

that he (Rhodes) would open it, and keep it in repair for a stated price per mile. The proposals, embracing the transportation of the mails at a stated price, and also the opening of the road at a stated price, were generally accepted by letter. When the contract was drawn out in form at the Department, it was to carry the mail "in stages and steamboats." This was impracticable, unless the road was opened; the proposal was, that the expense of opening the road should be paid by the United States. Although the contract, as drawn out, was silent as to the expense of the road, that contract was based upon proposals and acceptances, in which the road was expressly provided for at the cost of the United States. The silence of the formal contract does not appear sufficient to warn Mr. Rhodes that his proposal as to the road was rejected, much less to impose upon him the necessity to open the road for stages at his own expense, in direct hostility to his accepted proposals. The letter informing him that his proposal was accepted, and requiring him to "begin with all practicable expedition, and convey the mail upon a plan designated by the postmasters of Mobile and New Orleans," was well calculated to impress upon Rhodes the belief that he was to be paid for opening the road.

The committee are not unmindful of the evil consequences of an example which might encourage mail contractors to lay out money in improving roads to facilitate them in the performance of their contracts, with an expectation that Congress would reimburse the expense; nor of a like evil example, which might have a tendency to unbridle the discretion of the Postmaster General. But a payment to Mr. Rhodes, under the peculiar circumstances of his case, would not be a precedent pregnant with such evil consequences. The Postmaster General was faithfully endeavoring to effect the transportation of the mails along a route established by law between two points, and to overcome difficulties and obstructions which had retarded the mails. In doing so, he abstained from committing the Department by any express stipulations exceeding the authorities conferred by law; yet it is equally true that Mr. Rhodes acted under the belief that he was to be compensated for making the road. And, however wise and proper it may be to establish, as a general rule, that every citizen is bound to know the laws of his country, and the authority conferred on the officers of Government by those laws, yet that spirit of equity and mercy with which the administration of the laws should be tempered requires that exceptions should be allowed to that general rule.

Under all the circumstances of this case, the committee recommend that Mr. Rhodes be paid a reasonable compensation for his labor and moneys expended in opening the road out of the funds of the Post Office establishment. A bill is accordingly reported.

21st CONGRESS.]

No. 94.

[1st Session.

SURETIES OF A DEFAULTING DEPUTY POSTMASTER.

COMMUNICATED TO THE HOUSE OF REPRESENTATIVES, APRIL 29, 1830.

Mr. CONNER, from the Committee on the Post Office and Post Roads, to whom was recommitted the report of the said committee in the case of Stafford and Yates, of 25th January last, made the following detailed report:

That the petitioners set forth that, in the year 1816, John V. N. Yates and Spencer Stafford, in conjunction with John Stafford, now deceased, executed a bond with Solomon Southwick, as his sureties, to the Postmaster General of the United States, in the sum of \$6,000, conditioned that the said Solomon Southwick should well and truly execute the duties of postmaster at Albany, in the State of New York, &c.; that, in 1822, Solomon Southwick was found to be a defaulter to the amount of \$6,353 88, when he was removed, and a suit instituted by the Postmaster General against Solomon Southwick and his sureties, in the circuit court of the northern district of New York, to recover the penalty on said bond.

The petitioners claimed to be allowed, by way of setoff, the following items:

1st. For receiving and despatching foreign mails from 1816 to 1821, being twenty-two quarters, at \$25 per quarter,	-	-	-	\$550 00
2d. To receiving night mails from 1816 to 1821, at fifty per cent. additional,	-	-	-	1,250 00
3d. To keeping mail register of arrival and departure of mails, for five years and six months, at 10 cents,	-	-	-	30 80
4th. To hire of two bedsteads, beds, and clothes, for five and a half years, at \$20 per year,	-	-	-	110 00
5th. To washing bed clothes, and cleaning bed room, two hundred and eighty weeks, at \$1 50,	-	-	-	420 00
6th. To finding and washing towels for the same period,	-	-	-	35 00
E. F. Backus's receipt for post office rent,	-	-	-	625 00
J. B. Southwick, for salary,	-	-	-	750 00
Jos. Wands, 2d,	-	-	-	600 00
D. F. Pruyn, for salary,	-	-	-	500 00
S. W. Southwick, for salary,	-	-	-	500 00
H. C. Southwick, for salary,	-	-	-	500 00
G. Wood, for salary,	-	-	-	500 00
S. Rice, for salary,	-	-	-	116 70
Total,	-	-	-	\$6,577 50

Of this account, two items, the 1st and 3d, were admitted by the counsel for the United States, but were not permitted by the court to be deducted from the penalty of the bond. The petitioners state that, had this account of \$6,577 50 been allowed, it would have exonerated them from the liability on the bond; but was refused, without proof of an agreement on the part of the Postmaster General to allow the same; the damages of the Postmaster General were assessed by the court at \$6,000: that the cause was removed by writ of error to the circuit court of the United States for the southern district of New York, and was brought from that court, on a certificate of the judges of disagreement of opinion, to the Supreme Court of the United States, who, without argument, decided in favor of the Postmaster General: that, acting under the advice of counsel, they caused a writ of error to be sued out, by virtue of which the record and proceedings in the said circuit court were removed to the Supreme Court; and, by motion of the Attorney General of the United States, the writ of error was dismissed for want of jurisdiction. The petitioners further state that, in January, 1820, through their representative, application was made to the Postmaster General to know, among other things, if Solomon Southwick was a delinquent postmaster; and received the following answer:

DEAR SIR:

GENERAL POST OFFICE, *January 13, 1820.*

In reply to yours of to-day, I have to state that I know of no attempt to remove Mr. Southwick, or any charge against him.

Very respectfully, your obedient servant,

R. J. MEIGS, JUN.

HON. SOLOMON VAN RENSSELAER.

The petitioners also state that, in account marked B, in the printed document in this case, and among the papers, there was then a balance of over \$2,000 against said Southwick; and, in April, 1820, as will appear from the following letter from Abraham Bradley, the sum has increased to \$3,547 24.

SIR:

GENERAL POST OFFICE, *April 22, 1820.*

A balance, amounting to \$3,547 24, appears against you on the books of this Department, which it is indispensable necessary should be reduced. In making your subsequent deposits to the credit of this office, with the cashier of the New York State bank, at Albany, you will have regard to the reduction of the above, as well as depositing the amount of your current quarterly balances.

I am, sir, your obedient servant,

ABM. BRADLEY, JUN.

SOLOMON SOUTHWICK, Esq.

And again, in October, Mr. Bradley writes the following:

SIR:

GENERAL POST OFFICE, *October 8, 1820.*

I find by our bank books that only \$500 was paid by you the last quarter on account of this office. You will excuse me for stating that it was understood the balance was not to accumulate, and that the demands on this office are such that they cannot be met without punctual payment.

I am, sir, your obedient servant,

ABM. BRADLEY, JUN.

SOLOMON SOUTHWICK, Esq.

The petitioners complain that Southwick was not removed until the winter or spring of 1822, at which time the balance against him was \$6,853 88, as appears by the above-named account B, in the printed case.

They ask that a law may be passed discharging them from their liability as sureties of Solomon Southwick, who is and was insolvent before his removal from office; or to authorize the proper officers to settle with them on the principles of equity and justice.

The committee have carefully examined the accounts of Solomon Southwick, and the charges made by the petitioners. In an account exhibited, and herein inserted, the various items claimed as a setoff, amounting to \$6,577 50, the first item, for receiving and despatching foreign mails \$550, and the third item, for keeping mail register five years and six months, at ten cents, making \$30 80, were admitted by the Attorney of the United States, but were not allowed by the judge to be deducted from the penalty of the bond, \$6,000 being less than the damages sustained. It will be seen, by reference to a communication from the Postmaster General, and hereunto annexed, that the petitioners were not entitled to a credit for those two items, or either of the others exhibited. Your committee are unable to perceive that the Department have in any instance, in this transaction, acted illegally or improperly; or that any negligence has been manifested in their attention to the settlement of the accounts of Mr. Southwick. On the contrary, a proper vigilance seemed to be observed throughout; and it does appear that Solomon Southwick has received every thing that was due him on account of his expenses and compensation; and that, in 1822, the time of his removal from office, the balance against him, and due the Department, being \$6,853 88, the only alternative then left the Postmaster General, Southwick being insolvent, was a suit for the penalty of the bond, to secure the Department.

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

SIR:

POST OFFICE DEPARTMENT, *January 5, 1830.*

I have received and carefully examined the petition of Spencer Stafford and J. V. N. Yates, enclosed in your note of the 31st ultimo.

In reference to the items of the account to which it alludes, and in regard to which information is particularly requested, I remarked, generally, that they were submitted to the Postmaster General after the suit was commenced, and were by him rejected, with the exception of the charge of thirty dollars for mail register, which was left open; and that any similar charges, in the same circumstances, would be necessarily, and at all times, rejected.

Item 1st is a charge of \$550, for receiving and despatching "foreign mails."

In reference to this charge, it was proved (page 69 of the printed case) that Albany was a distributing office, &c.

The post office at Albany was then, and is still, a distributing office; and a commission of 5 per cent. has been regularly allowed for all distributions of letters, whether destined to Canada or otherwise; but no charge, so far as I can learn, has ever been made by any postmaster at Albany, while in office, for the peculiar service of "receiving and despatching foreign mails." This, it is understood, was always performed in that direction, as it still is, by the frontier post offices near the Canada line. The counsel for the Postmaster General did, however, admit this charge on the trial, as well as that for keeping a mail register, but without reference to the Department, though it was the opinion of the judge that neither ought to be allowed.

Item 2d is a charge of \$1,250 for "receiving night mails, at 50 per cent." additional commission.

The law allows to postmasters a commission of 50 per cent. on the first \$100 of postages, when "the mail is regularly to arrive between the hours of 9 o'clock at night and 5 o'clock in the morning."

The mail was never to arrive at Albany between those hours at any time during which Mr. Southwick was postmaster; and it does not appear that he made any pretensions to this additional commission while in office.

But the charge is itself erroneous; the postmaster has already received a commission of 30 per cent. on the first \$100 in every quarterly account; and, if the mail had regularly arrived between the hours of 9 and 5 o'clock, his claim would be limited to an addition of 20 per cent., and would amount to \$440 only.

Item 3d is a charge of \$30 80 "for keeping mail register five years and six months, at 10 cents."

The law allows to such postmasters as may be required to keep a mail register 10 cents for every monthly return thereof to the Department.

If, in this case, the postmaster kept such register, and made regular monthly returns, he was allowed the legal compensation of 10 cents each, amounting to \$6 60 for the whole period during which he was postmaster.

This charge of \$30 80 is made by his sureties, on the mere assumption of the fact that such returns were regularly made and never allowed.

For all the other items in the account Mr. Southwick has already received full compensation; and it is to be presumed that he would not, wittingly, present such charges as an offset to his debt, knowing, as he must, that he has already received, from quarter to quarter, every cent which could possibly be appropriated by law to the expenditure of his office.

The law provides that, whenever the annual emoluments of any postmaster, after deducting the necessary expenditures of his office, shall exceed \$2,000, he shall pay over the surplus, &c.

At the close of his first official year Mr. Southwick rendered an account of his emoluments, and the expenses of his office, showing a surplus of \$242 92 in favor of the Department.

For the first year, then, his annual emoluments, or commissions, covered the expenses of his office and his personal compensation; leaving, besides, a surplus of \$242 92 to be paid to the Department.

From this year to the close of his official life he received the *whole amount* of his annual emoluments on account of his expenses and compensation, and he could not legally receive more.

The petitioners appear to have misconceived the purport of the Postmaster General's letter of January 13, 1820. In the use of the term "charge," he could have no reference to the particular state of the postmaster's account at that moment, but merely intended to state the fact that he then knew of no charge preferred against Mr. Southwick with a view to his removal from office.

As evidence was offered to show that the Postmaster General had neglected to credit the account of Mr. Southwick for a draft of 4th January, 1817, it may be proper to add, that this draft was made in favor of Stephen Rice, on account of William Haswell, then postmaster at Bennington, Vermont, and, at the close of that quarter, was duly credited to the account of Mr. Southwick, under date of 31st March, 1817.

I return, herewith, the papers accompanying your note, and have the honor to be,

Very respectfully, sir, your obedient servant,

W. T. BARRY.

Hon. RICHARD M. JOHNSON,

Chairman of Committee on Post Office and Post Roads, H. R.

21st CONGRESS.]

No. 95.

[1st SESSION.

ADVANCES FOR PRINTING; CHANGES IN CERTAIN CONTRACTS; NEWSPAPERS IN WHICH ADVERTISEMENTS FOR PROPOSALS ARE PUBLISHED; EXTRA CLERKS; ALTERATIONS, REPAIRS, AND FURNITURE; INCOMPETENT CONTRACTORS; DUTIES OF THE ASSISTANT POSTMASTER GENERAL.

COMMUNICATED TO THE SENATE, MAY 5, 1830.

SIR:

POST OFFICE DEPARTMENT, *May*, 1830.

In obedience to the following resolutions of the Senate of the 10th ultimo, I have the honor to report:

1. "Resolved, That the Postmaster General be directed to inform the Senate whether any money has been paid by him or his predecessor in office to the present printer for Congress, in advance for work to be done; and, if so, how much, when, why, and under what circumstances."

It does not appear, from the books of the Department, that any moneys were paid by my predecessor to the present printer for Congress, in advance for work to be done; nor have any moneys been paid to him by me in advance.

A draft was made by the present printer for Congress on my predecessor in office for \$1,515 75, and accepted by him; which draft was discounted at the Patriotic Bank, and became due after I had come into the Department. It was alleged by the drawer that the draft was made at the suggestion of my predecessor, on account of printing which he intended to employ him to execute for the Department. That printing was given to others to execute, without a knowledge on my part that it had been promised to the present printer for Congress. When the draft became due, I withheld the payment, because it did not appear to be due from the Department to him; and the draft was protested. It remained under protest till after the advertisements for proposals to carry the mail were published in his paper, when he presented his account for the same; and in part payment of that account the draft was taken up.

2. "Resolved, That the Postmaster General be directed to inform the Senate whether any change has been made by him in the contract for carrying the mail between Georgetown and Charleston, South Carolina, and, if so, why, what the change is, and what the additional expense; and, also, the same information in regard to the contract for carrying the mail between Fayetteville, North Carolina, and Camden, South Carolina."

To the first inquiry in this resolution, I reply that no change has been made by me in the contract for carrying the mail between Georgetown and Charleston, South Carolina.

A contract was made by my predecessor with J. W. Janerett, to transport the mail between Georgetown and Charleston, South Carolina, from January 1, 1827, to December 31, 1830, at \$6,000 a year; which contract appears to have been transferred by Mr. Janerett, on the 1st of March, 1828, to Josiah T. Harrell. The following stipulation is contained in the contract: "It is also agreed that the Postmaster General may alter the times of arrival and departure fixed by said schedule, and alter the route, (he making an adequate compensation for any extra expense which may be occasioned thereby;) and the Postmaster General reserves the right of annulling this contract, in case the contractor do not promptly adopt the alteration required." To this, the following schedule is annexed:

"Leave Georgetown every day at 5 o'clock A. M.

Arrive at Charleston same day at 5 o'clock P. M.

Leave Charleston every day at 5 o'clock A. M.

Arrive at Georgetown same day at 5 o'clock P. M."

Agreeably to the above stipulation, the late Postmaster General altered the schedule, as appears by a letter of his assistant to Mr. Harrell, of April 15, 1828, as follows: "You will, from the 1st of next month, receive the mail at Georgetown one hour and a half earlier than you now do; and you must punctually deliver it at Charleston by 3 P. M. instead of 5 P. M."

This alteration appears to have been promptly complied with on the part of the contractor; and the late Postmaster General, by a letter of his assistant of the 3d July following, promised Mr. Harrell that "all expenses incurred by him under the direction of the Department, for any change in the transportation of the mail, should be paid; but that no payment would be made unless he would distinctly state the expense incurred."

Mr. Harrell, on the 26th of February, 1829, presented, through an honorable representative in Congress, his claim for the increased expense to which this alteration had subjected him. The late Postmaster General referred to his senior assistant to know what the change was; and the assistant stated that the same length of time was given him for performing the service which had been previously given, and that the only inconvenience to which the change subjected the contractor was that of running two hours, and crossing the Santee river in the night instead of the day, which would be inconsiderable. Upon this report of the assistant, the late Postmaster General made the following endorsement upon the claim: "As the contractor has now the same time to perform his route as formerly, it is not