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.

KELLER and others *v.* STOLZENBACH and others

(Circuit Court, W. D. Pennsylvania. March 20, 1884.)

1. FORMER JUDGMENT—WHEN A BAR.
   A decree under equity rule 38 dismissing the plaintiff's bill because of his failure to reply to a plea or set it down for argument, is not conclusive, since all the authorities agree that in order to constitute the former judgment or decree a bar it must appear that the point in issue was judicially determined after a hearing and upon consideration of the merits.
2. PATENTS FOR INVENTION—PARTNER INVENTING MACHINE—USE BY FIRM—LICENSE.
   During the existence of a partnership between two persons one of them invented a machine upon which a patent was granted to him. The firm paid the fees and costs of procuring the patent and the expenses of an experimental trial of the invention and also the expenses of some litigation which ensued. It appeared, however, that all the outlay of the firm was more than repaid by the benefits arising from the free use of the patented machine in the partnership business. *Held*, that upon these facts no implied license arises to the member of the firm not the inventor to make, use, and vend the patented machine after the dissolution of the partnership.

In Equity.

Bakewell & Kerr and *D. F. Patterson*, for complainants.

Geo. H. Christy, for defendants.

ACHESON, J. Nicholas J. Keller, one of the plaintiffs, and Philip M. Pfeil, one of the defendants, entered into partnership on April 26, 1870, in the business of dredging and dealing in sand and gravel, the partnership lasting until April 10, 1875, when it was dissolved by mutual consent. During the existence of the partnership Keller invented a sand and gravel separator, for which letters patent were granted to him on May 21, 1872. With his consent, and at the firm expense, the patented apparatus was put on two boats owned by the firm,—one called the Hippopotamus, the other the Rainbow,—and was used thereon without charge during the continuance of the partnership. The firm paid the fees and costs of procuring the patent, and the expenses of an experimental trial of the invention, and also paid the expenses of some litigation which ensued. The evidence, however, tends to show that this outlay was more than made good by the advantage and benefits accruing to the firm from the free use of the invention on said boats. Upon the dissolution of the firm each partner took at an agreed value one of the boats,—Keller, the Hippopotamus, Pfeil the Rainbow,—each then having the patented machine thereon. A contest immediately arose as to the right of Pfeil to use the patented machine on the Rainbow, and Keller filed a bill in this court to restrain such use, alleging that the privilege had not passed with the boat. The decision of the court, however, was against him, and his bill was dismissed. Subsequently Pfeil built another boat called the Wharton McKnight, and placed and used thereon the patented apparatus. Thereupon Keller filed in this court another bill against Pfeil and his associates to restrain the in-