in contract to one of tort, but it would change a suit in equity to an action at law. In this view of the matter, that the offer to amend must be denied can hardly be questioned.

In view of the confidence expressed by the eminent counsel for the plaintiff in the correctness of his pleadings originally, I have re-examined the matter with considerable care, and this re-examination has not shaken my belief in the correctness of the decision made after the argument of the demurrer in November last. The offer to amend must be denied, and the demurrer sustained.

CENTRAL TRUST CO. OF NEW YORK v. EAST TENNESSEE, V. & G. RY. CO. (CLARK, Intervener).

(Circuit Court, N. D. Georgia. October 1, 1895.)

1. RAILROADS—NEGLIGENCE—STATION-LIMIT BOARD.
   Upon an application of one C., intervening in a railroad foreclosure suit, and claiming damages from the receivers of the road for personal injuries, it was found from the evidence that C., a fireman on a locomotive, while in the discharge of a duty assigned him by the engineer, and in a position which he could naturally and properly assume for the purpose of such duty, was knocked from the engine by a station-limit board placed near the track. *Held*, that it followed from these circumstances that the board was too near the track, and was a dangerous structure, the maintenance of which was negligence in the receivers.
2. SAME—DUTIES OF FIREMAN.
   Held, further, that a fireman on a locomotive, whose duties are to look after the coal and steaming of the engine, is not bound to observe the distance from the track of all objects along the line of the road, so as to make him chargeable with contributory negligence in failing to remember and avoid such an object when called upon to lean out of the cab in the discharge of a duty outside his usual routine.

Arnold & Arnold, for intervener.
Dorsey, Brewster & Howell, for defendant.

NEWMAN, District Judge. Under orders of this court in the case above named, Samuel Spencer, Henry Fink, and C. M. McGhee are receivers operating the property of the defendant corporation. The case now before the court is the intervention of Martin Clark, claiming damages alleged to have been inflicted on him while in service of the receivers as fireman on the freight train. The facts and the issues involved will appear fully by the report of the special master to whom the intervention was referred, which report is as follows:

To the Honorable the Judges of Said Court: The above-stated intervention was duly referred to me, by an order of the court, and I have taken the evidence and heard the argument in the case, and report as follows:

Statement of the Case.

The intervener alleges that he was employed as a fireman by the receivers operating the East Tennessee, Virginia & Georgia Railway on June 14, 1894, and that on the night of that day, while in the proper discharge of his duties as such fireman, he was knocked off the engine attached to a freight at a point south of Powder Springs, on the line of said railway, and in the Northern district of Georgia. He alleges that he was knocked off said en-

gine by a station-limit board, which he alleges was located too near the track; that, at the time of the injury to himself, he had received an order from the engineer to look out of the gangway and inspect the condition of a hot box, and, while leaning out of said gangway, he was struck on the side of the head by a station-limit board, and knocked from said engine to the ground. He alleges that the train was running at the rate of twenty-five miles an hour. He sets forth in his petition, specifically, the extent of his injuries, and their character. The negligence which he alleges against the defendant, as the cause of the injury, was, that the station-limit board was located too near the track; rendering it unsafe for employés, in the proper discharge of their duties. The defendants admit that the intervener was employed as a fireman at the time alleged, and that said railway was operated by them as receivers. They deny any negligence, and claim that said station-limit board was not located too near the track, but at a reasonably safe distance, and that an injury therefrom could only happen by the negligence of an employé in leaning out too far, or from an improper place on said engine. They claim, further, that the intervener was fully aware of the position of said station-limit board, and its nearness to the track, or could have ascertained it by the exercise of ordinary diligence. They deny, as a matter of fact, that the intervener was injured by being struck by the said station-limit board, but insist that he either accidentally fell from said engine, or that the accident was the result of his own negligence. These are the contentions of the parties.

The evidence in the case is somewhat voluminous and contradictory. After a careful consideration of the same, I am of the opinion that the following conclusions are reasonably deducible therefrom: The station-limit board in question, a few days after the accident, was taken up by the employés of the defendant, and removed three feet further from the track than where it had originally been placed. From an actual measurement, it was shown that the post was located, at the the time of the accident, six and one-half feet from the near rail of the track, the measurement being from the hole left in the ground where the post formerly stood. The post was about seven feet high from the ground, having at the top a board with the words "Station Limit" printed thereon, extending towards the rail eighteen inches. This would bring the end of the board on top of the post four and one-half feet from the near rail of the track. It was shown from the evidence that the engine extended over the rail from two to three feet. These facts clearly show that the station-limit board was sufficiently near the track to have struck the employé, if he had been leaning out from the gangway two and one-half feet. Was this station-limit board, therefore, so near the track as to render it dangerous to servants of the defendant in the proper and reasonable discharge of their duties? On this point the evidence of the defendant fixes the customary and safe distance of such obstructions at least eight feet from the rail of the track,—one foot and a half further than the actual measurement makes this station-limit board. In view of these facts, I think it is fair to conclude that this particular post was located too near the track.

In the next place, was the intervener injured, as he claims, by having been struck by said station-limit board and thrown to the ground. On this point there is some doubt, but my conclusion is that the intervener was knocked from said engine, by leaning out therefrom, in obedience to an order of the engineer, for the purpose of looking at the condition of a hot box on one of the cars. The facts proven, which establish the correctness of this theory, are as follows: The fireman was knocked off at or near the station-limit board. This is shown by the uncontradicted evidence of all the witnesses. The intervener swears positively that he felt something strike his head while he was standing, looking out at the hot box; that he knew something hit him, but he could not tell what it was that knocked him from the engine. Both physicians who testified in the case swore that, when they examined the head of the intervener, they discovered on the back of his head, on the right-hand side, a wound, and that his face, his nose, and his eyes were also injured and mangled. This testimony shows that the intervener received injuries both in front and on the back side of his head. Add to these facts the further fact that this

station-limit board was sufficiently near to have caused the accident, and I think the conclusion that the intervener was knocked off by the board is reasonably certain, unless there are other facts that account for this injury. It is insisted by the defendant that the station-limit board did not knock the intervener off the engine—First, because the evidence shows that he could not have been struck by said board in the manner as testified to by him, it being impossible for a man to lean out far enough to come in contact with the board. This conclusion, the master thinks, is based upon the testimony of witnesses who make their calculations from the distance the board is now from the track, and not from the distance the board was at the time of the accident. In addition to these facts, and on the request of the master, the engine was furnished by the defendants, and, in company with the counsel for both sides, a practical experiment was made; and it was shown to my satisfaction that, while the injury did not occur just as described by the intervener in his testimony, yet he could have been struck by the board substantially as described by him. The post was taken up, and placed in the hole where it was located at the time of the accident. The intervener was located as he testified he was, and the engine moved by the board. It didn't strike the head of the intervener, but it was seen by the master that a very slight change in the position of the intervener made it possible for him to have been stricken by said board. In view of the fact that it was night, that the engineer ordered the intervener to look out and see the condition of the hot box, I don't think it reasonable to hold the intervener to an unerring recollection of his position at the time of the accident, provided the facts show that in the discharge of his duty, and without negligence on his part, he could have been struck by said station-limit board while leaning out of said gangway and looking at the condition of said hot box; and the experiment satisfies my mind that such could have been the result. In the next place, it is contended by defendants that the body of the intervener was found, shortly after the accident, some sixty or ninety feet south of the station-limit board, in the direction in which the train was running. This fact, it is claimed, clearly shows that he could not have been knocked off by the board, because he was too far from it, and must have fallen off accidentally, or by his negligence. The evidence on this point shows that the cap of the intervener was picked up some thirty feet nearer the station-limit board than his body, and the condition of the ground between the cap and the body indicated that he either had been dragged or had crawled over the intervening space; but I don't think that the fact that the intervener was found at this distance south of the station-limit board, in the light of the other facts in evidence, is sufficient to show that he was not knocked off by the board, or proved a theory of an accidental or negligent falling from the engine. The testimony showing the distance of intervener from the post was not by exact measurement, but an opinion as to distance, and is therefore not sufficiently reliable to overcome the other undoubted facts in the case going to establish the theory that he was knocked off by the station-limit board. The testimony of the witnesses also shows that the train was running at the rate of twenty-five miles an hour, and that the tendency of a falling body is to follow the direction of the train. I am clear that it is altogether reasonable to account for the distance of the body from the post on the theory that in falling from the engine the momentum of the train carried the body such distance. I am aware of the rule of law that negligence must be shown by an affirmative proof, or that the facts upon which it is to be inferred as a reasonable inference must be established by affirmative proof; in other words, that the existence or nonexistence of the facts upon which the inference is based must not be left to conjecture. But I am of the opinion that the facts of this case, and the conclusions fairly deducible therefrom, reasonably establish the truth of the theory as contended for by intervener,—that he was knocked off of said engine by the station-limit board, and that said board was located too near the track for the safety of the servants of the defendants, in the ordinary and diligent discharge of their duties. I think, as matter of law, an obligation rests upon masters to keep the right of way and the vicinity of the track clear from all obstructions that would render an

injury to their servants in the ordinary discharge of their duties, or in case of sudden emergencies, likely or probable.

My conclusion, therefore, from a consideration of the facts of this case up to this point, is that the defendants are liable to the intervener, unless the injury was caused either by his own negligence, or that the dangerous character of the station-limit board, and its nearness to the track, was known to him, or could have been known by the exercise of ordinary diligence on his part. The defendants contended on this point that the intervener was guilty of negligence in leaning from the gangway; that the safer place, and the proper place, to look out, was from the window of the engine cab. The evidence, however, does not sustain this contention. It shows that it is the usual practice to look out either from the gangway, or from the window; that the place of looking out is the place where the employé happens to be at the time of the emergency which caused him to look out, and one place is about as safe as the other. Counsel for the defendant, on this branch of the case, cite the decision of our supreme court in the case of Railway Co. v. Head, 92 Ga. 723, 18 S. E. 976. I do not think the facts in this case are altogether analogous to those in the Head Case. In the Head Case, according to the opinion of the supreme court, the evidence was clear, strong, and undisputed that without leaving his seat in the cab, and without subjecting himself to any peril whatever, the engineer might have seen the hot journal fully, but that he left his place of safety, and went to a dangerous position on the locomotive, for the purpose of getting a view of the journal. What dangerous place he went to does not appear from the evidence in the Head Case, but the supreme court says it was a dangerous place. The evidence in this case we are now considering does not show that the gangway—the place from where the intervener looked—was necessarily a dangerous place, nor did he leave his position in the cab, and go to the gangway, for the purpose of looking at the hot box, but he was already in the gangway when ordered by the engineer to look out. Each case must stand on its own facts; and I hold, under the facts in this case, that the mere fact that the intervener looked out of the gangway, and did not go to the cab window, was not an act of contributory negligence on his part.

In the next place, counsel for the defendants contend that even conceding, for the sake of argument, that this intervener was injured by having been knocked off by the station-limit board, and that the station-limit board was too near the track, yet the position of the station-limit board was well known to the fireman at the time of his injury, or should have been known to him by the exercise of ordinary diligence. They contend that having been an employé of the road, running by the said station-limit board, in the progress of his employment, for several years, his opportunities for finding out the nearness of the station-limit board were sufficient to put him on notice of its position. They also rely, in support of this position, on the Head Case, above cited. In the Head Case the post which knocked the engineer off was the contrivance commonly called a "tell-tale," designed to warn employés on the train of their approach to a bridge; and the supreme court say that, granting that the post was erected too near the track, the evidence establishes, almost to a certainty, if not absolutely, that this fact must have been known to the deceased. He passed over the road almost daily for a considerable period of time; the post was near a bridge; and, in view of all the evidence, it was almost impossible to conceive that he was ignorant of the existence of the post, or unaware of the distance it stood from the track. I do not think these facts are similar to the ones in the case we are now considering. The Head Case was that of an engineer whose special duty it was to look out for, and take cognizance of, all obstructions in and near the track; and I think that a tell-tale contrivance, located near a bridge, is an object which would much more reasonably and naturally be called to the attention of an employé than a station-limit board. However this may be, I hold, as matter of law, that a fireman, whose duties are to look after the coal and steaming of his engine, is not bound to observe the distance of every object on the line of railway. Intervener's duties had no relation to the roadbed and track, and I do not think an employé is bound to take knowledge of defects necessarily observed in the performance of his duty. I do not think that a fireman traveling on a train, whose attention is fixed and directed

to the discharge of his duties in connection with the running of the train, is bound to observe the distance of stationary objects from the track, or the fact of his passing objects along the track furnishes such opportunity for observation as would bring the case within the reasonable application of the rule of law. Intervener swears that he had, in a general way, observed these station-limit boards, and this station-limit board, but he had no knowledge of its nearness to the track. I think he had the right to assume that his employer would have such an object at a reasonably safe distance from the track.

I therefore conclude, from the evidence in this case: (1) That the intervener was knocked from said engine by the station-limit board. (2) I find from the evidence that said station-limit board was located too near the track. (3) I find, as a matter of law, that the intervener was not in any manner guilty of contributory negligence in connection with the accident. (4) I find, on application of the law to the facts, that the defendants are liable to the intervener for the injuries sustained by him as the result of said accident. The amount of such damages, of course, depends altogether upon the extent of intervener's injuries. He contends that he was very severely and permanently injured, and the description of his condition, given by himself and by his counsel, is distressing in the extreme. The evidence, however, satisfies my mind that the intervener and his counsel very greatly exaggerate the extent of the injuries received as the result of said accident. His own physicians testify that the immediate result of the accident, besides physical disfigurement, was compression of the brain, and a partial concussion of the spine, and that these injuries produced very serious functional derangement and disturbance; but they testify that such injuries will not be permanent, and that in their opinion the intervener will be entirely restored to his normal health at the end of this year. He was injured on the 4th of June, 1894, and, at the date of the trial of the case before me, he appeared to be in good physical condition. This condition was made more clearly manifest by his conduct and action at the place where the accident occurred when the experiment was made above referred to. I think the apparent physical condition and strength, and the conduct of the party before the master, as both court and jury, are legitimate matters for consideration. In my opinion, it is a fair deduction from the evidence that the intervener was incapacitated to earn money, as a result of his injuries, for a period of six months. He was earning, at the time of his injuries, from sixty dollars to seventy-five dollars per month. Taking the average of sixty-five dollars per month, it would make his actual damages on account of lost capacity for earning a living at three hundred and ninety dollars. I think he should also be allowed fifty dollars for medical bill, and, for his pain and suffering, the sum of four hundred dollars. This would make his total damages amount to the sum of eight hundred and forty (840) dollars, and I so report in his favor. I further report that this amount should be paid by the receivers out of the fund in their hands arising from the sale of the property, and that it ranks as receivers' expenses.

The evidence and minutes of the proceedings had before me are filed with this report, under my approval.

Respectfully submitted, Benj. H. Hill, Special Master.

This July 27, 1895.

It will be perceived, from the foregoing report of the special master, that three questions are necessary for determination, and were determined by him, in disposing of the case: (1) Was the intervener knocked from the engine by the station-limit board? (2) Was the board located too near the track? (3) Was the intervener guilty of contributory negligence?

The first two questions were purely and simply questions of fact. It may be stated that there was fair room for argument on both sides of the two questions. From the facts adduced in evidence, there was room for doubt as to whether the accident occurred as

claimed by intervener. At the same time, there was sufficient evidence to justify the conclusion reached by the special master in favor of the intervener's contention. Conceding the conclusions of the special master as to the first proposition to be correct, it seems to follow necessarily that his conclusion that the station-limit board was too near the track is also correct. If an employé, in the proper discharge of a duty which was required of him, was liable to be struck by the board, it certainly was a dangerous structure. While I am less satisfied about this than any other proposition in the case, it can hardly be said that error on the part of the master is sufficiently clear to justify me in setting aside his report on this ground. While it is true that the intervener, when struck by this board, must have been in a position that an employé of the road would rarely assume, yet it seems that this position of leaning out, as he was, is one that may be required of employés; and it does not seem unfair to say that, in erecting these structures, it should be anticipated.

The third question presented for the determination of the special master is somewhat a mixed question of law and fact,—that is, in the first place, did the intervener really know of the existence and location of the station-limit board, as a matter of fact? and, in the next place, how far the law will charge him with knowledge, on the ground of ample opportunity to know the location of the board. I see no reason for differing with the special master in his position on this question, or with the reasons he gives for his decision. While the fireman might have a general knowledge of the condition of structures of this sort along the tracks of the railroad on which he is employed, he could hardly be said to have such exact knowledge on the subject as would make the act he did by the direction of the engineer a negligent act. He seems to have been performing in a reasonably proper way the duties required of him by his superior, and if, while in the performance of this duty, he was injured, as found by the special master, by reason of the dangerous location of the structure near the track, he is entitled to recover. The evidence is, in my opinion, sufficient to justify the report. Consequently the exceptions will be overruled, and the report confirmed.

Ex parte SLAUSON.

(Circuit Court, E. D. Virginia. April 18, 1896.)

INTERSTATE EXTRADITION—IMPROVIDENT ISSUE OF REQUISITION.

One S., who had been engaged with G. in the insurance business, in Tennessee, was found, on a settlement of their accounts, to be indebted to G., in about the sum of $1,300, for various sums advanced to him and his family by G., and expenses paid by G. for his account. After bringing the business to an end, and making some efforts to raise money for its further prosecution, S. returned, with his family, to his home in Virginia. G. assigned his claim against S. to one C., who caused a civil suit to be brought upon it in Virginia against S. He also endeavored, by persuasions and threats, to induce S. to return to Tennessee, for what purpose did not appear. S. having refused to return, C. procured from the governor of Tennessee, upon affidavits, a requisition for S., as a fugitive from justice, alleging that he was guilty of "fraudu-

lent appropriation of money," and caused S. to be arrested thereunder in Virginia, for removal to Tennessee. *Held*, that no crime had been committed or was charged, that the requisition was improvidently issued, and S. should be discharged on habeas corpus.

Lassiter & Lassiter, for petitioner.
R. Carter Scott, for respondent.

HUGHES, District Judge. On the 23d ult. the governor of Tennessee made requisition upon the governor of Virginia for the extradition from this state to Tennessee of George W. Slauson, a citizen of Petersburg, Va., alleging in the requisition that Slauson stands charged in that state with the crime of "fraudulent appropriation of money," and that he is a fugitive from justice. The governor of Virginia, complying with this requisition, and reciting that it was accompanied by affidavits duly made, issued a warrant on the 14th inst., directed to the sergeant of Petersburg, requiring him to arrest and secure Slauson, afford him opportunity to sue out a writ of habeas corpus, and thereafter to deliver him to the custody of one Snapp, to be taken back to the state of Tennessee, "from which he fled." Slauson was arrested by the sergeant and turned over to Snapp, who committed him temporarily, overnight, to the jail in Petersburg. From the jail there he sent his petition to me praying for the writ of habeas corpus. This was granted, as of course, and Slauson is before me in pursuance of it.

The writ of habeas corpus is extolled by Blackstone as another Magna Charta of civil liberty. It is the most celebrated writ of English-speaking peoples. It is the process provided by law for deliverance from illegal confinement. The writ has no respect for persons. It lends itself to the humblest human being, and questions and inquires into the actions of the most exalted persons in the community and most powerful officers of government.

In regard to extradition, this writ is indicated by the law itself as the special remedy available to the citizen against the misuse and abuse of that proceeding. Requisitions for persons stigmatized as fugitives from justice, when issued, as in the case at bar, on mere ex parte affidavit, and not founded upon indictment, are liable to abuse. Little care can be taken to obtain the real facts of the case by the officers issuing a requisition. Papers are prepared and the demand issued, often in the most perfunctory manner; and it is impracticable for the governor, to whom the requisition is addressed, to inquire into the merits of the proceeding. But requisitions based upon affidavit are issued only in sudden emergencies, rarely after as much as four months of deliberation. The laws provide for no hearing to the alleged fugitive before the executives of the two states, and seem to recognize the fact that he has no redress except in this writ of high privilege,—this writ of habeas corpus.

Slauson is here clothed by law with the right to show why he should not be taken away from his wife and children and his home in Petersburg, to the distant state of Tennessee, and there tried on the vague charge, upon merely individual affidavit, of "fraudulent

appropriation of money." He has a right to show here that he has not committed the crime of a "fraudulent appropriation of money," and he has a right to show, moreover, the animus of the person who has instituted this proceeding. This writ would be a mockery in the case at bar if it were not competent for me to inquire whether the governor of Tennessee has been imposed upon by false affidavits. Slauson shows that his indebtedness in Tennessee is a balance of $1,328.69, which is the result of dealings with Gerald M. Funnell during the year 1895, under contract mutually agreed upon, and recognized by both. Their business was not successful, and towards the close of the year it was found that Slauson would have to leave Tennessee and come to the East to recuperate his finances. This recourse was talked over and agreed upon between Slauson and Cecil G. Funnell, the person who is now prosecuting him. Slauson and Gerald M. Funnell had been engaged in the business of soliciting insurances. The plan was, that Slauson, on coming East, was first to go to Baltimore to consult there with Mr. Breezée, a well-known and very prominent man in the business of insurance, and that Slauson's after movements should be governed by the result of his visit to Baltimore. Cecil G. Funnell not only advised and counseled Slauson to come to the East from Tennessee, but gave him pecuniary aid for making his visit to Baltimore.

As to the pecuniary debt left by Slauson in Tennessee, it was made up of items set out in a bill of particulars filed by C. G. Funnell, in a suit instituted by him against Slauson in the hustings court of Petersburg, on the 10th of March just past. The notice or declaration in the case claims the balance already mentioned, "as due to me by you on contract as follows: (1) For money due under contract made in duplicate between you and Gerald M. Funnell, dated July 25, 1895, * * * said Gerald M. Funnell having duly assigned to me all of his rights and claims thereunder. (2) For money had and received by you for my use. (3) For money advanced you and your wife, at your request. (4) For money paid, laid out, and expended for you, at your request. All of which indebtedness is fully shown in the statement of my account against you, hereto attached, * * * which amount of money is justly due to me on contract, as aforesaid,"—meaning Slauson's contract with Gerald M. Funnell.

The account filed opens with a debit balance of between $400 and $500, and embraces credits near its close of nearly the same amount, so that the items set out in the account make up the amount of the existing indebtedness of Slauson to C. G. Funnell,—an indebtedness which C. G. Funnell purchased from G. W. Funnell. I will set out some of the items which make up this $1,300 of indebtedness:

1895.

2. Aug. 27. Cash credited H. B. Maupin, as per request and notification of this date	$42.00
3. Sept. 12. Cash handed Mrs. Slauson at Greeneville	1.00
4. Sept. 16. Cash at Greeneville, just prior to G. W. S.'s trip to Knoxville	15.00

24. Oct. 28. Livery charged C. G. F., as per order given G. W. S. to hand Hall & Hall..... 15.25
36. Oct. 28. Cash ($55) and check ($55) at Greeneville, prior to leaving for Pulaski 110.00
24a. Nov. 1. Draft to order G. W. S. sent to Columbia, from Greeneville 30.00
25. Nov. 1. Cash to Mrs. Slauson at Greeneville..... 5.00
26. Nov. 2. Cash to Mrs. Slauson at Greeneville..... 3.00
27. Nov. 2. Cash to Mrs. Slauson at Greeneville..... 5.00
28. Nov. 4. Cash to Mrs. Slauson at Greeneville..... 5.00
29. Nov. 5. Hotel bill at Greeneville for family, paid by C. G. F., according to arrangement prior to G. W. S.'s departure for Pulaski... 15.00
30. Nov. 5. Railroad fares for family, paid by C. G. F., according to arrangement prior to G. W. S.'s departure for Pulaski..... 18.42
31. Nov. 5. Cash handed Mrs. Slauson while en route Greeneville to Columbia 10.00
32. Nov. 5. Pullman fares and baggage charges while en route Greeneville to Columbia..... 3.50
33. Nov. 9. Draft to Columbia from Memphis..... 30.00
38. Nov. 18. Check from C. G. F. while at Columbia..... 30.00
40. Nov. 18. Check to H. E. Jones to take up G. A. Blackmore's note (application written by G. W. S. and postponed). Subsequently H. E. Jones' check sent G. W. S., refunding $18.80..... 125.25

Section 5445 of the Code of Tennessee provides as follows:

"If a contract of loan for use, or of letting and hiring, or other bailment or agency, be used merely as the means of procuring possession of property, with an intent to make a fraudulent appropriation at the time, it is larceny."

The items set out in the foregoing list are given merely to show the character of the indebtedness. All the debit items are of the same character. It would be an insult to the intelligence of the inspector of these items to enter into an argument to show that neither the items nor the aggregate which they constitute could be regarded as evidences of money "fraudulently appropriated," within the meaning of the Tennessee law. Here are two men engaged in the business of insurance,—one of them as a traveling solicitor of insurance; the other keeping their office, collecting and managing their earnings, under an express contract, and defraying the traveling and family expenses of the traveling associate in business. These dealings run on for a year, and there is a settlement in December, and a balance ascertained due from Slauson to Gerald M. Funnell. There is no misunderstanding at the time of this settlement between Slauson and Gerald M. Funnell. There is no pretense or charge of fraud at the time. It is not shown that Gerald M. Funnell, with whom the business was done, ever believed or charged fraud against Slauson. But Cecil G. Funnell bought the debt held by Gerald M. Funnell against Slauson. He did not charge fraud for a series of months. He sued for the debt, as due by contract, as late as March 10th, just passed. He sent his claim to Petersburg, where Slauson lived and kept house with his family, ordering suit to be brought upon it, as due on a contract.

It seems that, for some reason not proper or necessary to be exposed in public court, Cecil G. Funnell was very anxious for Slauson to return with his family to Tennessee. His eagerness for this return began to manifest itself in the latter part of December, 1895,

apparently before he purchased the debt against Slauson from Gerald M. Funnell. Persuasions failing to bring about Slauson's return to Tennessee, resort was soon had to threats. He first threatened to publish, and then published, circulars assailing the character of Slauson, and mailed them to insurance men and others. He threatened other attacks upon Slauson, the character of which was not made known to Slauson. He talked to Slauson's wife, and rehearsed his threats to her. He did this on one occasion on a railroad train, and did it so effectually that the woman, in alarm, wrote to her husband a letter, from which the following extracts are made:

"On Train.

"* * * Cecil arrived in Chattanooga last night at 11. He has told me of all the awful things that he could do to you. He will write to papa, to the bank at —— [illegible], and, in fact, to every one. He will have it advertised that you did God knows what. He said that he could take our trunks, but for our sakes he don't want to do that; but, if I go on to you before you and he come to some understanding, he will make it dreadful for all. He said you have his railroad ticket. Have you? He said he gave you money to go to Baltimore on, and back, if you did not succeed in arranging things." etc.

Nothing availed to bring back Slauson and his family to Tennessee,—neither persuasion nor threats. After purchasing the debt due from Slauson to Gerald M. Funnell, and after bringing suit upon the debt, as due upon a contract, as late as the 10th of March just passed, he then resorted to the extradition proceedings which have been brought before me for consideration, the foundation of which is Cecil G. Funnell's affidavit charging the crime of a "fraudulent appropriation" of money.

Comment upon his conduct is unnecessary. His charge of fraud against Slauson is an afterthought. The affidavit by which he charged the fraud is a flagrant perjury. His prosecution of this extradition proceeding is malicious. The governor of Tennessee was deceived, and the requisition which he issued for Slauson was improvidently granted. The governor of Virginia was not advised of, and had no means of testing the truth of, the allegations of the requisition; but, in performing his duty in issuing his warrant directing the arrest of Slauson, he took care to reserve to him in advance the privilege of the writ of habeas corpus, under which he is now before me.

I have thus dealt with the facts in the case. The prisoner ought to be discharged on technical grounds also. The law in such proceedings requires that the charge shall be substantially set forth in the papers filed. In these papers there is no crime substantially set forth. There is merely a reference to a criminal statute, itself not identified by the reference. Merely to refer to a class of criminal acts is not to charge a specific crime. This is all that has been done in this affidavit. Nor does the affidavit set out important elements of this statutory offense. The warrant is vague, and does not inform the prisoner of the character of the crime, nor the time, place, or circumstance of its commission, of which every prisoner is entitled to be advised.

George W. Slauson must be discharged from custody.

UNITED STATES v. SAUER et al.

(District Court, W. D. Texas. April 6, 1896.)

No. 34.

1. CRIMINAL PROCEDURE—EXAMINATION OF ACCUSED PERSONS—REV. ST. § 1014.
Under Rev. St. § 1014, which assimilates all the proceedings for holding persons accused of crime to answer before a court of the United States to proceedings had for similar purposes under the laws of the state where the proceedings take place, all the regulations and steps incident to the proceeding before a United States commissioner, from its commencement to its close, are guided by the state laws, so far as they may be applicable to the federal courts, if no rule upon the same subject has been prescribed by the federal statutes.

2. SAME—HOLDING TO BAIL—POWER OF UNITED STATES COMMISSIONER.
The authority, therefore, of a United States commissioner to take bail for the appearance of an accused person to answer further before such commissioner to the charge against him is dependent upon the existence of such authority in examining magistrates under the laws of the state in which the proceedings before the commissioner are pending.

3. SAME—TEXAS STATUTE.
Such magistrates have the power under the statute of Texas, and accordingly United States commissioners sitting in that state have the same.

4. SAME—FORM OF BAIL BOND.
The form of a bail bond taken by a United States commissioner should conform, in all substantial particulars, to the requirements of the laws of the state in which the commissioner is sitting, so far as such laws are applicable.

5. SAME—TEXAS STATUTE—RECEIVING SMUGGLED GOODS.
The statute of Texas makes it a requisite of a bail bond that the offense of which the defendant is accused be distinctly named, and that it appear therefrom that he is accused of an offense against the laws of the state. Accordingly, *held*, that a bail bond, taken by a United States commissioner sitting in Texas, which states that the defendant is charged with receiving and concealing smuggled goods, but does not state that he did so knowing the same to be smuggled, is invalid, since the receipt or concealment of smuggled goods is not an offense against the United States unless they are known to be smuggled.

R. U. Culberson, U. S. Atty.
Falvey & Davis and W. M. Coldwell, for defendants.

MAXEY, District Judge. This suit was instituted by the United States, through the district attorney, to recover the penalty of a bail bond, in the sum of $1,000, executed by George Sauer as principal and J. C. Lackland and Richard Caples as sureties. It is alleged in the petition that the complaint upon which Sauer was arrested was made before F. B. Sexton, a circuit court commissioner at El Paso, on the 12th day of October, A. D. 1894, and, pending the preliminary examination before the commissioner, the defendant Sauer was required to enter into a bond, payable to the United States, to make his personal appearance before the commissioner, at his office in El Paso, on the 1st day of November, 1894, to further answer the complaint, and there remain from day to day until by the commissioner discharged.

The bond, which is duly signed by Sauer, Lackland, and Caples, is in these words:

"The United States of America, Western District of Texas.

"Know all men by these presents, that we, George Sauer, of El Paso county, as principal, and J. C. Lackland, of El Paso county, and Richard Caples, of El Paso county, as sureties, acknowledge ourselves to owe and stand indebted unto the United States of America in the sum of one thousand dollars, for the payment of which, well and truly to be made, we hereby do jointly and severally bind ourselves, our heirs, and legal representatives. Conditioned to be void if the above-named George Sauer shall well and truly make his personal appearance before F. B. Sexton, commissioner of the circuit court of the United States for the Western district of Texas, at El Paso, at the office of said commissioner, on the 1st day of November, 1894, and there remain from day to day until discharged by the commissioner, to answer the United States in a complaint filed against him, the said George Sauer, in said commissioner's court, charging him with having and receiving into his possession and concealing smuggled goods.

"Witness our hands this 16th day of October, in the year of our Lord one thousand eight hundred and ninety-four."

It is further alleged that the hearing continued until the 8th day of November, at which time Sauer failed to appear, and the bond was duly declared forfeited by the commissioner. Greater particularity in reciting the cause of action becomes unnecessary in view of the questions raised upon the demurrers.

The defendants appeared, by their attorneys, and interposed several demurrers to the petition, which may be properly and conveniently embodied in the two following: (1) A general demurrer; (2) a special demurrer, as follows:

"That said bond set out in the plaintiff's petition charges that defendants obligated themselves that said Sauer should appear [at the time and place therein mentioned] to answer the United States in a complaint filed against him, the said George Sauer, in said commissioner's court, charging him with having and receiving into his possession and concealing smuggled goods; that there is no offense charged, the said bond not charging that said George Sauer knew that said goods had been or were smuggled goods."

Under the general demurrer the question is presented whether the commissioner had authority to take a bond with surety for the appearance of the defendant before himself. And the answer to this inquiry must necessarily depend upon the law by which circuit court commissioners are governed in admitting to bail persons who are charged before them with the commission of crime. The power of commissioners to act as committing magistrates is conferred by section 1014, Rev. St. U. S., which is in the following language:

"For any crime or offense against the United States, the offender may, by any justice or judge of the United States, or by any commissioner of a circuit court to take bail, or by any chancellor, judge of a supreme or superior court, chief or first judge of common pleas, mayor of a city, justice of the peace, or other magistrate, of any state where he may be found, and agreeably to the usual mode or process against offenders in such state, and at the expense of the United States, be arrested and imprisoned, or bailed, as the case may be, for trial before such court of the United States as by law has cognizance of the offense."

The question whether, under this statute, the commissioner has authority to take bail for the appearance of a defendant before him-

self, has been considered by the courts in several cases; and it has been uniformly ruled, so far as the court is advised, that such power exists only when it is conferred upon examining magistrates by the laws of the state in which the proceeding takes place. And, on the other hand, the power has been denied in a case where the state statutes did not confer it upon committing magistrates. The cases of U. S. v. Rundlett, 2 Curt. 41–48, Fed. Cas. No. 16,208, and 12 Myers, Fed. Dec. § 1525, and U. S. v. Horton, 2 Dill. 94, Fed. Cas. No. 15,393, come within the first category, and U. S. v. Case, 8 Blatchf. 250–254, Fed. Cas. No. 14,742, and 12 Myers, Fed. Dec. § 1529, is embraced within the second.

In the three cases cited the decisions are based upon the ground that, under section 1014, Rev. St., the courts are relegated to the state statutes to ascertain and determine the nature and extent of the duties and powers of commissioners in arresting, imprisoning, and bailing persons accused of offenses against the United States. Thus, in Rundlett's Case, it is said by Mr. Justice Curtis that, in his opinion:

"It was the intention of congress by these words, 'agreeably to the usual mode of process against offenders in such state,' to assimilate all the proceedings for holding accused persons to answer before a court of the United States to the proceedings had for similar purposes by the laws of the state where the proceedings should take place; and, as a necessary consequence, that the commissioners have power to order a recognizance to be given to appear before them in those states where justices of the peace or other examining magistrates, acting under the laws of the state, have such power."

In U. S. v. Horton, supra, it is said by Judge Dillon that:

"Whatever authority the commissioner has in respect to the arresting, imprisoning, or bailing of criminal offenders is conferred by statute, and must be exercised by him pursuant to its requirements. Congress has not seen fit to prescribe a uniform mode of its own in respect to preliminary proceedings against persons accused of a violation of its criminal enactments, but in the thirty-third section of the judiciary act it is provided that the procedure in such cases should be 'agreeably to the usual mode of process against offenders in such state'; that is, in the state in which the offenders may be arrested and the proceedings had. To this section we must resort to ascertain the powers of commissioners in respect to the arrest, imprisonment, and bail of offenders against the laws of the United States."

And in U. S. v. Case, supra, where the commissioner was held to be without power to take a recognizance conditioned for the appearance of the accused before himself for further examination, because the laws of New York conferred no such authority upon committing magistrates, Judge Woodruff employs this language in reference to the ruling of Mr. Justice Curtis:

"It is quite clear, I think, that the thirty-third section of the judiciary act of 1789 (1 Stat. 91) was rightly construed by Judge Curtis in U. S. v. Rundlett, 2 Curt. 41, Fed. Cas. No. 16,208, and that, in a state where a justice of the peace has power to take a recognizance to appear from day to day pending the examination of an accused, there a United States commissioner has such power."

In the case of U. S. v. Evans, 2 Flip. 605, 2 Fed. 147, and 12 Myers, Fed. Dec. § 1534, Judge Hammond says:

"The federal courts are bound, in this matter of taking bail in criminal cases, by the state laws, by express command of the statutes."

It is said by Judge Bunn, in U. S. v. Keiver, 56 Fed., at page 425, that section 1014—

"Evidently refers the details of the proceeding to the state statute, and it is by that law that we must determine their regularity and validity."

Construing the same section of the Revised Statutes, it is said by Judge Deady, in U. S. v. Martin, 17 Fed. 155, 156, that this section—

"Is the authority under which a commissioner of the circuit court acts when engaged in a proceeding for the arrest, commitment, or bail of a person charged with crime against the United States, and such section provides that he shall proceed therein 'agreeably to the usual mode of process' against offenders in such state. A commissioner, acting under this statute, is simply a committing magistrate. The ambiguous phrase, 'mode of process,' is interpreted to mean 'mode of proceeding,' and this proceeding is according to the law of the state in similar cases. U. S. v. Rundlett, 2 Curt. 42, Fed. Cas. No. 16,208; In re Martin, 5 Blatchf. 307, Fed. Cas. No. 9,151; U. S. v. Case, 8 Blatchf. 250, Fed. Cas. No. 14,742. The validity of the process and order in question must, then, be determined by reference to the laws of Oregon for the arrest, examination, and commitment of persons charged with the commission of crime against the laws of the state."

See, also, U. S. v. Insley, 4 C. C. A. 296, 54 Fed. 223.

In considering the question of fees due to commissioners for services performed in obedience to section 1014, Mr. Justice Brown, citing the Cases of Rundlett and Horton, supra, in U. S. v. Ewing, 140 U. S., at page 144, 11 Sup. Ct. 743, says:

"As this section requires proceedings to be taken 'agreeably to the usual mode of process against offenders in such state,' it is proper to look at the law of the state in which the services in such case are rendered to determine what is necessary and proper to be done, and inferentially for what services the commissioner is entitled to payment."

And in U. S. v. Patterson, 150 U. S., at page 67, 14 Sup. Ct. 20, Mr. Justice Brewer, speaking for the court, uses this language:

"It was held, in the case of U. S. v. Ewing, 140 U. S. 142, 11 Sup. Ct. 743, that, in view of section 1014 of the Revised Statutes, the law of the state in which the services are rendered must be looked at in order to determine what is necessary in the matter of procedure."

Upon careful consideration of section 1014 of the Revised Statutes and authorities above cited, the following conclusions are derived: (1) Section 1014 assimilates all the proceedings for holding accused persons to answer before a court of the United States to the proceedings had for similar purposes under the laws of the state where the proceedings take place. (2) The term, "agreeably to the usual mode of process against offenders in such state," as used in the statute, should be so construed as to include all the regulations and steps incident to the proceeding before the commissioner from its commencement to its termination, as prescribed by the state laws, so far as they may be applicable to the federal courts. (3) The authority of the commissioner, therefore, to take bail for the appearance of an accused person to further answer the charge before him is existent or nonexistent accordingly as it may be conferred upon or denied to examining magistrates by the laws of the state in which the proceedings before the commissioner may be

pending. (4) Bail bonds, taken by the commissioner, should conform in all substantial particulars to the requirements of the state laws, so far as such laws may be applicable to the federal courts.

It follows that resort must be had to the statutes of this state to determine (1) whether Commissioner Sexton had authority to take the bond in question; and (2) whether such bond, as measured by the laws of Texas, is legally sufficient.

The following articles of the Texas Code of Criminal Procedure bear upon the questions to be decided:

"Art. 259. When a person accused of an offense has been brought before a magistrate, that officer shall proceed to examine into the truth of the accusation made, allowing the accused, however, sufficient time to procure the aid of counsel.

"Art. 260. The magistrate may, at the request of the prosecutor or person representing the state, or of the defendant, postpone for a reasonable time the examination so as to afford an opportunity to procure testimony, but the accused shall, in the meanwhile, be detained in the custody of the sheriff or other duly authorized officer, unless he give bail to be present from day to day before the magistrate, until the examination is concluded, which he may do in all cases, except murder and treason.

* * * * * * * * * * * *

"Art. 284. A 'bail bond' is an undertaking entered into by the defendant and his sureties for the appearance of the principal therein before some court or magistrate to answer a criminal accusation; it is written out and signed by the defendant and his sureties.

"Art. 285. A bail bond is entered into either before a magistrate upon an examination of a criminal accusation against a defendant, or before a judge upon an application under habeas corpus; or it is taken from the defendant by a peace officer who has a warrant of arrest or commitment, as hereafter provided.

"Art 286. Wherever the word 'bail' is used with reference to the security given by the defendant, it is intended to apply as well to recognizances as to bail-bonds. When a defendant is said to be 'on bail,' or to have 'given bail,' it is intended to apply as well to recognizances as to bail bonds.

* * * * * * * * * * * *

"Art. 288. A bail bond shall be sufficient if it contain the following requisites: (1) That it be made payable to the state of Texas. (2) That the obligors thereto bind themselves that the defendant will appear before the proper court or magistrate to answer the accusation against him. (3) That the offense of which the defendant is accused be distinctly named in the bond, and that it appear therefrom that he is accused of some offense against the laws of the state. (4) That the bond be signed by the principal and sureties, or in case all or either of them cannot write, then that they affix thereto their marks. (5) That the bond state the time and place when and where the accused binds himself to appear, and the court or magistrate before whom he is to appear. In stating the time it is sufficient to specify the term of the court; and in stating the place it is sufficient to specify the name of the court or magistrate and of the county.

"Art. 289. The rules laid down in this chapter respecting recognizances and bail bonds are applicable to all such undertakings when entered into in the course of a criminal action, whether before or after indictment or information, in every case where authority is given to any court, judge, or magistrate or other officer, to require bail of a person accused of an offense, or of a witness in a criminal action.

* * * * * * * * * * * *

"Art. 307. The rules laid down in the preceding articles of this chapter, relating to the amount of the bail, the number of sureties, the person who may be surety, the property which is exempt from liability, the form of bail bonds, the responsibility of parties to the same, and all other rules in this chapter of a general nature, are applicable to bail taken before an examining court."

It will be observed that article 260 of the Code of Criminal Procedure of this state expressly authorizes the examining magistrate to postpone the examination for a reasonable time to afford the opportunity of procuring testimony, but, employing the words of the statute, "the accused shall in the meanwhile be detained in the custody of the sheriff or other duly authorized officer, unless he give bail to be present from day to day before the magistrate, until the examination is concluded, which he may do in all cases, except murder and treason." Examining magistrates in Texas, therefore, having power to admit accused persons to bail for their appearance from day to day pending the examination, commissioners of the circuit court of the United States have like powers in this state. To avoid being misunderstood, it is deemed not inappropriate to here repeat what has, in effect, been already said, that the statutes of the state should govern commissioners in the matter of arresting, imprisoning, and admitting to bail accused persons, so far as they may be applicable to the federal courts, but in no case should they be held applicable where the federal statutes have prescribed a rule upon the same subject.

The remaining question to be considered is specifically pointed out by the special demurrer of defendants, although included within the general demurrer, and it challenges the sufficiency of the bond. It is objected to the bond that it describes no offense against the laws of the United States, in that it fails to recite want of knowledge on the part of Sauer that the smuggled goods, in his possession and concealed, had been smuggled or imported contrary to law. The bond, as before shown, is conditioned for the appearance of Sauer "to answer the United States in a complaint filed against him, the said George Sauer, in said commissioner's court, charging him with having and receiving into his possession and concealing smuggled goods."

The statute upon which the complaint is predicated reads as follows:

"If any person shall fraudulently or knowingly import or bring into the United States, or assist in so doing, any merchandise, contrary to law, or shall receive, conceal, buy, sell or in any manner facilitate the transportation, concealment or sale of such merchandise after importation, knowing the same to have been imported contrary to law, such merchandise shall be forfeited and the offender shall be fined in any sum not exceeding five thousand dollars, or be imprisoned for any term not exceeding two years, or both." Rev. St. U. S. § 3082.

The third clause of article 288 of the Texas Code of Criminal Procedure, hereinbefore set out, provides:

"That the offense of which the defendant is accused be distinctly named in the bond, and that it appear therefrom that he is accused of some offense against the laws of the state."

Does it appear from Sauer's bond that he is accused of an offense against the laws of the United States? Manifestly not. Guilty knowledge is the gist and essence of the offense attempted to be described in the bond. Section 3082 of the Revised Statutes does not make the mere receipt or concealment of smuggled goods an of-

fense. There must be, on the part of the person receiving or concealing the goods after their importation, knowledge of their illegal importation. Cases falling under this section of the statutes have been repeatedly before this court, and the ruling has been uniform that the jury was not authorized to convict unless the possession or concealment of the goods was accompanied with knowledge on the part of the possessor that they had been smuggled or imported contrary to law. It is evident that it does not appear from the bond that Sauer is charged with any offense against the laws of the United States, and hence the bond is not binding upon him or his sureties. See U. S. v. Hand, 6 McLean, 274, Fed. Cas. No. 15,296; U. S. v. Goldstein's Sureties, 1 Dill. 413, Fed. Cas. No. 15,226; and the four Cases of Horton, Rundlett, Case, and Keiver, supra.

The conclusion reached by the court is sustained by the supreme court and court of criminal appeals of this state, as a reference to the authorities will clearly show. Thus, in Dailey v. State, 4 Tex. 419, the supreme court says:

"The undertaking of the party contained in the recognizance or bond is to appear and answer to a charge simply of 'having in his possession stolen goods,' and the scire facias follows the recognizance in its description of the charge. We know of no law which makes this an indictable offense, or which authorizes the taking of a recognizance to answer this charge. The mere fact of having in possession stolen goods is not a crime. The possession may be lawful, and would not be criminal unless accompanied with a criminal scienter or felonious intent. The possession of stolen goods may be evidence to support a charge of larceny, but it does not, of itself, constitute that crime. As evidence, it is by no means conclusive, but is but presumptive, and is stronger or weaker according to the circumstances attending the possession. 2 Starkie, Ev. 449, 480; 1 Phil. Ev. 168. It is manifest that the present is a very different charge from that of receiving stolen goods knowing them to be stolen. And, in a word, it is not a crime known either to the common or statute law of this state. It is perfectly clear that neither a recognizance nor the scire facias upon it will be sufficient to authorize or support a judgment against the principal or surety, when the charge does not appear to be such as may be the subject of a criminal prosecution, and which requires bail. 'It is not necessary to recite the specific charge. To answer a charge of felony would be sufficiently explicit, because for every felony an indictment will lie.' West v. Com., 3 J. J. Marsh. 642, 643. But no indictment can be maintained on the charge of having in possession stolen goods. The recognizance, therefore, was unauthorized and invalid, and will not support a judgment."

Stancel v. State, 6 Tex. App. 460; Morris v. State, 4 Tex. App. 554. See, also, State v. Cotton, 6 Tex. 426; Cotton v. State, 7 Tex. 548; Tousey v. State, 8 Tex. 174; McDonough v. State, 19 Tex. 293; Foster v. State, 27 Tex. 236; State v. Gordon, 41 Tex. 510; Sively v. State, 44 Tex. 274; McLaren v. State, 3 Tex. App. 680, citing numerous authorities; O'Bannon v. State, 9 Tex. App. 465; Kramer v. State, 18 Tex. App. 13; Edwards v. State, 29 Tex. App. 452, 16 S. W. 98; Allison v. State, 33 Tex. Cr. R. 501, 26 S. W. 1080.

It is said by Mr. Chief Justice Roberts in State v. Gordon, supra, that:

"The Code of Criminal Procedure on this subject prescribes that the bond shall require the defendant to appear before the proper court 'to answer the accusation against him.' And in order that the accusation may be shown to be such as to authorize the bond, it is further prescribed 'that the offense of

which the defendant is accused be distinctly named in the bond, and that it appear therefrom that he is accused of some offense against the laws of the state.' "

In the early case of Dailey v. State, supra, it was ruled, as shown above, that a recognizance would not be sufficient to authorize or support a judgment against the principal or surety "when the charge does not appear to be such as may be the subject of a criminal prosecution, and which requires bail," and in the opinion it is also stated not to be necessary to recite the specific charge. "To answer a charge of felony would be sufficiently explicit, because for every felony an indictment would lie."

The distinction recognized and enforced by the courts of this state seems to be this:

"If an offense is one eo nomine, then it is only necessary, in the recognizance, to recite it by its name, as theft, etc. * * * When an offense is not one eo nomine, then the rule is well settled that the recognizance must state the essential elements of the offense, so that it will appear that a particular offense against the law is charged against the principal." Edwards v. State, supra; Allison v. State, supra; Morris v. State, supra.

The offense of receiving or concealing smuggled property, with knowledge that it had been unlawfully imported, as prescribed by section 3082 of the Revised Statutes, is not an offense eo nomine, and, according to the rulings of the Texas courts from the earliest cases to the present time, the offense must be described in the bail bond by giving substantially the statutory ingredients necessary to constitute it, in order that it may appear therefrom that the defendant is accused of some offense against the laws of the United States.

The cases cited pointedly support the view taken by the court touching the sufficiency of Sauer's bond. But the district attorney claims that U. S. v. Evans, 2 Flip. 605, 2 Fed. 147, and authorities there cited, announce a different rule, and that, upon the authority of those cases, the bond of Sauer is a valid obligation. By reference to the Evans Case it will be observed that Judge Hammond holds, as already shown, that the federal courts are bound, in the matter of taking bail in criminal cases, by the state laws, and it will be further seen that Evans' Case arose in the state of Tennessee, where it is held, by the supreme court of that state, that a bail bond is good "without even a specification of the offense charged against the defendant." State v. Adams, 3 Head, 261; State v. Rye, 9 Yerg. 386. U. S. v. Stien, 13 Blatchf. 127, Fed. Cas. No. 16,403, has no application to this case. The questions passed upon here were not decided in U. S. v. Reese, 4 Sawy. 629, Fed. Cas. No. 16,138, and hence the decision of Mr. Justice Field, whose opinions are entitled at all times to great consideration, cannot be considered as a guide for the court in this case. The other cases referred to by the district attorney were decided by state courts, and have no reference to the questions which have been considered by this court. The ruling upon Sauer's bond is based distinctly upon the statutes of Texas and the decisions of the highest courts of this state, and the rulings of other state courts as to the suffi-

ciency of bail bonds at common law would scarcely be pertinent to the inquiry.

Had a special exception been interposed by the defendants on the first ground discussed by the court, it would be overruled, for the reason that the commissioner had the power to take bail from Sauer conditioned for his appearance from day to day pending his examination. But the general demurrer not only raises that question, but also goes to the sufficiency of the bond upon the objection embraced in the special demurrer. In a word, all objections urged to the bond might have been properly presented by general demurrer; and, as the bond must be adjudged insufficient and a void obligation, the general demurrer, as well as the special demurrer, should be sustained, and the suit dismissed, and it is so ordered.

UNITED STATES v. DE RIVERA et al.

(Circuit Court, S. D. New York.)

CUSTOMS DUTIES—LIQUIDATION BY COLLECTOR—LIMITATION OF ACTIONS.

Iron ore was imported in 1881, a certain sum being then paid as duties, after the appraiser had raised the valuation. In 1890 the collector decided that an additional amount was due, and an action was brought to recover the same. The importers claimed that their original payment was a liquidation, and that the action was barred within one year thereafter. *Held*, that the liquidation was not complete until the collector had acted in the matter, and that there was no provision of law requiring him to liquidate within any particular time, or to give notice to the importer thereof.

Action for balance of duties.

On September 20, 1881, and September 22, 1881, defendants imported certain iron ore in the United States by the vessels Samuel Welsh and Mary C. Hale, respectively, and entered same at the port and collection district of Philadelphia, paying, at the time of such entry, the sums of $299.80 on each consignment as duties. Subsequently, on the 14th day of March, 1890, the collector decided that the amount of duties to be paid on said goods was, respectively, $754 and $750.40, leaving a balance due the United States from the defendants of $904.80, to recover which this action was brought. The defendants admitted the importation and entry of the said iron ore, but denied their liability for balance of duties, claiming that the payment made by them at the time of entry of such goods was a liquidation, and that, as more than a year since such liquidation had expired, the same was final and conclusive.

Wallace Macfarlane, U. S. Atty., and James R. Ely, Asst. U. S. Atty.

William H. Blain, for defendant.

LACOMBE, Circuit Judge (orally charging jury, after stating the case as above). I have examined this matter with great care since Friday, in the hopes that, in some way or other, I could find some means for relieving the defendant, in whole or in part, from this claim; but, gentlemen of the jury, it is impossible to do so. The laws of the United States in regard to the liquidation and collection of duties upon imports are evidently constructed upon the