his part of this judgment by Harrington from Harrington & Smith, or the fact that the firm made payment for Harrington, in no way tends to show that Harrington did not intend to look to the defendant to reimburse him for the payment which he was thus compelled to make. In so far as the obligation thus created has passed by assignment to plaintiffs, they are entitled, upon the facts found by the referee, to recover therefor in this action.

The several exceptions of both parties to the findings of fact by the referee are overruled, and upon such findings it is ordered that plaintiffs have judgment against the defendant for the sum of $153,128.89, with interest thereon from September 30, 1891.

UNITED STATES v. MORGAN.

(Circuit Court of Appeals, Eighth Circuit. February 20, 1895.)

No. 432.

CLERKS OF COURT—FEES—PRACTICE—VAN DUZEE v. U. S., 59 FED. 440, FOLLOWED.

Appeal from the Circuit Court of the United States for the Eastern Division of the Eastern District of Missouri.

This was a petition filed by William Morgan to recover from the United States for services rendered as clerk of a United States court. The circuit court rendering judgment for the petitioner, and defendant appealing to the circuit court of appeals, the appellee moved to dismiss the appeal. This motion was denied (12 C. C. A. 6, 64 Fed. 4), and the case was now heard on an exception to the ruling of the court below allowing fees to the appellee for making accounts of jurors for mileage and attendance.

William H. Clopton (Walter D. Coles, on the brief), for the United States.

Eleneious Smith (Joseph Dickson, on the brief), for appellee.

Before CALDWELL, SANBORN, and THAYER, Circuit Judges.

CALDWELL, Circuit Judge. The single question in this case is whether the clerk is entitled to 15 cents for making out the accounts of jurors and witnesses, in addition to 10 cents for swearing the witness or juror, and 15 cents for the jurat. It is the settled practice of the circuit court of the United States for the Eastern district of Missouri for the clerk to make out these accounts. This practice has the force and effect of a rule of court, of which this court will take judicial notice. On the authority of Van Duzee v. U. S., 59 Fed. 440, the judgment of the circuit court is affirmed.

TURNER et al. v. UNITED STATES.

(Circuit Court of Appeals, Fifth Circuit. January 15, 1895.)

No. 253.

1. CRIMINAL LAW—EVIDENCE—UNOFFICIAL MAPS.
   There is no error in admitting an unofficial map made by a witness, when the same is offered only in connection with his testimony, and not as independent evidence.
2. SAME—APPEAL—PREJUDICIAL ERROR.
   Overruling an objection to a question will not be held as prejudicial error when the record fails to show what answer was made by the witness.
3. SAME.
   Exclusion of questions will not be held as prejudicial error where the record fails to show what the witness would have answered, or what the party interrogating him proposed to prove by the question.
4. SAME—EVIDENCE—HEARSAY.
   In a prosecution for cutting timber on government lands, a witness for the government testified that he had cut some trees on the sections in question, and that all his knowledge as to the location of the section lines was derived from a third person. *Held*, that the fact of obtaining his knowledge by hearsay went rather to the effect than the admissibility of his evidence, and there was no error in its admission.
5. SAME—ORDER OF EVIDENCE—DISCRETION OF COURT.
   The order of proof is in the discretion of the trial court, and a reviewing court cannot review its action in receiving, after the defense had rested, certain evidence alleged to be not properly in rebuttal.
6. OBJECTIONS TO JURY—WAIVER.
   Objections to the manner and mode of drawing and impaneling the grand and trial juries should be prosecuted as grounds of challenge to the entire array, or to the objectionable juror before the trial, and if not so presented are cured by the verdict.
7. CRIMINAL LAW—JOINT VERDICT — SEPARATE SENTENCES — CUTTING TIMBER FROM GOVERNMENT LANDS.
   Where indictments against two persons for cutting timber from government land contrary to Rev. St. § 2461, are consolidated, and the jury returns a single verdict fixing the amount of damages, the court is justified in assessing against each separately the triple damages authorized by the statute, and is not required to impose a joint penalty.
8. SAME—CONSOLIDATION OF INDICTMENTS.
   Two indictments may be consolidated, under Rev. St. § 1024, although two persons are jointly charged in each.

In Error to the District Court of the United States for the Southern District of Alabama.

These were indictments against Noel E. Turner and Martin Lankford for violating the statute against cutting timber from the public lands. Rev. St. § 2461. The indictments were consolidated, and defendants, having been convicted and separately sentenced, sued out this writ of error.

On the 16th of February, 1894, the grand jury impaneled in the district court for the Southern district of Alabama found two indictments against the plaintiffs in error, each containing two counts, for cutting and procuring to be cut, with intent to export, dispose of, use, and employ the same in some manner other than for the use of the navy of the United States, certain timber upon lands then and there belonging to the United States, to wit: In the first indictment, No. 1,141, the E. ½ of the E. ½ of section 13, and all that part of the W. ½ of the E. ½ of section 13 lying east of the state line between the state of Alabama