return to said State; that libellant was aware that said committee had caused to be executed a number of persons, without color or warrant of law or right, and that the said committee had the power and ability to put in execution their threats, and libellant believed and had reason to believe from the conduct of said R. H. Pearson as aforesaid, and the treatment he received from the hands of said Vigilance Committee, and their threats as aforesaid, which were well known to said Pearson, that should he return to said State, his return, if attempted or if successful, would be impeded and resisted, and his life put in peril and jeopardy, which belief existed up to the time of his departure from New York to California."

This is the sworn statement of Duane, that his life was in peril if he returned to California at an earlier day, for the conduct of Pearson, to which he refers, was predicated on a corresponding belief.

It is true, this article in the libel was introduced, by way of excuse, for not having sooner brought the suit, but the admissions in it are proper evidence for all purposes. If so, it is clear that the legal injury which Duane suffered at the hands of Pearson, can be compensated by a small amount of money. On a review of the whole case, we are of opinion that the damages should be reduced to fifty dollars.

It is ordered that this cause be remitted to the Circuit Court for the District of California, with directions to enter a decree in favor of the appellee for fifty dollars. It is further ordered that each party pay his own costs in this court.

ORDER ACCORDINGLY.

WARE *v.* UNITED STATES.

1 Where—on a suit by the United States against a deputy postmaster for damages in not paying over moneys which came to his hands during the six months next preceding the discontinuance (March 13th, 1862) of the office to which he was appointed—the defendant's rejoinder (demurred to), by its whole context, and by its introductory allegations

Statement of the case.

that the office was never supplied with mails after it was discontinued, shows that it means nothing more than that such defendant was wrongfully prevented from earning commissions—such rejoinder presents a claim for damages merely.

2. To such a claim it is answer—

(1) That postage commissions as ascertained by the quarterly accounts of deputy postmasters and the receipts from boxes, during the term in question in this suit, were the only sources of compensation to those officers allowed by law.

(2) That the claim being for damages and not for commissions or receipts from boxes as ascertained in a quarterly account, it could not be sustained as a credit unless it appeared affirmatively that it had been presented to the auditor of the Post-office Department and had been by him disallowed in whole or in part, or that the defendant had been prevented from so presenting it by some unavoidable accident.

3. By the legislation of Congress the Postmaster-General has the power to "establish *post-offices*" as well where the commissions of the office amount to or exceed one thousand dollars as where they do not.

4. Unless there is some provision in the acts of Congress restraining its exercise, the power to establish post-offices, as interpreted by usage coeval with the creation of the Post-office Department and recognized in Congressional legislation, infers a power to discontinue them. And deputy postmasters occupy their offices subject to the contingency that such offices may be so discontinued.

5. Possessing thus the power to discontinue post-offices, the Postmaster-General may exercise the power, notwithstanding that the deputy postmasters have been appointed by the President, by and with the advice and consent of the Senate, and under a statute which enacts that the appointee shall hold his office for the term of four years unless sooner removed by the President.

6. If he do exercise it, the office of deputy postmaster is, in such cases, gone. There is no longer a deputy postmaster at that place.

ERROR to the Circuit Court of the United States for the Eastern District of Pennsylvania, to reverse a judgment of that court affirming the judgment of the District Court in an action of debt instituted by the United States on the official bond of one Ware, as deputy postmaster at Kensington, in the county of Philadelphia, for $8000.

The declaration alleged that there was due to the United States from the said postmaster, according to his quarterly accounts of receipts and expenditures for the last quarter of the year 1861 and the first quarter of the year 1862, a balance of $3380.43.

Statement of the case.

The only question in the cause arose upon the defendant's *second* plea, which alleged that the defendant, Ware, being postmaster at Kensington, and still continuing to exercise that office, and *not having been lawfully removed* therefrom, held and retained in his possession the sum of $3450, part of the sum demanded by the United States, as and for his commissions on the postages collected at that office, and for rent of office during the space of eighteen months, commencing April 1st, 1862, and ending September 30th, 1863.

The *replication* of the United States was a *special traverse* of this plea, averring in the *inducement* that on March 13, 1862, the Postmaster-General of the United States discontinued the post-office at Kensington, and that afterwards no letters were deposited in or forwarded by mail from that office; but that all such letters, &c., as had previously been deposited in and mailed at the Kensington office were, after the date aforesaid, deposited in and mailed at the Philadelphia post-office; and that the said Ware, since the 19th of March, 1862, had collected no postages at the said late post-office at Kensington, and, since his quarterly account for the first quarter of the year 1862, had rendered no accounts of receipts and expenditures at the said Kensington post-office; and, concluding: "*Without this*, that the said Samuel Ware, for the space of eighteen months, from the 1st day of April, 1862, to the 30th day of September, 1863, was deputy postmaster at Kensington, in the manner and form," &c.

The defendants, in the rejoinder filed to this replication, averred that, after the said unlawful discontinuance of the post-office at Kensington, the postmaster at Philadelphia received and delivered letters and other mailable matter which, *but for the said discontinuance, would have passed through the Kensington post-office, sufficient in quantity to authorize and justify an allowance of commissions to the said Ware*, over and above expenditures, at the rate of $2000 per annum, which said commissions, so wrongfully withheld from him, exceed in amount the balance claimed by the United States.

To this rejoinder the United States demurred, and the demurrer was sustained by the District Court. A jury having

been called to assess the damages found for the plaintiffs in the sum of $2366.22, for which the court entered judgment.

This judgment was affirmed, on writ of error, by the Circuit Court.

To understand the matter more completely it may be well to state the facts, not disputed, of the case, and also to mention certain acts of Congress in reference to the subject of postmasters.

I. *The facts were these:*

Previous to 1854, Kensington was a district adjoining the municipality of Philadelphia proper, possessing a distinct municipal organization. In 1854 it was consolidated with the city of Philadelphia, under an act of Assembly of the State of Pennsylvania. The post-office established at Kensington, before the consolidation of the districts, continued to be maintained there until March, 1862, when it was discontinued by the Postmaster-General in the manner stated in the plaintiff's replication.

At the time of this order the accounts of Ware had not been finally adjusted at the department.

After this, the mails were no longer supplied to or distributed through the Kensington office, but through the Philadelphia office and its sub-offices. No postages were collected or received thereafter by the postmaster of Kensington, and no accounts were rendered by him, after the abolition of his office, to the department at Washington.

II. *As respected the acts of Congress:*

1. The Constitution confers upon Congress power "to establish post-offices and post-roads." An act of March 3d, 1825,* provides that the Postmaster-General "shall *establish post-offices* and appoint postmasters *at all such places as shall appear to him expedient* on the post-roads that are or may be established by law." This act was changed by an act of July 2d, 1836,† which authorized the *President*, by and with the consent of the Senate, to appoint a deputy postmaster at

* § 1; 4 Stat. at Large 102. † § 33; Id. 87.

each office at which the commissions amounted to or exceeded one thousand dollars a year. And this law (*under which Ware had been appointed*) declares that the appointee "*shall hold his office for the term of four years, unless sooner removed by the President.*" But no other repeal of the act of 1825 was made by this act of 1836.

2. By an act of June 22d, 1854,* the compensation authorized or allowed by law, during the period mentioned in the defendant's second plea, to deputy postmasters, was certain *commissions* on the postages collected *at* their respective offices in each quarter of the year.

By an act of March 3d, 1847,† no compensation in addition, excepting the receipts from boxes, could be given to deputy postmasters by the Postmaster-General.

Mr. G. M. Wharton, by brief, for the plaintiff in error, Ware.

I. Ware held his office for the term of four years, and was entitled to its emoluments during that term unless sooner removed by the President.

There is no evidence on the record of any such removal, nor is there any proof of express removal even by the Postmaster-General. There is, therefore, no room for an inference that the defendant was removed by order of the President, as consequent on the act of the Postmaster-General.

The alleged power in the Postmaster-General to discontinue any post-office can hardly be construed to carry with it the removal of the postmaster not appointed by himself, else he might do indirectly what he could not do directly. This power in the Postmaster-General ought, therefore, to be construed to apply only to those offices where he has the power to appoint the postmaster.

The power of removal should be coextensive with the power of appointment. The Postmaster-General neither appointed Ware nor established the Kensington office.

II. If illegally removed, Ware was not removed at all, but still continued postmaster at Kensington, *de jure*, and was

* § 1; 10 Stat. at Large, 298. † § 13; 9 Id. 145.

entitled to the emoluments of the office, although wrongfully withheld from him. He was, consequently, further entitled to a credit on the books of the department for those emoluments.

III. In a suit by the United States against him for money alleged to be in his hands, he was entitled to claim credit for the amount in which the government was thus equitably indebted to him, the law being, that any credits may be claimed by the defendant when so sued, which had been previously submitted to the consideration of the accounting officers of the Treasury, and been rejected.

IV. The damages claimed to be set off by the defendant, need not arise out of the same transaction, which is the subject of suit.

V. Any claim within the discretion of the head of a department may be set off. A court and jury may do what the head of the department should have done.

VI. The restrictions on this right of set-off appear to be: *First.* The defendant cannot set off unliquidated damages; nor, *secondly*, any claim which requires legislative sanction. But these exceptions do not apply to the present case.

Unliquidated damages are such as rest in opinion only, and must be ascertained by a jury, the verdict being regulated by peculiar circumstances of each particular case; which cannot be ascertained by computation or calculation, as damage for not using a farm in a workmanlike manner, for not building a house in a good and sufficient manner, on warranty in the sale of a horse, for not skilfully amputating a limb, and other cases of like character.*

In our case the measure of compensation to the defendant, Ware, is to be found in the receipts of the office prior to its discontinuance, and in the allowance theretofore made to him at the post-office department, to wit, at the rate of two thousand dollars per annum.

After the discontinuance, the same mailable matter, yielding the same returns to the treasury, passed through the

* Butts *v.* Collins, 13 Wendell, 139

office at Philadelphia, and in the eye of the law, if the discontinuance and removal complained of were illegal, would stand to the credit of the Kensington post-office, and would be the basis of the salary or commissions of the defendant, Ware. The United States cannot contend that, by their own wrongful act, no revenue was received at the Kensington post-office after 13th of March, 1862; the revenue from the mailable matter which ought to have passed through that office, wheresoever received, would be considered in law as received thereat. The Kensington post-office had been established for many years, and yielded an annual return to the treasury, of which an average could be readily taken. Of course the receipts would increase with the increase of population.

Numerous decisions of this court may be cited as authority for the foregoing legal propositions.*

Mr. Ashton, Assistant Attorney-General, contra:

I. The argument of the other side assumes, as a *concessum* of the case, that if the Postmaster-General had no authority, under the acts of Congress, to discontinue the office at Kensington, the defendant, Ware, was unquestionably entitled to receive, and can claim by way of defence in this suit, the compensation, allowance, or emolument that he demands for the period subsequent to the discontinuance of that office.

But under the system established by the act of 1854, which was in full force during the period for which the defendant sets up a claim for compensation, no postmaster received or was entitled to any compensation unless he actually collected postages at his office; and, therefore, if for any reason a postmaster failed to collect postages at his office, he earned no compensation. If no postages were collected,

* United States *v.* Giles, 9 Cranch, 212; Same *v.* McDaniel, 7 Peters, 1; Same *v.* Ripley, Id. 19; Same *v.* Robeson, 9 Id. 319; Gratiot *v.* United States, 15 Id. 336; United States *v.* Bank of Metropolis, Id. 377; Same *v.* Wilkins, 6 Wheaton, 135; Same *v.* Buchanan, 8 Howard, 83.

he was entitled to no commissions; and commissions were the only compensation allowed or payable to the officers.

Certainly after March 31st, 1862, Ware collected no postages at the Kensington Post-Office, *nor were postages collected at that office by any one;* so that, whether the action of the Postmaster-General was lawful or unlawful, the defendant cannot make good the claim as he sets it up, for compensation after the discontinuance of his office.

II. Independently of this, the Postmaster-General had authority to discontinue this post-office.

1. By the act of March 3d, 1825, the entire constitutional power of Congress "to establish post-offices and post-roads," in so far as post-offices are concerned, was given to the Postmaster-General.

The power to discontinue post-offices is incident to the power to establish them. This was established by this court in *Ex parte Hennen.** The Postmaster-General may lawfully do, under the power conferred on him by the act of 1825 to "establish post-offices," whatever Congress might lawfully do under the same power conferred on it by the Constitution.

2. Moreover, the power to discontinue post-offices has been in constant exercise by the Postmaster-General, and it is too late, in a collateral way like this, to call in question the legality of his acts in that particular.

3. In addition, Congress has repeatedly recognized the power as one subsisting in the Postmaster-General. Thus the act of July 2d, 1836, section 11, requires him to cause to be certified to the Auditor of the Post-Office Department, "all establishments and *discontinuances* of post-offices,"† &c. And again, the act of March 3d, 1851, provided that "no post-office now in existence shall be *discontinued* in consequence of any diminution of the revenues that may result from this act."‡

III. The post-office having been discontinued in fact and in law, such discontinuance operated to determine the in-

* 13 Peters, 261. † 5 Stat. at Large, 82. ‡ 9 Id. 590.

cumbency of the defendant in the office of postmaster at Kensington, to which he was appointed by the President.

The existence of the office of deputy postmaster at Kensington depended upon the existence of a post-office *at Kensington*. It could continue not a day after the abolition of the post-office at that place. Now, we have seen that the continuance of a post-office at Kensington was made dependent by Congress upon the will of the Postmaster-General. And when, therefore, he exercised his discretion and discontinued the post-office there, *the office* to which he was appointed ceased. And unless it is possible to entertain the legal conception of an officer without a subsisting office, we must conclude that the defendant ceased to be deputy postmaster at Kensington on the 19th of March, 1862.

Mr. Justice CLIFFORD delivered the opinion of the court.

Deputy postmasters, where the commissions allowed to the office amount to or exceed one thousand dollars, are appointed by the President, by and with the advice and consent of the Senate, and hold their offices for the term of four years, unless sooner removed by the President.*

Principal defendant was, on the sixteenth day of July, 1861, duly appointed in that manner deputy postmaster at Kensington, in the County of Philadelphia; and the record shows that he was in the performance of the duties of that office on the thirteenth day of March, 1862, when the same was decided to be unnecessary by the Postmaster-General, and was discontinued. When appointed, he gave bond with sureties as required by law for the faithful performance of his duties, and that he would render a quarter-yearly account of receipts and expenditures, and pay over to the proper officer the balance of all moneys which should come to his hands for postages, in the manner prescribed by the department.

Substantial charge against the defendant was, that he had neglected and refused to pay over certain moneys received for postages, as exhibited in his quarterly accounts for the

* 5 Stat. at Large, 84.

last two quarters next preceding the discontinuance of the office. Refusing to pay over those sums, the United States sued him in an action of debt, declaring on his official bond against him and his surety.

Defendants appeared and pleaded several pleas; but it is unnecessary to refer particularly to any one of them except the second, as all the others resulted in issues of fact, and present no question for decision in this record. Second plea of the defendants alleged that the postages annually received at that office amounted to a sum which authorized an annual allowance to him of two thousand dollars, and entitled him to retain that sum, as and for commissions, to his own use, besides the rent of his office, from and out of the moneys so collected and received for postages; and they also averred that the principal defendant was never lawfully removed from his office, and that the moneys not paid over, as set forth in the declaration, were properly retained by him for rent of his office and as commissions for postages, from the first day of April, 1862, to the thirtieth day of September in the following year. Replication of the plaintiffs alleged that the office was discontinued by the Postmaster-General as unnecessary, on the thirteenth day of March, 1862; that the incumbent of the office was duly notified of that fact; that proper directions were given that the public property, keys, and books of the office should be transmitted to the Post-office Department; that letters and all other mailable matter then ceased to be delivered through or by that post-office, and that the defendant thereafter never collected any postages or rendered any quarterly accounts.

Rejoinder of the defendants denied that the office was ever lawfully discontinued, and averred that letters and other mailable matter addressed to the office, and which, but for the unlawful discontinuance of the same, would have passed through it, were received and delivered by the postmaster at Philadelphia, sufficient in number and quantity to justify the annual allowance to the defendant as commissions, of two thousand dollars, and that the commissions so wrongfully withheld from the defendant exceeded in amount the alleged

balance due to the plaintiffs, and tendered an issue to the country. Plaintiffs demurred to the rejoinder of the defendants, and the defendants joined in demurrer. Parties were heard, and the court rendered judgment for the plaintiffs for the damages as found by the jury. All of the foregoing proceedings took place in the District Court; but the judgment was affirmed, on writ of error, in the Circuit Court, and the defendants removed the cause into this court.

I. Theory of the defendants is, that the discontinuance of the post-office, even if it was the exercise of a lawful authority, did not carry with it the removal of the postmaster; and inasmuch as he was never removed by the President, they contend that he continued to be the postmaster *de jure* at that office, and that as such he was entitled to the commissions which the office would have earned if it had been regularly supplied with the mails as theretofore, and the defendant had performed all the duties which were devolved upon him prior to its discontinuance. Suppose all that could be admitted, still it is obvious that it would not, without more, establish a valid defence to the action, as it would yet be incumbent upon the defendant to show that he had a right to retain the amount which came to his hands before the office was discontinued, and to set off against that sum the damages he sustained by the subsequent refusal of the Postmaster-General to allow him a credit equal to the commissions for the year and a half next following the time when the order of discontinuance was carried into effect.

Demand of the plaintiffs is for damages for not paying over moneys which came to the hands of the incumbent of the office during the six months next preceding its discontinuance, and they insist that he had no right to retain the amount so received for any purpose, but was bound by law to pay it over under the regulations of the department. On the other hand, the defendants insist, in argument, that he properly retained it, and might lawfully and as matter of right prove his supposed claim for commissions in set-off as an answer to the action of the plaintiffs. Nothing of the

kind was alleged in the rejoinder, and nothing of the kind, therefore, was admitted by the demurrer. All that the rejoinder alleged was, that the commissions of the office, if it had not been unlawfully discontinued, would have been sufficient to justify an allowance to the incumbent of two thousand dollars per annum, and that the commissions were wrongfully withheld from him by the department.

Taken separately from the other averments of the rejoinder, those allegations might afford some countenance to the proposition that the demurrer admitted away the plaintiffs' case; but the whole must be considered together, and when so considered, it is evident that the pleader, when he alleged that the commissions were wrongfully withheld from the incumbent of the office, meant nothing more than that he was wrongfully prevented from earning commissions, as the clear and indisputable inference from the introductory allegations of the rejoinder are that the office was never supplied with the mails after it was discontinued.

II. Commissions are allowed to deputy postmasters, at prescribed rates, on the postage collected at their respective offices in each quarter of the year, or in due proportion for any period less than a quarter, and they are required by law and the regulations of the department to render accounts quarter-yearly of the receipts and expenditures of their offices, which are expected to show the extent of their liability and the amount of the commissions to which they are entitled.* Viewed in the light of these suggestions, it is undeniable that the real claim of the principal defendant, as exhibited in the pleadings, was not for commissions in the sense in which that word is employed in the acts of Congress and the regulations of the department, but was, in truth and fact, a claim for damages, based on the assumption that he had been wrongfully prevented from earning such commissions by the neglect and refusal of the Postmaster-General to supply his office with the mails, and by its unlawful discontinuance. Assuming such to be the char-

* 4 Stat. at Large, 102, 105; 10 Id. 298.

acter of the claim as described in the rejoinder, then it follows, as a necessary consequence, that there are at least two difficulties in the way of the theory of the defendants which cannot be overcome.

1. Where a deputy postmaster collects no postages, there can be no commissions allowed under the acts of Congress in force during the period embraced in this controversy, and as the office was not supplied with the mails there could be no receipts from boxes, as there were no letters or other mail matter to be delivered. Postage commissions, as ascertained by the quarterly accounts of deputy postmasters and the receipts from boxes, during that period, were the only sources of compensation to those officers allowed by law, and those sources having entirely failed in this case—yielding nothing—the department possessed no authority whatever to make any other allowance.*

2. Claim of the principal defendant being for damages, and not for commissions or receipts from boxes, as ascertained in his quarterly accounts, the court below, if the case had been tried on the merits, could not have sustained the claim as a credit unless it had appeared affirmatively that it had been presented to the Auditor of the Post-office Department, and had been by him disallowed in whole or in part, or that he had been prevented from so presenting it by some unavoidable accident. Such has been the rule in respect to credits claimed by individuals at the Treasury Department, almost from the foundation of the government, and the original provision upon that subject is still in full force.†

Same rule, substantially, has been prescribed by Congress in the trial of suits against delinquent postmasters and mail contractors, except that the party claiming the credit is required to present the claim to the Auditor of the Post-office Department. No claim not having been so presented and disallowed in whole or in part can be sustained at the trial, unless it appear that the defendant is then in possession of

* 9 Stat. at Large, 202; 10 Id. 298.

† 1 Id. 515; United States *v.* Giles, 9 Cranch, 212.

vouchers, not before in his power to procure, and that he was prevented from presenting the claim for credit to the auditor by some unavoidable accident.*

Testing the rejoinder by these requirements it is too plain for argument that it is defective in substance, as the facts shown in the allegations are in several respects insufficient to constitute a defence to any part of the plaintiff's claim. Plain inference from the facts, as alleged in the rejoinder, is that the defendant had neither collected any postages nor earned anything as receipts from boxes, and there is no pretence, even in argument, that he ever, during the period embraced in this controversy, rendered any quarterly account. Neglecting to allege those facts, or any of them, he utterly fails to show any claim to commissions, and having omitted to allege that his claim for credit on account of damages sustained was ever presented to the auditor and disallowed, he fails to make a case in which any such credit can be sustained in a Federal court.

III. But suppose it were otherwise, still we are of the opinion that the plaintiffs must prevail, because, in our judgment, the post-office at Kensington was lawfully discontinued. A general post-office was established on the twenty-sixth day of July, 1775, the year before the Declaration of Independence.† By that ordinance it was directed that a line of posts be appointed under the direction of the Postmaster-General, from Falmouth, now Portland, to Savannah, with as many cross-posts as he shall think fit; and he was authorized to appoint as many deputies as to him might seem proper and necessary. Amendments were made to that ordinance from time to time to the twenty-eighth day of October, 1782, when it was repealed, and a supplemental ordinance was adopted in its place, conferring substantially the same powers upon the Postmaster-General. Those powers were continued, with certain alterations and additions, until the Constitution of the United States was

* 5 Stat. at Large, 83.

† 1 Laws of the United States, ed. 1815, p. 649.

adopted. Congress, on the twenty-second day of September, 1789, made provision for the appointment of a Postmaster-General, and enacted that his powers and salary, and the compensation to the assistant or clerk and deputies which he may appoint, and the regulations of the post-office, shall be the same as they last were under the regulations and ordinances of the late Congress.*

Throughout that period post routes were established by Congress, but the deputy postmasters were invariably appointed by the Postmaster-General, and they were required to receive and distribute the mails at the places designated by the appointing power. When the last-named act was passed it was entitled "An act for the temporary establishment of the post-office;" but it was continued in force, from time to time, without any material alteration, until the twentieth day of February, 1792, when the act was passed to establish the post-office and post-roads within the United States.† Authority was conferred upon the Postmaster-General, by the third section of that act, "to appoint an assistant and deputy postmasters where such shall be found necessary."‡ Same authority was continued in the same terms in the act of the eighth of May, 1794, with the further provision that where there was more than one road between the places mentioned in the act, he might direct the route to be considered the post-road.§ Express authority was conferred upon the Postmaster-General, by the act of the second of March, 1799, *to establish post-offices* and appoint postmasters at all such places on the post-roads that are or may be established by law, as shall appear to him expedient.‖ Like power was conferred upon that officer by the first section of the act of the thirtieth of April, 1810, which also enacted that he should provide for the carrying of the mail on all post-roads that are or may be established by law, and as often as he, having regard to the productiveness thereof, and other circumstances, shall think proper. ¶

* 1 Stat. at Large, 70.
† 1 Id. 178–218.
‡ Id. 234.
§ 1 Id. 357.
‖ Id. 733.
¶ 2 Id. 593.

Power to establish post-offices and post-roads is conferred upon Congress, but the policy of the government from the time the General Post-office was established, has been to delegate the power to designate the places where the mails shall be received and delivered to the Postmaster-General. Sufficient evidence of that fact is seen in the references already made to acts of Congress; but if more be needed it will be found in the first section of the act of the third of March, 1825, entitled "An act to reduce into one the several acts establishing and regulating the Post-office Department."* Provision is there made that the Postmaster-General "shall establish post-offices and appoint postmasters at all such places as shall appear to him expedient, on the post-roads that are or may be established by law." No part of that provision has been repealed except the clause as to the appointment of postmasters for offices where the commissions amount to or exceed one thousand dollars. Such appointments must be made by the President, by and with the advice and consent of the Senate; but in all other cases the power of appointing postmasters is still vested in the Postmaster-General, and his power *to establish post-offices*, as there conferred, is neither repealed nor modified. We concur with the plaintiffs, that the power to discontinue post-offices is incident to the power to establish them, unless there is some provision in the acts of Congress restraining its exercise.†

Undoubtedly Congress might discontinue a post-office which they had previously established by law, and it is difficult to see why the Postmaster-General may not do the same thing when acting under an act of Congress expressed in the very words of the Constitution from which Congress derives its power. Strong necessity exists that the power of the Postmaster-General in this behalf should be upheld so long as the offices are established by his authority. New facilities for transportation may call for change of location, or it may appear that the location was unadvisedly selected,

* 4 Stat. at Large, 102. † Ex parte Hennen, 12 Peters, 261.

either from want of proper information or through misrepresentation. Some of these causes must be constantly operating in a sphere of action so vast and diversified as that of the Post-office establishment. Probably it was such reasons and others of a like character that gave rise to the practice which is believed to have been coeval with the creation of the department. Such a practice, which it is understood has been in constant exercise for more than three-fourths of a century, is certainly entitled to weight in the construction of an act of Congress appertaining to the powers of a department of the government. Much support to that view of the subject is also derived from the acts of Congress recognizing the power as one subsisting in the Postmaster-General. Section eleven of the act of the second of July, 1836, requires the Postmaster-General to cause to be certified to the auditor of the department "all establishments and *discontinuances of post-offices*, and all appointments, deaths, resignations, and removals of postmasters," and the second section of the act of the third of March, 1851, provides that no post-office now in existence shall be discontinued . . . . in consequence of any diminution of the revenues that may result from that act.* When weighed in connection with the immemorial usages of the department, those acts of Congress recognizing the existence of the power, may well be regarded as a legislative interpretation of the provision authorizing the Postmaster-General to establish post-offices, and as sanctioning a construction in conformity to that well-known usage.

Possessing that power it was lawful for the Postmaster-General to exercise it, notwithstanding the postmaster had been appointed by the President, by and with the advice and consent of the Senate, because the incumbent accepted the appointment subject to the legal contingency that the post-office might be discontinued. Congress, therefore, by necessary implication, authorized the Postmaster-General to discontinue any such post-office whenever it should appear

* 5 Stat. at Large, 82; 9 Id. 590.

to him to be expedient and proper, and having exercised that discretion it is not possible to hold that the discontinuance was unlawful.

Learned counsel will hardly contend that Congress might not have discontinued that office, and our conclusion is that the same effects flow from the discontinuance in this case as if it had been directly declared by an act of Congress.

Defendant, when the post-office was discontinued, ceased to be postmaster at Kensington, because there was no longer any post-office at that place. He was never entitled to any compensation except commissions and receipts from boxes, and those sources of compensation were extinguished when the post-office was discontinued, and he lost nothing to which he was entitled.

The judgment of the Circuit Court is therefore

AFFIRMED.

THE NASSAU.

1. The jurisdiction of a court of admiralty over a vessel captured *jure belli*, is determined by the fact of capture. The filing of a libel is not necessary to create it.
2. When, under the act of Congress of the 25th March, 1862, for the better administration of the law of prize (12 Stat. at Large, 374), the prize commissioners authorized by the act certify to a District Court that a prize vessel has arrived in their district, and has been delivered into their hands, this is sufficient evidence to the court that the vessel is claimed as a prize of war and in its jurisdiction as a prize court.
3. Demands against property captured as prize of war must be adjusted in a prize court. The property arrested as prize is not attachable at the suit of private parties. If such parties have claims which, in their view, override the rights of captors, they must present them to the prize court for settlement.
4. Whether a maritime lien for work and materials alleged to have been furnished to a vessel prior to her capture *jure belli* is lost by such capture, is a proper subject for investigation and decision by the prize court before which the captured vessel is brought for adjudication; and which the parties setting up such lien can, on presentation of their claim to that tribunal properly have decided.