mitting him on a charge of forgery to await the action of the secretary of state.

The accused, who was held for extradition for the offenses of forgery, larceny, and embezzlement by United States Commissioner Shields, sued out a habeas corpus and certiorari.

Counsel for the relator contended:

First. That as to the three checks of Morison & Marshall, for 500 pounds, 500 pounds, and 720 pounds, respectively, which relator was charged with forging, there was no testimony before the commissioner tending to show his criminality. Second. That, as to the false entries which it is charged relator made in the books of Morison & Marshall, such conduct on his part, even if proven, would not constitute an offense for which he could be extradited, for the reason that, when the treaty of 1842 was executed, the making of false entries was not forgery. Third. That, as to the additional sum of 280 pounds which the relator was charged with embezzling, there was no proof of criminality presented to the commissioner. Fourth. That as to the facts relating to the three checks, if it be held that they were sufficient to warrant commitment on the charge of forgery of the name of Morison & Marshall, and obtaining money upon such forgery from the bank, then they cannot be held as warranting a commitment for larceny or embezzlement from Morison & Marshall. If, on the contrary, it be held that such facts were sufficient to warrant a commitment for embezzlement from Morison & Marshall, then they certainly could not warrant a finding that the accused obtained the same money from the bank upon forged checks. Fifth. That, inasmuch as the treaty provides that a surrendered prisoner shall be tried only for the particular offense for which he may be surrendered, the demanding government and the commissioner should have elected, and, if the latter officer deemed the evidence sufficient to commit upon the one charge, he should not have committed upon the other.

Charles Fox, for the British government.
Lorenzo Semple, for Bryant.

LACOMBE, Circuit Judge (after stating the facts). The questions properly coming up for decision on this hearing are not as comprehensive as was supposed when the case was argued. If, upon examination of the record, it should appear that there was legal evidence of facts before the commissioner on which to exercise his judgment as to the criminality of the accused; that the commissioner reached the conclusion that the accused had committed any one of the several offenses with which he was charged; and that offense be one covered by the extradition treaty,—sufficient warrant for his detention is shown, and he should not be discharged from custody, but should be held in jail until the secretary of state shall act upon the question of his surrender to the demanding government, or until the expiration of the time provided for in section 5273, Rev. St. U. S. In re Stupp, 11 Blatchf. 124, Fed. Cas. No. 13,562. Without unnecessarily burdening this memorandum with citation, it will be sufficient to refer to Ornelas v. Ruiz, 161 U. S. 502, 16 Sup. Ct. 689, for an exhaustive statement of the procedure in extradition cases, and the extremely limited functions to be discharged by the court upon habeas corpus and certiorari to review commitment.

That forgery at common law, viz. the falsely making or altering a document to the prejudice of another, is one of the offenses covered by the treaty of extradition, is not disputed. The evidence before the commissioner disclosed the following facts: Bryant was employed

as bookkeeper and assistant cashier with the firm of Morison & Marshall, in the city of London, from January to October, 1896, at a salary of £104 per annum. He had under his control the check books and the checks returned from bank after payment. He was not authorized to sign the firm's name to any checks. The firm kept an account with the London office of the Commercial Bank of Scotland. On June 23, 1896, a check for £500, purporting to be drawn on the Commercial Bank, and to be signed by Morison & Marshall, and numbered 698, was presented for payment by the Provincial Bank of England, paid, and debited to Morison & Marshall. On August 14, 1896, a like check for £500, numbered 54,264, was presented by the Provincial Bank, paid, and debited. And on September 10, 1896, a third like check, £720, numbered 54,373, was presented by the Provincial Bank, paid, and debited. Bryant kept an account with the Provincial Bank, in which he deposited on June 22, 1896, a check for £500, on August 13, 1896, a check for £500, and on September 9, 1896, a check for £720. The proceeds of these three checks were duly credited to Bryant's account and the greater part thereof subsequently drawn out by him. The three checks which were paid by the Commercial Bank were abstracted from two check books, which were not in use at the time, and were accessible to Bryant. No particulars appear on the counterfoil of the book from which they were taken. Nor are there any particulars of such checks entered on the counterfoils of any check books in use, nor are these checks now to be found among those received back from the bank in the ordinary way. Morison & Marshall had a sum exceeding £5,000 carried to the credit of a suspense account in their ledgers. Bryant had no authority to interfere with this account. He, however, brought £2,000 from such suspense account to the credit of a fictitious account which he opened in the ledger, in the name of T. H. North. Against this sum of £2,000 he debited the following amounts, viz.: £780 and £1,220. The £780 was posted in the ledger from the cash book, and consisted of £280 and the £500 represented by check No. 698. The £1,220 was in respect of the checks No. 54,364, for £500, and No. 54,373, for £720. These amounts Bryant did not carry out in the cash column of the cash book, but, in order that the balances of the ledger, cash book, and bankers' pass book should agree, added the sum of £1,220 to the total, at the bottom of the page, notwithstanding that amount was not in the column, nor was there any entry in the cash book relating to the £1,220 which could be posted to North's fictitious account.

This court most certainly cannot say in view of this proof, circumstantial though it be, that there was no legal evidence upon which the commissioner could properly exercise his judgment as to the guilt or innocence of the accused; and when, reaching the conclusion that the checks were false, he deems the evidence sufficient to sustain the charge of forgery, under the provisions of the treaty, and commits the accused to await the action of the secretary of state, this court most certainly should *not* enlarge him upon habeas corpus. What action may be taken as to the form of his surrender is a matter for the disposition of the executive.

UNITED STATES v. NEBRASKA DISTILLING CO.

(Circuit Court of Appeals, Seventh Circuit. May 3, 1897.)

No. 329.

1. INTERNAL REVENUE—ILLEGAL ASSESSMENT—LIMITATION.
The inhibition of Rev. St. § 3224, against suits "for the purpose of restraining the assessment or collection of a tax," and the provisions of sections 3226, 3227, that a suit to recover an illegal tax shall not be brought "until after appeal to the commissioner of internal revenue, and must be brought within two years next after the cause of action accrued," do not apply to a proceeding in which the government is the moving party; and, therefore, upon an application by the United States for an order upon a receiver to pay an assessment, the receiver may show that the assessment was erroneous or illegal, without regard to the lapse of time, or to whether there has been an appeal to the commissioner of internal revenue.

2. SAME—DEFICIENCY ASSESSMENT AGAINST DISTILLERY.
A deficiency assessment against a distillery is erroneous where the deficiency of production for which the assessment was made was caused by a defective still, and was not the result of "culpable neglect, default, or mismanagement of the owners"; and the failure to apply to the collector to have the distillery sealed up until the fault could be rectified, as provided by Rev. St. § 3310, was not in this instance a want of diligence.

Appeal from the Circuit Court of the United States for the Northern Division of the Northern District of Illinois.

John C. Black, U. S. Dist. Atty.

Levy Mayer, I. K. Boyesen, John J. Herrick, Charles L. Allen, and Horace H. Martin, for appellee.

Before WOODS and JENKINS, Circuit Judges, and SEAMAN, District Judge.

WOODS, Circuit Judge. This appeal is from an order of the circuit court dismissing the intervening petition of the United States filed in the consolidated cause of John M. Olmstead and others against the Distilling & Cattle-Feeding Company, a corporation of Illinois, of which, by appointment of the circuit court, John McNulta was and is receiver. Included with the properties of which the receiver had been put in charge was the distillery of the Nebraska Distilling Company, located at Nebraska City, which had theretofore been transferred to the Distilling & Cattle-Feeding Company. Before the transfer, on November 21, 1891, a deficiency assessment against the distillery had been made by the commissioner of internal revenue, amounting, after reductions which need not be explained here, to the sum of $2,161.71, alleged to be unpaid. The petition, after alleging the facts, prayed an order upon the receiver to pay the assessment, or, in the event that such order could not be made, that permission be granted by the court for the immediate levy of a distraint warrant upon the distillery and premises, to the end that the same be sold, in pursuance of the statutes in such cases provided, to satisfy the claim. The receiver answered to the effect that the deficiency for which the tax was assessed was caused by the use of a new still, which was imperfect and defective in its working. The amount