter be engaged in running or operating any of the railroads of this state, either in part or in whole, either in their own name or that of others, are hereby required to furnish separate coaches or cars for the travel or transportation of the white and colored passengers on their respective lines of railroads. Each compartment of a coach divided by a good and substantial wooden partition, with a door therein, shall be deemed a separate coach, within the meaning of this act, and each separate coach or compartment shall bear in some conspicuous place, appropriate words in plain letters, indicating the race for which it is set apart.

"Sec. 2. That the railroad companies, person or persons, shall make no difference or discrimination, in the quality, convenience or accommodations in the cars or coaches, or partitions, set apart for white and colored passengers.

"Sec. 3. That any railroad company or companies, that shall fail, refuse, or neglect to comply with the provisions of sections 1 and 2 of this act, shall be deemed guilty of a misdemeanor, and upon indictment and conviction thereof shall be fined not less than five hundred, nor more than fifteen hundred dollars for each offense."

"Sec. 5. The conductors or managers on all railroads shall have power, and are hereby required, to assign to each white or colored passenger his or her respective car or coach or compartment; and should any passenger refuse to occupy the car, coach or compartment to which he or she may be assigned by the conductor or manager said conductor or manager shall have the right to refuse to carry such passenger on his train, and may put such passenger off the train; and for such refusal, and putting off the train, neither the manager, conductor nor railroad company shall be liable for damages in any court.

"Sec. 6. That any conductor or manager on any railroad, who shall fail or refuse to carry out the provisions of section 5 of this act, shall, upon convic-

tion, be fined not less than fifty nor more than one hundred dollars for each offense.

"Sec. 7. The provisions of this act shall not apply to employes of railroads, or persons employed as nurses, or officers in charge of prisoners."

This statute makes no discrimination in favor of white passengers, since any discrimination in the quality, convenience, or accommodations in the cars and compartments set apart for white and colored passengers is prohibited. It may be that some of the railroad companies of this state fail to provide equal accommodations for its colored passengers as they provide for white passengers, but this difference is not authorized by this statute, but prohibited. The fourteenth amendment to the constitution of the United States prohibits discrimination by a state because of race or previous condition of servitude, and, indeed, secures to all of its citizens certain fundamental rights as against state action, but it does not secure the joint and common enjoyment of such rights. It is the equality of right which is secured, and not the joint and common enjoyment of such right. Civil Rights Cases, 109 U. S. 3, 3 Sup. Ct. 18; U. S. v. Buntin, 10 Fed. 730; Claybrook v. Owensboro, 16 Fed. 297.

The next inquiry is whether this statute is in violation of the commerce clause of the constitution of the United States, which gives congress the exclusive right to "regulate commerce with foreign nations, and among the several states." Const. art. 1, § 8. If this statute be construed to include the internal commerce of the state of Kentucky, and not to apply to interstate commerce, it is a proper exercise of the police power of the state, and is constitutional, as has been settled in the case of Louisville, etc., R. Co. v. Mississippi, 133 U. S. 587, 10 Sup. Ct. 348. See, also, Railroad Commission Cases, 116 U. S. 307, 6 Sup. Ct. 334, 348, 349, 388, 391, 1191. The case of Louisville, etc., R. Co. v. Mississippi came to the supreme court upon the question whether or not the railroad company was obliged, under the requirements of the statute of the state of Mississippi, to furnish separate cars or compartments for colored passengers whose passage commenced and ended in the state, and a majority of the court did not attempt to decide whether the statute would have been constitutional if it had applied to interstate commerce. There was, however, a dissent by Justices Harlan and Bradley, because they considered that statute as an attempt to regulate interstate commerce. The Kentucky statute has never been construed by the court of appeals of the state, and we must determine whether it includes interstate commerce as well as internal commerce. The title of the act is to regulate the travel or transportation of white and colored passengers on the railroads of this state, and in terms it applies to all companies, corporations, or persons operating railroads, by steam or otherwise, within the state, and to all conductors of trains thus operated; and it requires all such conductors, under penalty of a fine, to assign to each white and colored passenger his or her respective car or compartment. This language is so broad and comprehensive that we conclude it must embrace all passengers, whether their

passage commences and ends in the state of Kentucky, or commences in a foreign country or another state of this Union, and ends elsewhere than in this state. The act seems to divide all persons traveling on railroads in this state, without regard to the place whence they came or whither they go, into classes, and that on the color line; all white passengers being in one class, and all other passengers in another. If this be the correct construction of the act, the question as to the constitutionality of the entire act arises, as the court cannot separate one part of the act from another, and leave the constitutional part valid and enforceable. Where the provisions of an act are distinct and separate, and the court can determine by construction the constitutional parts of an act from the unconstitutional parts, and can presume the legislature would have enacted the constitutional part of the act without the unconstitutional part, it may declare a part of an act unconstitutional and the other enforceable; but this cannot be done with this act. Baldwin v. Franks, 120 U. S. 678, 7 Sup. Ct. 656, 763, and cases cited.

The transportation of passengers is commerce, and the regulation of commerce "with foreign nations and among the several states" is exclusively in congress; yet there are many state laws that incidentally affect foreign and interstate commerce which have been held constitutional. The supreme court has declined to attempt to lay down a definite rule by which may be determined what is a regulation of foreign and interstate commerce, and how far the several states may legislate upon the subject. It is often most difficult to determine the line of demarkation which separates the power of congress from that of state legislatures, but we think the principle which determines the case under consideration has been decided by the supreme court in Hall v. De Cuir, 95 U. S. 485. In that case the Louisiana statute, as the state court construed it, forbade common carriers of passengers to separate the passengers carried by them on account of race or color while in their charge in that state, and authorized a recovery of exemplary as well as actual damages by any passenger who was thus separated without his or her consent. The supreme court held the act unconstitutional as affecting foreign and interstate commerce, although De Cuir, who was a woman of color, took passage upon the steamer Governor Allen at New Orleans to Hermitage, which was a landing within the state of Louisiana. She was refused accommodations, on account of her color, in a cabin of the boat specially set apart for white persons, and brought suit therefor, and recovered damages in the state court. Chief Justice Waite said:

"If each state was at liberty to regulate the conduct of carriers while within its jurisdiction, the confusion likely to follow could not but be productive of great inconvenience and unnecessary hardship. Each state could provide for its own passengers, and regulate the transportation of its own freight, regardless of the interests of others. Nay, more, it could prescribe rules by which the carrier must be governed within the state in respect to passengers and property brought from without. On one side of the river or its tributaries he might be required to observe one set of rules, and on the other another. Commerce

cannot flourish in the midst of such embarrassments. No carrier of passengers can conduct his business with satisfaction to himself, or comfort to those employing him, if on one side of a state line his passengers, both white and colored, must be permitted to occupy the same cabin, and on the other be kept separate. Uniformity in the regulations by which he is to be governed from one end to the other of his route is a necessity in his business, and, to secure it, congress, which is untrammeled by state lines, has been invested with the exclusive legislative power of determining what such regulations shall be. If this statute can be enforced against those engaged in interstate commerce, it may be as well against those engaged in foreign; and the master of a ship clearing from New Orleans for Liverpool, having passengers on board, would be compelled to carry all, white and colored, in the same cabin during his passage down the river, or be subject to an action for damages, 'exemplary as well as actual,' by any one who felt himself aggrieved because he had been excluded on account of his color."

Neither this language nor decision has been modified or changed by the court in Louisville, etc., R. Co. v. Mississippi, 133 U. S. 587, 10 Sup. Ct. 348. The court in that case, after quoting a part of the opinion in Hall v. De Cuir, said:

"So the decision was by its terms carefully limited to those cases in which the law practically interfered with interstate commerce. Obviously, whether interstate passengers of one race should, in any portion of their journey, be compelled to share their cabin accommodations with passengers of another race, was a question of interstate commerce, and to be determined by congress alone. In this case the supreme court of Mississippi held that the statute applied solely to commerce within the state; and that construction, being the construction of the statute of the state by its highest court, must be accepted as conclusive here. If it be a matter respecting wholly commerce within a state, then, obviously, there is no violation of the commerce clause of the federal constitution. Counsel for plaintiff in error strenuously insists that it does affect and regulate interstate commerce, but this construction cannot be maintained."

It cannot be doubted that under this latter decision the state of Kentucky could constitutionally pass a law which would require separate cars or compartments for white and colored passengers when their travel commences and ends in the state. See, also, Wabash, etc., Ry. Co. v. Illinois, 7 Sup. Ct. 4; Louisville, etc., Ry. Co. v. State, 66 Miss. 662, 6 South. 203; State v. Judge, 44 La. Ann. 770, 11 South. 74; Ex parte Plessy, 45 La. Ann. 80, 11 South. 948. The trend of recent cases in the supreme court has been to fully sustain the doctrine of the exclusiveness of the power of congress over interstate and foreign commerce. Thus in the case of Wabash, etc., Ry. Co. v. Illinois, 118 U. S. 557, 7 Sup. Ct. 4, the court held unconstitutional a statute of Illinois which enacted that if any railroad corporation shall charge, collect, or receive for the transportation of any passenger or freight of any description upon its railroad, for any distance within the state, the same or a greater amount of toll or compensation than is at the same time charged, collected, or received for the transportation in the same direction of any passenger or like quantity of freight of the same class over a greater distance of the same road, all such discriminating rates, charges, collections, or receipts, whether made directly or by means of rebate, drawback, or other shift or evasion, shall be deemed and taken against any such railroad corporation as prima facie evidence of unjust discrimination, which was pro-

hibited under penalty by the act. In Robbins v. Taxing Dist., 120 U. S. 489, 7 Sup. Ct. 592, the court held an act of Tennessee unconstitutional that required that drummers and all persons not having a regular licensed house of business in the taxing district of Shelby county, offering for sale or selling goods, wares, or merchandise therein by sample, shall pay to the county trustee the sum of $10 per week, or $25 per month, for such privilege. This was because it applied to persons soliciting the sale of goods on behalf of individuals and firms doing business in another state, and so far was a regulation of commerce among the states. In the case of Minnesota v. Barber, 136 U. S. 313, 10 Sup. Ct. 862, the court held a statute of Minnesota which required, as a condition of sales in that state of fresh beef, veal, mutton, lamb, or pork, for human food, that the animals from which such meats are taken shall have been inspected in that state before being slaughtered, unconstitutional and void as an interference with interstate commerce. And again, in the case of Crutcher v. Kentucky, 141 U. S. 47, 11 Sup. Ct. 851, the court held an act of the Kentucky legislature which provided that the agent of an express company not incorporated by that state should not carry on business in the state without first obtaining a license from the state, and that he could not obtain such license until he satisfied the auditor of the state that the company he represented had an actual capital of at least $150,000, was unconstitutional and void. The court said in that case:

"But the main argument in support of the decision of the court of appeals is that the act in question is essentially a regulation made in the fair exercise of the police power of the state. But it does not follow that everything which the legislature of a state may deem essential for good order of society and the well-being of its citizens can be set up against the exclusive power of congress to regulate the operations of foreign and interstate commerce. We have lately expressly decided in the case of Leisy v. Hardin, 135 U. S. 100, 10 Sup. Ct. 681, that a state law prohibiting the sale of intoxicating liquors is void when it comes in conflict with the express or implied regulation of interstate commerce, by congress declaring the traffic in such liquors as articles of merchandise between the states shall be free."

These and other cases show that the supreme court has had occasion and has given the subject of this exclusive power of congress to regulate foreign and interstate commerce much consideration, and has insisted upon the exclusiveness of this power even as against the exercise of the police power by the several states of this Union. Whether or not a regulation of the defendant company that there should be separate cars or compartments for white and colored passengers, and the passengers be thus separated, is proper and reasonable, cannot arise on this demurrer, as there is nothing in the record showing any regulation or rule by the company. The question of the reasonableness of such a regulation of the company can only arise when the regulation is shown to have been made by the company. Railroad Co. v. Williams, 55 Ill. 185. The defendant's demurrer to the petition must be overruled, and it is so ordered.

UNITED STATES v. VAN LEUVEN (fifteen cases).

(District Court, N. D. Iowa, E. D. June 4, 1894.)

Nos. 3,494, 3,495, 3,498, 3,499, 3,501, 3,502, 3,504, 3,507, 3,520, and 3,526-3,531.

1. EXCESSIVE FEES IN PENSION CASES—INDICTMENT—REQUISITES.
In an indictment under the act of July 4, 1884, § 3, for demanding and receiving compensation for prosecuting a pension claim before such claim is allowed, it is unnecessary to aver that the amount so received was in excess of the sum legally chargeable, or to negative the existence of a contract in regard to the fees.

2. SAME.
An indictment for violating the statute regulating fees for prosecuting pension and bounty land claims (Act July 4, 1884) need not aver that the applicant for a pension had been in the military or naval service of the United States.

3. SAME.
An indictment charging the receipt of a fee exceeding $10 for prosecuting an application for an increase of pension because of an increase of disability need not negative the existence of a contract; for under the act of July 4, 1884, it was unlawful to receive, even by contract, a fee exceeding $10.

4. CONSTITUTIONAL LAW—REGULATION OF CONTRACTS—FEES IN PENSION CASES.
Congress has constitutional power to regulate the amounts which claimants under the pension laws may contract to pay to their solicitors, even though both parties are citizens of the same state.

These were indictments against George M. Van Leuven for demanding or accepting excessive fees for prosecuting pension claims, contrary to the act of July 4, 1884. Defendant demurred to the various indictments.

Cato Sells, U. S. Atty., and M. D. O'Connell, for the United States.
John Day Smith, for defendant.

SHIRAS, District Judge. It will probably aid in arriving at a clear understanding of the questions presented by the demurrers to the indictments to briefly state the provisions of the statutes regulating the matter of the fees legally chargeable by attorneys acting for persons applying for pensions.

By section 3 of the act of July 4, 1884 (23 Stat. 98), section 4785 of the Revised Statutes is re-enacted and amended so as to read as follows:

"No agent or attorney or other person shall demand or receive any other compensation for his services in prosecuting a claim for pension or bounty land, than such as the commissioner of pensions shall direct to be paid to him, not exceeding twenty-five dollars; nor shall such agent, attorney or other person demand or receive such compensation in whole or in part, until such pension or bounty land claim shall be allowed, * * *."

By section 4 of this act, section 4786 of the Revised Statutes is amended; and, as amended, it provides for the filing with the commissioner of pensions of duplicate articles of agreement, setting forth any contract existing between the attorney and claimant in regard to the fee to be paid; it being provided that if no agreement is filed with the commissioner the fee to be paid shall be

$10, and no more. And by section 6 it is declared that "the commissioner shall have power subject to review by the secretary, to reject or refuse to recognize any contract for fees herein provided for, whenever it shall be made to appear that any undue advantage has been taken of the claimant in respect to such contract;" it being also further provided that "any agent or attorney or other person instrumental in prosecuting any claims for pension or bounty land, who shall directly or indirectly contract for, demand or receive or retain any greater compensation for his services or instrumentality, in prosecuting a claim for pension or bounty land than is herein provided, or for payment thereof at any other time or in any other manner than is herein provided, * * * shall be deemed guilty of a misdemeanor." It is also provided in this act that "no greater fee than ten dollars shall be demanded, received or allowed in any claim for pension or bounty land granted by special act of congress, nor in any claim for increase of pension on account of the increase of the disability for which the pension has been allowed." By the provisions of the act of March 3, 1891 (26 Stat. 1081), the compensation for services rendered in securing an increase of pension on account of the increase of disability for which the original pension was granted is reduced to two dollars; it being, however, provided "that the foregoing provisions in relation to fees of agents or attorneys shall not apply to any case now pending where there is an existing lawful contract express or implied."

Thus we find that for the protection of pension claimants the statutes of the United States regulate the matter of the fees to be paid to agents, attorneys, and others instrumental in prosecuting claims, in two important particulars: First, as to the amount legally chargeable; second, as to the time of payment. Upon the question of the amount, the law is, and has been since the adoption of the act of July 4, 1884, that the agent or attorney shall be entitled to such compensation as the commissioner shall direct to be paid him, not exceeding $25; that the agent or attorney, by a contract fairly entered into, and duly executed in the presence of, and certified by, some officer competent to administer oaths, may agree with the claimant as to the fee to be paid him, not exceeding the sum of $25, and upon this agreement being filed with the commissioner the sum agreed upon may be paid by the commissioner, in accordance with the provisions of sections 4768 and 4769 of the Revised Statutes; that if no agreement thus executed is filed with the commissioner the fee shall be $10, and no more, and since the adoption of the act of March 3, 1891, the fee for service in procuring an increase of pension for an increase of the original disability is the sum of $2, and no more. Therefore, any agent, attorney, or other person who, since the 4th day of July, 1884, has demanded or received for services in and about securing an original pension, or increase thereof, for another, a sum in excess of $25, or who since that date has demanded or received for services in and about securing an original pension, or increase thereof, for another, a sum in excess of $10, unless the same has

been demanded or received in accordance with a contract executed and filed with the commissioner of pensions as provided for in section 4 of the act of July 4, 1884, or who since that date, and previous to March 3, 1891, has demanded or received for services in and about securing an increase of pension for another, on account of the increase of the disability for which the pension was originally allowed, a sum in excess of $10, or who, since the adoption of the act of March 3, 1891, for services of the character last mentioned, has demanded or received a sum in excess of $2 for such service, has thereby violated the provisions of the law, has been guilty of a misdemeanor, and is liable to the punishment by the statute provided.

Upon the question of the terms of payment of legal fees the statutes are explicit. By the provisions of section 3 of the act of July 4, 1884, amending section 4785 of the Revised Statutes, it is declared that the agent, attorney, or other person must not demand or receive compensation, in whole or in part, for the services by him rendered, until the pension shall be allowed; and by section 4 of the act it is made a misdemeanor to contract for, demand, or receive payment of the compensation at any other time or in any other manner than that provided for in the other portions of the act. Thus an agent, attorney, or other person rendering services in aid of the procurement of a pension, or the increase thereof, may be guilty of a misdemeanor by directly or indirectly contracting for, demanding, receiving, or retaining a compensation in excess of the legal amount, or he may be guilty of a misdemeanor by contracting for, demanding, or receiving his compensation before the allowance of the pension, or in a manner other than that provided in the statute.

Indictments to the number of 13 have been found against the defendant, George M. Van Leuven, charging him with violation of the statutes, in that in some instances he demanded and received payment of compensation for services rendered, as agent or attorney, in procuring pensions, or an increase thereof, before the pension or increase was allowed, and in other instances he demanded and received sums in excess of the legal amount.

To these indictments general demurrers are interposed, and in support thereof it is urged that the several indictments are lacking in the averment of the facts essential to sustain a conviction. Touching indictments in cases Nos. 3,494, 3,495, 3,498, 3,499, 3,501, 3,502, first count 3,504, 3,507, 3,520, 3,526, 3,527, 3,528, 3,529, 3,530, and 3,531, which charge the receiving payment of compensation before the allowance of the pension touching which the services were rendered, I think all the necessary facts are properly and sufficiently set forth, and that the defendant is thereby fully informed of the charge which he is required to meet. In regard to this class of cases, it is not necessary to aver or show that the amount received by the defendant is in excess of the amount which might be lawfully demanded or received by the defendant, for the charge is not that an unlawful amount was received, but that the amount, whether excessive or not, was received at an unlawful time. The

fact, therefore, of the existence of a contract in regard to the fees to be paid, is wholly immaterial on the question of the time of payment. It is not necessary, therefore, to negative the existence of a contract, in order to make out a charge of receiving payment at an unlawful time, because the parties cannot, by contract, make lawful, payments made to the agent or attorney before the allowance of the pension in the given case.

In some of these indictments, it is not averred that the party on whose behalf application for a pension was made had been in the military or naval service of the United States; and exception is taken thereto on the ground that, to constitute a violation of the statute, it must be averred and be proven that the applicant had been in fact in the military or naval service. The statute does not so provide in express terms, nor can such a requirement be implied from the language of the statute, as applied to the subject-matter. The protection of the statute is thrown about all applicants for pensions, even though they may fail in proving that they had been in the military or naval service, within the meaning of the pension laws. The sections of the statute restricting the fees legally demandable by agents or attorneys have a double purpose,—the one being the protection of the applicant; the other, the protection of the government against fraudulent claims, which might be greatly multiplied if no restrictions in regard to the amount or time of payment of fees were provided. It would greatly narrow the real purpose of the statute if we should read into the same the restriction that its provisions are applicable only in cases wherein a soldier or sailor who had actually been in service was the applicant. Whenever an agent or attorney undertakes to render service in aid of an application for a pension, or for an increase thereof, he then comes within the purview of the statute, and must act within its provisions.

The second count in indictment 3,502 and indictments 3,504 and 3,507 are based upon the charge of receiving excessive fees for services rendered in connection with applications for an increase of pension by reason of an increase of the disability for which the original pension was granted. The sums charged to have been received in each of the cases named in these indictments exceed in each instance the sum of $10. These payments could not, under any circumstances, have been legally contracted for. It is charged in each case that the payment was received at dates subsequent to March 3, 1891; and hence it is argued that it should be shown whether there was or was not a contract in existence in regard to the fees, in order to show whether the proviso in the act of March 3, 1891, is applicable or not. That proviso is to the effect that the reduction of the fee from ten to two dollars for services in connection with an increase of pension shall not apply to any case pending, wherein there is an existing, lawful contract, express or implied. If the law were such that at the time the payments in question were made the parties might have lawfully contracted for the payment of the sums received, then it might well be that the indictments should contain an averment showing the nonex-

istence of such contract; but the law is now, and was so at the date of the payments in question, that under no circumstances could the parties, by contract, lawfully agree to payment in excess of $10. The averments in the indictments are sufficient, without any statements negativing the existence of contracts, to show conclusively that the reception of the sums charged to have been received by the defendant was in each case a violation of the statute, and that is all that is necessary.

The next contention on behalf of the defendant is that these acts of congress for the regulation of contracts in regard to the fees to be paid for services in connection with pension matters between the parties—they being citizens of the same state—are unconstitutional, the argument being that the United States government is one possessing only enumerated powers, all others being reserved to the states; that the right to restrict the general power to contract possessed by the citizen belongs to the state; that the money paid by the claimants to the defendant was part of their own money, and not part of any pension payment received from the United States, and hence the claimants could pay it, if they so desired, to the agent or attorney. It cannot be questioned that the general subject of the payment of pensions to persons who are, or have been, in the service of the United States is one within the powers conferred upon the federal government. Of necessity, the regulation of the mode to be followed in applying for a pension belongs to the government of the United States. The pensioners are deemed to be recipients of the bounty of the general government, and the extent to which congress has gone in legislating for the protection of pensioners is fully set forth by Mr. Justice Clifford, speaking for the supreme court, in U. S. v. Hall, 98 U. S. 343, wherein it was held that congress had the power to provide for the punishment of a guardian who should embezzle pension money paid to him for his wards. Persons acting as agents or attorneys in regard to pension claims are governed by strict rules adopted by the pension office, and when they seek the privilege of practicing in that office they become subject to all the statutory and office rules regulating the business they engage in. It has never been doubted that congress can regulate the fees demandable by the clerks or marshals of the courts of the United States for services rendered the individual citizen in the prosecution of claims in the courts, although such claims may be wholly private in their nature, and not be part of the public bounty, as in the case with pensions. The right of congress to regulate the amounts demandable of pensioners or pension claimants for services rendered in connection with the procurement of pensions, or an increase thereof, has two substantial grounds of support, to wit, the necessity of protecting the citizens who are seeking the bounty of government from all imposition and extortion, and the necessity of protecting the government against false, fictitious, or greatly magnified claims, worked up by agents who have contracted for, or expect to get, a large share of the claim that may be allowed. The right of congress to legislate on this subject seems to me clear, beyond question.

Finding no substantial merit in any of the objections urged against the validity of the indictments in the cases now under consideration, the demurrers thereto are overruled.

UNITED STATES v. KESSEL (three cases).

(District Court, N. D. Iowa, E. D. June 4, 1894.)

Nos. 3,512, 3,513, and 3,517.

1. VIOLATION OF PENSION LAWS—BRIBERY—INDICTMENT.
A member of a board of examining surgeons is a person acting in behalf of the United States in an official capacity, under the pension office, which is an office of the government within the meaning of Rev. St. § 5501; and hence such member is subject to indictment under that section for receiving a bribe.

2. SAME.
An indictment under Rev. St. § 5501, charging that defendant, a member of a board of surgeons, did unlawfully ask a "gratuity, the nature of which is unknown," with intent to have his official action influenced, is bad, in that it fails to sufficiently inform defendant of what he is to meet in evidence.

These were indictments under the pension laws against George Kessel for accepting bribes to influence his official action as a member of a board of examining surgeons. Defendant demurred to the indictments.

Cato Sells, U. S. Dist. Atty., and M. D. O'Connell, for the United States.

Lyon & Lenehan, H. T. Reed, and W. H. Barker, for defendant.

SHIRAS, District Judge. The indictments in cases Nos. 3,512, 3,513, and 3,517 are based upon the provision of section 5501 of the Revised Statutes; and in cases Nos. 3,512 and 3,513 it is charged that the defendant, Kessel, did knowingly and unlawfully receive from the person named the sum of $10, with the intent to have his official decision influenced in a matter pending before him, he being a person acting on behalf of the United States government in an official function, as a member of a board of surgeons duly organized at Cresco, Howard county, Iowa, by the commissioner of pensions, which board and the defendant, as a member thereof, were acting under the authority of the office of the United States commissioner of pensions, and charged with the duty of examining persons prosecuting claims for pensions, or increase thereof, who might be ordered by the commissioner to appear before them, and to make a certificate and report of the results of such examination to the commissioner; it being also averred that the person from whom the money was received had a claim for pension pending, and had been ordered to appear before the board of surgeons for examination by the commissioner of pensions, and did so appear. The objections urged, that a member of a board of surgeons is not a person acting under any official capacity, and that the pension office is not an "office of the government," within the meaning of