

magistrate, and attested by the clerk of his court, would be, anywhere within the British dominions, competent proof against the accused for the purposes of commitment.

If, for instance, the prisoner had been found in London, and proceedings were had there upon this original warrant from Calcutta, for the purpose of his commitment and transportation to Calcutta for trial, it is provided by the statute of 6 & 7 Vict. that, upon such an arrest in London, and on his being brought before a criminal magistrate there, "such evidence of criminality must be there produced as would justify committal if the offense had been there committed," (section 3;) "provided, always, that in every such case copies of the depositions upon which the original warrant was granted, certified under the hand of the person or persons issuing such warrant, and attested upon the oath of the party producing them to be true copies of the original depositions, may be received in evidence of the criminality of the person so apprehended," (section 4.) Our statute of 1848 above cited was manifestly framed upon the statute of 6 & 7 Vict. The language is nearly identical in each. From this it is clear that, unless there be some later statutes that I have not found, the attested copies in this case could not have been received if this proceeding had been in London; nor could the prisoner have been committed for transportation, because the attested copies are not certified under the hand of the presidency magistrate who issued the original warrant.

The case must stand, therefore, upon the certificate of the consul alone. That certificate is very full in many respects. All that relates to the certified copies, however, is in the following words:

"And I certify that all and every the certified copies hereunto attached are properly and legally authenticated and certified according to the law in force in British India, so as to enable them to be used in evidence and as proof that the originals were duly received in evidence by the said GILBERT STUART HENDERSON, Esquire, and the said FREDERICK JOHN MARSDEN, Esquire, respectively in proof of the criminality of the said Robert Bruce McPhun named therein, in respect of the said charges of forgery, uttering, and cheating."

Had the foregoing certificate omitted all that follows the words "used in evidence," and added only "for similar purposes," that, with the context, must have been held sufficient, as in the *Case of Wadge, supra*. But, upon repeated consideration, I find myself unable to construe what follows the words "used in evidence" as intended otherwise than as a definition of the purposes for which the copies might be received, namely, as evidence that certain originals were on file, which originals had been duly received in evidence by the magistrates at Calcutta as proof of criminality. That is manifestly quite a different thing from what our statute requires. The certificate amounts to no more than what would be the force of the copies as evidence at common law; namely, that such depositions existed at Calcutta, which might be used as evidence as against the parties who made the depositions, perhaps, though not competent evidence of the criminality of the accused. 1 Greenl. Ev. 538, 538, 539. The

evident meaning of the act of 1882 is that whatever papers are so authenticated as to be receivable in evidence in the foreign country as proof of the criminality of the accused may be received in evidence here; and that our consul's certificate that they are so authenticated as to be entitled to be used for that purpose there shall be conclusive proof on that point. Proof that there is competent and legal evidence on file elsewhere is not the same thing as proof of criminality here. If these copy depositions, attested as these are by the clerk, are competent evidence of criminality as against the accused in any part of the British dominions, a certificate to that effect by the general consular officer is sufficient. The elaborate form of the consul's certificate in the present case rather supports the inference that copies thus attested by the clerk of the foreign court could not be used as in themselves evidence of criminality. Had the consul's certificate ended with the words "used in evidence," it would have been clearly insufficient. What follows those words manifestly does not comport with the meaning of the statute, but is a very different qualification.

It cannot be justly claimed that there is anything unreasonable in the act of congress, or in the construction here given to the certificate of the consul, which requires, as a condition of the receipt of copies of depositions as evidence of criminality here, that the copies should be legally receivable in evidence as proof of criminality within the kingdom from which the accused has escaped. If such copies were receivable here, although they were not competent evidence of criminality in the foreign country, the effect would be that persons would be committed and extradited to distant lands upon proof which was there incompetent. Nor can there be any practical difficulty in obtaining the magistrate's certificate to original depositions taken by him; and then such copies, so attested and certified, could be received here on the proper certificate of the consul, or on proof of the British law as found in the 6 & 7 Vict., above quoted.

The act of congress of 1876 may possibly have permitted for a time the introduction of copies on less proof, because the authentication required as to copies did not expressly require that the copies should be competent evidence abroad; but the act of 1882, as stated above, has placed both originals and copies under the same restrictions, and has provided, in effect, that they are not to be receivable here unless they would be receivable in the foreign country as proof of criminality, or are certified to have that effect.

There has long been a practice, where an original warrant, upon competent original proof, has been issued by the magistrate where the offense was committed, to transmit the warrant to some other district where the accused may be found, and to procure his arrest there under the original warrant upon the indorsement and allowance thereof by the local magistrate, under which the prisoner is thereupon removed to the place of trial. In such cases there may or may not be further inquiry concerning the criminality of the accused in the place where he is found and arrested. See 1 Chit. Crim. Law, 75, 82, 88, 89. Various stat-

utes of Geo. II. and Geo. III. expressly authorized this practice. See 45 Geo. III. c. 92, 48; Id. c. 58; 2 Hale, P. C. 285. The statute of 6 & 7 Vict., above quoted, required proof of criminality, and admitted copies of depositions under conditions not in this case complied with. Such proceedings rest upon statute law. Whatever may be the practice at present as respects British India, nothing appears that has relevancy to the present case. The treaty itself, as I have said, requires proof of criminality here. As I am obliged to hold that the proof produced in this case was not competent, either according to the law of congress, or according to the common law, the commitment cannot be sustained.

If there were reasonable grounds to suppose that the imperfection of the consul's certificate in this case had arisen from inadvertence, or from a misunderstanding of the intention of the act of congress that the copies must be certified to be competent evidence of criminality, the court would remit the proceedings to the commissioner for a further hearing, if it also appeared that by the general English law, or by that of British India, copies of depositions attested in this manner were in fact competent proof of criminality; for other proof of this fact might supply the defects of the consul's certificate. But though inquiries have been made by the court from the first concerning the British law in this respect, nothing has been cited from the text-books, statutes, or reports that goes to show that there is any such law or practice within the British dominions as would make these copies evidence of criminality. The prisoner must therefore be discharged.

EASTERN PAPER-BAG Co. and others v. STANDARD PAPER-BAG Co. and others.¹

(*Circuit Court, D. Massachusetts.* February 17, 1887.)

1. PATENTS FOR INVENTIONS—PROCESS FOR MAKING PAPER BAGS.

Letters patent No. 258,272, granted May 23, 1882, to the Eastern Paper-bag Company, assignee of Daniel Appel, for a process of making paper bags, the object being the production in a novel manner of a satchel-bottom paper bag, made from a strip of paper folded to form a tube, by first forming a diamond fold, then cross-folding the leading corner of the diamond fold, and subsequently cross-folding the rearmost corner of the diamond fold, to form the last cross-fold of the bag bottom, and, together with it, the main body of the bag-blank, on the line of the second cross-fold, *held*, in view of the prior state of the art, not void, as lacking patentable invention.

2. SAME—PROCESS.

A process may be patentable irrespective of the particular form of instrumentalities used.

3. SAME—DESCRIPTION OF PROCESS IN APPLICATION.

Description of a process in an application for a machine patent does not constitute an abandonment or dedication to the public of such process, so as to estop the inventor from subsequently obtaining a patent for the process, if applied for in two years.

¹See 29 Fed. Rep. 787