

THOMAS RHODES AND JEREMIAH AUSTILL.

[To accompany bill C. C. No. 14.]

JULY 22, 1856.

The COURT OF CLAIMS submitted the following

REPORT.

To the honorable the Senate and House of Representatives of the United States in Congress assembled:

The Court of Claims respectfully presents the following documents as the report in the case of Thomas Rhodes and Jeremiah Austill *vs.* The United States:

1. The petition of the claimant.
2. Brief of claimant's counsel.
3. Brief of the solicitor of the United States.
4. Opinion of the court on preliminary question, in which testimony is ordered to be taken.
5. Claimant's depositions of witnesses in the case.
6. Documents referred by the House of Representatives, returned to the House in a separate envelope.
7. Opinion of the court on the facts.
8. Bill for the relief of claimants.

By order of the Court of Claims.

In testimony whereof, I have hereunto set my hand and affixed the seal of said court at Washington, this tenth day of July,
[L. S.] A. D. 1856.

SAMUEL H. HUNTINGTON,
Chief Clerk Court of Claims.

To the honorable the Court of Claims:

The petition of Thomas Rhodes, of the State of Mississippi, and Jeremiah Austill, of the State of Alabama, respectfully represents, that a resolution of Congress was passed May 24, 1828, (4 Statutes at Large, 322,) "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." In pursuance of this authority, the Postmaster General, on the first of August, 1828, wrote to the postmasters at New Orleans and Mobile, requesting them to examine said route, and report to him their opinion whether its establishment as a mail route would advance the public convenience. They were required to ascertain the distance; to examine the quality of the ground; to estimate the probable expense of opening a good road for stages; and to ascertain the time that would be saved in conveying the mail between the two cities, and the expense of the transportation of the same three times a week. An examination of the route was made by the postmasters aforesaid, and a report was forwarded to the department, before the 6th day of October, 1828; and on that day the Postmaster General acknowledged the receipt of the report, and informed the postmaster at New Orleans that it was entirely satisfactory, and subsequently informed the postmaster at Mobile that the joint report met his entire approbation.

It being understood, either from an advertisement of the department, or from information obtained from the postmaster at Mobile or New Orleans, that the Postmaster General wished to contract for carrying the mail from Mobile to New Orleans by Pascagoula bay, the petitioners, Rhodes for himself, and said Austill, on the 10th of August, 1828, made a proposal in writing for conveying the mail between the two cities, by way of Pascagoula, three times a week each way. He offered to transport the mail for fourteen thousand dollars a year, but added, that the road from Mobile to Pascagoula must be made by or at the expense of the United States; and then proceeded to say that he would make the road suitable for stages for four thousand dollars, and keep it in repair for four years, the term of the proposed contract. In case he should be required to make the road, *the money to be paid on the completion of the work.*

That it was an essential part of Mr. Rhodes' proposal, and an express condition of his offer to carry the mail for \$14,000, that the government should either make the road, or pay him four thousand dollars for making it; the money to be paid, as aforesaid, on the completion of the work.

On the 7th of October, a letter from the department informed the petitioner, Rhodes, that his proposal for carrying the mail from Mobile to New Orleans, by land and water, at the rate of fourteen thousand dollars per annum, was accepted by the Postmaster General, and requested him to begin with all practicable expedition to convey the mail upon a plan to be designated by the postmasters of Mobile and New Orleans. Although the terms of the acceptance were general, and made no express reference to the opening of the road, yet, as he was required to put the mail in immediate operation, which could not be done until the road was opened, and as this was well known to the department when it gave this direction, they necessarily construed the acceptance of the department, coupled with this direction, as an order to construct the road and put the mail in operation

as soon as possible. The postmasters to whom they were referred for the plan of proceedings concurred in this construction, and with their full concurrence they proceeded to open the road. That the road was completed by the 15th of December, 1828; and on that day they commenced carrying the mail over the same.

The first expense of constructing the road, erecting the bridges, &c., a distance of about forty miles, was about \$3,500. Subsequently, during the winter, it was found necessary to cut ditches on each side of the road, and make other repairs, at an expense of about \$866 more, which was expended for that purpose by the petitioners.

On the 11th of December, 1828, Mr. Austill, in behalf of himself and the petitioner, Rhodes, informed the Postmaster General, by letter of that date, that "Having nearly completed the road, I will commence running the mail on the 15th instant, and I shall expect to be remunerated without delay for cutting the road. I have addressed Mr. Owen upon the subject, which I hope will be attended to." That no answer to this letter was received until he was advised by the letter of the department, dated February 16, 1829, addressed to Jeremiah Austill, in which the department said: "It was supposed you were informed, on the 29th of December last, (as it was the intention of the department at the time,) that the department possessed no means to remunerate you for any expense that you may have incurred in the improvement of the road." In another letter from the department, bearing the same date, he was informed that it was the business of his representative, Mr. Owen, to procure an appropriation from Congress for that purpose.

That this correspondence between the parties, at the time, shows that the road was made by the petitioners in good faith, and under a belief that, according to the terms of the proposals, and the acceptance of the department, it was to be paid for when completed.

Your petitioners further show, that, though they were advised by the letter of acceptance, dated October 7th, 1828, that a contract would be sent to them for execution, yet no such contract was sent from the department until the 12th of March, 1829, and that they were consequently left to act, until the receipt of the letter of the 16th of February, 1829, above referred to, upon their own construction of the legal effect of the proposals and the acceptance of the department.

Your petitioners further state, that when the contract, thus forwarded by the department, was presented to them for execution, they ascertained that it was merely the usual contract for the transportation of the mail between Mobile and New Orleans, for the sum of \$14,000 per annum, and provided no compensation for the construction of the road, and took no notice of that part of the petitioners' proposals which related to the construction of the road, and which, they insist, was as much covered by the acceptance as the price named for the transportation of the mail. The Postmaster General refused to have the contract altered so as to conform to the proposals, and actually refused the mail pay proper, unless the contract should be executed in the form in which it had been prepared by the department. The petitioners having exhausted their means in building the road, and in furnishing and stocking the line, and being greatly embarrassed for

the want of the money expended in constructing the road, were reluctantly compelled to acquiesce in this unjust demand, and to execute the contract in the form required.

At the suggestion of the department, an immediate application was made by the petitioners to Congress for an appropriation to pay for the expense of constructing the road; but this having failed, and the department having given notice on the 14th of April, 1829, that the route was to be relet, and thus virtually annulled the contract before it had been actually signed, and destroyed the remaining credit of the petitioners, they were obliged to abandon their contract, and only continued to transport the mail until their successor was prepared to carry the same.

The petitioners therefore say, that the first breach of contract was on the part of the Post Office Department, in its failure and refusal to pay for the construction of the road; and that the failures which were made the pretext for annulling the contract, by the department, were in a great measure caused by its own wrong. This is substantially conceded by the department in a letter of the 11th July, 1829, addressed to the petitioner, Rhodes, in which Mr. Bradley, the Assistant Postmaster General, said: "I have received your letter of the 21st, and regret that the non-appropriation by Congress for opening the road [from] Mobile to Pascagoula bay, had compelled you to give up the contract." That any other causes of failure were such as resulted from the newness of the route, the season of the year, and the character of the country through which the mail had to be carried, being a low and wet one, over which it was impossible to carry the mail with entire regularity until the road became settled, and until a boat better adapted to the navigation than any which could be procured could be constructed.

The petitioners further say, that when the contract was annulled on the 14th of April, 1829, they had nearly completed building a boat at Pittsburg, expressly adapted to the navigation of the waters between Pascagoula and New Orleans; and that in consequence of the annulment of the contract, they were compelled to dispose of said boat at a large sacrifice; and that the loss on the same was about \$3,084 20. That they also suffered losses upon the sale of the teams, stages, stables, and other property required for the transportation of the mail upon this route. That other heavy expenses, losses, and damages resulted from the same cause, amounting, as your petitioners believe, to the sum of \$2,704 88, besides the expense of constructing the road.

The petitioners further say, that the road was necessary and of great utility, and continued to be used for the transportation of the mail after their contract was annulled; and that the government thus had the benefit of this expenditure, in obtaining its subsequent contract for the transportation of the mail at a lower rate of compensation.

Your petitioner, Rhodes, for himself and in behalf of Jeremiah Austill, has made repeated applications to Congress for relief; and the action of the two houses upon his applications is shown by the statement hereunto annexed.

The petitioners further say, that they have never assigned their

interest in the aforesaid claim, nor any portion of the same, and that they still remain the owners of the same.

The petitioners therefore pray, in consideration of the premises, that the amount of money expended in the construction of the road, with the interest thereon, may be decreed to them, together with such damages for the breach of contract, on the part of the Post Office Department, as in the judgment of this honorable court may seem to be just; and, as in duty bound, will ever pray, &c.

RHODES & AUSTILL.

By JEREMIAH AUSTILL.

STATE OF ALABAMA, }
County of Mobile. }

Personally appeared before me this 18th day of September, 1855, Jeremiah Austill, well known to me to be the person named in the petition, who having been first duly sworn, deposeth, and saith, that the facts stated in the foregoing petition are true, to the best of his knowledge and belief.

Given under my hand as judge of the probate court, in and for said [L. s.] county and State, as witness my hand and the seal of said court, this September 18, 1855.

JOHN A. HITCHCOCK, *Judge.*

CHA. E. SHERMAN,
Attorney for Claimants.

UNITED STATES SENATE.

ACTION ON THE CASE OF THOMAS RHODES.

Session.	Congress.	Reference to Committee.	Action by Committee.	No. of bill reported	How disposed of.
1	21	Post Office and Post Roads.	Reported bill.-----	184	No action.
1	22	---do.-----do-----	-----do-----	204	No action.
2	22	---do.-----do-----	-----do-----	24	No action.
1	23	---do.-----do-----	-----do-----	12	Passed.
2	23	---do.-----do-----	-----do-----	50	No action.
1	24	---do.-----do-----	Reported adversely.-----	-----	Indefinitely postponed.
2	24	---do.-----do-----	Reported bill.-----	200	Passed.
2	25	---do.-----do-----	Leave to withdraw case.		
3	25	---do.-----do-----	Reported bill.-----	88	Laid on table.
1	26	---do.-----do-----	-----do-----	29	Passed.
2	26	---do.-----do-----	-----do-----	31	No action.
1	28	---do.-----do-----	Committee discharged; no report.		
2	28	---do.-----do-----	Reported bill.-----	128	No action.
1	29	---do.-----do-----	Reported.-----	100	Passed.
2	29	---do.-----do-----	Reported bill.-----	58	Passed.
1	30	---do.-----do-----	-----do-----	28	Passed.

IN HOUSE OF REPRESENTATIVES.

1	23	Post Office and Post Roads.	Reported Senate bill without amendment-----		And rejected.
2	23	-----do.-----do-----	No action by committee.		
2	24	-----do.-----do-----	Reported Senate bill-----	200	No action at all.
2	25	-----do.-----do-----	S. bill 20 amended and-----		Referred to Committee of Whole House.
1	26	-----do.-----do-----	S. bill 29, adverse report.	325	
1	29	-----do.-----do-----	S. bill 100 amended-----		Referred to Whole House.
2	29	-----do.-----do-----	S. bill 58 amended-----		Referred to Whole House.
1	30	-----do.-----do-----	S. bill 28, adverse report.	131	Laid on table.
2	30	-----do.-----do-----	S. bill 28 amended-----		Laid on table.
2	31	-----do.-----do-----	Reported bill.-----	104	Referred to Committee of Whole House; no action.

THOMAS RHODES AND JEREMIAH AUSTILL }
vs. } *Contract.*
 THE UNITED STATES.

The original contract between the above named parties is in words and figures as follows, and is, or should be, on file in the office of the Postmaster General, to which, for greater certainty, reference is made:

MOBILE, *August 16, 1828.*

SIR: Having examined the route from this to New Orleans, by the way of Pascagoula bay, and find it much the shortest and most certain way to carry the mail—it must be conveyed thirty or forty miles by land, in stages; the residue of the way by steamboats—I have made a calculation of the cost, and, having charge of a first-rate steamboat of 139 tons, called Marietta, and am owner, with Jeremiah Austill and Robert Williamson, all of the city and county of Mobile, have agreed to lay in proposals for conveying the mail, agreeably to your proposals, thrice a week, for the sum of \$14,000 per year, and have authorized Jeremiah Austill to write to that effect. If Austill's proposals should not come to hand you may consider this a proposal. The road from this 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 the notice, for the sum of four thousand dollars, or for one hundred dollars per mile, and will keep it in good repair for the term of four years from the time of the completion of the work. The money to be paid on the completion of the work.

If it should be necessary to convey the mail by this route before the stage-road is complete, we will have it carried on horseback. This route the mail can be carried at least four hours sooner than by steamboats from port to port, taking the best weather, and scarcely a probability of being detained by bad weather any time.

I case of our getting the contract I should like to have the earliest information, or in case I should have the opening of the road.

I am, sir, with due respect, yours,

THOS. RHODES.

N. B.—Please to inquire of George W. Owen respecting capacity, &c., or of any gentlemen you may think proper in Mobile, as I am known here.

T. R.

POST OFFICE DEPARTMENT,
Office of Mail Contracts, October 7, 1828.

SIR: The Postmaster General has decided to accept your proposal to transport the mail, by land and water, between Mobile and New Orleans, at the rate of fourteen thousand dollars per annum. You will begin with all practicable expedition, and convey the mail upon a plan designated by the postmasters of Mobile and New Orleans. A contract will be made out and sent for you to execute.

Respectfully, &c.,

P. BRADLEY.

Mr. THOMAS RHODES, *Mobile, Ala.*

PHILLIPS *for the claimant.*

The petition states the resolution of Congress 24th May, 1828, vesting the Postmaster General "with full power and authority to adopt" the new route.

That under this, the Postmaster General wrote to the postmasters at Mobile and New Orleans to report the probable expense of "*opening a good road for stages.*" This report was made, and on the 6th October, 1828, the Postmaster General replied that the joint report met his entire approbation.

The petitioner offered to carry the mail on this route for \$14,000, "the road from this to Pascagoula to be made by or at the expense of the United States." He then adds, that he will undertake to make the road for \$4,000, payment to be made on the completion of the work. That if it should be necessary to convey the mail on this route before the road is completed, he will have it carried on horseback.

The day after the Postmaster General wrote to Mobile and New Orleans postmasters, Mr. Bradley, the assistant, wrote to petitioner, to wit, 7th October, 1828, accepting the proposal for carrying the mail for \$14,000. "*You will begin with all practicable expedition and convey the mail upon a plan designated by the postmasters at Mobile and New Orleans. A contract will be made out and sent for you to execute.*"

With the concurrence of the postmasters at Mobile and New Orleans, they went to work and finished the work by the 15th December, 1828.

The petitioners allege that no contract was sent to them to be executed until the 12th March, 1829.

The contract purports to have been executed on the 1st of October, 1828; but that this is not the true date of execution is evident from the facts:

1st. That on 7th October, the department writes, "a contract will be *made out and sent to you.*"

2d. That the contract shows by its endorsement that the oath required by law was not taken until 2d April, 1829.

On 11th December, 1828, Austill writes to the department that, "having nearly completed the road, I will commence running on the 15th inst., and shall expect to be remunerated without delay for cutting the road."

No answer was received to this letter until 16th February, 1829, when the department writes, "*it was supposed* you were informed on 29th December last, as it was *the intention of the department at that time*, that the department had no MEANS to remunerate you," &c.; and, in another letter of same date, he was referred to Mr. Owen to obtain an appropriation.

When the contract arrived, the demur of the parties to it, as containing no stipulation as to the road, was met with the refusal to pay the mail pay proper without it was executed as it stood; and, under the force of these circumstances, they were compelled to sign.

The road has been of great service to the government, and they continued to use it long after their contract had been annulled, and it enabled the government to transport the mails at a lower rate than they could otherwise have done. My propositions are:

1st. That as there was no road fitted for the transportation of the mail between the designated points, the authority given to the Postmaster General, to "adopt that route," carried with it the power to *make the road.*

2d. That if the department was not authorized, yet the facts of this case show that the agents of the government had, either wilfully or unintentionally, deceived the parties into the construction of the road. That the road was necessary for the use of the government, and was valuable to them in enabling them to have the mails carried at a less cost; and having thus been benefited by the labor and means of the petitioner, the government is bound to refund.

The advertisement for contract, 17th of June, 1828, was to carry the mail by water as usual. (See advertisement.)

Apply these facts to a case among citizens. If the agent did exceed his authority, but the principal used the road and had the full benefit of the improvement, could he in equity have resisted the payment of it?

There have been fifteen reports in the Senate favorable to this claim. In twelve different Congresses it passed the Senate nine times. During this period there was one unfavorable report, and this was *indefinitely postponed.*

During the same period, in the House there have been *but two* adverse reports.

As to the equity of the claim, see letter of Judge McLean, 23d March, 1848, and letter of Mr. Bradley, 2d February, 1830.

On the final hearing in the petition of Rhodes, et al.

BRIEF OF UNITED STATES SOLICITOR.

This is a claim for pay for constructing a road from Mobile to Pascagoula, under a contract with the Post Office Department, made in 1828.

The solicitor denies that the Post Office Department contracted for the construction of the road.

The letters set out in the petitions of August 16 and October 7, are relied on to prove such a contract. These letters are not the contract between the parties. That was subsequently executed, and dates back to the 1st October. It is not contended that this was executed under duress, or is not obligatory for any reason.

This formal contract does not cover the claim. This purports to be the whole contract between the parties. It is inadmissible to vary or add to it by other proof.

But the letters relied on do not prove any contract to pay for the road. The acceptance is explicitly confined to the proposition to carry the mail for \$14,000.

It is argued, however, that the proposition was a whole, and that the acceptance must be taken to be an acceptance of it all, although in terms it is limited to the proposition to carry the mail.

It is not necessary to show that the claimants knew that it was at best an acceptance of the proposition to carry the mail. The evidence shows that these parties did know, and did act on the knowledge, that the acceptance was limited to the mail contract.

1. This is shown, *first* by the letter of Austill, of October 8, in which it appears they knew previously that the department had no power to contract for making roads. When the department agreed, therefore, to pay \$14,000 for carrying the mail, they knew that nothing more was to be implied, because they had been informed that no contract would be made by the department on the other point.

2. The letter of December 11, relating that Austill had been to New Orleans to get contributions from the citizens to make this road, shows that the reliance was not on the contract with the department.

3. What he says of his application to Congress, through Mr. Owen, shows that he intended to appeal to Congress, as he had appealed to the citizens of New Orleans; and shows that they did not regard themselves as having any legal claim against the government in virtue of the contract with the Post Office Department.

4. The fact that the contract, executed after all these letters, contains no stipulation in relation to the road, is not conclusive as the legal evidence, but conclusive that the parties have regarded the claim now presented as growing out of the contract with the Post Office Department.

THOMAS RHODES *vs.* THE UNITED STATES.

The opinion of the court was delivered by Chief Justice Chilchrist. This claim is now twenty-six years old. It has been before Congress at sixteen sessions. There have been nine favorable reports upon it in the Senate, and it has passed the Senate nine times. It has been once rejected by the House, and at seven sessions there has been no action upon it.

The resolution of Congress of the 24th May, 1828, (4 Stat. at Large, 322,) authorized 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 was authorized to adopt it in lieu of the then présent one from Mobile to New Orleans.

On the 17th of June, 1828, the Postmaster General gave notice that proposals would be received at the department for carrying the mail three times a week between Mobile and New Orleans in steamboats. At this time there was no road from Mobile to Pascagoula, and the mail was necessarily transported for the whole distance by water. On the 1st of August, 1828, the Postmaster General requested the postmasters at New Orleans and Mobile to examine the route from Mobile to Pascagoula, and to report to him, among other things, upon the quality of the ground, and to estimate the probable expense of opening a good road for stages.

On the 16th of August, 1828, the claimant wrote to the department, saying that the route from Mobile to New Orleans, by the way of Pascagoula bay, was much the shortest and most certain way to carry the mail; and saying also, "it must be conveyed thirty or forty miles by land in stages; the residue of the way by steamboats." He then offered to carry the mail agreeably to the proposals three times a week for the sum of \$14,000 per year, and added: "The road from this 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 the notice for the sum of four thousand dollars, or for one hundred dollars per mile;" "the money to be paid on the completion of the work." His letter closes by saying: "In case of our getting the contract, I should like to have the earliest information, or in case I should have the opening of the road."

On the 7th of October, 1828, Mr. Bradley, of the office of mail contracts, wrote to the claimant that the Postmaster General had decided to accept his proposal to transport the mail by land and water between Mobile and New Orleans, at the rate of \$14,000 per annum.

The letter of the claimant is free from any reasonable doubt. The substance of it is, that the mail from Mobile to New Orleans, by way of Pascagoula bay, must be conveyed partly by land in stages, and the residue of the way by steamboats; that he would convey the mail for \$14,000 per year; that the road to Pascagoula must be made at the expense of the United States; that he would make it within sixty days for the sum of \$4,000, the money to be paid on the completion of the work.

This was clearly a proposal to transport the mail by land and water.

The land route was from Mobile to Pascagoula, where the road was to be made; the water route was from Pascagoula to New Orleans. It was so considered by the department; for the acceptance is of a proposal to transport the mail "by land and water." But the proposal is, in substance, to transport the mail by land and water for \$14,000 per year, provided the United States would pay the expense of making the road over the land route, as there was no road in existence. It was not a proposal to carry the mail for \$14,000 by land and water unconditionally, but if the United States would pay the expense of making the road. An acceptance of the proposal, upon any reasonable construction, is an acceptance of the proposal with the conditions, unless they are excluded by the terms of the acceptance; or the transaction may be regarded as an offer by the claimant to transport the mail for \$18,000 per year for the first year, and to build the road; for, in substance, it amounts to that. It was well known by the department that there was no road from Mobile to Pascagoula, and that without such a road the mail between Mobile and New Orleans could not be transported by land and water. According to the claimant's offer, the road was completed by the 15th of December, and on the 17th of December he wrote the department that he should commence running the mail by that time. Now, as his offer was to make the road in sixty days, he should have been informed by the department that the offer was not accepted at once. Instead of that, he received no answer to his letter until he received the letter of the department of the 29th of February, 1829, when he was informed that the department possessed no means to remunerate him, and that the department intended so to inform him on the 29th of December. This, by the way, would have been after the expiration of the time within which he offered to make the road.

The resolution of May 24, 1828, authorized the Postmaster General to adopt the route from Mobile to Pascagoula, if, in his opinion, it should be the most expedient route from Mobile to New Orleans. He caused the route to be examined, and was of opinion that it was the most expedient one. He thus had power to adopt the route, and a question arises as to the extent of that power. At that time there was no road over which the mail could be transported. Now, to adopt a route for the transportation of the mail, means to take the steps necessary to cause the mail to be transported over that route. If it does not mean as much as that, the resolution of Congress is nugatory. The Postmaster General had the power to contract with the claimant to transport the mail over that route, and to agree to pay him for such duty \$18,000 for the first year, and \$14,000 for the remaining years of the existence of the contract. This is the substance of the two letters of the claimant and Mr. Bradley construed together. It was worth more to transport the mail for the first year over a country where there was no road than it would be during the years succeeding, and there was no reason why the claimant should not receive a compensation commensurate with the value and difficulty of his services. If the Postmaster General may lawfully pay a larger sum for the transportation of the mail over a difficult and expensive route than for transporting it over an easy and cheap route, *a fortiori*, he may

pay a larger sum for such transportation, where, in addition to conveying the mail, the contractor is compelled to make a road over which to transport it. If he contracts to transport the mail from one given point to another, between which points it is known that no road exists, and that to fulfil his contract he must cut down hills and fill up valleys, and make a road through a wilderness with the trees he finds in his path, and bridge streams, he may, surely, without any violent expansion of the powers of the department, be compensated for such duty and expense by a sum sufficient to pay him for carrying the mail under such circumstances. He says, in effect, to the department: "I cannot afford to transport the mail for \$14,000 per year, because, in addition to the expense of coaches, horses, and drivers, I must incur the expense of putting the road in a passable condition. If you will pay me enough for the first year to enable me to do this, I will carry the mail." We see nothing unreasonable either in such a proposition or in its acceptance; and if this cannot be done, the resolution of Congress is idle, and gives the Postmaster General no available authority whatever.

The question of damages will properly be considered hereafter; and we think it is a proper case in which to order testimony to be taken.

THOMAS RHODES & JEREMIAH AUSTILL

vs.

THE UNITED STATES.

} *Notice under Rule XL.*

Please to take notice that I propose to take depositions in the above entitled cause before R. B. Owen, or James A. Kennedy, commissioners of the city of Mobile, Alabama, appointed by the judges of the Court of Claims, and to examine as witnesses, Walter Drane, of Loundes; Ursin Rabby, of Pascagoula; Lemuel Childers, of Bayou Batré; and E. Austill, of Mobile, and any other person, on the 12th day of May next, at 12 o'clock noon, at the office of the said Owen; and that said witnesses will be examined on the interrogatories hereunto annexed.

WASHINGTON, *March* 21, 1856.

CHARLES E. SHERMAN.

Per J. E.,

Attorney for Petitioners.

M. BLAIR, Esq.,

U. S. Solicitor Court of Claims.

I waive time and accept notice.

M. BLAIR, *Solicitor U. S.*

Interrogatories to be administered to Walter Drane, of Loundes; Ursin Rabby, of Pascagoula; Lemuel Childers, of Bayou Batré; E. Austill, of Mobile, and any other persons, witnesses to be produced, sworn, and examined before R. B. Owen, or James A. Kennedy, of Mobile, Alabama, commissioners appointed by the judges of the Court of

Claims, in a certain cause now pending in the Court of Claims, on the petition of Thomas Rhodes and Jeremiah Austill:

1st Int. What is your name, occupation, age, and place of residence for the past year? have you any interest, direct or indirect, in the claim which is the subject of inquiry? are you, and in what degree, related to the claimants or either of them?

2d Int. Do you know the petitioners above named, Thomas Rhodes and Jeremiah Austill, or either, and which of them?

3d Int. Do you, or do you not, know whether they were contractors for carrying the United States mails between Mobile and New Orleans in the years 1828 and 1829?

4th Int. Was there, or was there not, any road suitable for stages from Mobile to Pascagoula, when they became contractors? and if not, please state whether they were obliged to construct such a road, and did construct such a road, whereon to transport the mail; and when the said road was completed, and the mail transported thereupon?

5th Int. Do you, or do you not, know what was the expense incurred by said Rhodes & Austill in the construction of said road, including bridges and ditches, and all other necessary expenses? State the same fully. If you do not know the actual expense incurred by the contractors for the purposes aforesaid, please state, according to the best of your knowledge and belief, what would be a reasonable compensation therefor.

9th Int. Was or was not said road, or a large portion of the same, used by subsequent contractors in transporting the mails between Mobile and New Orleans, and until the mail was transported between Mobile and New Orleans wholly by water?

Lastly. Do you know of any other matter relative to the claim in question? If you do, state the same fully and at large, as if particularly interrogated thereunto.

CHARLES E. SHERMAN.

Per J. E.,

Attorney for Petitioners.

OFFICE OF THE CHIEF CLERK COURT OF CLAIMS,
Washington, April 18, 1856.

I hereby certify, that the foregoing are true copies of the original interrogatories filed in the office of the chief clerk of the Court of Claims, to be propounded to the witnesses therein named, and others, in the case of Thomas Rhodes and Jeremiah Austill *vs.* The United States; and also of the waiver and admission of the solicitor of the United States in reference to the same.

In testimony, whereof, I have hereunto set my hand and affixed
[L. S.] the seal of said court at Washington, on the day and year last
above mentioned.

SAMUEL H. HUNTINGTON,
Chief Clerk Court of Claims.

THOMAS RHODES AND JEREMIAH AUSTILL }
 vs. } In the Court of Claims.
 THE UNITED STATES.

Depositions of Ursin Rabby, Lemuel Childers, and Walter Drane, on the part of the claimants in the above entitled cause, the said witnesses having been produced, sworn, and examined before me, a commissioner of said court, at my office in the city of Mobile, at the times hereinafter mentioned.

That is to say : Ursin Rabby being first sworn and examined this 12th May, 1856, deposes and says as follows to the interrogatories to him propounded, to wit :

1st Int. What is your name, occupation, age, and place of residence, for the past year? Have you any interest, direct or indirect, in the claim which is the subject of inquiry? Are you, and in what degree, related to the claimants, or either of them?

Answer. My name is Ursin Rabby ; my age is about 57 years ; occupation is that of a farmer, and my residence for the past year has been at East Pascagoula. I have no interest whatever in the claim. Am not in any way related to the claimants or either of them.

2d Int. Do you know the petitioners above named, Thomas Rhodes and Jeremiah Austill, or either, and which of them?

Answer. I know them both.

3d Int. Do you, or do you not, know whether they were contractors for carrying the United States mail between Mobile and New Orleans, in the years 1828 and 1829?

Answer. I know that they were contractors for carrying the mail in those years.

4th Int. Was there, or was there not, any road suitable for stages from Mobile to Pascagoula when they became contractors? and if not, please state whether they were obliged to construct such a road, and did construct such a road, whereon to transport the mail; and when the said road was completed and the mail transported thereupon?

Answer. There was no road at all between Mobile and New Orleans at that time. They were obliged to make a road, and did make one, whereon to convey said mail. The said road was completed and the mail transported thereupon, as near as I can remember, about twenty-eight years ago.

5th Int. Do you, or do you not, know what was the expense incurred by said Rhodes & Austill in the construction of said road, including bridges and ditches, and all other necessary expenses? State the same fully. If you do not know the actual expense incurred by the contractors for the purposes aforesaid, please state, according to the best of your knowledge and belief, what would be a reasonable compensation therefor.

Answer. I was employed by the petitioners to work on said road whilst it was being constructed; and though I do not know the actual expense incurred by them for its construction, I am satisfied, from my knowledge of the country over which it ran, and of the work done upon it, that it could not have been done for less than \$7,500.

6th Int. Was or was not said road, or a large portion of the same, used by subsequent contractors in transporting the mails between

Mobile and New Orleans, and until the mail was transported between Mobile and New Orleans wholly by water?

Answer. Said road was used by subsequent contractors in transporting the mails between Mobile and New Orleans, until the route was changed to that by water.

Lastly. Do you know of any other matter relative to the claim in question? If you do, state the same fully and at large, as if particularly interrogated thereunto.

Answer. I have stated about all I know in relation to the matter.

URSIN RABBY.

Lemuel Childers being next sworn and examined in answer to the said interrogatories above written and answered by said Rabby, whose deposition is above written, deposes and says—that is to say:

To the first interrogatory he says: My name is Lemuel Childers; my occupation that of a farmer; I am between sixty-three and sixty-four years of age, and have resided for the year past in Mobile county, Alabama; have no interest at all in the claim, nor am I in any way related to the claimants.

To the second interrogatory he says: I know both the petitioners.

To the third interrogatory he says: They were contractors for carrying the mail between the points inquired of, in the years inquired of.

To the fourth interrogatory he says: There was no road at all when they became contractors, that it would be possible for a coach to travel on. They built a road, and when completed they transported the mail thereon.

To the fifth interrogatory he says: I superintended the work upon the said road as overseer. They were engaged in building said road from November, 1828, to some time in July of 1829; and, though I do not know what the actual cost was to them, I think it must have been all of \$7,000. I worked on the road four months as overseer, and during that time there were an average of twenty hands engaged in work upon it. After I ceased to be overseer, I hired on the work and had business on it, and know that they continued the work on it, and carried the mail. The bridges on said road were not built by the hands working on the road, but were built by contract, with the exception of one, the Jackson bridge, which was built by the hands.

To the sixth interrogatory he says: The greater part of said road was used by subsequent contractors in transporting the mail, and continued to be so used until the route was changed to that by water.

To the last interrogatory he says: I have stated all I know of the matter.

[And here the examination was adjourned to Tuesday, 13th May, 1856.]

LEMUEL CHILDERS.

Walter Drane being next sworn and examined in answer to said interrogatories which are above written, and which have been answered by

Ursin Rabby and Lemuel Childers, whose depositions are above written, deposes and says, this 13th day of May, 1856, as follows, to wit:

To the first interrogatory he says: My name is Walter Drane; occupation that of a farmer, and my residence is in Loundes county, Alabama, and I am in the sixtieth year of my age; have no interest, either direct or indirect, in this claim; I am the brother-in-law to one of the claimants, Jeremiah Austill, but am in no way related to the other claimant, Thomas Rhodes.

To the second interrogatory he says: I have been for many years well acquainted with both of them; have known them for about thirty-four years.

To the third interrogatory he says: They were contractors for carrying the United States mail between Mobile and New Orleans in the years 1828 and 1829.

To the fourth interrogatory he says: There was no road at all between Mobile and Pascagoula suitable for transporting the mail on at that time. The claimants were obliged to construct such a road, and did do so; and when the said road was completed, which was in the fall of 1828, the mail was transported on it in the fall and winter of that year, until about May of 1829.

To the fifth interrogatory he says: The first construction of the road cost the claimants \$4,000. This was exclusive of ditches and causeways. After the road was opened, and the winter had set in, a full third of the road had to be ditched and causewayed to enable the stages to pass over it; and owing to the unfavorable country over which it ran, lighter vehicles had to be procured by the contractors than they had begun to use at first; and all this cost them about \$4,000 more, making the whole cost incurred by them \$8,000. I was well acquainted with the said road; was over it frequently, and am satisfied that \$8,000 would be nothing more than a just compensation to the claimants for the labor and money put upon it.

To the sixth interrogatory he says: I removed from Pascagoula, where I was then residing, in May or June of 1829, and in consequence do not know whether said road was used by subsequent contractors or not.

To the last interrogatory he says: I have no further information in relation to this claim than I have already given in answer to the preceding interrogatories:

WALTER DRANE.

THE STATE OF ALABAMA, }
Mobile County. } ss.

On the 12th day of May, 1856, and on the 13th day of May, 1856, personally came Ursin Rabby, Lemuel Childers, and Walter Drane, the witnesses above named—that is to say, Ursin Rabby and Lemuel Childers on the 12th, and Walter Drane on the 13th of said month, and after having been sworn to tell the truth, the whole truth, and nothing but the truth, the questions contained in the above deposition were written down by the commissioner, and then proposed to each of the said witnesses, and their answers thereto were written down by

the commissioner in the presence of the witnesses, who then subscribed the deposition in the presence of the commissioner.

The depositions of Ursin Rabby, Lemuel Childers, and Walter Drane, taken at the request of Thomas Rhodes and Jeremiah Austill, to be used in the investigation of a claim against the United States now pending in the Court of Claims in the name of said Rhodes and Austill.

The adverse party was notified, did not attend, and did not object.

RICHARD B. OWEN,
Commissioner.

Commissioner's fees, \$15 ; postage, 20 cents ; paid by claimants.

IN SENATE OF THE UNITED STATES.—*January 30, 1852.*

The Committee on the Post Office and Post Roads, to whom was referred the memorial of Thomas Rhodes, asking compensation for improving the mail road between Mobile and New Orleans, report :

That this case has been before the committee on a former occasion, and that they see no reason for altering the opinion which they have already expressed in a report annexed to the documents on file. They therefore ask leave to refer to that report for the facts of the case, and the reasons which induce them to return it back to the Senate, with a recommendation that the accompanying bill be passed.

IN SENATE OF THE UNITED STATES.—*March 30, 1854.*

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

That the claim of the petitioner was presented at the last session of Congress, and a bill for his relief reported. The committee concurring in the views expressed in the previous report, hereto annex the same and report the accompanying bill.

IN SENATE OF THE UNITED STATES.—*March 29, 1854.*

The Committee on the Post Office and Post Roads, to whom was referred the petition of Thomas Rhodes, submit the following report :

That the committee have examined the claim of the petitioner, and present a statement of the facts on which his claim is founded. During the session of Congress in 1828, a resolution was passed, "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." In pursuance of this authority, the Postmaster General, on the 1st of August, 1828, wrote to the postmasters at New Orleans and Mobile, requesting them to examine said route, and report to him their opinion whether its establishment as a mail route would advance the public conveniences. They were required to ascertain the distance; to examine the quality of the ground; to estimate the probable expense of opening a good road for stages; to ascertain the time that would be saved in conveying the mail between the two cities, and the expense of three weekly trips. An examination of the route was made by the postmasters aforesaid, and a report made and forwarded to the department, before the 6th day of October, 1828, and on that day the Postmaster General acknowledged the receipt of the report, and informed the postmaster at New Orleans that it was entirely satisfactory, and subsequently informed the postmaster at Mobile that the joint report met his entire approbation. It being understood, either from an advertisement of the department, or from information obtained from the postmaster at Mobile or New Orleans, that the Postmaster General wished to contract for conveying the mail from Mobile to New Orleans, by Pascagoula bay, the petitioner, for himself and Jeremiah Austill, on the 10th of August, 1828, made a proposal in writing for conveying the mail between the two cities, by way of Pascagoula, three times a week each way. He offered to transport the mail for fourteen thousand dollars a year, but added that the road from Mobile to Pascagoula must be made by, or at the expense of, the United States; and then proceeds to say, that he would make the road suitable for stages for four thousand dollars, and keep it in repair for four years, the term of the proposed contract.

On the 7th of October, a letter from the department informed the petitioner that his proposal for carrying the mail from Mobile to New Orleans, by land and water, at the rate of fourteen thousand dollars per annum, was accepted by the Postmaster General, and requested him to begin with all practicable expedition to convey the mail upon a plan to be designated by the postmasters of Mobile and New Orleans. This acceptance of the proposal of the petitioner said nothing about that part of the proposal relating to opening the road. The petitioner and Austill commenced making the road, and had it completed so as to begin carrying the mail upon it on the 15th of December, 1828, and continued to carry the mail until the last of May, 1829. Failing to carry the mail according to their contract, the Postmaster General, on the 14th of April, 1829, advertised for proposals to let the route again, of which the petitioner was advised, but he continued to convey the mail until the last of May following, being one year and five and a half months that their service continued under this contract, during which the mail failed many times. The department paid them \$4,928 98, being \$324 89 more than they were entitled to receive, at the rate of compensation stipulated in their contract. Jeremiah Austill failed and left the country, and the responsibilities of the concern were thrown on the petitioner, who made a claim upon

the department for the expenditure he had incurred in opening the road to Pascagoula bay, which the Postmaster General declined to pay, alleging that he had no authority to apply the revenues of the Post Office Department to an object of that kind; and informed the petitioner that he must look to Congress for relief. It appears that the road, or some part of it, was used for transporting the mail for some time, and that it has been of considerable public advantage.

The question presented by these facts is, whether, under the circumstances of the case, the petitioner has an equitable claim on the government to be remunerated for the expense he incurred in opening the road. He claims that his proposal for carrying the mail four years for fourteen thousand dollars per annum was connected with a condition, which, from the nature of the case, could not be separated from it—namely, that the United States was to open the road, or agree to pay him four thousand dollars for doing it. The Postmaster General adopted or established the mail route by Pascagoula, and accepted the proposal of the petitioner for carrying the mail upon it, without saying anything in regard to that part of the proposal of the petitioner which related to opening the road, although he must have known that the mail could not be conveyed on that route without the road being opened. Did not the acceptance by the Postmaster General of that part of the proposal of the petitioner which related to carrying the mail, which he knew could not be performed without the road being first opened, authorize the petitioner to believe that if he constructed the road, he would in some way be paid for it? It appears to the committee that it did, and that there was an implied or tacit engagement that the petitioner was in some way to be remunerated for his expenses in opening the road. It does not appear, from any of the correspondence, that the department ever claimed or expected that the contractors were to construct the road at their own expense. Was it just, or strictly honest, in the government to accept one part of a proposition for a contract, consisting of two parts, when they knew that the part accepted could not be performed without the other part was also agreed to; and when they had reason to believe that the part accepted would not have been offered but in connexion with the part which was not accepted? The committee are of opinion that the petitioner has an equitable claim to be reimbursed the money he has expended in opening the road, being \$3,500; but as he appears to have been overpaid for carrying the mail to the amount of \$324 89, they deduct that sum from the amount of the claim, leaving \$3,175 11, and report a bill for paying him that sum from the treasury.

AN ACT for the relief of Thomas Rhodes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the Secretary of the Treasury be, and he is hereby, authorized and directed to pay, out of any moneys in the treasury not otherwise appropriated, the sum of three thousand one hundred and seventy-five dollars and eleven

cents to Thomas Rhodes, in full satisfaction for the expenses incurred by him in opening and constructing a road from Mobile, in Alabama, to Pascagoula bay, for the transportation of the mail, in the year eighteen hundred and twenty-eight, in pursuance of an implied authority and contract from the Postmaster General.

To the Editors of the Mobile Commercial Register :

GENTLEMEN : I have observed a communication in the United States Telegraph, of the 15th ult., from the Post Office Department, to the president of the Senate, relative to certain contracts ; and among them, one that recently existed between that department and Rhodes and myself, to which in self-justification I must beg leave to reply. Mr. T. Barry, the present incumbent, states in his communication that his predecessor made a contract with Rhodes & Austill to transport the mail three times a week between Mobile and New Orleans for 14,000 dollars a year ; that they commenced the service on the 15th day of December, 1828 ; but the heavy expense incident to the undertaking soon involved them in pecuniary ruin, and under circumstances calling for *commiseration* rather than censure ; and that they were compelled to abandon the contract, and in the beginning of June, 1829, their contract was annulled.

The following is a true statement of the case : In the year 1828, Thomas Rhodes and myself proposed to convey the mail by stages and by steamboats from this place to New Orleans by the way of Pascagoula, three times a week, for the sum of 14,000 dollars per annum ; *upon condition* that the government would make a road from this to Pascagoula, or that we would make it for four thousand dollars or one hundred dollars a mile, which proposition and condition were accepted by Mr. McLean, and he required us to get in readiness with all possible despatch. Accordingly we employed hands to open the road, and on the 15th of December, 1828, it was opened barely sufficient for the stages to pass, for at that time, as it is well known by many, the ground was so soft that the stages could not run, and we procured small light carriages to use until the road would settle and become hard by use. After a trial of two months, we found it would be necessary to have another steamboat, and on the 14th of February, 1829, I left for Pittsburg by Washington city, with the promise from a gentleman of this city that I could have what funds I should want if any, to obtain one or two boats : provided, that the Postmaster General would reimburse me for the road. I then called on my way upon Mr. McLean, and informed him through Mr. Bradley how we were progressing, and that I was on my way to buy or build suitable boats, and that I wished him to pay me for the road, and also for the time the mail had been transported. He replied that he was unauthorized to make any appropriation for the road, and that he would not pay me for the transportation of the mail unless I would sign the contract, leaving out the road altogether. I had no alternative but to sign the contract and to petition Congress for the appropriation, which I did,

and received the money for the transportation of the mail up to that time, and proceeded on to Pittsburg, which place I reached on the 17th of March, and on the 18th contracted for the buiding of a boat, which would have been in Mobile on the 15th of July following by contract. But under date of the 16th day of April, to my astonishment, I saw proposals for letting out the contract, signed by the present incumbent. I then wrote on to my partner to stop the mail, for the postmaster had annulled the contract, who on the 1st of June received my letter and stopped the conveyance. In January, 1830, Captain Rhodes and myself called on Mr. Barry for a balance due for the transportation of the mail, and at the same time we laid before him a copy of the proposals and the acceptance, with a request that he would pay for the road; and if he would not, to state in writing *his reason* for annulling the contract and for the non-payment of the amount stipulated for the road. He then requested that the papers might be left with him until the next morning so as to give him time to examine them, and on the second or third day afterwards we called again, and he replied that he could not pay the balance due for the transportation of the mail, until we would produce a certain certificate from the postmaster at Mobile.* I then asked him if he would not make any reply upon the subject of the road and contract. He then had to acknowledge that he had not examined any of the papers. I then gave him the substance of them; to which he replied that he did not feel disposed to make or give a voluntary explanation, but if the members of Congress required it of him he would do so: he is entitled to some credit for putting that clause in. We then left Mr. Barry, and as yet we have received nothing for the road and damages but Mr. Barry's *commisseration*; and if this is administering justice, God forbid that I should ever have any more of it.

And if this simple statement of facts should not be credited, I will prove them when required.

JEREMIAH AUSTILL.

POST OFFICE DEPARTMENT,
August 1, 1828.

At the last session of Congress, a resolution was passed 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." To enable me to discharge the duties imposed by this resolution, I have to request that some convenient time before the first of November next, in conjunction with the postmaster of Mobile, you examine said route, and report to me your opinion whether its establishment would advance the public convenience.

* Alleging that we had no legal but an equitable claim after the 16th of April, at which time he had annulled the contract.

In making your examination, it would be well to ascertain the quality of the ground on which the road is now opened, or may be located; also, the expense that may be necessary to make it a good road for stages. An estimate of the distance of this land route will be proper, and also of the time that could be saved, should it be established as the mail route between the two cities over the present route. It would be well also to make an estimate of the expense of carrying the mail three trips weekly on the proposed route, and whether one steamboat would not be sufficient to perform three trips weekly between Pascagoula and New Orleans.

I wish also to know whether the mail-boat plying between these points would be as likely to be interrupted by storms as on the present water route. It would be also interesting to know whether the new route would be as satisfactory to the citizens of New Orleans as the present route; and I wish you to report any other fact connected with the subject which it may be important for me to know, in making up an opinion on the eligibility of the route. I have written a similar letter to this to the postmaster at Mobile, and I wish you to confer with him; and prepare to make the examination, with as little delay as may comport with your convenience.

Respectfully, &c.,

J. McLEAN.

A. DUPUY, P. M.,
New Orleans, Louisiana.

POST OFFICE DEPARTMENT,
August 18, 1828.

I regret exceedingly the delays in the transmission of the eastern mail between Mobile and New Orleans. It was hoped that the authority given to you and the postmaster at Mobile would have been so used as to procure some tolerable degree of regularity; at least that the transportation of the mail should not depend on chance. Perhaps during the sickly season, when all business almost is suspended, two trips weekly between Mobile and New Orleans would be satisfactory.

These, I think, might be secured, without an extravagant rate of compensation. I wish you would take immediate steps to give all possible regularity to the mail. By giving notice, I should suppose that a schooner might be procured to run the two trips, without paying a high sum. It is to be regretted, that when the smallest amount is realized in receipts by the department, there is generally the least efficiency in the transportation of the mail, and the department is compelled to pay about double for the service over what is paid in more productive parts of the country.

Twenty thousand dollars cannot be given by the department, or a sum approximating to that amount, for the conveyance of the mail between Mobile and New Orleans. This sum would nearly equal the whole receipts of postage at New Orleans, and is greater than the department can expend on that object. It is hoped that a favorable

arrangement will be made, under the notice now in course of publication for this contract.

The late contractor was released from his contract on the strength of the assurance in one of your letters, that you had made an arrangement with the proprietors of the steamboats to convey the mail three trips weekly between the above cities, and I regret that the boats were found unsuitable for the service.

If no arrangement can be made at any reasonable sum, the mail had better be sent on the former route.

I despair of making any arrangement for a reasonable sum, with a person in your section of the country, but I hope in the North there will be found an efficient contractor, who will undertake to perform the service at nearly the same terms of the late contract.

J. McLEAN.

A. DUPUY, P. M.,
New Orleans, Louisiana.

POST OFFICE DEPARTMENT,
September 27, 1828.

It is believed that the route for the New Orleans mail cannot be relied on by the way of St. Stephens and Madisonville. There are numerous streams of water and other obstructions on this route, which would cause continual failures. The ground may admit of a good road, but who is to make it? I regret there is so little attention paid to roads in all the slaveholding States.

The mail is desired with the same certainty and expedition as it is conveyed in the States where the roads are paved. But this is impracticable. Until the road you suggest shall be made good, the principal mail to New Orleans cannot be conveyed on it. I have strong expectations that the route by the way of Pascagoula will be found to be the best one. If so, it shall be established immediately, although I am informed that there is no road from Mobile to the bay. Should not a road be opened by the voluntary contributions of the citizens of Mobile, the mail must be conveyed on horseback. To convey the mail to New Orleans in fourteen days from Washington, if it be at all practicable, would require an expenditure greater than all the receipts for postage in the State of Louisiana. It is expected that the time may be reduced to sixteen days, should the Pascagoula route be established.

J. McLEAN.

A. DUPUY, P. M.,
New Orleans, Louisiana.

POST OFFICE ²DEPARTMENT,
October 6, 1828.

Your joint report with the postmaster of Mobile, on a mail route between Pascagoula and Mobile, is satisfactory, and I have established

the route. A bid is accepted to convey the mail three times weekly on this route from New Orleans, and it will be put into operation as soon as circumstances will admit.

I have not the control of any fund which can be applied to the construction of the road, but I hope that the States of Alabama and Mississippi will cause it to be opened. The advantage to the citizens of New Orleans and Mobile will be so great, from the establishment of this route, that I hope the road may be opened and made passable for stages, by voluntary contribution. When this route shall go into operation, I hope to reduce the time of the mail to sixteen days between this city and New Orleans.

I will thank you to make out your account, in conjunction with Mr. Stone, for your expenses and time, in making the late examination.

J. McLEAN.

A. DUPUY, P. M.,
New Orleans, Louisiana.

POST OFFICE DEPARTMENT,
Office of Mail Contracts, October 7, 1828.

SIRS: The report you have communicated to the department relative to the land route between Mobile and Pascagoula, has met with the *full approbation* of the Postmaster General. It evinces accuracy and a sound, discriminating judgment. That route will be pursued as soon as practicable, and we will thank you to state the best mail arrangement the department can adopt in regard to your offices, and the depending or connecting mails.

P. BRADLEY.

Messrs. A. DUPUY, *Postmaster, New Orleans*, and WILLIAM D. STONE,
Postmaster, Mobile, Alabama.

POST OFFICE DEPARTMENT,
Office of Mail Contracts, October 7, 1828.

SIR: The Postmaster General has decided to accept your proposal to transport the mail by land and water between Mobile and New Orleans at the rate of fourteen thousand dollars per annum. You will begin with all practicable expedition, and convey the mail upon a plan designated by the postmasters of Mobile and New Orleans.

A contract will be made out and sent for you to execute.

P. BRADLEY.

Mr. THOMAS RHODES,
Mobile, Alabama.

POST OFFICE DEPARTMENT,
December 29, 1828.

The Postmaster General requests that you inform this department as early as feasible what plan governs the mail transportation between your office and New Orleans. Does Mr. Rhodes carry the mail? When did he begin? Did you receive my letter of October on the above subject?

P. BRADLEY.

POSTMASTER, *Mobile, Alabama.*

POST OFFICE DEPARTMENT,
January 12, 1829.

The postmaster at New Orleans reports, under date of the 23d December ult., that the mail *via* Mobile which was due on Sunday at 7 p. m. did not arrive until Monday at 1½ a. m., and that a correspondent failure would by your detention for the New Orleans mail occur at Mobile. The Postmaster General apprehends that your boats are deficient and not adapted to the expeditious transportation or safety of the mail. The department had calculated greatly on your ability and punctuality, and therefore allowed you a liberal compensation. Unless you come up to your engagements, payment need not be expected. Yours is an important link in the great chain of mail transportation, and if you cannot keep it sound, it must be committed to other hands. The interest of the community must be looked to, and no excuse on the part of contractors can make amends for failure to comply with their engagements. The Postmaster General requests your prompt attention to the subject-matter of this communication.

P. BRADLEY.

Capt. THOMAS RHODES,
Mobile, Alabama.

POST OFFICE DEPARTMENT,
January 23, 1829.

The Postmaster General regrets the inadequacy of the steamboats for mail transportation to New Orleans. He wishes you to state the plan presented for Mr. Rhodes's government.

P. BRADLEY.

POSTMASTER, *Mobile, Alabama.*

POST OFFICE DEPARTMENT,
February 9, 1829.

The mail due at New Orleans on Friday, the 16th ult., did not arrive till the next day; and the mail due on Saturday evening, the

18th, was not expected till the following Tuesday, causing a total failure. Your pay must be suspended to cover penalties. The department places reliance on your energy and means, and feels great regret to be disappointed.

P. BRADLEY.

Mr. THOMAS RHODES,
Mobile, Alabama.

POST OFFICE DEPARTMENT,
February 9, 1829.

Mr. Rhodes has been informed that his pay will be suspended to cover penalties incurred by failures to deliver your mail, as per your letter of the 18th ultimo.

P. BRADLEY.

A. DUPUY, P. M.,
New Orleans, La.

POST OFFICE DEPARTMENT,
February 13, 1829.

You will inform Mr. Rhodes that the Postmaster General has no alternative but to fine him.

P. BRADLEY.

POSTMASTER, *Mobile, Alabama.*

POST OFFICE DEPARTMENT,
February 18, 1829.

No such condition as that alleged by Mr. Austin has been attached to the contract, nor cannot be, as the Postmaster General has no authority by law to make such conditions as a part of the contract. The contractors have no claims on the department but for transportation services; they will be paid accordingly.

P. BRADLEY.

POSTMASTER,
New Orleans, La.

POST OFFICE DEPARTMENT,
February 19, 1829.

Your mails with New Orleans must not be interrupted. If the boats fail, the contractors must employ vessels till the boats are repaired.

P. BRADLEY.

WM. D. STONE, P. M.,
Mobile, Alabama.

POST OFFICE DEPARTMENT,
February 23, 1829.

The course adopted as indicated in your letter of the 7th inst. was the correct one, and anticipated the instructions of the department having direct reference to that subject, as will appear by a letter now on its way to you.

P. BRADLEY.

WM. D. STONE, P. M.,
Mobile, Alabama.

POST OFFICE DEPARTMENT,
February 24, 1829.

Mr. Dupuy did right in the instance mentioned in your letter of the 3d instant, as he has ever done in furthering the views of the department and guarding against failures, and in that case anticipated the views of the department, and we look confidently to his continuing to do so.

P. BRADLEY.

B. CASEAUR, Esq.,
Assistant P. M., New Orleans, La.

POST OFFICE DEPARTMENT,
February, 28, 1829.

The Postmaster General directs that when the steamboat fails you will send the mail by packet at the contractor's expense. Please to inform the contractors of this decision.

P. BRADLEY.

POSTMASTER,
New Orleans, La.

POST OFFICE DEPARTMENT,
March 3, 1829.

The postmaster of New Orleans always does his duty so far as our knowledge extends. By his vigilance we are aware many failures have been saved.

P. BRADLEY.

ASSISTANT POSTMASTER,
New Orleans, La.

POST OFFICE DEPARTMENT,
March 20, 1829.

A bond and contract for the conveyance of the mail between your office and New Orleans were sent to your office to be executed by Mr.

Rhodes, on the 12th instant. I will thank you to alter the same so as to read: "This contract made the first of October, in the year one thousand eight hundred and twenty-eight," instead of twenty-seven, and return the same without delay to this office.

P. BRADLEY.

POSTMASTER,
Mobile, Alabama.

POST OFFICE DEPARTMENT,
March 21, 1829.

If the contractors will use due diligence and put in requisition all their means, still the public will not be satisfied. Suitable boats must be used. Your reports are very acceptable and appropriate.

P. BRADLEY.

POSTMASTER,
Mobile, Alabama.

POST OFFICE DEPARTMENT,
March 23, 1829.

Your letter of the 7th instant is received. The loss of bridges between Macon, Georgia, and Montgomery, Alabama, has caused several failures of the mail. Suitable boats alone will enable Mr. Rhodes to fulfil the contract.

P. BRADLEY.

POSTMASTER,
Mobile, Alabama.

POST OFFICE DEPARTMENT,
April 9, 1829.

A paragraph in a late newspaper states a fact of a most singular character, viz: That eastern intelligence published in the Mobile journals reached New Orleans several days before the regular mails; and also that the mails are detained for days at Pascagoula bay. The department can hardly credit such representation, as your vigilance would have prompted a direct report of such occurrences. The Postmaster General wishes you at once to state whether or not there be foundation for such representation; and that you force the mails through with all possible despatch. You will also report the condition of Mr. Rhodes without delay, and his prospects of fulfilling the contract.

P. BRADLEY.

POSTMASTER,
Mobile, Alabama.

POST OFFICE DEPARTMENT,
April 14, 1829.

As you have not carried your engagement into effect which you made with the department, to transport the mail between the cities of New Orleans and Mobile, the Postmaster General has considered it his duty to invite other proposals for the performance of the service which you have failed to accomplish, agreeably to your engagement to do, and the route is now again advertised.

P. BRADLEY.

Mr. THOMAS RHODES,
Mobile, Alabama.

POST OFFICE DEPARTMENT,
April 20, 1829.

Your letter of the 4th inst., covering a bond and contract executed by Mr. Rhodes, has been received. You have not lately kept the department advised whether the mail is regular or otherwise, or whether steamboat navigation has been resumed. My late letter having reference to a new contract for said route will reach you this month. Every failure should, as heretofore, be reported.

P. BRADLEY.

WM. D. STONE, P. M.,
Mobile, Alabama.

POST OFFICE DEPARTMENT,
April 30, 1829.

The Postmaster General requires that you promptly report each and every failure of the mails connected with your office, and that you keep up the Mobile route regularly.

P. BRADLEY.

POSTMASTER,
New Orleans, La.

POST OFFICE DEPARTMENT,
May 13, 1829.

Your official duties have been so fully and satisfactorily performed, that when I wrote you I could not believe any imputation rested on you.

Your letter of the 27th ult. fully shows the way in which the intelligence had reached New Orleans earlier than through the regular channel of communication.

P. BRADLEY.

WM. D. STONE, P. M.,
Mobile, Alabama.

POST OFFICE DEPARTMENT,
May 23, 1829.

Mr. Thomas Rhodes, the contractor, in a communication to the postmaster of Mobile, dated "Pascagoula, May 2, 1829," writes as follows: "The post office people in New Orleans have again detained the mail and refused to deliver it to my agent. This puts it out of my power to give you the mail; besides, if we should be a little after hours, say 6 o'clock p. m., we cannot get the mail before 6 or 7 a. m. the next day. There must be some change, or I cannot get on with my contract." We trust, sir, this representation may be made on mistaken grounds. It is the imperative duty of postmasters to aid in the expediting of the mail's transportation, and not to retard it. No personal hostility or misunderstanding must be suffered for one moment to interfere with the public interest. We look for a prompt and satisfactory reply.

P. BRADLEY.

POSTMASTER,
New Orleans, La.

POST OFFICE DEPARTMENT,
May 27, 1829.

Your course was an erroneous one beyond a doubt, as stated in your letter of the 3d inst., from the fact that Captain Rhodes could not, without extreme inconvenience, receive the mail in person; at times it would be impossible for him to do so; he is responsible, besides, for his agents. The rule adopted, if persevered in, would arrest the mail's movements throughout the country, as a contractor can be at one point only at one time. Some contractors have a dozen routes and fifty places, perhaps, for the receipt and delivery of mails.

P. BRADLEY.

POSTMASTER,
New Orleans, La.

POST OFFICE DEPARTMENT,
May 29, 1829.

Your letter of the 5th inst. is received. It is evident that neither the conduct of your clerks nor of Captain Leech can be approved; the course you took with respect to your clerks was the correct and prudent one. The mail should be delivered to the contractor or any agent selected by him, duly sworn according to the requisition of the post office law.

P. BRADLEY.

POSTMASTER,
New Orleans, La.

POST OFFICE DEPARTMENT,
June 2, 1829.

Your partner, Mr. Austill, has drawn for the last quarter's pay to pay for the boat now building for you at Pittsburg; there were no funds to meet the draft which you lately made on this office. The letter of the Hon. Mr. Owen shows that you are performing the contract as punctually as can be done until a better boat is obtained.

P. BRADLEY.

RHODES & AUSTILL, *Mobile, Ala.*

POST OFFICE DEPARTMENT,
June 8, 1829.

Yours of the 23d ultimo gives a lamentable account of difficulties in the mail's transportation to and from New Orleans. A remedy must be applied.

P. BRADLEY.

POSTMASTER, *Mobile, Ala.*

POST OFFICE DEPARTMENT,
June 15, 1829.

The Postmaster General deeply regrets the great irregularity of your mails from Mobile; he hopes that suitable steamboats may soon be provided, and that a decided improvement will be made in your intercourse. No means of the department shall be left untried to produce this most desirable end.

P. BRADLEY.

POSTMASTER, *New Orleans, La.*

POST OFFICE DEPARTMENT,
June 18, 1829.

The department will look to your vigilance and promptitude in forwarding the mail to Mobile both expeditiously and reasonably, till a contract can be made. Mr. Rhodes' arrangements here have been such as to occasion confusion throughout. We trust that the mail's transit on this great and important route may be speedily established regularly and expeditiously.

P. BRADLEY.

POSTMASTER, *New Orleans, La.*

POST OFFICE DEPARTMENT,
June 20, 1829.

It is true Mr. Rhodes has not been duly paid, but it is alike true he has never conveyed the mail for a full week as he contracted to do. If he had been punctual he would have been promptly paid.

P. BRADLEY.

POSTMASTER, *New Orleans, La.*

POST OFFICE DEPARTMENT,
June 29, 1829.

The temporary mail arrangement made by you, as indicated in your letter of the 13th instant, is a good one; let it be continued until a permanent engagement is made.

P. BRADLEY.

POSTMASTER, *Mobile, Ala.*

POST OFFICE DEPARTMENT,
July 11, 1829.

I have received your letter of the 21st, and regret that the non-appropriation by Congress for opening the road from Mobile to Pascagoula bay has compelled you to give up the contract. We are not advised what Mr. Austill did in respect to the steamboat; the last letter from him stated that it was in progress. He received for pay on the contract up to December 31, 1828.....

.....	\$608 89
Draft paid on the 1st April.....	3,000 00
Your draft paid July 1st.....	1,300 00
Of Mr Dupuy.....	20 00

So that you stand debtor for.....	4,928 89
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We have not given you any credit, on the ground that the contract was not complied with; but you are entitled to pay for the times when you did carry it. I will, therefore, thank you to forward me a statement of the particular times when you carried it, since the 1st December last, mentioning whether it was carried in a steamboat or by other vessels, that we may give you proper credits. It appears to me that the mail might be carried in a small steamboat, drawing not more than two feet water, all the way from Mobile, and at all times, excepting during violent winds. Two boats, with accommodations for twelve passengers, would be sufficient for the service. The number of passengers would not justify elegant and expensive boats.

P. BRADLEY.

THOMAS RHODES, *Mobile, Ala.*

POST OFFICE DEPARTMENT,

July 17, 1829.

If, as your letter of the 29th ultimo states to be the case, your detention referred to arose from the impassable state of a bridge or bridges, you should be excused for the failure; but the fact is, that the mail, while confided to you, was not carried agreeable to contract, it is believed, in a single instance. It may have been carried from the one city to the other within the time stipulated; but if it was, the fact is not recollected by the department. Our impression is, that the schedule was never conformed to; I do not speak positively on this point, but state such to be our impression.

P. BRADLEY.

THOMAS RHODES, Esq.,
Near Mobile, Ala.

POST OFFICE DEPARTMENT,

January 15, 1830.

Your letter of the 13th instant has been considered, and I am instructed to say that the facts of record in this department go conclusively to show, that from the acceptance of the proposition of Mr. Rhodes, in October, 1828, to transport the mail by land and water between the cities of Mobile and New Orleans, to the 14th April, 1829, when new proposals were invited for said route by the new Postmaster General, a succession of failures were reported by the postmasters of Mobile and New Orleans, which coerced the department to annul the contract with Mr. Rhodes; that he was repeatedly warned of the consequence which would follow his failure to comply with his engagements, and as repeatedly failed to profit thereby. Under these circumstances, which appear in the correspondence, it is not perceived that injustice has been done Mr. Rhodes, but, on the contrary, that the measures adopted in his case were imperiously demanded by the public interest.

ARTHUR NELSON,

for the POSTMASTER GENERAL.

JEREMIAH AUSTILL, Esq.,
At Brown's Hotel, Washington, D. C.

POST OFFICE DEPARTMENT,

January 20, 1830.

After due consideration given to your claim for a balance due you by the department, and a thorough investigation of the correspondence on the subject of the mail's transportation under your contract, between Mobile, Ala., and New Orleans, La., it is decided that, to entitle you to further credits than those already made you by the department, it will be incumbent on you to show, by the certificate of

the postmaster at Mobile, the particular times you did carry said mails since the 1st December, 1828, with a specification of the manner you transported it—whether in a steamboat or by other vessels. On an exhibit of this evidence, the Postmaster General will cause your account to be equitably settled.

ARTHUR NELSON,

for the POSTMASTER GENERAL.

THOMAS RHODES, Esq., *Present.*

MOBILE, *August 9, 1828.*

SIR: I have observed in the public papers that proposals would be received to carry the mail from this place to New Orleans by steamboats, three times a week, which I have no doubt can be done, but not without considerable risk of failures, and at a very considerable expense to the contractor. Having made myself acquainted with the geography of the country, I beg leave to propose a different route for your consideration, which I believe would be attended with less risk, and at much less expense; and in the event of its being adopted, I will make you a proposition, viz: To carry the mail in a stage from this place to Pascagoula, thence to New Orleans by a *steamboat*, three times a week, in less than twenty-two (22) hours from city to city, for the sum of fourteen thousand dollars per annum, upon condition that the road from this place to Pascagoula bay is 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.

I have the honor to be your obedient servant,

JEREMIAH AUSTILL.

JOHN McLEAN, Esq.,
Postmaster General.

MOBILE, *October 8, 1828.*

DEAR SIR: I have 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 thereby, I will make you another proposal, if it should not be too late, in behalf of myself, Thomas Rhodes, William Mathison, and Robert Williamson, all of this State; 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.

Therefore, should you accept of our proposals, we shall require the earliest notice, so that we may not delay in cutting out the road, so as to admit the mail to pass.

I have the honor to be your obedient servant,

JEREMIAH AUSTILL.

JOHN McLEAN, Esq.,
Potmaster General.

MOBILE, *December 11, 1828.*

SIR: Upon the faith of your opinion and belief, I proceeded to New Orleans for the purpose of obtaining contributions or some appropriations for opening the mail road and other purposes from this to New Orleans, and I regret to have to inform you that I have not obtained one cent, but, on the contrary, they appeared to be offended at the idea that such a thing should have been expected of them. I was likewise sorry to learn that the Navigation Company would not permit me to enter the pickets for less than six thousand dollars, or thereabouts, per annum, unless I exclude all passengers, from whom I expect a profit; for it will take all of the fourteen thousand dollars to pay expenses. Having nearly completed the road, I will commence running the mail on the 15th instant, and I shall expect to be remunerated, without delay, for cutting the road. I have addressed Mr. Owen upon the subject, which I hope will be attended to.

I have the honor to be your obedient servant,

JEREMIAH AUSTILL.

JOHN MCLEAN, Esq.,
Postmaster General, Washington.

POST OFFICE, MOBILE,
December 15, 1828.

SIR: Capt. Rhodes commenced this morning to take the mail between this and New Orleans, under the contract for transporting it via Pascagoula in stages.

I have the honor to be, very respectfully, your obedient servant,
WM. D. STONE.

P. BRADLEY, Esq.,
Assistant Postmaster General, Washington city.

POST OFFICE, MOBILE,
February 11, 1830.

SIR: At the request of Mr. Rhodes, late mail contractor, I have the honor to inform the department that Mr. Rhodes commenced on the 15th December, 1828, to convey the mail between this office and New Orleans in stages and wagons overland between this and Pascagoula, and by steamboat between New Orleans and Pascagoula, and continued to do so until the 30th May, 1829.

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, and one week but one mail, so that *every trip* may be considered as a failure under his contract except two.

I am, sir, respectfully, your obedient servant,

WM. D. STONE.

S. R. HOBIE, Esq.,
Assistant Postmaster General, Washington city.

THE STATE OF ALABAMA, }
County of Mobile. } ss.

Personally appeared before me, B. B. Breedin, a notary public, in and for Mobile county, duly commissioned and qualified, and dwelling in the city of Mobile, Walter Drane, to me well known, who made solemn oath that the foregoing are true and faithful copies of certain letters received by Jeremiah Austill, at Mobile, from the General Post Office Department; and further, that the original of each is now in his possession.

WALTER DRANE.

Sworn to and subscribed before me, the 28th day of January, 1830.

B. B. BREEDIN,
Notary Public.

POST OFFICE DEPARTMENT, OFFICE OF MAIL CONTRACTS,
February 16, 1829.

SIR: It was supposed you were informed on the 29th December last, (as it was the intention of the department at the time,) that the department possessed no means to remunerate you for any expense that you may have incurred in the improvement of the road. It was hoped that the company referred to in your letter of the 11th December would be more reasonable in their tolls.

Respectfully, your obedient servant,

P. BRADLEY.

JEREMIAH AUSTILL, Esq.,
Mobile, Alabama.

POST OFFICE DEPARTMENT, OFFICE OF MAIL CONTRACTS,
February 16, 1829.

SIR: On the 29th of December, a letter was directed to be written to you, purporting that the Postmaster General could not pay you for opening the road. That expense he cannot meet in any case without a special law for the purpose; nor has he in a similar case recommended an appropriation for a similar road: that province belongs to your representative in Congress. Until this day I had thought that the letter was sent to you on the 29th December, as it was directed to be done. The quarterly pay will be sent if the services are performed.

I am, sir, your obedient servant,

P. BRADLEY.

JEREMIAH AUSTILL, Esq.,
Mobile, Alabama.

POST OFFICE DEPARTMENT, OFFICE OF MAIL CONTRACTS,
October 29, 1828.

SIR: The proposals had been closed, and a contract made for the route Mobile and New Orleans, before your letter of the 8th instant reached the department.

Respectfully, your obedient servant,

P. BRADLEY.

JEREMIAH AUSTILL, Esq.,
Mobile, Alabama.

CINCINNATI, *March 23, 1848.*

DEAR SIR: I have but an indistinct recollection of the facts stated by Dr. Bradley, in relation to the road made by Mr. Rhodes. The fact of making the contract I remember, and that the new route on which the mail was to be carried was considered a great improvement on that important line of transportation. But I am not able to recollect the particulars as to the construction of the road. It was about forty miles long and passed over a sterile country, uninhabited, and the greater part of it unfit for cultivation.

Doctor Bradley was the Second Assistant Postmaster General, and whose duty it was to superintend the transportation of the mail. I have no doubt his statement is substantially correct. He had an accurate memory, and his statements of facts are entitled to the highest confidence. I regret that you did not name the circumstances to me before I left Washington, as an examination of the papers might have refreshed my memory as to the facts.

The construction of the road was important to the public, as it shortened the distance of the most important southern route from New Orleans. It is probable that more was saved to the public by the establishment of the road, in the transmission of the mail over it for four years, than would pay the costs of its construction. In addition to this, the increased speed with which the mail was conveyed between New Orleans and Mobile was important to the commercial interests of those cities, and of all other places connected with them.

Mr. Rhodes seems to have a strong equitable claim, and I trust it will be duly considered by Congress.

With great respect and esteem, yours,

JOHN McLEAN.

Hon. JOHN GALE.

POST OFFICE DEPARTMENT, OFFICE OF MAIL CONTRACTS,
March 25, 1830.

SIR: I have the honor to transmit, herewith, in obedience to a call from the Committee on the Post Office and Post Roads of the 24th instant, the following papers in relation to the contract of Thomas

Rhodes and Jeremiah Austill, for the transportation of the mail between Mobile and New Orleans, viz :

No. 1. The advertisement for the conveyance of the mail between New Orleans and Mobile, under which Rhodes and Austill became the contractors in 1828. [Their proposal is now filed in the Treasury Department.]

No. 2. A copy of the letter of acceptance.

No. 3. A copy of the contract.

No. 4. A copy of a letter showing their contract to be forfeited.

No. 5. A copy of a letter to one of the contractors showing that the department could not be responsible for any expense attending the opening of a road between Mobile and Pascagoula.

The department is not in possession of any facts relative to the time of commencing, or the expense attending, the opening and construction of the road between Mobile and Pascagoula.

The road is now partially used for transporting the mail.

With great respect, your obedient servant,

W. T. BARRY.

Hon. GEORGE M. BIBB, *Chairman of the
Committee on Post Office and Post Roads, Senate.*

WASHINGTON CITY, *February 2, 1830.*

DEAR SIR: Agreeably to your suggestion of this morning, I will endeavor briefly to state the case of Captain Rhodes, so far as my knowledge extends. After Congress had authorized the mail to be transported between Mobile and New Orleans, via Pascagoula bay, the late Postmaster General directed the postmasters of Mobile and New Orleans to survey (or explore) the land route, being a distance of about forty miles. This route, with others, was advertised, and proposals invited, to convey the mail between these cities by land and water. As the road was not made so that carriages could pass, and the mail be carried with regularity, Captain Rhodes proposed to open the road, and also to convey the mail; his proposal to convey the mail was accepted, but the other proposal was not accepted, as Congress had not authorized the measure. Captain Rhodes went on and opened the road, at an expense of nearly \$4,000, and has not, I believe, ever received any remuneration whatever. The service he rendered was of great public importance, as it was essentially necessary to carry out the object Congress had in view, viz: the establishment of a mail route on which reliance could be placed for the mail's regularity, not only between the cities of Mobile and New Orleans, but at the nearest and most expeditious mail route between the Atlantic States and the latter city. The services rendered were so clearly understood by Judge McLean, that he would promptly have reimbursed the sum necessarily expended in the undertaking if he had possessed the authority to do so. The road, ever since it was opened, has been used as a public or national road, and it has essentially contributed to the speedy and certain transmission of the mail between all the Atlantic States and New Orleans.

I know of no claim upon the government which appears to me more equitable than Captain Rhodes's, and I flatter myself that the proper authorities will do this gentleman justice.

I trust Judge McLean, the late Postmaster General, will substantially corroborate the foregoing statement, and concur with me in saying that the labor of Captain Rhodes has proved to be of essential service to the public.

I have the honor to be, dear sir, your obedient servant,

P. BRADLEY.

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

CINCINNATI, OHIO, *February 18, 1830.*

DEAR SIR: I accidentally put my letter into my trunk, and did not notice the circumstance till I reached this city yesterday. I regret the occurrence.

P. BRADLEY.

To the Senate and House of Representatives of the United States in Congress assembled:

The petition of Thomas Rhodes, of the city of Mobile, in the State of Alabama, respectfully represents, that in the early part of the year 1828, your petitioner, in connexion with Jeremiah Austill, late of said city and State, became the contractors for the transportation of the mail between the said city of Mobile and New Orleans, by virtue of proposals made and promulgated by the then Postmaster General. Your petitioner further represents, that prior to the above-mentioned period, an attempt had been made by other persons, under the authority of the General Post Office Department, to carry the mail between the said cities entirely by water, but that owing to the various difficulties and delays which that route presented, it was eventually abandoned. The rapid increase of commercial intercourse between these cities, and the repeated solicitations of the community, continued to urge on the attention of the department the great and vital necessity of a speedy, certain, and frequent passage of the mail between those places. Inasmuch, therefore, as the scheme of transporting the said mail wholly by water had then recently failed, and inasmuch as from a variety of reasons it was evident that the old route entirely by *land* could not answer the purpose, it was believed, and the suggestion was made to the late Postmaster General, that the object in view could be easily accomplished, by tracing out a road from the city of Mobile to the mouth of Pascagoula river, in the State of Mississippi, over which the mail could be transported in mail-stages, and thence by water, in steamboats, to the city of New Orleans. Your petitioner further represents, that the postmasters of New Orleans and Mobile, by authority of instructions from the Postmaster General, proceeded to mark out the said road, which having been completed, your petitioner, together with the said Jeremiah Austill, became the joint contractors for the carriage of the mail by the route thus designated.

Your petitioner further represents, that the General Post Office Department having no authority to appropriate the public money to the purposes of cutting out roads and constructing bridges, and that no appropriation had been made by Congress for this particular road, but that being assured and verily believing that such an appropriation would be made, and urged by the great necessity of an immediate commencement of the route, the contractors proceeded, upon their own 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. Your petitioner further represents that, for reasons not necessary now to be set forth, the said contract has been withdrawn from your petitioner and the said Austill, and that the said Austill has long since left the United States, leaving your petitioner involved in heavy responsibilities, to which they had been subjected in the transportation of the said mail. Believing, as your petitioner verily does, that the road cut out by the contractors has proved, and will always remain, a permanent benefit to the public at large—that it will facilitate the mail communication between the said cities—and believing that upon every principle of justice he ought to be remunerated for the same to the extent at least of his expenditures, he respectfully and humbly invokes your honorable bodies to pass an act allowing him compensation therefor out of the treasury of the United States.

And, as in duty bound, he will ever pray.

THOS. RHODES.

We, the undersigned, citizens of Mobile, in the State of Alabama, being conversant with the facts set forth in the foregoing petition of Thomas Rhodes, and believing from a variety of circumstances that his is a case of great hardship, and demanding the interposition of Congress, cannot but earnestly unite in the prayer of the petitioner.

J. G. Lyon
M. Hunter
Henry Lewis
Nathan Whiting
B. B. Breedin
Chas. Jerkoot
James Dowell
Robertson & Barnewall
McLaskey, Hogan & Co.
Wells & Rea
G. Tompkins
John Patterson
Thos. Sturtevant
Isaac Muker
N. F. Ledyard
Geo. W. Lewis
Isaac H. Erwin

Jas. P. Wilson
J. F. Adams
J. B. Toulmin
Tho. Perry
G. W. Owen
Henry Daggett
John Duncan
Thos. Bates
Richd. Corre
Bunce & King
Benj. Wilkins
Wm. Quigley
Byard Sheffield
N. Hayden
Lewis Leland, jr.
U. Ogden
S. Chandler

Dunning & Knapp
 Wm. C. Coolidge
 B. Arnet
 James J. Marsh
 Ross, Crane & Strang
 Geo. H. Statster
 Sidney Douglass
 J. M. Ross
 J. P. Ross
 James Campbell
 Wm. Calvert
 David White
 E. E. Pidney
 Joseph N. Williams
 David Pawnill
 Jno. F. Everitt
 P. Malone
 Wm. De Forest Holly
 Peter Getchiff
 Samuel G. Swift
 Henry Gunnison
 Calvin Norris
 F. W. Armstrong
 Thomas Mather
 R. G. Gordon
 Geo. E. Hall
 H. V. Chamberlain
 Geo. F. Salli
 Geo. Walker
 A. Rust Cuyter
 A. W. Gordon
 Jos. E. Sheffield
 J. W. Moore
 R. G. Barde
 Joshua Kennedy
 H. Chamberlain
 E. Murray
 G. A. Benoit
 James L. Day
 Benj. F. Smoot
 D. P. Squire
 J. Mufsun
 Richd. R. Wilkins
 James J. Brady
 G. Hugg
 John Campbell
 John Ticknor
 Pell. B. Sutton

J. Norking, jr.
 L. Mitchell
 Andw. Armstrong
 D. Simpson
 W. R. Hallets
 C. C. Hazard
 Moses Ryan
 J. Emanuel
 James A. Tashat
 T. Sanford
 P. Putnam Rea
 William Hall
 Jas. Windall
 Arch. Smoot
 Clinton Ford
 John Austin
 Jesse Folder
 T. H. Lane
 Wm. Austin
 Thos. P. Norris
 Thos. Casey
 Bott. D. Crawford
 David Files, jr.
 J. W. Curtis
 Curtis Lewis
 J. B. Nixon
 T. T. Holt
 C. Weelda & Co.
 T. M. English
 M. Krafft
 E. P. Dickinson
 Henry Bright
 S. H. Thompson
 William Brooks
 F. M. Alexander
 C. Jannbot
 John F. Pagles
 Gurdon Robinson
 Benjamin Stantoup
 R. H. Gould
 R. W. Lewis
 Edwd. King
 Edward Hall
 H. Chesebrough
 John S. Aire
 Joseph Krebs
 Jno. Elliott
 George Poe, jr.

MOBILE, *August 16, 1828.*

SIR: Having examined the route from this to New Orleans by the way of Pascagoula bay, and find it much the shortest and most certain way to carry the mail—it must be conveyed thirty or forty miles by land, in stages; the residue of the way by steamboats—I have made a calculation of the cost, and, having charge of a first rate steamboat of 139 tons, called Marietta, and am owner, with Jeremiah Austill and Robert Williamson, all of the county and city of Mobile, have agreed to buy in proposals for carrying the mail, agreeably to your proposals, thrice a week for the sum of \$14,000 per year, and have authorized Jeremiah Austill to write to that effect. If Austill's proposals should not come to hand, you may consider this a proposal. The road from this 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 the notice, for the sum of four thousand dollars, or for one hundred dollars per mile, and will keep it in good repair for the term of four years from the time of the completion of the work; the money to be paid on the completion of the work.

If it should be necessary to convey the mail by this route before the stage-road is complete, we will have it carried on horseback. This route the mail can be carried at least four hours sooner than by steamboats from post to post, taking the best weather, and scarcely a probability of being detained by bad weather at any time.

In case of our getting the contract I should like to have the earliest information, or in case I should have the opening of the road.

I am, sir, with due respect, yours,

THOMAS RHODES.

To the POSTMASTER GENERAL.

N. B.—Please to inquire of George W. Owen respecting capacity, &c., or of any gentleman you may think proper in Mobile, as I am known here.

T. R.

POST OFFICE DEPARTMENT, OFFICE OF MAIL CONTRACTS,
April 14, 1829.

SIR: As you have not carried your engagements into effect which you made with the department, to transport the mail between the cities of New Orleans and Mobile, the Postmaster General has considered it his duty to invite other proposals for the performance of the service which you have failed to accomplish agreeably to your engagements to do, and the route is now again advertised.

Respectfully, &c.,

P. BRADLEY.

Mr. THOS. RHODES,
Mobile, Alabama.

POST OFFICE DEPARTMENT, OFFICE OF MAIL CONTRACTS,
February 16, 1829.

SIR: On the 29th of December a letter was directed to be written to you, purporting that the Postmaster General could not pay you for opening the road; that expense he cannot meet in any case without a special law for the purpose; nor has he, in a similar case, recommended an appropriation for a similar road—that province belongs to your representative in Congress. Until this day I had thought that the letter was sent you on the 29th December, as it was directed to be done. The quarterly pay will be sent if the services are performed.

I am, sir, your obedient servant,

P. BRADLEY.

JEREMIAH AUSTILL, Esq.,
Mobile, Alabama.

POST OFFICE DEPARTMENT, OFFICE OF MAIL CONTRACTS,
October 7, 1828.

SIR: The Postmaster General has decided to accept your proposal to transport the mail by land and water between Mobile and New Orleans, at the rate of fourteen thousand dollars per annum. You will begin with all practicable expedition, and convey the mail upon a plan designated by the postmasters of Mobile and New Orleans. A contract will be made out and sent for you to execute.

Respectfully, &c.,

P. BRADLEY.

Mr. THOMAS RHODES,
Mobile, Alabama.

This contract, made the first day of October, in the year one thousand eight hundred and twenty-eight, between Thomas Rhodes and Jeremiah Austill, of Mobile, Alabama, contractors for carrying mails of the United States, of one part, and the Postmaster General of the United States of America, for and in behalf of the said States, of the other part, witnesseth: that the said parties have mutually covenanted as follows; that is to say: the said contractors covenant with the said Postmaster General—

1. To carry the mail of the United States, or cause it to be carried, from Mobile, by Pascagoula, to New Orleans and back, thrice a week, in stages and steamboats, at the rate of thirty-five hundred dollars for every quarter of a year, during the continuance of this contract; to be paid in drafts on postmasters on the route above mentioned, or money, at the option of the Postmaster General, in the months of May, August, November, and February.

2. That the mail shall be duly delivered at each post-office now established on any post-route embraced in this contract, or that shall be established during the continuance of this contract, under a penalty

of ten dollars for each offence; and a like penalty shall be incurred for each quarter of an hour that shall elapse between the delivery of the mail and the period fixed for its delivery at any post office specified in the schedule hereto annexed; and 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 provided, that such alteration shall not require the mail to be conveyed at a greater rate than six miles in an hour; and the Postmaster General reserves the right of annulling this contract, in case the contractors do not promptly adopt the alteration required.

3. If the delay of arrival of the said mail continue until the hour of departure of any depending mail, whereby the mails destined for such depending mail lose a trip, it shall be considered as a whole trip lost, and a forfeiture of one hundred dollars shall be incurred on any post-route embraced in this contract.

4. That the said contractors shall be answerable for the persons to whom they shall commit the care and transportation of the mail, and accountable for any damages which may be sustained through their unfaithfulness or want of care.

5. That seven minutes after the delivery of the mail at any post office on the aforesaid route not named in the annexed schedule, shall be allowed the postmaster for opening the same, and making up another mail to be forwarded.

6. That if the mail aforesaid shall be conveyed past any post office without stopping the time allowed the postmaster for opening and making up a mail, unless sooner discharged by the postmaster, a forfeiture of ten dollars shall be incurred for every such failure.

7. That if the contractor, post rider, or driver, to whom the transportation of the said mail is committed, do proceed without it, or do not make a proper exchange of the mails where such exchange is statedly to be made, or, instead thereof, shall carry back the same mail which he or they brought to such place of exchange, it shall be considered as a whole trip lost, and a penalty equal to the forfeiture stipulated in the third article of this contract shall be incurred.

8. That upon reasonable complaint made by the Department of the General Post Office against any carrier of the said mail, for negligence or misbehavior, such carrier shall be forthwith discharged.

9. That when the said mail goes by a stage-wagon, it shall invariably be carried within the body of a comfortable stage, (or in a secure and dry boot under the driver's feet,) suitable for the accommodation of at least seven travellers, under a penalty of fifty dollars for each offence; and when it is carried on horseback, or vehicle other than a stage, it shall be covered securely with an oil-cloth, or bear-skin, against rain or snow, under a penalty of twenty dollars for each time the mail is wet, without such covering; and for a second offence in permitting the mail to be injured by carrying it contrary to the stipulations before recited, the Postmaster General shall have a right to annul this contract; and when it stops at night, it shall be put in a secure place, and there be locked up, at the contractor's risk, unless it is deposited in a post office.

10. And if any delay shall occur, equal to a trip lost, the Postmaster General, when satisfied that such delay has arisen from negligence or misconduct, shall have full right to annul this contract.

11. The forfeitures and penalties before mentioned are to be deducted out of the pay of the contractor if there shall be so much due; but if there be not so much due, the contractor and sureties hereby promise to pay their amount to the said Postmaster General, on demand, for value received: *Provided*, That the whole forfeiture and penalties to be incurred in the course of any one trip shall not exceed the sum specified in the third article.

12. If the contractors shall make it appear to the Postmaster General that the delay, failure, or other breach of contract, arose from insurmountable casualty or a public enemy, then no more than half the amount of the said forfeitures and penalties shall be deducted or paid; but it is expressly agreed and understood, that where there is no performance there shall be no pay or compensation.

13. And the said Postmaster General covenants with the said contractors to provide portmanteaus and bags necessary for containing the letters and newspapers which constitute the aforesaid mail, and pay the said contractors as aforesaid, for the carriage thereof as aforesaid, at the rate aforementioned, quarterly, in the months of May, August, November, and February.

14. It is mutually understood by the contracting parties, that if the route, or any part of the route, herein mentioned, shall, previous to the expiration of the contract, be discontinued by act of Congress, or a line of stages shall be established on the whole or any part of it, the mail not being carried by stage under this contract, that then this contract, or such part of it as is discontinued, or on which stages shall be established, shall cease to be binding on the Postmaster General, he giving one month's notice of such event, and making an allowance of one month's extra pay.

Provided always, That this contract shall be null and void in case the said contractors shall become members of Congress; and also, in case any member of Congress is, or shall become, directly or indirectly, himself, or by any other person whatsoever in trust for him, or for his use or benefit, or on his account, interested herein, in the whole or in part; and this contract shall, in all its parts, be subject to the terms and requisitions of an act of Congress passed on the twenty-first day of April, in the year of our Lord one thousand eight hundred and eight, entitled "An act concerning public contracts."

And it is mutually covenanted and agreed by the said parties, that this contract shall commence on the fifteenth day of December next, and continue in force until the first day of November, inclusively, which will be in the year one thousand eight hundred and thirty-two.

In witness whereof, they have hereunto interchangeably set their hands and seals, the day and year first above written.

THOMAS RHODES. [L. S.]
JEREMIAH AUSTILL. [L. S.]

Signed, sealed, and delivered in presence of—

WM. D. STONE, *witness for T. Rhodes.*

SCHEDULE.

Leave Mobile every Monday, Thursday, and Saturday, at 10 $\frac{1}{2}$ a. m.; arrive at New Orleans on Tuesday, Friday, and Sunday by 2 p. m. Leave same every Tuesday, Friday, and Sunday at 10 a. m.; arrive at Mobile on Thursday, Saturday, and Monday by 2 p. m.

We, Thomas Rhodes and Jeremiah Austill, being appointed mail contractors, do swear, that we will faithfully perform all the duties required of us, and abstain from everything forbidden by the law in relation to the establishment of post offices and post roads within the United States. And we do solemnly swear that we will support the constitution of the United States.

THOMAS RHODES.

Sworn before the subscriber, a justice of the peace for the county of Mobile, Alabama, this 2d day of April, A. D. 1829.

BASIL MESTOR, J. P.

Know all men by these presents, That we, Thomas Rhodes and Jeremiah Austill, as principals, are held and firmly bound unto the Postmaster General of the United States of America, in the just and full sum of fourteen thousand dollars, value received, to be paid unto the Postmaster General, or his successors in office, or to his or their assigns; to which payment well and truly to be made, we bind ourselves, our heirs, executors, and administrators, jointly and severally, firmly by these presents. Sealed with our seals: dated the 30th day of March, in the year of our Lord one thousand eight hundred and twenty-nine.

The condition of this obligation is such, That whereas the above bounden Thomas Rhodes and Jeremiah Austill, by a certain contract, bearing date the first day of October, in the year of our Lord one thousand eight hundred and twenty-eight, covenanted, with the said Postmaster General, to carry the mail of the United States, or to cause it to be carried, from Mobile to New Orleans, as per contract annexed, during the term of ———, commencing the fifteenth day of December, one thousand eight hundred and twenty-eight, and ending the first day of November which will be in the year one thousand eight hundred and thirty-two.

Now, if the said Thomas Rhodes and Jeremiah Austill shall well and truly perform the covenants in the said indenture expressed, on their part to be performed, and repay all advances that may be made, then this bond is to be void; otherwise to remain in full force.

THOMAS RHODES.	[L. S.]
JOHN CRAWFORD.	[L. S.]
BENJ. WILLIAMSON.	[L. S.]
ROBT. WILLIAMSON.	[L. S.]

Signed, sealed, and delivered in presence of—

WM. D. STONE.

POST OFFICE DEPARTMENT,
June 17, 1828.

Proposals will be received at this department until the 1st of October next, for the conveyance of 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.

JOHN McLEAN.

POST OFFICE DEPARTMENT,
Office of Mail Contracts, February 16, 1829.

SIR: On the 29th of December a letter was directed to be written to you, purporting that the Postmaster General could not pay you for opening the road; *that* expense he cannot meet in any case, without a special law for the purpose; nor has he in a similar case recommended an appropriation for a similar road: that province belongs to your representative in Congress. Until this day, I had thought that the letter was sent you on the 29th of December, as it was directed to be done.

The quarterly pay will be sent if the services are performed.

Respectfully, &c.,

P. BRADLEY.

JEREMIAH AUSTILL, Esq.,
Mobile, Alabama.

POST OFFICE DEPARTMENT,
Office of Mail Contracts, February 16, 1829.

SIR: It was supposed that you were informed on the 29th of December (as it was the intention of the department at the time) that the department possessed no means to remunerate you for any expense that you may have incurred in the improvement of the road, and it was hoped that the company referred to in your letter of the 11th of December would be more reasonable in their tolls.*

Respectfully, your obedient servant,

P. BRADLEY.

JEREMIAH AUSTILL, Esq.,
Mobile, Alabama.

* As it appears you addressed a letter to Mr. Owen at the time you did the department, it is hoped that he has attended to it, as Congress can alone grant you relief.

Opinion of the court on the evidence, delivered by Chief Justice Gilchrist.

Depositions have been taken in this case, the substance of which is as follows:

Ursin Rabby deposes that there were no roads suitable for stages in the years 1828 and 1829, between Mobile and Pascagoula, and claimants were obliged to make, and did make, one whereon to convey the mails. This was done about twenty-eight years ago. He was employed by the claimants to work on the road while it was being made, and though he does not know its actual expense, he is satisfied from his knowledge of the country over which it was made, and of the work done upon it, that it could not have been done for less than \$7,500. The road was used by subsequent contractors in transporting the mails between Mobile and New Orleans, until the route was changed to one by water.

Lemuel Childers deposes that there was no road at all when the claimants became contractors, that it would be possible for a coach to travel on. They built a road, and when completed they transported the mail on it. He superintended the work upon the road as overseer. The contractors were engaged in building the road from November, 1828, to some time in July, 1829, and he thinks it must have cost \$7,000. He worked on the road four weeks as overseer, and during that time there were, upon the average, twenty hands engaged upon it. After he ceased to be overseer, he lived on the road and had business upon it, and knows that they continued to work on it, and carried the mail. The bridges were not built by the hands working on the road, but were built by contract, with the exception of one. The greater part of the road was used by subsequent contractors in transporting the mail, and continued to be used until the route was changed to that by water.

Walter Drane says that there was no road at all suitable for transporting the mail, and the claimants were obliged to construct a road; and when it was completed, which was in 1828, the mail was transported on it until about May, 1829. The first construction of the road cost the claimants \$4,000, exclusive of ditches and causeways. After the road was opened and winter had set in, a full third of the road had to be ditched and causewayed, to enable the stages to pass over it; and owing to the unfavorable country over which it ran, lighter vehicles had to be procured by the contractors than they had begun to use at first. All this cost them \$4,000 more, making the whole cost incurred by them \$8,000. He is well acquainted with the road, and is satisfied that \$8,000 would be no more than a fair compensation for the labor and money put upon it.

Among the papers transmitted to us by the House, there are copies of letters, constituting a voluminous correspondence with the department, on the subject of this mail route. On the 1st of August, 1828, the honorable John McLean, then Postmaster General, wrote to the postmaster at New Orleans, desiring him to examine the route from Mobile to Pascagoula, in connexion with the postmaster at Mobile, and

saying, among other things, "in making your arrangements, it would be well to ascertain the quality of the ground on which the road is now opened, or may be located; also, the expense that may be necessary to make it a good road for stages."

This information could have been useful only upon the supposition that the expense would properly be considered in determining the amount of compensation to be paid for transporting the mail.

Prior to the 7th of October, 1828, the postmasters of Mobile and New Orleans made a report on the subject, which met with the approbation of the Postmaster General.

On the 10th of August, 1828, the claimants proposed to carry the mail for the sum of \$14,000 per year, "the road from here (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 the notice, for the sum of \$4,000." On the 7th of October the department decided to accept his "proposal to transport the mail by land and water," as hereinbefore stated.

The claimants thereupon proceeded to make the road, and completed it according to the offer, and commenced running the mail on the 17th of December. They had no reason to think the Postmaster General entertained any doubt about his power. They had no reason to believe that he did not think he had the power to build the road at the expense of the United States, according to their proposition of the 10th of August. On the 8th of October, the day after the date of Mr. Bradley's letter of acceptance, Austill wrote the Postmaster General that he had been informed by Mr. Owen (a representative from Louisiana) that the department thought they had no power to contract for building the road to Pascagoula. He then said: "Therefore, to obviate the difficulty that may exist thereby, I will make another proposal, if it should not be too late, in behalf of myself, Thomas Rhodes, William Mathison, and Robert Williamson, all of this State; 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 \$18,000, and each of the succeeding three years at \$14,000 per annum." This was, in substance, the first proposal.

After Mr. Bradley's letter of the 8th of October, accepting the first proposal, nothing further was said by the department until Mr. Bradley's letter of the 16th of February, 1829, in which he says to Austill, that on the 29th of December a letter was directed to be written to him, purporting that the Postmaster General could not pay him for opening the road. He also says, "that expense he cannot meet in any case without a special law for the purpose, nor has he in a similar case recommended an appropriation for a similar road; that province belongs to your representative in Congress. Until this day I had thought that the letter was sent you on the 29th of December, as it was directed to be done."

Even if the letter had been written on the 29th of December, it would have been too late, for the road had already been built by the claimants a fortnight before, and the mails had been transported upon it.

On the 23d of March, 1848, Judge McLean wrote the Hon. John
Rep. C. C. 28—4

Gayle: "The construction of the road was important to the public, as it shortened the distance of the most important southern route from New Orleans. It is probable that more was saved to the public by the establishment of the road, in the transmission of the mail over it for four years, than would pay the cost of its construction. In addition to this, the increased speed with which the mail was conveyed between New Orleans and Mobile was important to the commercial interests of those cities, and of all other places connected with them. Mr. Rhodes seems to have a strong equitable claim, and I trust it will be duly considered by Congress."

On the 2d of February, 1830, Mr. Bradley, Assistant Postmaster General, wrote to Mr. King, of the Senate, that the making of this road "was of great public importance, as it was essentially necessary to carry the object Congress had in view, viz: the establishment of a mail route on which reliance could be placed;" that Judge McLean would promptly have reimbursed the expense if he had had the power so to do; that the road has been used as a public and national road ever since it was opened, and has essentially contributed to the speedy and certain transmission of the mail between all the Atlantic States and New Orleans; that he knows of no claim upon the government which appears to him more equitable than the present claim; and he says, "I flatter myself that the proper authority will do this gentleman justice."

On the 29th of March, 1854, Mr. Adams, from the Committee on the Post Office and Post Roads, in the Senate, made a report in favor of this claim. The argument of the report is as follows: "He (the claimant) claims that his proposal for carrying the mail four years for \$14,000 per annum, was connected with a condition which, from the nature of the case, could not be separated from it, namely, that the United States were to open the road, or agree to pay him \$4,000 for doing it: The Postmaster General adopted or established the mail route by Pascagoula, and accepted the proposal of the petitioner for carrying the mail upon it, without saying anything in regard to that part of the proposal of the petitioner which related to opening the road, although he must have known that the mail could not be conveyed on that route without the road being opened. Did not the acceptance by the Postmaster General of that part of the proposal by the petitioner which related to carrying the mail, which he knew could not be performed without the road being first opened, authorize the petitioner to believe that if he constructed the road he would, in some way, be paid for it? It appears to the committee that it did, and that there was an implied or tacit engagement that the petitioner was, in some way, to be remunerated for his expense in opening the road. It does not appear from any of the correspondence that the department ever claimed or expected that the contractors were to construct the road at their own expense. Was it just or strictly honest in the government to accept one part of the proposition for a contract consisting of two parts, when they knew that the part accepted would not have been offered but in connexion with the part which was not accepted?"

Upon the argument of this case the question made was as to the

power of the Postmaster General, under the resolution of May 24, 1828, to pay for making the road. As we have before said, the resolution authorized him to adopt the route if he should deem it the most expedient route. He thought it was the most expedient route. Now, to adopt a route for the transportation of the mail where there is no road, means to take the steps necessary to enable the mail to be transported, otherwise the resolution will amount to nothing. The Postmaster General might decline to pay the expense of making the road upon the ground that he had no funds which could be appropriated for that purpose, but it by no means follows that the claimant had not a legal cause of action against the United States. As the resolution authorized the making of the road, its effect was to give validity to the claim of the person who should make it. Any other conclusion would be such a violation of common honesty as would seriously injure the reputation of an individual in the business relations of life. If this were a suit between individuals, and if the plaintiff had performed labor for a defendant under such circumstances, and the latter had received the benefit of the services without objection, no one would venture to deny that in law and justice alike the plaintiff should be compensated. This principle lies at the foundation of all pecuniary transactions between the citizens of the United States, and it is surely not unreasonable that it should be applied to the dealings between the government and its citizens. In this case the government received the benefit of the labor of the claimant in making the road, and should, upon principles of law and justice, make compensation for it to the claimants.

The evidence proves that the expense of building the road was \$8,000; but as the proposal of the claimant was to build it for the sum of \$4,000, he should be limited to that sum. This will place him in as good a position as if his proposal had been accepted in terms, so far as relates to the compensation for building the road; and for that sum we report a bill.

The claimants also allege that they are entitled to damages consequent upon the annulment of their contract by the department. But as there is no evidence upon this point, it is not necessary to investigate it.

