

Report No. 131.

[To accompany bill S. No. 28.]

HOUSE OF REPRESENTATIVES.

THOMAS RHODES.

JANUARY 25, 1848.

Read, and laid upon the table.

Mr. GEORGE W. JONES, from the Committee on the Post Office and Post Roads, made the following

REPORT:

*The Committee on the Post Office and Post Roads, to whom was referred Senate bill No. 28, entitled "An act for the relief of Thomas Rhodes," submit the following report:*

The committee, upon examination of the papers accompanying the bill referred to them, find that, in pursuance of the provisions of a joint resolution, approved May 24, 1828, "authorizing the Postmaster General to cause to be examined the route from Mobile to Pascagoula, and if, in his opinion, it should be the most expedient route to the city of New Orleans, he shall be, and hereby is, vested with full power and authority to adopt that route in lieu of the present one from the city of Mobile to New Orleans." Hon. John McLean, then Postmaster General, on the 1st August, 1828, wrote to the postmaster at New Orleans, requesting him, at "some convenient time, before the first of the ensuing November, in conjunction with the postmaster at Mobile, to examine the route from Mobile to Pascagoula, and report to him their opinions whether its establishment would advance the public convenience, suggesting to them that, in making their examination, it would be well to ascertain the quality of the ground on which the road was then opened, or upon which it might be located, also the expense which might be necessary to make it a good road for stages." These gentlemen made the examination and reported to the Postmaster General; and, under date of October 7, 1828, were advised that their report "met with the full approbation of the Postmaster General."

On the 17th June, 1828, the Postmaster General advertised for

proposals for carrying the mail thrice a week between Mobile, Alabama, and New Orleans, Louisiana, in steamboats—the mail to be carried from city to city within thirty hours; and the service to commence on the 1st of November, and continue four years. On the 9th of August, 1828, Jeremiah Austell, the partner of the present claimant, wrote to the Postmaster General that he had observed in the public papers that proposals would be received to carry the mail from Mobile to New Orleans, by steamboats, three times a week, which he thought could not be done without considerable risk of failures, and a very considerable expense to the contractors. That, having made himself acquainted with the geography of the country, would propose a different route for the consideration of the Postmaster General, which he thought would be attended with less risk and much less expense. In the event his suggestion should be adopted, he proposed to carry the mail in a stage from Mobile to Pascagoula, thence to New Orleans in a steamboat, three times a week, in less than twenty-two hours from city to city, for the sum of fourteen thousand dollars per annum, upon condition that the road from Mobile to Pascagoula should be put in a suitable condition for the stage; *“which may be done at a very small expense, there being no water or streams in the way.”*

On the 16th of August, 1828, Thomas Rhodes, the present applicant for relief, informed the Postmaster General, by letter, that he had examined the route from Mobile to New Orleans, by the way of Pascagoula bay, and found it much the shortest and most certain way to carry the mail, that some thirty or forty miles of the route would be by land in stages, the residue in steamboats. Having made calculations of the cost, and having charge of a first class steamboat, of which he was owner with Jeremiah Austell and Robert Williamson, had agreed to lay in proposals for carrying the mail agreeable to his, the Postmaster General's, proposals, three times a week, for the sum of fourteen thousand dollars per year, and that he had authorized Jeremiah Austell to write to that effect; stating, “if Austell's proposals should not come to hand, you may consider this a proposal. The road from this (Mobile) to Pascagoula to be made by or at the expense of the United States. The road I will be obligated to make within sixty days from the time I may receive notice, for the sum of four thousand dollars, or one hundred dollars per mile, and will keep it in good repair for the term of four years from the completion of the work—the money to be paid on the completion of the work.”

By letter, dated October 7, 1828, addressed to Thomas Rhodes, he was advised of the acceptance, by the Postmaster General, of his “proposal to transport the mail by land and water between Mobile and New Orleans, at the rate of fourteen thousand dollars per annum,” and directed to commence the service with all practicable expedition, and carry the mail upon a plan designated by the postmasters at Mobile and New Orleans, and that a contract would be made out and sent for him to execute, without saying a word about the proposition to make the road.

October 8, 1828, Jeremiah Austell, by letter, informed the Post-

master General, that he "had recently received a letter from Mr. Owen upon the subject of the contemplated mail route to New Orleans, in which he informs me that you have no authority to contract for cutting the road to Pascagoula. Therefore, to obviate the difficulty that may exist, I will make you another proposal, if it should not be too late, in behalf of myself, Thomas Rhodes, William Mathison, and Robert Williamson; and that is, we will transport the mail within the time and manner first proposed at the following rates, to wit: for the first year, at eighteen thousand, and each of the succeeding three years at fourteen thousand dollars per annum."

October 29, 1828, Mr. Austell was informed, "the proposals had been closed and a contract made for the route, Mobile and New Orleans, before your (his) letter of the 8th instant reached the department."

The contract, as it appears to the committee, was awarded to Thomas Rhodes and Jeremiah Austell, and a contract executed for carrying the mail for four years, from October 1, 1828, between the cities of Mobile and New Orleans, three times a week, at fourteen thousand dollars. It further appears to the committee, that the contractors, Rhodes and Austell, commenced carrying the mail, under that contract, on the 15th December, 1828, and continued to perform that service until the 30th of May, 1829, a period of about five and a half months, for which they seem to have been fully paid, as no claim is now set up for any balance due them for mail transportation.

On the 11th of February, 1830, William D. Stone, postmaster at Mobile, at the request of Thomas Rhodes, addressed a letter to the Assistant Postmaster General, in which he says, after stating the length of time which Thomas Rhodes carried the mail, "It will be understood, however, by the department, that the mail was not *regularly* conveyed by Mr. Rhodes during the time above mentioned, according to his *contract*. Some weeks I received three mails, other weeks two mails, and one week but one mail. So that *every trip* may be considered as a failure under his contract, except two."

In consequence of the repeated failures, and the great irregularity, the Postmaster General, on the 14th April, 1829, caused a letter to be addressed to Mr. Rhodes, informing him the contract had been forfeited and the route again advertised; and on the 30th May, 1829, he ceased to carry the mail, as above stated. Jeremiah Austell, one of the partners, left the United States, and the other, Thomas Rhodes, preferred his petition to Congress, praying to be remunerated for cutting the road, as alleged in his petition, from Mobile to Pascagoula. Upon what principle is this demand for remuneration made? Certainly not upon the ground that the work was performed under contract with the government, or with the Post Office Department. The proposal to carry the mail for a specific sum was accepted, without referring in the least to the proposition or condition concerning the opening of the road. And one of the partners, at least, had notice before the contract for trans-

porting the mail was concluded, that the Postmaster General had no power to contract for the opening of the road nor funds within his control, out of which he could pay for such work. If not, then, a legal demand, if it exists at all, it must be upon the equitable principle, that the petitioners, having performed the work, and the government received the benefit, is entitled to fair and equitable compensation for the time and labor actually expended. Admit this principle to be correct, the committee have no evidence to aid them in ascertaining the amount which should be paid to the claimant, save his declaration in his petition, that "the contractors proceeded, upon their private funds, to cut out and open the said road, in length from forty to forty-five miles, the greater part of which lay through an almost trackless wilderness, and in the execution of which they were necessarily compelled to build bridges over creeks and rivers, and construct causeways; that they expended in the work upwards of thirty-five hundred dollars, and were laboriously employed for about three months." Rhodes, the present applicant for relief, says, "they were necessarily compelled to build bridges over creeks and rivers, and construct causeways." Austell, his partner, says, he had made himself acquainted with the geography of the country, and the road could be put in a suitable condition for the stage "*at a very small expense, there being no water or streams in the way.*" The petitioner says, they "were laboriously employed for about three months." The correspondence with the department shows that they could not have received information of the acceptance of their proposal to carry the mail before the middle of October, and that they commenced the service on the 15th December. It is hardly probable they commenced the work before they were apprised they had the contract for carrying the mail. The committee have no evidence when the work was commenced, if commenced at all; how long they were engaged in the work, what number of hands were employed, nor the amount expended, save the statement of the petitioner, that they had expended over thirty-five hundred dollars.

True, the petitioner, in his letter to the Postmaster General, proposed to construct the road from Mobile to Pascagoula within sixty days, for four thousand dollars, or one hundred dollars per mile, and "*keep it in good repair for the term of four years from the completion of the work.*" It is not pretended by the petitioner that he has ever repaired or worked on said road since he lost the mail contract by forfeiture. The committee think it not at all unreasonable to suppose that the labor and expense of opening the road would be comparatively small to what would be necessarily required to keep it in repair for the term of four years. Rhodes and Austell, being acquainted with the geography of the country and condition of the road, submitted proposals for carrying the mail, with the knowledge that the Postmaster General had no authority to contract for cutting or opening roads; their proposal was accepted, and under these circumstances they entered upon the service.

In the present case, the committee have been unable, from the facts presented, to satisfy their minds, that the petitioner is entitled to any relief whatever, certainly not from the general government. If the work was really performed in a manner and under circumstances which would entitle the petitioner to remuneration, he should have looked to the States within which the work was done rather than to Congress.

It is such a claim as no prudent individual, in the management of his private business, would admit as either legal or equitable; and the committee know of no principle or rule by which a claim against a government should be allowed and paid as just, which could not be sustained upon either legal or equitable principles as against an individual. Therefore, the committee report the bill back to the House and recommend its rejection.