

During the last summer and fall, the mail was conveyed from Cincinnati to Sandusky city, on the above route, in post coaches, three trips weekly; and, from the concourse of passengers, it promises to become an important channel of intercourse. If Sandusky city shall continue to be a place of deposit for merchandise destined to Cincinnati and other places, and if the amount of such deposits shall increase for a few years to come as rapidly as it did the past season over the previous one, this city will become a very important point, and render a speedy and safe mail communication between it and Cincinnati indispensable. In the present condition of that section of the road embraced by the resolution, this would be impracticable at some seasons of the year, and, at the most favorable time, would be very difficult, from the depth of the mud and other obstructions.

The road through the wilderness passes over a level country, and is shaded by trees of the largest growth, so as to prevent the rapid absorption of the water which falls upon it, and renders many places almost impassable.

The above route affords the best line of communication between Detroit and the southwestern part of Ohio and all the other western States. Between these places the correspondence is now important, and is annually becoming more so.

It would be of advantage to the Department to have the proposed repairs made; and, if Congress shall think proper to authorize it, the estimated expense may be paid out of its funds without injury to the public service.

With great respect, I have the honor to be your obedient servant,

JOHN McLEAN.

Hon. A. STEVENSON, *Speaker of the House of Representatives.*

20th CONGRESS.]

No. 70.

[1st SESSION.]

BREACH OF CONTRACT.

COMMUNICATED TO THE SENATE, MARCH 18, 1828.

Mr. JOHNSON, of Kentucky, made the following report:

The Committee on the Post Office and Post Roads, to whom was referred the petition of William Mickler, report:

That they have examined the petition and the documents in the case, and they find that the Postmaster General has complete power and control over the whole subject, both as it respects the prayer of the petitioner to be restored to a contract made by an authorized agent of the Post Office Department, and to the amount of compensation for services performed, and for damages which may have arisen in the transaction. The committee are not inclined to recommend to the Senate the examination or revision of any case within the legitimate powers of the head of the Department, unless the committee could be convinced that manifest injustice had been done. Such a case is not now presented; on the contrary, the judgment and decision of the Postmaster General is approved by the committee. The committee refer to the petition and to the letter of the Postmaster General, and make them a part of this report, to be printed as an appendix. The committee recommend the following resolution, viz:

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

To the honorable the Senate and House of Representatives in General Congress assembled: The memorial of William Mickler, a citizen of Georgia, residing at present in the town of St. Mary's, in the county of Camden, sheweth:

That, on the 1st day of August last, your petitioner made a contract with James Bentham, postmaster of St. Mary's aforesaid, (*the said James acting at the time under the specific instructions of the Postmaster General.*) for the transportation of the mail between St. Mary's and St. Augustine, East Florida, once per week, at \$995 per year, for the term of three years and five months, being for the unexpired term of a four years' contract made, in the first place, with one Abram Bellamy, said Abram having failed to perfect the same by giving bond in the manner pointed out by law.

That, before said contract was made by Mr. Bentham with your petitioner, the same was duly advertised for thirty days at St. Augustine, at Jacksonville, and at St. Mary's; in consequence of which there were a number of applicants for the same, and, among others, one Mr. Francis J. Ross, who offered to contract at \$1,200 per year, or at \$1,000, if there was any other bid as low as that sum; but your petitioner's terms being preferred, he gave bonds, and entered upon the duties of his appointment immediately after the date aforesaid.

That, with a full knowledge of all the foregoing facts, about fifteen or twenty days after your petitioner perfected his contract, and after he had carried the mail on the route two trips, the postmaster of Jacksonville, East Florida, by virtue of instructions transmitted to him on the 28th of July, 1827, made a contract with said F. J. Ross for the transportation of the mail on the same route, and for the same time; and, on your petitioner's third trip, took the mail away from him, and gave it to Mr. Ross.

That, on its arrival at St. Augustine, the postmaster then having consulted the district attorney, and having laid all the papers and documents before him relating to the contract, in pursuance of a written opinion given by him, immediately restored the mail to your petitioner; which opinion of the district attorney is now on file in the office of the Postmaster General, having been immediately transmitted to him.

That, about seven weeks after your petitioner first commenced carrying the mail, notwithstanding the opinion of the district attorney of East Florida to the contrary—notwithstanding the evidence of fraud and combination between the postmaster at Jacksonville and the said Francis J. Ross, evinced by his making a contract with said Ross, who is his friend and near neighbor, when he knew, and Ross knew, your petitioner had already the contract for the route—the said Postmaster General directed the different postmasters of the route to consider Ross the legal mail carrier, and not your petitioner.

That, since the Postmaster General has come to this determination, your petitioner has applied to him either to restore the contract to him, or to make him compensation for the time he carried the mail, and for the damages he has sustained by preparing himself to perform the contract, (being about equal to the one quarter's salary allowed in all instances, as your petitioner has learned, whenever the Postmaster General takes away a mail contract from a contractor,) which, with the services performed, would make the sum of \$364 75. But the Postmaster General has refused to pay any further sum than \$100, and even that sum is withheld from the petitioner by the postmaster here, because your petitioner will not give a general release.

Your petitioner therefore prays that Congress may order the Postmaster General to restore the contract to him, or pay the bill your petitioner has furnished the Postmaster General, who has the evidences thereof; or that the sum of \$363 50 may be appropriated to your petitioner, being the sum of \$114 75 for carrying the mail six trips, and the sum of \$248 75, one quarter's salary, for being deprived of the contract.

Your petitioner annexes hereto a copy of the instructions of the Postmaster General to the postmaster here, by virtue of which he made the contract with your petitioner. Your petitioner hopes your honorable body will direct him to lay before you the opinion of the district attorney of East Florida on the subject of this contract, which contains a complete history of the facts, made by an indifferent person; a copy of his instructions to the postmaster of Jacksonville, East Florida, dated 23th July last; and your petitioner's letter to him, dated 27th September, 1827; and your petitioner, as in duty bound, will ever pray.

WILLIAM MICKLER.

SIR:

POST OFFICE DEPARTMENT, *December 13, 1826.*

I have not made a contract for the weekly transportation of the mail between your office and St. Augustine. *I therefore wish you to keep up said route, at a fair and just valuation of the service.* Mr. John Warren's bid for said route was nine hundred dollars per year; Mr. A. Bellamy's nine hundred and fifty. They are both residents of Jacksonville. If they are suitable persons, you may contract with either of them at the prices stated by them, or any other suitable person. Your reply is desired.

Yours, &c.

JOHN McLEAN.

To JAMES BENTHAM, Esq.

SIR:

POST OFFICE DEPARTMENT, *December 24, 1827.*

On examining the bids for the mail route between St. Mary's and St. Augustine, in the fall of the year 1826, the bid of Mr. Tria, being the lowest, was accepted. He resided at St. Augustine, in Florida, to which place a letter of acceptance of the bid was directed. Some time afterwards Mr. Tria wrote to the Department that his bid was made under a mistake, and that he should not execute the contract, nor make any provision for the transportation of the mail. On the reception of this letter, the letter of the 13th December, 1826, a copy of which is enclosed, was written to the postmaster at St. Mary's. By this letter the postmaster was informed that no contract had been made for the conveyance of the mail on the above route, and he was requested to provide for the continuance of the service, at a fair and just compensation. He was informed that John Warren's bid for the route was \$900, and A. Bellamy's \$950. They were represented to be both residents of Jacksonville, and the postmaster was instructed to make a contract with either of them, at the price stated, or with any other suitable person. The mail was regularly conveyed on the route from the 1st of January; and before any thing was heard decisively from the postmaster at St. Mary's on the subject, a letter was received from Francis J. Ross, stating that A. Bellamy, who had contracted to carry the mail on the route, having left the country immediately on obtaining it, and the writer having become one of his sureties for the performance of the contract, was compelled to convey the mail. A copy of this letter is herewith transmitted, and bears date 14th June, 1827.

Some time after this, the postmaster at Jacksonville was written to on the subject, from the circumstance of Mr. Ross's letter being dated at that place. In this letter the postmaster was instructed to make the contract with the person who had regularly conveyed the mail, if he was a suitable person, inasmuch as he had not only been engaged in the service, but considered himself liable as the surety of Bellamy for the faithful transportation of the mail. The postmaster at Jacksonville confirmed the statement of Ross as to his having transported the mail, and the Department possessed no knowledge of the steps taken by the postmaster at St. Mary's, to advertise for proposals, &c. He had not advised the Department, except by letter dated 15th February, at which time he had written to Bellamy, but had not received his answer. At the time the above instruction was given to the postmaster at Jacksonville to make a contract with Ross, it was believed that the postmaster at St. Mary's, in pursuance of his instruction, had made the contract with Bellamy, who had failed, and that Ross, his surety, being responsible, to indemnify himself, had taken possession of the route. This seems literally to have been the fact; though a mistake is said to have been made in the contract, which induced the postmaster at St. Mary's to forward to Bellamy another contract. But it seems at this time, several weeks having elapsed since the execution of the first contract, Bellamy had absented himself, and Ross, his surety, was carrying the mail.

The postmaster at St. Mary's should have advised the Department immediately on his making the contract with Bellamy, and, at all events, should have done so before he proceeded to advertise for a new contract. In my letter of the 13th December, 1826, he was informed of two bids made for the route, and was authorized to make a contract with either of the persons named, at the price stated, if they were worthy of confidence, or with any other suitable person. The highest sum named was \$950; and, from the tenor of the letter, this was clearly the limit beyond which he was not authorized to go in making the contract. At least he could not make a contract for a greater sum, which would have been considered binding on the Department. In the contract made with Mickler, \$995 was fixed as the compensation. This was done at the time Ross was in possession of the mail; and although, under an impression that the course taken by Mr. Bentham was correct, he bid \$1,000, yet there is no evidence to show that he was not willing to continue the transportation of the mail at Bellamy's bid. His letter to the Department, of the 14th June, showed a willingness to continue the service under Bellamy's contract. In all cases where the surety is competent, and offers to perform the service to save himself from damages, a preference is given to him. The mail on this route has never been so well transported as by Mr. Ross, the present contractor.

From the report of the postmaster at Jacksonville, doubts are entertained whether Mickler be a suitable person for so important a trust as the conveyance of the mail. In his first trip, it seems, he admitted to the postmaster that he "threw down the mail in the road, two or three miles from any house, and went back five or six miles." Such gross inattention to the safety of the mail would have called for the interference of the Department, had there existed no other ground.

On a full view of the circumstances of this case, it will be seen that the postmaster at St. Mary's was negligent in correcting the error of the contract with Bellamy, and in not advising the Department of the steps taken, and that he exceeded his instructions. It will also appear that Ross was entitled to the contract, because he was the security of Bellamy, and was willing, as he informed the Department, to continue the service under Bellamy's contract; that, when the contract was forwarded to him, the Postmaster General had no knowledge of the course taken by the postmaster at St. Mary's, and that the service is now better done than formerly.

That Mr. Mickler should sustain any injury, through the agency of this Department, forms a subject of regret; but the facts of the case do not seem to authorize the change of the contract from Ross to Mickler, nor the payment of the damages claimed by the latter. A liberal allowance will be made to him for the service he performed, and the present contractor will be requested to purchase his horses, if they are suitable for the service, and he has not a sufficient number of his own.

With great respect, I am your obedient servant,

JOHN McLEAN.

Hon. Mr. COBB, *Senate U. S.*