

UNITED STATES *v.* HARNED.

District Court, D. Washington, N. D. *Mr. Winston.* I move to dis-
miss—discontinue—this bill of December 9, 1890.

indictment. The amount charged in it to have been embezzled by the defendant Harned constitutes a part of the larger amount alleged to have been embezzled by the defendant Brooks in the case just disposed of. I have no testimony to proceed upon in one case more than another. The government is without testimony to sustain the indictment, being unable to get the items of account from the department; therefore, I ask the court for permission to discontinue the indictment.

Mr. Coleman. The statement we made in the other case, your honor, would be applicable to this one, and on the same grounds we desire a verdict in this case. We have a statement certified from the commissioner of customs, showing that the government was at that time indebted to Mr. Brooks, who was Mr. Harned's principal, instead of Mr. Brooks being a defaulter; that it is impossible that Mr. Harned could have been an embezzler, his principal having been largely a creditor of the government at that time. We think, as we stated before, under these circumstances, we are entitled to a verdict of a jury, and we ask for it.

The Court. I will grant the United States attorney's motion, and the remarks made in the case of *U. S. against Brooks, ante*, 749, are in a large degree applicable to this case; this being but another count, really, upon the same indictment against the custom-house officials. The same order will be made. The defendant will be discharged, and bail exonerated.