or in part of metal;" that the article in question is known in trade and commerce as bullion fringe, is composed of bullion canetille and galloons, and assimilates in character, manufacture, and the uses to which it is applied, to epaulets, galloons, laces, knots, stars, tassels, and wings of gold, silver, or other metal, enumerated in Schedule N of the act of congress of March 3, 1883, and should have been classified for duty at 25 per cent. *ad valorem*. The court therefore finds the issue joined for the plaintiffs, and assesses their damages at $199.40, with interest from the date of payment, and costs of suit.

HERSEY and others, Assignees, *v.* FOSDICK

(*Circuit Court, D. Massachusetts.* April 23, 1884.)

BANKRUPTCY—INTEREST ON DIVIDENDS.

Assignees of an estate in bankruptcy are not bound to pay interest upon dividends which may be declared upon debts which have been fairly and reasonably disputed, from the time that like dividends were declared upon undisputed debts.

Semble, they may be ordered to pay such interest as has been earned upon funds set apart to meet the disputed claim.

At Law.

Edward Avery and *L. B. Thompson*, for appellant.

Myers & Warner, for Fosdick.

LOWELL, J. The petitioner, Fosdick, has been found by the district court, and afterwards by a jury here, a creditor of Charles F. Parker & Co. He now asks that the assignees be ordered to pay interest on the two dividends of 15 and 5 per cent., respectively, which were declared long since upon the acknowledged or undisputed debts. The large amount of the debt due the petitioner, and the time which has been spent in establishing it, make the interest a matter of some importance. The district judge, while sustaining the right to prove the debt, refused the request for interest.

It is admitted, for the purposes of this hearing, that the bankrupt firm were ruined by the fraud of one partner, who borrowed large sums for his own private purposes, and gave firm notes therefor. The debt of the petitioner was of that character; and the question for the court below, and for the jury here, was whether the petitioner had notice of the fraud. It is further admitted that this was a fair subject of doubt, proper to be referred to a jury. In a single case, such a claim was allowed: *Re Kitzinger*, 19 N. B. R. 238, 307. That decision, though by a very able judge, and sustained on appeal, is a new departure in the law of bankruptcy. Of the almost numberless cases in which a proof has been contested, no other has been found in which such an allowance has been made. By the act of 49 Geo. III. *c.* 121, § 12, the action of *assumpsit* for recovery of a dividend was abolished, and

a remedy by summary petition was substituted, and the lord chancellor was authorized, when justice appeared to him to require it, to order payment of interest for the time the dividend should have been withheld. See 2 Christ. Bankr. Law, 477. This statute refers to dividends ordered upon debts duly proved, and to a mode of managing the estates of bankrupts which is now superseded. The assignees took the funds, and dealt with them as trustees; and it was one of the abuses of the system that they would delay payment of dividends after they had been declared by the commissioners, in order to make interest for themselves. By the old law, they could be sued for the several amounts, and, no doubt, were bound to pay interest for the delay. But it was a delay in paying a debt due from themselves after it had been judicially ascertained. It is to this practice that the statute is addressed, and it is under this statute, I have no doubt, that the case cited by counsel was decided. *Ex parte Loxley*, 1 Glyn & J. 345. See *Ex parte Graham*, 1 Rose, 456; *Ex parte Atkinson*, 3 Ves. & B. 13; *Ex parte Alsopp*, 1 Madd. 603. In this last case, the reason for paying interest is given by the vice-chancellor that a debt proved is like a judgment which the assignees cannot refuse to respect excepting by a direct motion to expunge. If they fail to take the appropriate action to review the proof, they cannot resist payment of the dividend, and may be bound to pay interest. In this case the debt was suspended and never admitted to proof until now, by order of the court, upon the verdict rendered.

I can see no reason why, because a creditor finally prevails in a claim honestly and fairly disputed by the assignees, he should have more than his dividend. Not, surely, as damages for withholding something due him, for there is nothing due him in bankruptcy until his debt, both as to its legality and its amount, has been ascertained. Not as matter of contract, for there is no contractual relation between the parties. I am confident that the practice has always been against it, and that it is both just and expedient that the general creditors should be at liberty to investigate doubtful claims, without the liability to such a penalty as would be imposed upon them by granting this petition. I do not say that if funds have been set aside to meet a large claim of this kind, and have earned interest, the court has not power to order the precise amount of interest so earned on a sum which proves to be the creditor's money, to be paid to him. The case of *Kitzinger, ubi supra*, rejects this ground of relief, and gives the creditor a larger rate than his money had actually earned. The record in this case does not inform me whether such interest has been received. If it has, the district judge must pass upon the case if the petitioner sees fit to bring it before him. His former decision related only to the time before the appeal, and in respect, at least, to the considerable time which has since elapsed, I see no impropriety in asking him to hear the case again.

Petition denied.

UNITED STATES *v.* REILLEY.

(*Circuit Court, D. Nevada.* April 7, 1884.)

CRIMINAL LAW—EMBEZZLEMENT NOT AN INFAMOUS CRIME.

Embezzlement is not an "infamous crime" within the intention of the fifth amendment of the constitution, and hence a person charged therewith may be tried without the intervention of a grand jury.

Information for Embezzlement.

Trenmor Coffin, U. S. Atty., for the United States.

W. W. Bishop, for defendant.

SAWYER, J. Motion to rescind the order made by United States District Judge HILLYER granting leave to file an information for embezzlement by a postmaster, and to strike the information from the files, the case having been transferred to the circuit court for trial. I have no doubt that the court has jurisdiction to try offenders for misdemeanors and offenses not capital or otherwise infamous, upon informations filed by leave of the court, and that the offenses charged in this case are not infamous. Whether the information presents a proper case for granting leave to the United States attorney to file it, is a question for the exercise of a sound discretion by the court. Generally, in this circuit, unless for some substantial reason the court otherwise determines, it has been required that the party charged shall be examined and held to answer by some committing magistrate, or else that evidence showing probable cause should be made to appear in some proper form before granting leave. In this case the information was verified by the direct, positive affidavit of the United States attorney, and, upon being arrested upon a warrant issued thereon, the prisoner was examined and held to answer for the offense set out in the information. I think the circumstances are sufficient to justify a refusal to vacate the order granting leave, and to strike the motion from the files. For authorities sustaining this action see Spear on the Law of the Federal Judiciary, 406, and the authorities there cited. See, also, *U. S.* v. *Shepard*, 1 Abb. (U. S.) 437; *U. S.* v. *Waller*, 1 Sawy. 701; *U. S.* v. *Block*, 4 Sawy. 211; *In re Wilson*, 18 FED. REP. 33; Thatch. Pr. 650–652, and cases cited.

Let an order be entered denying the motion.

See *U. S.* v. *Field*, 16 FED. REP. 778, and note, 779, and *U. S.* v. *Petit*, 11 FED. REP. 58, and note, 60.—[ED.