

diction of this case. The judgment of the circuit court is therefore reversed, and the cause is remanded with directions to dismiss the plaintiff's action without prejudice.

LANSING & CO. v. HESING.

(Circuit Court of Appeals, Seventh Circuit. May 28, 1897.)

No. 370.

APPEAL—DISMISSAL—INJUNCTION AGAINST PUBLIC OFFICER.

An appeal from an order denying an injunction against a postmaster will be dismissed without costs to either party, where, pending the appeal, the appellee has been succeeded in office by another.

Appeal from the Circuit Court of the United States for the Northern Division of the Northern District of Illinois.

This was a bill in equity by Lansing & Co., an Illinois corporation, dealing in grain, provisions, and other commodities, against Washington Hesing, who at the time the suit was instituted was postmaster of the city of Chicago, to enjoin him from withholding mail addressed to complainant, and from returning such mail matter to the senders thereof with the word "Fraudulent" marked on the outside thereof. The defendant, in his answer, justified his acts under an order known as a "fraud order," made by the postmaster general of the United States. Complainant having moved for an injunction pendente lite, the same was denied by the court, and it thereupon took this appeal. Pending the appeal the defendant resigned his office, and a successor was appointed.

Henry Stephen, for appellant.

John C. Black, for appellee.

Before WOODS, JENKINS, and SHOWALTER, Circuit Judges.

PER CURIAM. This appeal is from an order denying an injunction against the appellee as postmaster at Chicago. After the appeal was taken, the appellee resigned the office, and his successor has been appointed. On the authority of *U. S. v. Boutwell*, 17 Wall. 604, *Secretary v. McGarrahan*, 9 Wall. 298, and *U. S. v. Lochren*, 164 U. S. 701, 17 Sup. Ct. 1001, the appeal is dismissed, without costs to either party.

SMITH v. WESTERN UNION TEL. CO.

(Circuit Court, D. Indiana. May 8, 1897.)

No. 9,286.

COSTS—ATTORNEY'S DOCKET FEE.

An attorney's docket fee will not be allowed upon an order to remand to a state court, either under Rev. St. § 824, authorizing such an allowance where there has been a "final hearing" in equity, nor under the act of March 3, 1875, permitting the court, in remanding a case, to "make such order as to costs as shall be just."

Motion to Retax Costs.

Linton A. Cox, for plaintiff.

Chambers, Pickens & Morris, for defendant.

BAKER, District Judge. Some time since, the motion of the plaintiff to remand the above-entitled cause to the state court was sustained, and now the attorneys for the plaintiff move the court to retax the costs in this cause by adding to the sum already taxed the item of \$20 as a docket fee for the plaintiff's attorneys. They cite in support of their motion the case of *Josslyn v. Phillips*, 27 Fed. 481. The practice in this district, and, so far as the court is advised, in the entire Seventh circuit, has been uniformly to allow no docket fee where a motion to remand has been sustained. By section 824 of the Revised Statutes a docket fee of \$20 is allowed when there has been a trial by a jury in a case at law, and when, in equity or admiralty, there has been a final hearing. I understand that the term "final hearing" means a trial or hearing of the cause upon its merits. An order to remand certainly would not come within any reasonable construction or interpretation of the words of section 824, and it seems to me that the construction given by Judge Brown to the words referred to by him in the act of March 3, 1875, is a broader one than the words contemplate. It is certain that the act of 1875 does not, in express terms, authorize the allowance of a docket fee; and, if one were allowed under the provisions of that act, it would have to be granted, in the nature of a discretionary allowance. In my judgment, the practice of the court so long continued ought not to be changed; and in this view Judge WOODS, of the circuit court, concurs.

UNITED STATES v. NORTH BLOOMFIELD GRAVEL-MIN. CO.

(Circuit Court, N. D. California. June 8, 1897.)

1. CONSTITUTIONAL LAW—POWER OF CONGRESS OVER NAVIGABLE WATERS—OBSTRUCTIONS TO NAVIGATION.

Congress has absolute power, in the interests of interstate and foreign commerce, over the navigable waters of the United States, and may declare what may or may not constitute obstructions thereto.

2. OBSTRUCTIONS TO NAVIGABLE WATERS—REGULATION OF HYDRAULIC MINING.

The act of March 1, 1893 (27 Stat. 507), creating the California debris commission, and prohibiting and declaring unlawful hydraulic mining "directly or indirectly injuring the navigability" of the Sacramento and San Joaquin river systems, and requiring persons or corporations desiring to carry on hydraulic mining in the territory drained by those river systems to file a petition, setting forth the facts, to obtain permission from the debris commission to carry on such mining, etc., is to be construed as entirely prohibiting any hydraulic mining in said territory until such application has been made and permission given. And the fact that prior to the passage of said act the United States had filed a bill to restrain a certain corporation from carrying on hydraulic mining so as to interfere with the navigability of such rivers, and that a decree had been entered adjudging that impounding works erected by the company pending the suit were sufficient to remove all injurious matter, and that the company could not thereafter be restrained under the then existing law, is no defense to a suit by the United States to enforce compliance with the act of 1893.