

wharves of the city, which have been collected with great research and instructively presented by counsel, but none of them control or materially vary the principal facts which have been referred to in respect to this particular wharf, therefore it is not deemed to be needful or useful to further refer to them.

The motion is granted.

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WESTERN STAR LODGE, No. 2, *v.* SCHMINKE, Postmaster.

(Circuit Court, D. Nebraska. January, 1883.)

1. POSTMASTERS—REMOVAL OF POST-OFFICES—POSTMASTER GENERAL.

A postmaster is a subordinate officer of the post-office department, and bound to obey the orders of the postmaster general.

2. SAME.

The power to remove the post-office in certain towns from one building to another is vested by law in the postmaster general, and can be exercised by him at his discretion.

3. SAME.

A claim for rent of premises occupied, or leased to be occupied, by the government as a post-office, should be sued for in the court of claims.

4. SAME.

The circuit court has no jurisdiction to grant relief against the government.

In Equity. On exceptions to answer.

McCRARY, J. This is a bill in equity brought for the purpose of restraining the respondent, who is postmaster at Nebraska City, Nebraska, from obeying an order of the postmaster general of the United States, directing him to remove the post-office in that city from one building to another. This relief is sought upon the ground that a removal of the office, as proposed, would be in violation of a lease executed by the late postmaster general, Horace Maynard, whereby certain premises, in which the complainants have an interest, were leased for use as a post-office for a period of four years.

The relief sought cannot be granted for several reasons: (1) The respondent is a subordinate officer of the post-office department, and bound to obey the order of the postmaster general. (2) The postmaster general is not made a party, and cannot, therefore, be enjoined in this proceeding, even if it were within the power of the court to control his action in the matter of locating and removing post-offices. (3) The power to remove the post-office at Nebraska City from one place within the city to another, is vested by law in

the postmaster general, and can be exercised by him at his discretion. (4) If the lease executed by the late postmaster general to complainant is a valid contract, the complainant is entitled to the stipulated rent for the entire term, and may recover the same by suit in the court of claims; but I know of no other remedy. The law does not authorize the postmaster general to bind the United States by an agreement that a post-office shall not be removed from a particular building during a period of four years, or any other period. Besides, the lease in question does not show that the late postmaster general undertook to make such a contract, and the answer avers that the lease expresses the whole contract. (5) The contract, such as it is, is with the "United States, by Horace Maynard, postmaster general," and this court has no jurisdiction to grant any relief upon it or against the government.

The exceptions to the answer are overruled.

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### UNITED STATES *v.* MOYERS and others.

(*Circuit Court, W. D. Tennessee. December 23, 1882.*)

#### CRIMINAL LAW—WITHHOLDING PENSION—ILLEGAL FEES; REV. ST. § 5485.

Any scheme or contrivance by which, under the guise of a loan or other dealing, the claim agent or attorney retains more than his legal fee, is a violation of the statute against withholding pension money or taking illegal fees. And while the pensioner, who has unconditionally and without restraint or limitation received the money, may do with it what she pleases,—except to pay the attorney a larger fee for his services than allowed by law,—may lend it to him, or buy property from him with it, these transactions must be with the utmost good faith, and no use of them to evade the statute will be tolerated.

#### Criminal Information.

This was a criminal information against Gilbert and George C. Moyers, in which they are jointly charged with demanding, receiving, and retaining from a pensioner illegal fees as her attorneys in the prosecution of her claim, and also with unlawfully withholding from her a portion of her pension money in violation of the provisions of section 5485 of the Revised Statutes.

On motion of the defendant George C. Moyers, supported by affidavits, a severance was granted, and thereupon Gilbert Moyers was separately put upon his trial under a general plea of not guilty.