

THORNLEY *v.* UNITED STATES.

District Court, D. South Carolina.

February 25, 1889.

UNITED STATES COMMISSIONERS—DOCKET FEES—PRIOR TO ACT CONG. AUG.
4. 1886.

United States commissioners are entitled to docket fees earned before the passage of act Cong. Aug. 4, 1886, which amended Rev. St. U. S. §§ 828, 847, and took away the right to such fees, allowed by the latter statute.

At Law.

Action by John L. Thornley against the United States for fees as commissioner.

THORNLEY v. UNITED STATES.

Julius H. Heyward, for plaintiff.

H. A. De Saussure, Asst. U. S. Dist. Atty.

SIMONTON. J. The plaintiff is a commissioner of the courts of the United States in this district. He brings his action for docket fees for the period beginning 12th March, 1886, and ending 23d June, 1888; in all, \$517. Upon his account it appears that between 12th March, 1886, and 1st. August, 1886, he charged 19 docket fees, to-wit 16 at \$3, \$48; and 3 at \$1, \$3; in all, \$51. He presented in his accounts forwarded to the department claim for these last-mentioned docket fees in due form. The department disallowed all docket fees anterior to July 1, 1886, and allowed all docket fees charged between July 1, 1886, and August 4. 1886. The amount thus disallowed is \$39. The other items of docket fees were never included in his accounts, and the claim has never been made upon or disallowed by the department, and has never been, until now, presented to the court.

In the case of *Calvert v. U. S.*, ante, 762, (decided this day, it has been held that the provision inserted in the deficiency act of August 4, 1886, depriving commissioners of docket fees, was not a condition annexed to the special provision then made, and was not confined to that act; but that it was permanent in its character, and operated as an amendment to section 847, Rev. St. U. S. If this is so, the section remained the law until thus amended, and commissioners are entitled to the fees provided in it. When the amendment was passed, this plaintiff had performed certain services anterior to its passage, payment of which the section provides for, and has earned his money. The government then owed it to him. Let him have a decree for \$39. The rest of the account comes within the ruling in *Calvert's Case*, and must be disallowed. Since August 4, 1886, commissioners have lost the right to docket fees. It is unnecessary to decide whether a suit can be maintained in this court on a claim not passed upon by the treasury department.