justice of the peace, or other state magistrate. Rev. St. § 1014. And it cannot be pretended that one of those state officers, while conducting a preliminary investigation, is holding a court of the United States. Technically, we speak of an examining magistrate, and not of an examining court. The distinction is recognized in the statutes (section 1014), by which sundry judicial officers of the United States and of the states are authorized to conduct an examination, and imprison or bail the defendant 'for trial before such court of the United States as by law has cognizance of the offense.' Also section 911, which provides that 'all writs and processes issuing from the courts of the United States shall be under the seal of the court from which they issue, and shall be signed by the clerk thereof.' But a commissioner, like a justice of the peace, is not obliged to have a seal, and his warrants may be under his hand alone. Starr v. U. S., 153 U. S. 614, 14 Sup. Ct. 919."

It is obviously implied throughout in this opinion, and the ground on which it proceeds, that the United States commissioner sustains in the federal system exactly the same relation of the committing magistrate in the state systems and at the common law, and, as has been seen, the warrant issued by such magistrate might be made general, and returned before any magistrate, giving to such magistrate full jurisdiction. It is very clear, therefore, that a warrant issued by a United States commissioner, like one issued by one of these magistrates long known to the common law, might be returned before a United States commissioner other than the one issuing the same. The ground on which the special master proceeds, therefore, gives way, in view of the fact that the marshal cannot, under the statute, charge mileage from the place of issue to the place of service, but only from the place of return to the place of service. If, therefore, the subpœna became perfect process on which the marshal might charge after the arrest of the defendant, it seems that the travel to execute the subpœna between the place of return and the place of service could be claimed upon the same ground and equally with the fee for travel on the warrant of arrest. It may be true that the result in particular cases, and also generally, may be inequitable as against the government, but, if the statute in terms allows the charge, the court would be without authority to deny it on equitable grounds. In the effort to reach an equitable result, the power of interpretation must not be permitted to trench upon the province of legislation. The distinction between the legislative and judicial function must be preserved. Interpretation may make manifest that a change of law is necessary, but it must not make that change itself. It was recognized at once that the ruling which the court thought the express language of the statute required in U. S. v. Harmon was unjust to the government, and that decision was promptly met by proper legislation changing the law in that respect, and making such a result no longer possible. This case, however, is controlled by the previous law as announced in U. S. v. Harmon, provided the facts here do not substantially distinguish this case from that; the only difference being that the writs here, while against separate persons, were issued and served in the same case. I am not, by any mode of reasoning satisfactory to myself, able to see that there is any such substantial legal distinction as justifies a different judgment from that pronounced in U. S. v. Harmon upon the facts in that case, and I therefore feel constrained, in obedience to the authority of that case, to sustain the exception to the special

master's report which raises this question. That Attorney General Devens was of the opinion that there was no distinction between the cases of process against different persons in the same and in separate causes is made clear by the parts of the opinion herein referred to. The precise question which was being answered by the attorney general was this:

"Whether a marshal of the United States is entitled to full mileage on each writ served by him when several issued in behalf of the government, to be served on different persons, are or might be served at the same time, only one travel being necessary to make the service on all of said persons."

Keeping in view the only lawful method of computing the mileage fee, and that question is exactly similar to the one here presented. In the progress of the opinion, the question was again stated as follows:

"The inquiry accordingly is whether this clause forbids the allowance of mileage to a marshal on each writ where two or more writs issued in behalf of the government, to be served on different persons, at the same place, are then served by him, only one journey being necessary to serve them."

Continuing the opinion, it was said:

"It is to be observed that in regard to mileage section 829 makes no distinction between process issued in behalf of the government and that issued in behalf of individuals. Mileage is provided by that section 'for travel, in going only, to serve any process, warrant, attachment, or other writ, including writs of subpœna in civil or criminal cases,' the provision applying alike to cases in which the government is concerned and to cases of individuals. Hence the circumstance that the writs in the case presented by the inquiry under consideration were issued in behalf of the government is unimportant. The same section also provides that the mileage shall be 'computed from the place where the process is returned to the place of service, or, where more than one person is served therewith, to the place of service which is most remote, adding thereto the extra travel which is necessary to serve it on the others.' And under the general provision of that section the marshal must be deemed to be entitled to mileage, thus computed, on each and every writ served by him, irrespective of the number served at any time or place, with the exception of one case, which is withdrawn from their operation by being made the subject of a specific provision. That case is 'when more than two writs of any kind required to be served in behalf of the same party on the same person might be served at the same time.' In such case it is provided by section 829 'the marshal shall be entitled to compensation for travel on only two of such writs.' As is well remarked by the district judge of Kentucky in the opinion hereinbefore referred to, this limitation implies that the marshal is entitled, under the other provisions of the section, to compensation for travel in going to serve any number of writs, provided that they were issued in behalf of different parties, or are to be served on different persons."

And, finally, coming directly to the point under examination, it was observed:

"As has just been intimated, where several writs, issued in behalf of different parties, are received by the marshal at the same time, and are to be served on different persons residing in the same place, the journey which is undertaken to serve these writs is as necessary for any particular one of them as it is for either of the others. If it had been the design of congress to limit the compensation of the marshal to mileage upon but one writ in a case of this kind, the provision referred to would doubtless have been accompanied by some regulation for determining on which of the writs mileage should be allowed or taxed,—whether on the one first placed in the marshal's hands or on the one first served, etc. It is not likely that a matter of such concern to litigants would have been left to the arbitrary determination of the marshal himself. But the case of several writs issued in behalf of the same party (whether such party be the government or an individual) against different persons stands on precisely the same footing, when viewed in connection with

the provision in the act of 1875, as the case of several writs issued in behalf of different parties; and I am unable to find in that provision anything inconsistent with the allowance of mileage on each of the writs issued and served in either of those cases when actual travel has been performed by the marshal in serving them. * * * To the question submitted for reconsideration, I accordingly return this answer: That, in my opinion, a marshal is entitled to 'full mileage on each writ served by him when several issued in behalf of the government, to be served on different persons, are or might be served at the same time, only one travel being necessary to make the service on all of each persons where such travel is actually performed.' "

Such was the ruling in the Crittenden Case. The opinion of Attorney General Devens was recognized and followed by the first comptroller in a recent ruling. Dec. 1st Comptr. 1893–94, p. 192. The comptroller stated that the question whether a marshal should be entitled to mileage from the place where he receives the writ to the place where it is served is in doubt.

Exception 3 is to so much of the special master's report as disallows the item for service and travel in transporting prisoners from one jail to another under order of the court. The facts on which this claim rests are these: Offenders tried before a United States commissioner, and bound over, failing to give bond, were by the marshal committed to the county jail nearest to the place of trial, there to remain in custody until a true bill should be found by the grand jury. The court would then order the prisoner brought into court, just as a prisoner would be ordered brought in who was in the jail of the county where the court was held. Under such order the prisoner was transferred from the jail in which he was first lodged to the county in which the circuit court was being held, for the purpose of being put on trial under the indictment. The marshal was allowed and paid his fees, under section 829 of the Revised Statutes, "for transporting criminals ten cents a mile for himself and for each prisoner and necessary guard." What the marshal now claims is the right to charge six cents a mile for the distance in going to the out county jail and two dollars for service of the order, treating the order in all respects as original process under the general provisions of section 829. This is clearly an attempt to make a double charge for the same service, and cannot be allowed, under the express language of the section of the act; and such, in effect, is the holding in U. S. v. Tanner, 147 U. S. 661, 13 Sup. Ct. 436. And see, also, Campbell v. U. S., 13 C. C. A. 128, 65 Fed. 781. Exception 3 is therefore overruled.

The fourth and last exception raises the question of the right to charge two dollars per day in each case for attending criminal examinations in separate and distinct cases on the same day before the same commissioner. The reasons why the master disallows this item of the account are fully stated in the report, page 33. Plaintiff's attorney relies, to sustain this exception, upon the case of U. S. v. McMahon, 13 C. C. A. 257, 65 Fed. 976. The judgment in that case was, however, on writ of error reversed by the supreme court, and it only remains upon the undisputed facts to make the decree conform to the law as settled by that court. U. S. v. McMahon, 164 U. S. 81, 17 Sup. Ct. 28.

KEYES v. UNITED INDURATED FIBRE CO.

(Circuit Court, N. D. New York. July 1, 1897.)

No. 6,254.

1. PATENTS—INFRINGEMENT.
The use of a plain iron ring to prevent the ends of barrel bodies molded from paper pulp from shrinking or losing their proper shape while drying, is not an infringement of a patent for an article consisting of a ring having an inwardly-extending flange and a cross fastened down on the flange, its arms extending beyond the outer periphery of the ring.

2. SAME—END SUPPORTER FOR PULP BARRELS.
The Laraway patent, No. 339,064, for an improvement in mechanism for preventing a molded barrel body from shrinking in diameter at either end while being dried, if valid at all, must, in view of the prior state of the art, be restricted to the precise mechanism described.

Tracy C. Becker, for complainant.
Frederick P. Fish, W. K. Richardson, and John E. Pound, for defendant.

COXE, Circuit Judge. This action is based on letters patent No. 339,064, granted, March 30, 1886, to George W. Laraway for an improvement in mechanism for preventing a molded barrel body from shrinking in diameter at either end while being dried. The specification says:

"Barrel-bodies molded from paper pulp are now extensively made and used. In drying a body of such kind after its formation in a molding-machine it is important that each mouth or part that receives the barrel-head should retain its proper size and shape to fit such head, and this is the purpose of my invention or barrel-body-end supporter, which, on the barrel body being taken in a moist state from the molding-machine, is inserted in it (the said body) at its end and kept there until the body may have become dry. The said body in becoming desiccated shrinks in size; but by having in the mouth or opening at each end of it one of the said supporters while the drying operation is taking place the mouth is preserved in its proper condition and size to receive a barrel-head."

The device shown in the drawings and described in the specification consists of a ring having an inwardly-extending flange and a cross fastened down on the flange, its arms extending a short distance beyond the outer periphery of the ring. The claim is as follows:

"As a new article of manufacture, for the purpose described, the pulp barrel end supporter substantially as represented, consisting of the cross and the flanged ring, substantially as set forth."

The defense of noninfringement only need be considered. If there be any invention in the complainant's patent, and this is exceedingly doubtful in view of the use of rings for similar purposes in this and in analogous arts, it is clear that it must be confined to the precise mechanism described and shown. The patent is not entitled to a broad construction. It is clear that when properly construed the claim is not infringed. The defendant uses a plain angle iron ring. It has no inwardly-extending flange and no strengthening or supporting cross. The bill is dismissed.