MEAD *v.* PLATT.

(*Circuit Court, S. D. New York.* August 16, 1883.)

BANKRUPTCY—DISMISSAL OF APPEAL—COSTS.

Where an appeal from the disallowance of a claim by the district court is dismissed for want of jurisdiction, docket fees or other costs are not taxable.

In Bankruptcy.

Coleridge A. Hart, for appellee.

Black & Ladd, for appellant.

WHEELER, J. This appeal from the disallowance of a claim by the district court in bankruptcy is dismissed for want of jurisdiction. The appellee claims costs of the motion, admitting that he is not entitled to costs of the cause, and that no costs but for a docket fee are taxable on the motion. The language of the supreme court upon this subject is uniform and decisive. In *Inglee* v. *Coolidge*, 2 Wheat. 363, Mr. Chief Justice MARSHALL said: "The court does not give costs where a cause is dismissed for want of jurisdiction." In *McIver* v. *Wattles*, 9 Wheat. 650, he said again: "In all cases where the cause is dismissed for want of jurisdiction no costs are allowed." And in *Strader* v. *Graham*, 18 How. 602, the court said: "This court cannot give a judgment for costs in a case dismissed for want of jurisdiction." *Hayford* v. *Griffith*, 3 Blatchf. 79, cited for the appellee, does not appear to have been dismissed for want of jurisdiction entirely, but for want of security. This fee is taxable only in cases where by law costs are recoverable in favor of the prevailing party, under section 983, Rev. St., and as a part of such costs. *Goodyear* v. *Sawyer*, 17 FED. REP. 2. This court had no jurisdiction by this appeal of any cause in which to render judgment for costs. If there were other costs on the motion which could be allowed, this fee would not be taxable in addition to them, for they would not be taxable in the cause on a disposition of it on the merits. *Dedekam* v. *Vose*, 3 Blatchf. 77, 153. And, further, this appeal is a case at law, as distinguished from cases in equity and admiralty, and in cases at law the allowance of such a fee is provided for only on trial by jury, when judgment is rendered without jury, and when "the cause is discontinued," except in some special proceedings different from this. Rev. St. 824. Here is no jury trial, no judgment rendered, no cause to render judgment in, and none to be discontinued; and consequently nothing on which the docket fee is taxable.

Motion for costs denied.

UNITED STATES *v.* BLACKMAN.[1]

(Circuit Court, E. D. Missouri. September 21, 1883.)

CRIMES — POSTAL SERVICE — DETAINING AND OPENING MERCHANDISE — REV. ST. § 3891.

It is a criminal offense, under section 3891 of the Revised Statutes, for any one in the employ of any department of the postal service to unlawfully detain, delay, or open any mailable packet of merchandise which has come into his possession, and which is intended to be conveyed by mail.

Indictment under Rev. St. § 3891.

William H. Bliss, U. S. Atty., for the Government.

Mason G. Smith, for defendant.

MCCRARY, J. The indictment charges that the defendant, "on this twenty-second day of March, in the year of our Lord one thousand eight hundred and eighty-three, at said district, being then and there a person employed in a certain department of the postal service of the United States, to-wit, a postal clerk in the railway mail service of the United States, unlawfully did detain, delay, and open a certain packet then and there containing tea, which said packet had then and there come into the possession of him, the said Blackman, and which said packet was then and there intended to be conveyed by mail, contrary to the form of the statute," etc.

The question to be determined is whether there is any statute of the United States which provides for the punishment of the offense here charged.

Section 3891 of the Revised Statutes provides for the punishment of any one employed in any department of the postal service "who shall unlawfully detain, delay, or open any letter, packet, bag, or mail of letters intrusted to him or which has come into his possession, and which was intended to be carried by mail," etc.

The language is taken literally from the act of June 8, 1872, § 146, (17 St. 202,) and it was there copied from the act of March 3, 1825, § 21, (4 St. 107.)

It is insisted that the offense here described is that of detaining, delaying, or opening a packet of letters, and that the statute does not provide for the case of the detention or opening of a package or packet of merchandise sent through the mails. In support of this view it is said that at the time the original act was passed (1825) there was no law authorizing the sending of merchandise by mail, and that, therefore, congress could not have intended to provide for such a case. There would certainly be great force in this argument if the act of 1825 had remained in force and the indictment had been found under its provisions. But that act is expresly repealed by the act of 1872, and the latter is enacted as a new, independent, and original

[1] Reported by Benj. F. Rex, Esq., of the St. Louis bar.