

v.43F, no.11-50

UNITED STATES V. LEOPOLD *ET AL.*

*District Court, D. Colorado.*

October 20, 1890.

CRIMINAL LAW—COSTS.

A defendant who has been discharged by the commissioner on preliminary examination, and is afterwards indicted and convicted on the same charge, should not be taxed with the costs of the examination before the commissioner.

At Law.

*John D. Fleming*, U. S. Atty.

*Robt. J. Pitkin*, for defendants.

HALLETT, J., (*orally.*) There is a case pending in the district court in which I stated to counsel that I would express an opinion, which perhaps cannot be entered of record until the district court convenes. The case is *U. S. v. Leopold*, in which there was a conviction for using the mail in sending lottery circulars. The parties were arrested several times before a commissioner, and upon some of the charges they were discharged, and upon others they were held to appear in the district court. When the cases came before the grand jury, they found bills in the cases in which the prisoners were discharged by the commissioner and in the cases in which the prisoners were held by the commissioner, and upon arraignment they entered a plea of guilty upon all such charges. Thereupon the clerk taxed the costs accruing before the commissioner in the matters in which they were discharged by him, and also in the other cases. There is a motion to retax as to the costs made in cases in which they were discharged, and I believe that motion to be well founded. It seems to me that as to the costs accruing during an examination before a commissioner, if the party be discharged, he cannot afterwards be held for those costs, although on the same charge the jury may subsequently find a true bill. The costs will be retaxed, when judgment can be entered in that behalf, so as to exclude those which were made in the charges upon which the prisoners were acquitted on examination before the commissioner.