

## COUPER v. SMYTH.

(Circuit Court, N. D. Georgia. November 19, 1897.)

## OFFICERS—POWER OF REMOVAL—INJUNCTION.

The courts have no jurisdiction to enjoin a postmaster from removing an assistant postmaster who claims protection under the civil service law.

This was a bill in equity by James M. Couper, assistant postmaster at Atlanta, Ga., to enjoin the postmaster, William H. Smyth, from removing complainant from his office. Complainant claimed that he was protected by the civil service law.

E. A. Angier, U. S. Atty.

Hamilton Douglas, for defendant.

Before PARDEE, Circuit Judge, and NEWMAN, District Judge.

PER CURIAM. The United States circuit courts in equity are without jurisdiction to restrain or control United States post-office officials in the removal of subordinate officials or employes. We cite *In re Sawyer*, 124 U. S. 200, 8 Sup. Ct. 482. The equitable jurisdiction of the circuit courts of the United States is not enlarged by the civil service law of January, 1883, or by any of the rules and regulations of the civil service commission thereunder. Interesting cases bearing upon these propositions have been recently decided, though not yet officially reported. In the supreme court of the District of Columbia, Mr. Justice Cox, for the court, in an elaborate opinion held that a court of equity is without jurisdiction to enjoin the postmaster general from removing a superintendent of mails from office. In the circuit court of the United States for the Northern district of Illinois, Mr. Justice Jenkins (also filing an elaborate opinion), held that the circuit court of the United States sitting in equity was without jurisdiction to interfere with or control the post-office department in the transfer or removal of employes, although such employes might be protected in their positions by the civil service law, and the rules of the commission made thereunder. In the circuit court of the United States for the district of West Virginia, Judge Jackson appears to have held to the contrary, holding that ex necessitate the circuit courts of the United States must take equitable jurisdiction. The only reference Judge Jackson makes to *In re Sawyer*, supra, is to quote a sentence from the dissenting opinion of Chief Justice Waite.

In *Re Sawyer*, supra, not since questioned or modified, the supreme court decided upon principle and authority as follows:

"The office and jurisdiction of a court of equity, unless enlarged by express statute, are limited to the protection of rights of property. It has no jurisdiction over the prosecution, the punishment, or the pardon of crimes or misdemeanors, or over the appointment and removal of public officers. To assume such a jurisdiction, or to sustain a bill in equity to restrain or relieve against proceedings for the punishment of offenses, or for the removal of public officers, is to invade the domain of the courts of common law, or of the executive and administrative department of the government. \* \* \* It is equally well settled that a court of equity has no jurisdiction over the appointment and removal of public officers, whether the power of removal is vested, as well as that of appointment, in executive or administrative boards or officers, or is

intrusted to a judicial tribunal. The jurisdiction to determine the title to a public office belongs exclusively to the courts of law, and is exercised either by certiorari, error, or appeal, or by mandamus, prohibition, quo warranto, or information in the nature of a writ of quo warranto, according to the circumstances of the case, and the mode of procedure established by the common law or by statute." Pages 210, 212, 124 U. S., and pages 487, 488, 8 Sup. Ct.

The principles thus declared control the jurisdiction in this case. It follows that the application for an injunction pendente lite must be denied, and the rule nisi discharged, and it is so ordered.

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NEW YORK NEWS PUB. CO. v. DE FREITAS.

(Circuit Court of Appeals, Second Circuit. January 7, 1898.)

No. 17.

**LIBEL—INSTRUCTION AS TO DAMAGES—DISCRETION OF JURY.**

In an action for publishing a libel charging plaintiff with a grave crime, it is not error to refuse to instruct the jury that they may find a verdict for nominal damages, though the evidence may warrant such a verdict, the amount of damages awarded being discretionary with the jury, within the evidence.

In Error to the Circuit Court of the United States for the Southern District of New York.

This was an action for libel by De Freitas against the New York News Publishing Company. There was judgment upon a verdict for plaintiff, and defendant brings error.

Delos McCurdy, for plaintiff in error.

S. R. Ten Eyck, for defendant in error.

Before WALLACE and LACOMBE, Circuit Judges.

**PER CURIAM.** Error is assigned to the refusal of the trial judge to instruct the jury that they might find a verdict for nominal damages. The action was libel, and the libel imputed to the plaintiff complicity in the theft or embezzlement, recently discovered at Rio Janeiro, of a large sum of money. The libel was published in a newspaper of New York City, having no circulation outside of that locality. The plaintiff was a citizen of Brazil, residing in Rio Janeiro, and keeping hotel there at the time. The evidence authorized the jury to find that the article was published by the defendant without actual malice, as a news item received from a reputable news agency in the usual course of business. The trial judge instructed the jury that, although there was no proof of actual damages in the case, the law presumed the plaintiff had been injured in his feelings and reputation by the publication of the libelous article, and that they were authorized to award to him compensatory damages. He subsequently instructed them that there was no evidence that the plaintiff himself had ever seen the libelous article, or that it had ever been read by any resident of Brazil, and that there was no evidence that the plaintiff had been injured by it in his business, property, or social status. He was requested for the defendant to instruct the jury that, if they