

The plaintiff in error also complains of the refusal of the court to charge the jury, upon its request, as follows:

(1) "We think the decided weight of authority is in favor of the rule that, in an action of negligence, the defendant has the right to have the question submitted to the jury whether the result which is the ground of action might, under all the circumstances, have been reasonably expected, not by the defendant, but by a man of ordinary intelligence and prudence." (2) "It is generally held that, in order to warrant a finding that negligence of an act not amounting to wanton wrong is the proximate cause of the injury, it must appear that the injury was the natural and probable consequence of negligence or wrongful act, and that it ought to have been foreseen, in the light of the attending circumstances."

It is not necessary to express any opinion in regard to the accuracy of the above propositions of law, or in regard to their applicability to the facts of the case. The plaintiff in error failed to reserve any exception to the refusal of the court to give them in charge to the jury. It will not now be heard to allege error upon any ruling to which it did not, at the proper time, reserve an exception.

The instructions of the court were in harmony with the foregoing principles, and a careful examination of them fails to disclose any substantial error. All of the alleged errors argued by counsel have been considered by the court, and we find no prejudicial error in the record. The judgment below is affirmed, at the costs of the plaintiff in error.

HIRSCHBECK v. UNITED STATES.

(District Court, N. D. New York. October 19, 1894.)

1. UNITED STATES COMMISSIONERS—FEES.
A commissioner is not entitled to charge for making triplicate, instead of duplicate, affidavits to the accounts of special deputy marshals, or for triplicate orders for payment of witnesses.
2. SAME.
A commissioner is not entitled to fees for administering two oaths, when duplicate oaths are required, or for arraigning parties brought before him charged with crime.
3. SAME.
A commissioner is entitled to fees by the folio for drawing recognizances and orders, to the full number of folios employed, in the absence of proof that these papers were unnecessarily prolix.

This was a suit by Caroline G. Hirschbeck, as administratrix of Joseph G. Hirschbeck against the United States, to recover fees alleged to have been earned by the decedent as a United States commissioner.

Joseph G. Hirschbeck was a circuit court commissioner for the Northern district of New York. The plaintiff, as his administratrix, brings this suit to recover various items which were stricken from his accounts by the accounting officers of the treasury department. In making up the accounts of special deputy marshals he had charged for triplicate affidavits and triplicate orders for payment. He had also charged for two oaths in cases where he was required to take an oath and a duplicate thereof. He had made charges also for arraigning parties brought before him charged with crime. In drawing recognizances he had charged by the folio, insisting that he was not limited to two or three folios, but might charge for the number of folios

actually employed. The United States insists that the commissioner might lawfully have charged for duplicate affidavits and orders in making up the accounts of special deputy marshals, but not for triplicates; that when required to take duplicate oaths he could charge for but one oath; that he had no authority to arraign a defendant brought before him in his official capacity and that in preparing recognizances his charge should be confined to three folios. The issues thus raised were the principal matters in dispute between the parties. The other questions are settled in favor of the plaintiff by the authorities cited in the opinion.

Frank P. Murray, for plaintiff.

W. F. Mackey, Asst. U. S. Atty., for defendant.

COXE, District Judge. This action has been submitted without oral argument. The plaintiff has furnished a brief memorandum covering about two pages of legal cap. The defendant has furnished no brief at all. From a letter written by the comptroller to the attorney general and from the plaintiff's memorandum I have done my best to spell out, from the mass of accounts, allowances and disallowances, the points in dispute between the parties. The plaintiff has introduced testimony to prove that the services charged for by the intestate were actually performed. The defendant has introduced no proofs except a treasury transcript containing a statement of the late commissioner's accounts taken from the books of the department.

I find nothing in the law permitting a charge for triplicate affidavits to the accounts of special deputy marshals, or for triplicate orders for the payment of witnesses. The amounts charged for drawing triplicates should be disallowed.

There is no authority bearing directly upon the question whether a commissioner can charge for administering two oaths when duplicate oaths are required, but, by analogy to *U. S. v. Barber*, 140 U. S. 177, 11 Sup. Ct. 751, I shall hold that the transaction constitutes but a single act for which one charge only can be made.

A commissioner sits only as a committing magistrate. His duty is to determine whether there is sufficient evidence against the defendant to warrant his being held for the grand jury. An arraignment is extrajudicial and no fees can be allowed therefor.

The charges for drawing recognizances and orders seem to be sustained by the decisions of the United States courts, especially in the absence of proof that these papers are unnecessarily prolix. *U. S. v. Taylor*, 147 U. S. 695, 701, 13 Sup. Ct. 479; *Crawford v. U. S.*, 40 Fed. 446, 448; *U. S. v. Rand*, 3 C. C. A. 556, 53 Fed. 348.

The other questions in dispute, so far as I am able to understand them, seem to be settled by the decisions of the federal courts in plaintiff's favor. There is nothing to show that the late commissioner did not do the work for which charges are made. *U. S. v. Jones*, 134 U. S. 483, 10 Sup. Ct. 615; *U. S. v. Ewing*, 140 U. S. 142, 11 Sup. Ct. 743; *Hoyne v. U. S.*, 38 Fed. 542; *Clough v. U. S.*, 47 Fed. 791.

It follows that the charges disallowed by the above rulings should be deducted from the account and that judgment should be entered in favor of the plaintiff for the balance.

UNITED STATES v. JOSE.

(Circuit Court, D. Washington, N. D. October 12, 1894.)

No. 257.

1. CONTEMPT—DEGREE OF PROOF REQUIRED.

Accusations for contempt must be supported by evidence sufficient to convince the mind of the trier, beyond a reasonable doubt, of the actual guilt of the accused; and every element of the offense, including a criminal intent, must be proved by evidence or circumstances warranting an inference of the necessary facts.

2. SAME—INTERFERENCE WITH PROPERTY IN RECEIVERS' POSSESSION.

A shipper of logs by rail, being unable to pay the freight in advance, agreed with the receivers of the railroad that after transportation each lot of logs should be held in a boom owned by one P., and while so held should be considered as in the possession of the receivers. The receivers thereafter arranged with P. that he should hold the logs as their agent, and should not release any of them except on notice to the receivers, and with their consent. The shipper thereafter induced P. to release one raft without first obtaining the receivers' consent, and the evidence strongly tended to show that he accomplished this by fraud and false statements, but the proof was not sufficient to convince the court beyond a reasonable doubt. *Held*, that in the absence thereof, and of proof that he had knowledge of P.'s instructions from the receivers, the shipper could not be convicted of contempt of court in interfering with property in the possession of its receivers.

This was a proceeding against Thomas Jose for an alleged contempt in interfering with property in the possession of the court's receivers.

Wm. H. Brinker, U. S. Atty.

Greene & Turner, for defendant.

Carr & Preston, for receivers, Seattle, L. S. & E. Ry. Co.

HANFORD, District Judge. At the instance of the receivers of this court, in charge of the business and property of the Seattle, Lake Shore & Eastern Railway Company, the defendant has been arrested and brought before the court to answer a charge of contempt alleged to have been committed by him, in this: That on or about the 14th day of August, last, said defendant unlawfully, willfully, and clandestinely wrested from the possession of said receivers, and removed out of the jurisdiction of this court, a raft of saw logs which were theretofore in the lawful possession of said receivers. The undisputed facts are that the defendant, prior to the date of the alleged offense, was engaged in cutting saw logs at a place near to the line of said railroad, and dependent on said railroad for transportation of his saw logs to salt water. The logs were delivered to the receivers, and carried upon trucks to Salmon bay, where they were unloaded, and placed in a boom owned and controlled by one A. C. Pates. Timber belonging to other loggers, transported by the same railroad, was also received and cared for by said Pates, who, for a consideration paid by the loggers, attended to the unloading of the logs from the trucks, and placed them in a general boom, and afterwards, as required, sorted them, and made up rafts for towing; having pocket booms, rafting gaps, and