

## Statement of the Case.

achievement of the desired result in its widest form, unlimited by specific details. If this claim can be sustained, in the light of the previous inventions, it can only be done by restricting it narrowly to the particular devices described, and under such a construction the machines of defendants cannot be deemed to infringe.

None of the defendants are shown to have ever made, sold, or used a machine containing a binding arm and twister, or any equivalent device, adjustable with reference to the binding machine in which they are mounted, or with reference to the platform on which the binding takes place, or with reference to the bundles of grain in position to be bound. In the defendants' machines the binding arm and knot-tying mechanism are permanently secured in a fixed position and incapable of adjustment by being moved to and fro in the machine. When the binding machine itself is moved so as to adjust it to the middle of the stalks to be bound, the binding arm and tying mechanism, by virtue of their permanent attachment to the frame of the machine, are necessarily moved with it, but they cannot be adjusted in it.

Our examination of these cases has brought us to the conclusion reached by the court below, and its decrees, dismissing the several bills of complaint, are, therefore,

*Affirmed.*

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UNITED STATES *v.* BAIRD.

## APPEAL FROM THE COURT OF CLAIMS.

No. 963. Submitted October 20, 1893.—Decided October 30, 1893.

A marshal of the United States is not entitled to commissions on disbursements for the support of a penitentiary, made under Rev. Stat. § 1892.

THIS was a petition by the marshal of the United States for the Territory of Idaho for fees earned in executing warrants of commitment of certain prisoners to the penitentiary at Boisé City, and also for commissions upon disbursements for

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the support of such penitentiary. In connection with the latter claim the court made the following findings of fact:

“IV. He also, as such marshal, disbursed the sum of fifty-four thousand four hundred and twenty dollars and fifteen cents, (\$54,420.15,) funds of the United States, for the use of the penitentiary of said Territory. For such penitentiary disbursements he claimed a commission at the rate of two per cent, amounting to one thousand and eighty-eight dollars and forty cents, (\$1088.40,) and his account for the same was likewise approved by said District Court for the First District of Idaho.

“V. The only reason why no commission was allowed him on such disbursements appears to have been that he was allowed compensation for the services required by section 1893 in the government of such penitentiary, which said compensation was fixed by the Attorney General in accordance with said section at the rate of one thousand two hundred dollars (\$1200) a year.”

Upon this finding the court rendered judgment in his favor upon the last item for \$1088.40, and the United States appealed.

*Mr. Assistant Attorney General Dodge and Mr. Charles C. Binney for appellants.*

*Mr. George A. King for appellee.*

MR. JUSTICE BROWN, after stating the case, delivered the opinion of the court.

Plaintiff having withdrawn the claim for mileage in executing warrants of commitment in consequence of the ruling of this court in *United States v. Tanner*, 147 U. S. 661, it only remains to consider his claim for commissions for disbursements for the support of the penitentiary.

This claim is based upon the general fee bill, Rev. Stat. § 829, which allows to the marshal “for disbursing money to jurors and witnesses, and for other expenses, two per centum.”

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The practice has been to make this allowance for all disbursements made by the marshal in his official capacity.

But by Rev. Stat. § 1892, another anomalous and extraordinary duty is imposed upon certain territorial marshals, *of caring for and controlling* "any penitentiary which has been, or may hereafter be, erected by the United States in an organized Territory," and by section 1893 it is provided as follows: "The Attorney General of the United States shall prescribe all needful rules and regulations for the government of such penitentiary, and the marshal having charge thereof shall cause them to be duly and faithfully executed and obeyed, and the reasonable compensation of the marshal and of his deputies for their services under such regulations shall be fixed by the Attorney General." The compensation of the commissioner for these services was fixed by the Attorney General at \$1200 per annum.

It is evident from this statement that petitioner held practically two distinct offices, namely, marshal of the Territory, for which he received the fees of the office, and also keeper or warden of the territorial penitentiary, for which he received a compensation of \$1200 per year. There was no necessary connection between these two offices. If the custody of the penitentiary had been by law assigned to a different person, with a salaried compensation, it would never be claimed that he would be entitled to a commission for the money expended for its support. The case is not altered by the fact that the marshal was assigned to this duty. The very language of section 829 indicates that the marshal's commission extends only to disbursements "to jurors and witnesses, and for other expenses," to the definition of which *other* expenses the rule of *ejusdem generis* applies.

Upon the other hand, if "the reasonable compensation of the marshal and of his deputies for their services under such regulations" "for the government of such penitentiary" did not extend to his services in paying the bills of the penitentiary, it is difficult to see what is meant by the statute. The duties of the marshal are those of supervision, of hiring guards, feeding and clothing prisoners, and supplying the prison with

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fuel, lights, and furniture, and paying for the same, and it is impossible to make a distinction between these classes of services. Payment is a necessary incident to hiring and purchasing, and one is as much a service under the regulations for the government of the penitentiary as the other.

The judgment of the court below must be

*Reversed, and the case remanded with directions to dismiss the petition.*

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## MOORE v. UNITED STATES.

## ERROR TO THE CIRCUIT COURT OF THE UNITED STATES FOR THE EASTERN DISTRICT OF TEXAS.

No. 789. Submitted October 20, 1893.—Decided October 30, 1893.

When the tendency of testimony offered in a criminal case is to throw light upon a particular fact, or to explain the conduct of a particular person, there is a certain discretion on the part of the trial judge which a court of errors will not interfere with, unless it manifestly appears that the testimony has no legitimate bearing upon the question at issue, and is calculated to prejudice the accused in the minds of the jurors.

When a necessity arises for a resort to circumstantial evidence in a criminal trial, objections on the ground of relevancy are not favored, as the effect of circumstantial facts depends upon their connection with each other, and considerable latitude is allowed on the question of motive.

The fact that such testimony also has a tendency to show that the defendant was guilty of the alleged offence is not sufficient reason for its exclusion, if otherwise competent.

Acting on these principles, the court sustains the ruling of the court below admitting testimony stated at length in the opinion, to show a motive for the alleged murder.

An exception to the denial of a motion for a new trial on the ground that the verdict was not supported by the evidence is untenable under repeated rulings of this court.

THIS was a writ of error upon the conviction of the plaintiff in error for the murder of Charles Palmer, on July 25, 1889, in Blue County, Indian Territory. Nelson Moore, defendant's brother, was indicted with him, but was not tried.