

ings which are properly in court, or form some part of the action of a court. It does not extend to proceedings out of court. It does not forbid the exercise of the police power of the state, nor the arrest of a consular officer by a policeman when committing a crime, nor his consequent detention for surrender to the proper tribunal for punishment. And so the commitment of a consular offender by a magistrate, merely for the purpose of transmitting him to the state where the crime was committed, and where alone he can be tried, is not a proceeding in court or by any court, (*Robertson v. Baldwin* [Jan. 25, 1897] 17 Sup. Ct. 326,) and therefore not prohibited by section 711. And so whatever implications in favor of exclusive federal jurisdiction in consular cases may be claimed, they are in no way incompatible with a preliminary arrest by a state magistrate for removal to the proper state for trial in which-ever tribunal is appropriate. The object of any such exclusive jurisdiction in the federal courts, if it still exists in fact, is evidently quite foreign to such a preliminary proceeding as this, the purpose of which is the transmission of offenders to the state where the offense is committed, to be there brought to trial in the appropriate court, whether state or federal. All questions under the United States statutes as to the proper tribunal for a trial of the cause can be more appropriately heard and determined there. This course seems the more proper in a case like the present, inasmuch as section 1014 of the Revised Statutes, the only one under which removal could be had through federal proceedings, is limited to cases of "crimes or offenses against the United States"; and this is not such an offense. Either, therefore, the petitioner must be amenable to such proceedings as the present, or else he cannot be arrested or sent back at all. As I cannot find that the arrest and detention of the accused under the law of this state, for the purposes specified, are unlawful, the application must be denied.

In re IASIGI.

(District Court, S. D. New York. March 16, 1897.)

BAIL—HABEAS CORPUS—APPEAL.

A district judge who has denied a writ of habeas corpus to release a foreign consul imprisoned under state authority has no power, under Rev. St. § 765, and Sup. Ct. Rule 34 (6 Sup. iii.) to admit the prisoner to bail pending an appeal from the order denying the writ.

The court heretofore denied an application for a writ of habeas corpus to release the petitioner, Joseph A. Iasigi, Turkish consul general at Boston, from imprisonment under an order of commitment by a magistrate in interstate extradition proceedings. The petitioner, having taken an appeal from the order denying the writ, has now applied to be admitted to bail pending the appeal.

David Keane, for petitioner.

Albert Stickney and John D. Lindsay, opposed.

BROWN, District Judge. Without considering the propriety of admitting the petitioner to bail during his appeal to the supreme court from the order refusing to discharge him on habeas corpus in interstate extradition proceedings, I am of opinion that under rule 34 of the supreme court, and section 765 of the Revised Statutes, I have no authority to act, but that the application must be made to the supreme court.

1. I think the provisions of section 765 are in force in habeas corpus cases, except as to the right and mode of appeal, which are regulated by the act of 1891. In *re Lennon*, 150 U. S. 399, 14 Sup. Ct. 123. The act of 1893 evidently contemplates that section 765 and section 766 remain in force, except as to the right and mode of appeal.

2. Under section 765 after the supreme court has made its regulations and orders as to the "custody of the prisoner" (which includes the taking of bail) I think my authority is limited by the regulations so made.

3. Rule 34 of the supreme court (6 Sup. iii.) provides that the prisoner "may be taken into the custody of the court or judge." I have, therefore, for sufficient cause, so ordered. This rule further provides that the prisoner may be "enlarged upon recognizance, as herein-after provided." This is a limitation to the cases so provided; and the next clause of the rule provides only for such a recognizance where an appeal is taken upon the discharge of the prisoner. Here the prisoner was held; not discharged.

4. Rule 36 (11 Sup. Ct. iv.) gives no additional authority to take bail in habeas corpus cases.

Under the statute and rule 34, I do not seem to have authority to admit to bail.

WEST PUB. CO. v. LAWYERS' CO-OPERATIVE PUB. CO.

(Circuit Court of Appeals, Second Circuit. April 8, 1897.)

1. COPYRIGHT—SYLLABI OF LAW REPORTS—INFRINGEMENT.

A copyrighted syllabus to a legal opinion may be infringed without reproducing its original language. It is the unfair appropriation of the original compiler's labor that constitutes the offense. Identity of language will often prove that the offense was committed, but it is not the sole proof; and, when the offense is proved, relief will be afforded, irrespective of any similarity of language.

2. SAME—INTERNAL EVIDENCE OF INFRINGEMENT—PRESUMPTIONS.

When it is conclusively shown from internal evidence that a subsequent digester has made an unfair use of any part of a syllabus of his predecessor, it is not to be presumed that he availed himself of the prior syllabus only to the extent appearing on the face of his work. Rather, the burden of proof will be upon him to show that there were parts of the syllabus that he did not use.

3. SAME—ADMISSIBILITY OF EVIDENCE—OPINION EVIDENCE.

Testimony of witnesses who have compared copyrighted syllabi of legal opinions and alleged infringing digest paragraphs with the opinions themselves, as to their general conclusions on the question of infringement, cannot be accepted as evidence; but, where they also point out similarities of language and other indicia of infringement, the testimony should not be wholly rejected, as it is of great aid to the court in making the laborious examination required in order to reach a conclusion.