

8FED.CAS.—3

Case No. 4,142.

DUNDORE V. COATES ET AL.

{6 N. B. R. (1873) 304.}¹

District Court, D. Maryland.

BANKRUPTCY—DISMISSAL OF PETITION—ATTORNEY'S FEES.

Where a petition is dismissed the debtor is entitled to receive by law the attorney's fees on a hearing in equity twenty dollars. No fee can be taxed for petitioner's attorney.

In bankruptcy.

The debtors filed a denial and upon trial before the court without a jury were adjudicated not to be bankrupts, and the petition was dismissed. The clerk taxed an appearance fee of twenty dollars for the attorneys for both parties. The following, exceptions were made: Exception is taken to the taxation of any attorney's fees at all. The appearance fee is only allowed to the attorney of the successful party. *Gordon v. Scott* [Case No. 5,620]. It is not allowed unless there is a trial by jury. *In re Mead & Co.* [Case No. 9,364]. The ten dollars for judgment without jury trial and the five dollars for discontinuance, are only allowed in actions at law. 10 Stat. 161. A proceeding in bankruptcy is not an action at law within the meaning of the statute.

GILES, District Judge. Exceptions in this case overruled so far as respects the costs taxed for the defendant By the thirty-first of the general orders in bankruptcy, in a case where the petition shall be dismissed by order of the court, the debtor is entitled to recover from the petitioner the same costs that are allowed by law to a party recovering in equity. By the act of eighteen hundred and fifty-three (the fee bill) the attorney's fee on a hearing in equity is twenty dollars. No fee can be taxed for petitioning attorney in this case.

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