

19th CONGRESS.]

No. 59.

[1st SESSION.]

DEFALCATION OF A DEPUTY POSTMASTER.

COMMUNICATED TO THE HOUSE OF REPRESENTATIVES, FEBRUARY 2, 1826.

Mr. INGHAM, from the Committee on the Post Office and Post Roads, to whom was referred the petition of Samuel B. Crocket, late a postmaster at Frankfort, Kentucky, reported:

That the petitioner prays to be released from the payment of a judgment for the sum of \$1,827 01 obtained against him at the suit of the Postmaster General. The ground on which the petitioner asks relief is, that he had been authorized by the custom of the country to receive postages in the notes of the Bank of Kentucky, of which he had a considerable sum in hand at the time that bank stopped payment, viz. on the 31st of December, 1819, by which he was compelled to pay subsequent drafts from the General Post Office at an advance upon the Kentucky Bank notes of from fifty to one hundred per cent.

It is not improbable that the petitioner may have sustained some loss by the cause above stated, but there is no evidence before the committee showing the amount of Kentucky Bank notes on hand, or his deposits in that bank at the time of its failure, or of the rate of depreciation of those notes; but it appears, from the documents furnished by the petitioner, that, had the balance been struck between him and the General Post Office Department on the day of the failure of the bank, he would have been indebted in the sum of \$1,999 79; and, had the whole of this sum been in hand, in Kentucky Bank notes, on that day, (which is not alleged, nor at all probable,) and the depreciation of those notes been at the current rate stated by the petitioner, viz. fifty per cent., his only loss would have been half the amount of the above balance, *provided he had paid it up*. This balance was, however, subsequently reduced to only \$1,395 54; and the only loss which the petitioner could, in any event, have sustained by the causes alleged would have been the depreciation on the difference between \$1,999 79 and \$1,395 54, viz. \$604 25, which, at fifty per cent., would have occasioned a loss of \$302 12½. It is impossible, therefore, for the committee to agree to the petitioner's conclusion that he has been compelled to pay more than was due to the General Post Office Department, even according to his own premises. But this question involves a principle which ought not to be lost sight of in determining all similar cases.

The constitution requires that "all duties, imposts, and excises shall be uniform throughout the United States." Postage duties are undoubtedly embraced in this provision; and Congress has declared, by a resolution passed 20th April, 1816, that "no duties, taxes, debts, or sums of money, accruing or becoming payable to the United States, ought to be collected or received otherwise than in the legal currency of the United States, or treasury notes, or notes of the Bank of the United States, or in notes of banks which are payable, and paid on demand, in the said legal currency of the United States." Then, in order to preserve the uniformity of the taxes, duties, &c., it is required that they shall be paid in the currency of the same character in every part of the Union. In this case, the petitioner became indebted to the United States for the amount of the postage duties received by him, which could only be paid in the description of money prescribed by the resolution of Congress; and now, to release him from the payment of the judgment, on the ground which the application rests upon, would be to infringe the uniformity of obligation imposed upon public debtors by the aforesaid resolution, if not indirectly to violate a very sacred provision of the constitution; for, if a collector shall be permitted to pay over duties to the Government in notes not equal to the legal currency of the United States, how much more strongly might other debtors, and those who had duties to pay, claim the right to pay their dues in the same description of paper? And it could not be pretended that duties, &c. were uniform when they were thus paid in currencies of unequal value, having no reference to any generally established standard whatever. These principles, in the opinion of the committee, decide this case conclusively against the petitioner; and they submit the following resolution:

Resolved, That the prayer of the petitioner ought not to be granted.

19th CONGRESS.]

No. 60.

[1st SESSION.]

EXTRA ALLOWANCE MADE TO A MAIL CONTRACTOR.

COMMUNICATED TO THE SENATE, MARCH 13, 1826.

Mr. JOHNSTON, from the Committee on the Post Office and Post Roads, to whom was referred the petition of John Donly, made the following report:

John Donly was the mail contractor from Nashville, Tennessee, to Columbus, in Mississippi. In 1820, the mail having greatly increased, so as to require one, and often two additional horses to transport it, application was made to the Postmaster General, Mr. Meigs, and, in consideration of all the circumstances, the fidelity and vigilance of the contractor, but particularly the increased size of the mail, and increased difficulty and expense of carrying it, it was agreed at the Department to extend to him an additional allowance of \$1,000. Mr. Meigs, in a letter dated 5th of July of that year, to the Hon. Newton Cannon, a member of the House of Representatives, remarks:

"In reply to your letter of the 3d, on behalf of John Donly, I have the honor to observe, that when I contracted with Mr. Donly, I made him an allowance of \$1,000, to compensate him for a led horse; and his mail has *manifestly* so much increased as to require *another led horse*, and sometimes *two led horses*, or one led with each of the three mails. I am satisfied it will be proper to make him, for *this year*, a further allowance of \$1,000 a year; the additional allowance to take date January 1, 1820.

"R. J. MEIGS."

On the authority of this letter, Mr. Donly inferred that the allowance made to him was not merely for the year 1820, but would, in fact, be continued during the years 1821 and 1822; for which his present application is made. Besides this, he states that Colonel Cannon assured him that such was the intention and design of Mr. Meigs. Thus impressed, he continued to carry the mail, and knew nothing against the impression he had received from Colonel Cannon and the letter of Mr. Meigs until the latter part of the year 1821, when Mr. Bradley informed him the allowance heretofore made could not be extended for that year. In consequence of this, shortly afterwards Mr. Donly informed the Department that he would be unable to carry the mail, and requested that their agent in Tennessee might be instructed to make a new contract, and to discharge him.

This was agreed to, and accordingly Mr. Bradley instructed Mr. Neale, at Huntsville, to enter into a new contract, and to discharge Mr. Donly. The agent, on seeing Donly, showed him the letter of Bradley; but neither the one nor the other of them could decipher the figures made, and at which the contract was authorized to be entered into. If it were \$5,050, as is now asserted, then Mr. Donly was unwilling to do else than surrender directly his contract; but if (as both supposed it might be) it was \$6,050, then, it being the increased sum he desired, he was willing to continue the contract. In this doubt, it was agreed that Mr. Donly should continue to carry the mail until the Postmaster General could be written to, and an answer received. Accordingly, Mr. Neale, in his letter dated 13th March, 1822, remarks: "I experience some difficulty in deciphering your figures, as to the sum to which I was limited in making a new contract, whether it was \$5,050, or \$6,050; should I be instructed to make a new contract, please explain."

To this letter no answer was ever returned, and, owing to this circumstance, Mr. Neale (the agent) inferred, as any one else might have done, that it was intended that Mr. Donly should carry the mail, and receive the additional allowance of \$1,000.

In a letter dated January 11, 1825, addressed to Mr. McLean, Postmaster General, Mr. Neale says:

DEAR SIR:

HUNTSVILLE, *January 11, 1825.*

In the letter from Mr. Meigs, the 11th February, 1822, requesting me to make a new contract for carrying the mail from Nashville to Columbus, 235 miles, the figures were so badly made, that I could not tell what they were. We agreed to defer the contract until I could hear from the General Post Office Department. I did not hear from the Department, and I concluded, from the figures, that Mr. Meigs was willing to give Mr. Donly the sum which he was contending for.

Mr. Meigs's letter to the Honorable N. Cannon, of February 5, 1820, induced me to believe that there was a misunderstanding between Mr. Meigs and Mr. Donly; in consequence of which I made no contract with Mr. Donly, but waited an answer from the General Post Office Department; which answer I did not receive.

I am yours, &c.

JOHN P. NEALE.

JOHN McLEAN, Esq., *Postmaster General, Washington.*

The committee, under a view of all the circumstances, think with Mr. McLean, the Postmaster General, that it refers itself strongly to the equitable discretion of Congress, and, thinking it founded on justice, and that the paternal care of the Government should ever, in cases of such strong equity, lean in favor of the claimant, cannot distrust that conclusion in a case like this, where both the equity and justice are so plainly marked; they therefore beg leave to append to this report a letter from the Postmaster General to Mr. Eaton, of the Senate, explanatory of the merits of this claim, and to report a bill for his relief, embracing compensation for the years 1821 and 1822.

SIR:

POST OFFICE DEPARTMENT, *February 11, 1826.*

By a careful examination of the facts on which Mr. Donly's claim is founded, I am of the opinion that any remuneration he may be entitled to must be obtained by an exercise of the equitable discretion of Congress.

His contract for the transportation of the mail from Nashville to Columbus commenced with the year 1818, and terminated on the last day of December, 1822. At the beginning of the contract, the fact probably was, as stated by him, that a led horse was not necessary to the conveyance of the mail oftener than every third trip.

It appears, by the letter of the Postmaster General to the Honorable Mr. Cannon, dated on the 5th February, 1820, that when he contracted with Mr. Donly an allowance of \$1,000 was made him for a led horse; and as his mail had manifestly so much increased as to require another led horse, and sometimes two led horses, or one led horse with each of his three mails, he was satisfied that it was proper to make him, for that year, a further allowance of \$1,000 *a year*, and that the additional allowance was to take date from 1st January, 1820. The language of this note is not entirely clear of all ambiguity, but it appears to me that its import limits the allowance to the year in which it was made, and that the words *a year* cannot have the important effect of extending the additional pay to the two following years. I admit that, with the progress of time, there was every reason to expect an increase of the bulk and weight of the mail on that route; and that, if there was just ground for the allowance of \$1,000 on account of this increase in the year 1820, the reasons for its continuance through the two succeeding years grew stronger, as the weight of the mail became greater. But I do not feel myself authorized now to investigate the cause which induced my predecessor to pay the additional sum of \$1,000; nor am I at liberty, however strong the equitable considerations may be, to say that the same sum should have been paid annually for the remainder of the contract.

On the 5th October, 1821, a letter was written by Mr. A. Bradley, jun., Assistant Postmaster General, to Mr. Donly, informing him that no extra pay was agreed to be given him that year, and that there was no reason for making him any.

On the 1st February, 1822, Mr. Donly wrote to the Postmaster General, that as the extra allowance made him in 1820 had been refused for the ensuing year, he was determined to surrender his contract after the 2d of March following, unless the increased pay should be continued.

The Postmaster General, on the receipt of this letter, wrote to Mr. Neale, postmaster at Huntsville, authorizing him to make a new contract, and release Mr. Donly. It was proposed to divide the route into two equal parts; and the compensation limited on each was specified. The amount for the proposed allowance for the route between Nashville and the Big Spring was rendered somewhat doubtful, from the manner in which the figures were made; and it seems, from the letter of Mr. Neale, dated 13th March, 1822, to the Postmaster General, that he was at a loss to determine whether the sum was \$5,050, or \$6,050, and he asked instructions on the subject. No answer was given to this letter, and Mr. Donly continued to transport the mail until the close of his contract.

That Mr. Donly was under an impression that the allowance of \$1,000 was designed to be extended to the end of his contract, seems probable from the fact of his charging in his account one-half that sum for the first six months of the year 1821, and his offering to relinquish his contract on the 1st February, 1822, about three months after he was informed that the additional pay would not be extended. It is also probable that he may have been induced to continue his services under the expectation that the sum named in Mr. Neale's letter would be explained to mean \$6,050, which, with the sum proposed for the other route, would be nearly equal to his contract, including the allowance made in 1820. Of these facts I have no other means of judging than that which is common to any other individual who examines the papers; and, if they were fully substantiated, I have determined that it is not within the legal discretion of the Postmaster General to make compensation. It is, however, but an act of justice which Mr. Donly may expect, that I should say he has faithfully performed his engagements with the Department, and, under the most perilous circumstances, has shown the greatest energy and devotion to the public interest.

I have the honor to be, very respectfully, your obedient servant,

JOHN McLEAN.

Hon. J. H. EATON, *Senate.*