backward, instead of waiting till they stopped. Since it was through no fault of O'Brien that the pin was drawn too soon, and since it was such a premature drawing of the pin which caused the accident, the question whether or not he was generally competent to discharge his duties is immaterial. Assuming that plaintiff was not himself negligent, the accident seems to have been caused by the carelessness of Gooley, a fellow servant, for whose negligence defendant would not be liable.

At the close of the whole case, defendant moved for the direction of a verdict on the ground that—

"There is not sufficient proof in law to sustain a verdict for the plaintiff; that the accident resulted from a danger incident to the nature of the employment in which the plaintiff was engaged; that the plaintiff assumed all the risk of the dangers he alleges caused the accident; that, if there was any negligence, it was the negligence of a fellow servant or servants, for which defendant is not liable; that there is no negligence proven against the defendant; that, if there is any evidence in the case that O'Brien was incompetent, the evidence in the case which is claimed to show that he was incompetent is not sufficient to prove that the accident was caused by reason of any of the defects which it is claimed existed in O'Brien; that it was not the approximate cause of the accident."

The exception to the court's refusal to make such direction sufficiently presents the point above discussed. The judgment appealed from is reversed.

ATLANTIC TRANSPORT CO. v. CONEYS.

(Circuit Court of Appeals, Second Circuit. July 26, 1897.)

MASTER AND SERVANT—INDEPENDENT CONTRACTOR.

A firm of jobbing carpenters employed by a steamship company to make necessary repairs and alterations in their vessels when in port, and who charged for work by the hour, and lumber by the foot, sent men in charge of a foreman to do the work. Superintendents and captains of the vessels had the right to direct the manner and extent of repairs and alterations to be made. *Held*, that the men, while so engaged, were the servants of the steamship company, and not of an independent contractor.

Wallace, J., dissenting.

In Error to the Circuit Court of the United States for the Southern District of New York.

This writ of error was brought to reverse a judgment for $2,034.85 rendered upon a verdict of the jury in favor of Michael Coneys, the plaintiff below, in an action to recover damages for personal injuries caused by the negligence of persons alleged to be the servants of the defendant, a steamship company having a line of steamers running to and from New York, and engaged in the transportation from New York to London of cattle, horses, grain, and general merchandise. The plaintiff was an employé of an elevator company, and at the time of the accident was at work upon a canal boat alongside of the defendant's steamer Mississippi, and between it and a grain elevator from which the steamer was loading. He was injured by the fall upon him of a wooden shutter which was used for closing a gangway at the side of the top deck of the steamer, and was a part of the fittings of the vessel for the carriage of cattle, and which was being handled by carpenters in the employment of H. P. Kirkham & Son, a firm of carpenters, who were repairing the cattle stalls. The accident happened through the negligence of the carpenters. The defendant relied upon the position that the workmen were in the employment of independent contractors, and were not its servants, and, in various forms, requested the trial court to thus instruct the jury. The court charged the jury that the evidence showed they were not the servants

of an independent contractor, but that they were doing the ship's work at the request of, and under the direction of, the ship's officers. To this charge the defendant excepted, and the assignments of error relate to this exception, and to the various refusals of the trial judge to direct otherwise. The facts in regard to the course of business of the defendant with the firm of H. P. Kirkham & Son are given in the opinion.

William P. Burr and H. K. Coddington, for plaintiff in error.

J. Parker Kirlin, for defendant in error.

Before PECKHAM, Circuit Justice, and WALLACE and SHIPMAN, Circuit Judges.

SHIPMAN, Circuit Judge (after stating the facts as above). The fact of a distinction between the liability of an employer for an injury caused by the negligence of his employé or his servant, and the liability of an owner for an injury caused by the negligence of an independent contractor who undertakes to execute specified work upon the owner's property, was formerly not well recognized (Bush v. Steinman, 1 Bos. & P. 404), but is now distinctly understood (Hilliard v. Richardson, 3 Gray, 349). If any confusion now exists, it is in regard to the controlling tests that determine the character of the particular contract which is under examination. The two kinds of employment are frequently close to each other, and, while it is often not difficult to appreciate and understand the difference between the two classes of contracts, it is sometimes difficult to express the distinctions with exactness of language. The cases of Casement v. Brown, 148 U. S. 615, 13 Sup. Ct. 672, and Railroad Co. v. Hanning, 15 Wall. 649, illustrate that, while two contracts may apparently be similar in phraseology, yet their nature and subject-matter may place the respective contracting parties in different relations to each other. The tendency of modern decisions is not to regard as essential or controlling the mere incidentals of the contract, such as the mode and manner of payment (Corbin v. American Mills, 27 Conn. 274), or whether the owner can discharge the subordinate workmen, and not to regard as essential, or an absolute test, so much what the owner actually did when the work was being done, as what he had a right to do. Many circumstances may combine, as in Butler v. Townsend, 126 N. Y. 105, 26 N. E. 1017, which show that the relation of an independent contractor exists, but the significant test, which courts regard as of an absolute character, has been variously expressed by them as follows:

"The test, I think, always is, had the superior control or power over the acting or mode of acting of the subordinates? * * * Was there a control or direction of the person, in opposition to a mere right to object to the quality or the description of the work done? * * * On the other hand, if an employer has no such personal control, but has merely the right to reject work that is ill done, or to stop work that is not being rightly done, but has no power over the person or time of the workman or artisan employed, then he will not be their superior, in the sense of the maxim, and not answerable for their fault or negligence." Lord Gifford in Stephen v. Commissioners, 3 Sess. Cas. (4th Series Scot.) 535, 542.

In Linnehan v. Rollins, 137 Mass. 123, 125, the instruction of the trial judge, which was adopted by the appellate court, was:

"The absolute test is not the exercise of the power of control, but the right to exercise power of control."

In Hexamer v. Webb, 101 N. Y. 377, 4 N. E. 755, the court said:

"The test to determine whether one who renders service to another does so as a contractor or not is to ascertain whether he renders the service in the course of an independent occupation, representing the will of his employer only as the result of his work, and not as to the means by which it is accomplished."

In Casement v. Brown, supra, the court, by Mr. Justice Brewer, said:

"The will of the companies [the owners] was represented only in the result of the work, and not in the means by which it was accomplished. This gave to the defendants the status of independent contractors, and that status was not affected by the fact that, instead of waiting until the close of the work for acceptance by the engineers of the companies, the contract provided for their daily supervision and approval of both material and work."

—Whereas, in Railroad Co. v. Hanning, supra, the court found that the essence of the contract to rebuild an old wharf, and "make it as good as new," was a reservation of the power, "not only to direct what shall be done, but how it shall be done."

In the case now under consideration the contract was not in writing, but was manifested by the course of business between the parties, and the witnesses are not at variance as to its terms. There was no question before the jury as to the evidence, but the plaintiff in error insists that it was entitled to a ruling that the legal conclusions from the evidence must be that the firm of carpenters stood in the position of independent contractors, or at least that the question of the character of the contract was one for the jury. The members of the court concur in the opinion that the facts did not entitle the plaintiff to the absolute ruling which was asked for, and the majority are of opinion that the only just inferences from the testimony are that the relation between the shipowners and the carpenter was that of master and servant. The dissenting judge thinks that the inferences might be twofold, and that the question should have been submitted to the jury.

The steamship company had for four years before the accident been operating a line of steamers carrying horses, cattle, and general cargo from New York. Whenever a steamer arrived in port, its fittings for cattle and other equipments for the carriage of freight required repairs, which were uniformly made by Kirkham & Son, who charged for work by the hour, and for material by the foot. The dock superintendent of the steamship company, in reply to the question, "Describe to us how the work is done; who gives the directions?" said:

"There are hardly any directions to be given. Mr. Kirkham has a foreman there, and he goes to work,—being used to this work, he knows just what is to be done; and he goes ahead and does this work regularly each week, excepting possibly when we have horses. When we have horses, then I counsel him how many horses."

In reply to the question, "What kind of work do they do on the ship, and how long are they there generally each trip?" he said:

"Some of them are there most all the time while the ship is in port. There is so many things to be done—fitting up the boat for grain, and tinkering around, one thing and another; fixing up the cattle fittings; fixing up for the horses—that it takes a larger or smaller gang, according to the amount of work, most of the time the ship is in port."

The carpenters' foreman testified that he goes over every vessel of the steamship company as it arrives, and reports the result of his inspection to the superintendent, who tells him to go ahead with the work; that when the Mississippi came in, the superintendent being absent, the assistant gave orders to go ahead and see to the repairing the same as usual; that in practice the witness got instructions from the captains once in a while, "in the nature of alterations, or any thing that way"; and that it was a part of his general duty to do any repairing that he sees is needed, and asked for by the captain or by the dock superintendent. Kirkham & Son are the jobbing carpenters customarily employed by this steamship line. Their experience has been such that their ascertainment of the necessary amount of repairs is relied upon. They are told to do the work, and, as a rule, need no other directions. But both the captains and the superintendent have the right to direct the extent and the manner of the alterations and repairs. It is a right not often exercised, for the carpenters apparently had the confidence of the superintendent, but the right existed. But it may be said that, while it is true that the officers of the defendant had some general power to direct how alterations and repairs should be made, they had no particular power "to direct and control the manner of performing the very work in which the carelessness occurred," and that the existence or nonexistence of such kind of power is the real question in the case, which is true. Charlock v. Freel, 125 N. Y. 357, 26 N. E. 262; Vogel v. Mayor, 92 N. Y. 18. The subject-matter to which the course of business related —that of a series of minor jobbing repairs—tells with a good deal of clearness what the rights of the respective parties were. The contract of the superintendent was not analogous to that of a householder's occasional contract with a tinman to tin a roof, or with a painter to paint a house. It was analogous to that of the owner of a house who customarily calls in the jobbing carpenter whom he is in the habit of employing, and starts him in the work of "tinkering around, one thing after another," and doing the various jobs of repairs which time has shown to be necessary. The manner in which the work shall be done, and the dangers to be avoided, as well as the extent to which the work shall be carried on, are under the control and guidance of the owner. In this case separate bills were made out for the separate kinds of work upon each vessel, and for the materials furnished for each job; and, while the mode of payment is not essential, it was not in harmony with the usual incidents of the contract of an independent contractor. Inasmuch as, in our opinion, the only inference that can fairly be drawn from the testimony is that the steamship company and the carpenters were in the usual relation of master and servant, the judgment of the circuit court is affirmed.

WALLACE, Circuit Judge (dissenting). I think that the evidence upon the trial presented a question of fact for the determination of the jury,—whether Kirkham & Son were contractors, exercising an independent calling, and delegated with the responsibility of deciding how the carpenter work which they were to do for the defendant should be done, subject to the right of the defendant to object to the

quality of the work, or whether the relation between their subordinates and the defendant was that of master and servant. Unless the defendant, pursuant to the understanding or course of business between it and Kirkham & Son, had the right to direct and control the manner of performing the very work in which the carelessness occurred by which the plaintiff was injured, the employés of Kirkham & Son were not its servants. In my opinion, the trial judge erred in taking this question from the jury, and deciding as matter of law that these employés were the servants of the defendant. I therefore dissent from the opinion of the court.

WARNER v. PENOYER et al.

(Circuit Court, N. D. New York. August 17, 1897.)

No. 6,392.

NATIONAL BANKS—LIABILITY OF DIRECTORS FOR NEGLIGENCE.

Where the affairs of a national bank were managed entirely by its cashier, who was reputed and universally believed to be honest and capable, but whose dishonesty and reckless management resulted in wrecking the bank, the president and directors, who knew little of the business of banking, and most of whom were farmers, were not guilty of negligence rendering them liable for the losses to creditors because they failed to examine the books; the statements prepared and furnished them by the cashier, and which purported to be made from the books, showing the bank to be in a prosperous condition, and there being no grounds of suspicion known to them. Briggs v. Spaulding, 11 Sup. Ct. 924, 141 U. S. 132, followed.

This was a suit in equity by John W. Warner, as receiver of the First National Bank of Watkins, N. Y., against William J. Penoyer and others, directors of said bank, for losses of the bank alleged to have been caused by defendants' negligence as such directors.

Martin S. Lynch and Edward Winslow Paige, for complainant.

Frank C. Avery, Charles M. Woodward, and Frederic Collin, for defendants.

COXE, District Judge. The complainant, as receiver of the First National Bank of Watkins, N. Y., seeks to recover of the defendants, who were directors of the bank, for losses alleged to be due to their negligence. Watkins is a village of about 3,000 inhabitants in Schuyler county, N. Y., situated in the midst of an agricultural community. The First National Bank of Watkins, succeeding the Schuyler County Bank, was organized in 1883 with a capital of $50,000. It closed its doors, hopelessly insolvent, on the 8th of February, 1894. William N. Love was president of the bank from 1885 until August, 1892, when he died. The defendant Adrian Tuttle, who was a director from the organization of the bank, became its president upon the death of William N. Love. John W. Love, a son of William N. Love, entered the bank as an errand boy, and rose to the position of cashier before his father's presidency. He was continued in that position until the failure of the bank, being its chief executive officer and having the entire charge of its affairs for at least 18 months prior to

the failure. At the time of his father's death he was about 32 years of age, reputed to be worth two or three thousand dollars. The directors never required a bond from him and he gave none. The reports to the comptroller show that the deposits and discounts of the bank averaged not to exceed about $200,000. When the bank suspended, February 8, 1894, it had lost mainly through the negligence, incompetency and rascality of the cashier, John W. Love, nearly $150,000. Of this sum about $100,000 was lost during the 18 months subsequent to his father's death and while Tuttle was president. John W. Love is now serving a term in the state's prison for his crimes in wrecking this bank. It is not necessary to enter into the details of his fall. It is the old familiar story. The first false step, the rapidly downward course, the hopeless struggle to avert disclosure by perjury, forgery and theft; discovery, disgrace and then—the penitentiary. The defendants do not deny his incompetency or attempt to palliate his crimes. All agree that the bank was ruined by him. The largest item of loss was through the Western Improvement Company, a speculative concern of which the cashier was vice president, and for which he discounted notes and permitted overdrafts to the amount of $72,000. This account began in October, 1891, gradually growing larger until the failure of the company involved the bank in ruin. It may be conceded that this was reckless, if not dishonest, banking, and that Love's action in permitting it rendered him liable for the loss and renders the defendants equally liable if they connived at or permitted it. The directors were all men of good character and had the confidence of the community. With two exceptions they were farmers. All were unacquainted with the details of banking and had little knowledge of bookkeeping. During the entire period of his cashiership John W. Love had the confidence of the citizens of Watkins. To all outward appearances his character was above reproach; his life blameless. We have then, upon undisputed facts, the following situation: A village bank managed exclusively by its cashier, who is believed to be honest, but whose dishonesty and incompetency result in wrecking the bank. A set of books, for the most part correctly kept, which, if examined, would have disclosed the reckless financiering of the cashier. This examination, depending upon the time it was made, would, probably, have saved the bank from failure or greatly reduced its losses. A board of directors composed of men knowing little of banking, but honest and respected, who intrust the administration of the bank to the cashier relying upon his representations and never examining the books except as statements, purporting to be taken from them, are submitted to the board from time to time. The question of liability can be narrowed to the single inquiry, should the directors have examined the discount register and general ledger? Are they liable for not doing this? The law which rules this controversy must be taken from Briggs v. Spaulding, 141 U. S. 132, 11 Sup. Ct. 924. This is true, even though the court may be convinced that the rule contended for by the dissenting justices is conducive to greater stability, conservatism and honesty in all branches of commerce and finance. A somewhat extended experience in the trial of indictments under section 5209 of

the Revised Statutes has led to the conclusion that in fully half these cases an examination of the books of the bank by the directors, or an examiner, would prevent failure, or, at least, would save large sums for the creditors. Furthermore, the knowledge that such an examination is liable to be made at any time would have a most salutary effect in restraining dishonest officers from entering upon a career of crime. The rule laid down by the supreme court does not, however, require such an examination unless the directors become acquainted with some fact calculated to arouse suspicion. The liability of the directors, says the court, in the Briggs-Spaulding Case, "depends upon whether they should have made an examination of the books and assets of the bank," etc. The court holds that they were not required to do this, quoting, with approval, the language of Sir George Jessel in Hallmark's Case, 9 Ch. Div. 332, as follows:

"I know no case, except Ex parte Brown, 19 Beav. 97, which shows that it is the duty of a director to look at the entries in any of the books; and it would be extending the doctrine of constructive notice far beyond that of any other case to impute to this director the knowledge which it is sought to impute to him in this case."

I cannot resist the conclusion that the conduct which the supreme court excused approached much nearer the verge of culpable negligence than that of the defendants in the case at bar. The status of the three directors, whose negligence was in question, is thus characterized in the minority opinion:

"In fact, these gentlemen, while they were directors, had no knowledge whatever of what was being done by Lee in the conduct of the bank. They took his word that all was right, and gave no attention whatever to the management of its business. * * * They signed and certified to their correctness [reports to the comptroller] entirely upon their faith in Lee. They acted as if confidence in him discharged them from all responsibility touching the management of the bank. * * * In the case of Mr. Spaulding, there are absolutely no circumstances of a mitigating character. * * * He performed no duty while director, except 'to examine reports'; but he made no examination to ascertain their correctness. * * * When asked in reference to the enormous overdrafts, made while he was director, and whether he did anything to prevent them, he replied, 'I didn't go to the bank to ascertain. I left the officers in charge as I found them.' * * * 'I never examined its books or affairs, and I only examined the reports which it made to the comptroller, whose duty it was to see that these reports were correct.' * * * It is plain from the evidence that if, with his long experience in banking business, he had given one hour, or at the utmost a few hours' time in any week while he was director, to ascertain how this bank was being managed, he would have discovered enough that was wrong and reckless to have saved the association * * * many if not all the losses thereafter occurring. Upon his theory of duty, the only need for directors of a national bank is to meet, take the required oath to administer its business diligently and honestly, turn over all its affairs to the control of some one or more of its officers, and never go near the bank again unless they are notified to come there, or until they are informed that there is something wrong. * * * The case is one of supine, continuous negligence, upon the part of the three directors named, in the discharge of duties they owed to the bank and to those interested in it."

And yet these men were exculpated.

The question arises, how can this court, in justice, hold these defendants when the only act of negligence is failure to do that, which, on the highest authority in the land, they were not required to do? I have read with interest the able opinion in the case of Gibbons v.

Anderson, 80 Fed. 345. With the views there expressed I am in hearty accord and should be inclined to enter a similar decree if there were here the necessary suspicious circumstances to put the directors upon inquiry. In the Gibbons Case it appeared that the usual dividend was passed in January, 1892, and again in July, 1892, and the court says:

"It would seem to me that at the last-mentioned date the fact that a year had now gone by without any declaration of dividend, and no sufficient explanation thereof being shown, the attention of the board of directors, to the bank's condition, was challenged, and that, in the interest of those concerned, an examination into the causes should have been instituted."

There was also in that case a letter from the comptroller making disclosures and giving warning which was brought directly to the attention of the board; and even this failed to arouse them from their lethargy. In Robinson v. Hall, 25 U. S. App. 48, 12 C.C.A. 674, and 63 Fed. 222, the frauds and irregularities which resulted in the ruin of the bank were of such a character that they must have been known to the directors. In the case at bar, on the contrary, dividends were regularly paid and every one in the community believed the bank to be in a most flourishing condition until the news of Love's flight was made known. Some of Love's frauds were carried on so clandestinely, by false entries and juggling with the books, that it is not pretended that they could have been discovered except by an expert. Others, like his larceny of the cash, it would have been impossible to prevent. The chief accusation against the directors is that they permitted the account of the Western Improvement Company to grow to such large proportions; but they all testify that they were absolutely ignorant of the existence of such an account, and there was no way they could have discovered it short of an actual inspection of the books, for statements purporting to be drawn from the books were from time to time submitted to them. There was nothing to direct suspicion in that direction. At the time they trusted Love no young man in the community stood higher. They had absolutely no reason for thinking that statements presented by him were false and that notes submitted by him were forged or fictitious. These men were none of them bankers or bookkeepers, and the examination by them of statements which, they were informed by a trusted employé, were taken from the books, was surely the next thing to an examination of the books themselves.

The argument for the complainant proceeds upon the theory that the defendant Tuttle, being the president of the bank, was guilty of greater negligence than the other defendants. In other words, if any defendant is liable it is Tuttle. A brief résumé of the testimony as to him will, therefore, suffice for all. Adrian Tuttle is a farmer, 60 years of age, residing in the town of Reading, 2½ miles from the bank building. He had been a director since its organization and was elected president of the bank in the autumn of 1892. He and his family owned $6,000 of the shares of the bank, purchasing $4,000 of this amount in 1892 and 1893 while he was president. John W. Love was employed during Tuttle's connection with the bank, and for some time prior to his presidency Love had been cashier. Nothing

had ever occurred to mar Tuttle's confidence in Love until the morning the bank closed. During his presidency he attended every meeting of the directors. His visits to the bank were frequent, sometimes every day, sometimes every other day, and during haying or harvesting he would come down in the evening and talk with the cashier. When in the bank he frequently did the work of the cashier and the clerks while they were absent making collections or for other purposes. He had numerous conversations with the cashier regarding the condition of the bank and was always informed that it was solvent and prosperous. Weekly statements drawn up by the clerk or cashier were examined by him every Tuesday morning. The last statement of this kind was submitted to him two days before the bank failed. It showed that the bank was solvent and prosperous. That Tuttle had the utmost confidence in the bank up to the last moment of its existence as a going concern, is demonstrated by the fact that he had a deposit there of $420 when the collapse came and made a deposit of $100 on Wednesday—the bank failing on Friday. Shortly before the bank failed he signed a tax collector's bond for the purpose of securing the deposit for the bank and subsequently paid the amount of the loss. At the directors' meetings in response to a request to produce all the notes of the bank the cashier would bring in a bundle of notes and the directors would proceed to examine them. Tuttle swears that he did not know of the overdraft of the Western Improvement Company, or of the discount of its paper. After the cashier absconded Tuttle did what he could to secure his arrest and paid one-third of the reward offered for his apprehension. He has also paid the assessment on his stock. These are the salient features of Tuttle's connection with the bank. It will hardly be controverted that, when compared with Spaulding's directorship in the Buffalo bank, it is a record of activity and prudence. The testimony as to the other directors is substantially the same. Unquestionably they trusted too implicitly to Love, but it would be manifestly unfair to judge them in the light of what now is known of Love's character. At the time they trusted him every one trusted him. Nothing had occurred to shake their confidence in him, or put them upon inquiry. It is true that at the meeting held on the 11th of July, 1893, a list of notes was submitted showing eight $5,000 discounts, but it did not show who were the makers and indorsers. There was nothing to show that these discounts were all for the same party. With the burden upon the complainant it can hardly be said that this proof sufficiently establishes negligence in the teeth of the defendants' oaths that they never knew of the Western Improvement Company's discounts. Assuming that they could be held liable had they known of this transaction, the court must find that they did not know of it, and that the facts were so concealed by Love that nothing occurred to turn their attention in that direction.

After giving this cause the most careful consideration it is thought that under the law of Briggs and Spaulding, which, of course, is controlling upon this court, the liability of these defendants has not been established. The bill is dismissed.

PRIDDIE v. THOMPSON, United States Marshal.

(Circuit Court, D. West Virginia. July 28, 1897.)

1. UNITED STATES MARSHAL — REMOVAL OF OFFICE DEPUTY — CIVIL SERVICE LAW.
An office deputy marshal appointed by the joint action of the attorney general and the marshal under the provisions of the act of May 28, 1896 (29 Stat. 182, § 10), is protected in his position by the civil service laws and rules, and is not subject to removal by the marshal.

2. INJUNCTION—REMOVAL FROM OFFICE—CIVIL SERVICE LAW.
One who holds a position under the protection of the civil service laws and rules is entitled to the remedy by injunction to prevent his unauthorized removal therefrom.

J. T. McGraw, J. H. Holt, and Z. T. Vinson, for complainant.
Joseph H. Gaines, for defendant.

JACKSON, District Judge. This cause is now heard upon a motion for an injunction upon a bill filed by the complainant, an office deputy marshal of the United States for the district of West Virginia, against the defendant, the marshal of the United States for the district of West Virginia. The defendant files a demurrer to the bill, and insists—First, upon the right of the marshal to remove the complainant in this cause from the position he holds; second, that there exists no legal remedy to prevent the marshal from removing the complainant from office, and appointing another in his place. Congress passed an act "to regulate and improve the civil service of the United States," which was approved by the president on the 16th day of January, 1883. 22 Stat. 403. I infer that the purpose of congress was to promote efficiency in the public service, and the exercise of such a power was clearly within its legislative scope. Under and by virtue of the provisions of this act the commission was authorized "to make regulations for their guidance" in the execution of the powers conferred upon it, subject to the rules that may "be made by the president." Upon the 28th day of May, 1896, congress passed an act "allowing the marshals of the United States to employ necessary office deputies and clerical assistants, if in the opinion of the attorney general the public interest requires it." 29 Stat. 182, § 10. The bill alleges that the complainant was appointed, under written authority from the attorney general, by C. E. Wells, then marshal of this district, "chief office deputy marshal," with the approval of the attorney general, and that he qualified as such officer on the 1st day of July, 1896. The form of the appointment was prepared and sent to the marshal from the department of justice, as provided for in the act of May 28, 1896, designating and authorizing the complainant to act as chief office deputy of the United States marshal, and to hold said position subject to the conditions prescribed by the tenth section of said act. Prior to the act of 1896, deputy marshals were all on the same footing, and held their positions at the pleasure of the marshal, unless removed by the district court. By the tenth section of the act of 1896 there was a provision made for a new grade of deputy marshals, to be known as "office deputies," "when,