35TH CONGRESS, 2d Session. } HOUSE OF REPRESENTATIVES. { REPORT C. C. No. 177.

THOMAS C. NYE.

DECEMBER 7, 1858.—Reported from the Court of Claims and committed to a Committee of the Whole House to-morrow.

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 C. NYE *vs.* THE UNITED STATES.

1. The petition of the claimant.
2. Contracts between the Post Office Department and claimant.
3. Depositions taken by the claimant and offered as evidence, transmitted to the House of Representatives.
4. Depositions taken by the United States and offered as evidence, transmitted to the House of Representatives.
5. Letters and circular from the Post Office Department, referred to in the opinion of the Court, transmitted to the House of Representatives.
6. Claimant's brief.
7. United States Solicitor's brief.
8. Opinion of the Court, adverse to the claim.

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 seventh day of December, A. D., 1858. [L. S.]

SAM'L H. HUNTINGTON,
Chief Clerk Court of Claims.

To the Honorable the Court of Claims:

The petition of Thomas C. Nye, a citizen of the State of New York, respectfully showeth: That he entered into the service of the United States in the transportation of the mails prior to the year 1837, and that in the spring of that year your petitioner, in company with others,

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entered into contracts with the Post Office Department to transport the daily mails from the city of Utica, in the State of New York, to the village of Ithaca in said State, and also from Utica aforesaid to Binghamton, and also from the village of De Ruyter to Cherry Valley, in the said State; and was also largely interested in the mail contract of J. M. Sherwood, from the city of Albany to the village of Salina in said State, and stocked said road with teams and post coaches.

Your petitioner further shows that the above routes were relet in 1841, and that he was interested in all of them by the renewal of his contracts with the United States government, and that he was the sole contractor from Canastota to Hamilton, also the sole contractor from De Ruyter to Cherry Valley, which last contract was extended to Cooperstown, daily, from Cherry Valley in said State. And that your petitioner continued interested in said mail contracts upon the aforesaid post roads, as above stated, up to 1842 or 1843, when the contract of said Sherwood, from Albany to Salina aforesaid, was transferred to your petitioner, who became thereby, with the assent and approval of the Post Office Department, together with Hiram Lewis, a contractor with said department for carrying said mails from Albany to Cherry Valley, and from Cherry Valley to Syracuse, and all the afore mentioned routes; and that your petitioner, under said contracts, found it necessary to invest a large amount of capital in horses and post coaches, &c., and from the year 1841 up to 1845 your petitioner owned and employed in such service constantly about two hundred horses and a large number of post coaches, and from the year 1841 to 1845 was running over two hundred miles of daily mails upon the aforesaid post roads.

And your petitioner further shows that by the terms and regulations of the Post Office Department then in force, viz: by act of Congress passed March 3, 1825, sec. 4, 5th vol. United States Statutes at Large, p. 103, and by the regulations of the department, a copy of which is hereunto annexed, marked exhibit "A," your petitioner felt secure in making such large investments in horses, coaches, &c., in the government service, because, under the laws and regulations of the Post Office Department above referred to, and particularly the 13th note to the proposals for carrying the United States mail from July 1, 1841, to June 30, 1845, inclusive, and dated December 22, 1840, which reads as follows:

13. On coach routes where the present contractor shall be superseded by an under bidder who may not have the stage property requisite for the performance of the contract, he shall purchase from the present contractor such of his coaches, teams, and harness belonging to the route as shall be needed, and may be suitable for the service, at a fair valuation; and make payment therefor by reasonable instalments, as his pay becomes due, unless the present contractor shall continue to run stages on the route. Should they not agree as to the suitableness of the property, the terms of the security, each may choose a person, who may appoint a third, and their decision shall be final; or the Postmaster General will name the umpire. Should the under bidder fail to comply, his bid will be offered to the contractor;

but should he decline it, the proposals of the under bidder will be accepted unconditionally. The under bidder should give early notice of his intention to take or not to take the stock, and if the latter, of his reasons; and the present contractor is to determine, on the first application, whether he will sell it or not.

He felt justified in placing a good stock on the lines, as, if said regulations had been complied with, he could by no possibility have lost anything.

That your petitioner, in good faith, entered into the mail service of the United States under the law governing the Post Office Department and the regulations thereof, as above stated and referred to, and made the aforesaid large investments of capital in stocking said post roads, and to the amount of at least of *fifty thousand dollars.*

And your petitioner further shows that by the 18th section of the act of Congress approved March 3, 1845, a copy of which is hereunto annexed, marked exhibit "B," it was enacted that no new mail contractor shall hereafter be required to purchase out, or take at a valuation, the stock or vehicles of any previous contractor for the same route.—(5th volume U. S. Statutes at Large, p. 738.)

And your petitioner further shows that in the letting of the mail contracts in the year 1845, on the respective routes and lines hereinbefore specified, and on which your petitioner was a contractor as aforesaid, previous and up to said letting, in the year 1845, your petitioner was an unsuccessful bidder upon all of said post routes, and lost all his contracts for transporting the mails upon said roads or routes.

And by the terms of the lettings of the new contractors upon said post roads the new contractors were not required to purchase out or take at a valuation the stock and vehicles with which your petitioner had supplied and run the said post roads, and your petitioner was left with all of said stock and vehicles for running the said roads upon his hands, without any use or employment for the same, and unavoidably sustained thereby a large amount of damage in disposing of the same.

And your petitioner further shows that he is advised and believes that as he entered into the aforesaid mail contracts under the laws and regulations of the Post Office Department, governing the contract between your petitioner and the said Post Office Department, which required the new contractors to purchase and take at a valuation his aforesaid stock upon the aforesaid post roads, that it was a direct and positive violation of the contracts between your petitioner and the Post Office Department to let the aforesaid mail contracts to new contractors, without requiring them to purchase or take at a valuation the stock with which your petitioner had supplied said post roads, and with which he had been running the same.

Your petitioner further shows that the aforesaid act of March 3, 1845, did not take effect till the first day of July thereafter, and the aforesaid mail contracts for the year 1845 were advertised to be let, with the usual provision requiring the new contractors to purchase or take at a valuation the stock of previous contractors upon the same roads, and that the new contracts on the post roads or routes on which

your petitioner had, previous to said letting for the year 1845, had contracts with the Post Office Department for transporting the mails, were let before the act of March 3, 1845, took effect, and without containing any provision requiring the new contractor to purchase or take at a valuation the stock of your petitioner upon the aforesaid post roads.

Your petitioner therefore insists that he has a just and legal claim upon the United States government for the amount of damages to which he has been subjected by reason of the aforesaid violation of his contract with the Post Office Department.

And whereas, by rule No. 2, the Court requires that the contract shall be printed in the words of the contract, but the contracts in this case being very numerous, to print them would be very expensive, the petitioner herewith files said contracts, marked exhibit C, D, E, F, G, H, I, J, and others on file in the Post Office Department, and prays that they may be taken as parts of this petition.

And your petitioner further states that he has not received any indemnity or satisfaction of his damages aforesaid from any department of the government, and that he has not transferred any portion of his said claim to any other person, but that he is the owner thereof.

Your petitioner would further show that his claim was presented to the Senate of the United States at the first session of the thirty-third Congress, and that it was referred to the Committee on the Post Office and Post Roads, which committee reported a bill for the relief of your petitioner, which passed the Senate and was sent to the House of Representatives, when, at the same session, it was referred to the Committee on Post Offices and Post Roads, on the 14th of July, 1854; and on the 20th of the same month and year said committee reported the Senate bill (being No. 307) without amendment, which, on its second reading, was referred to the Committee of the Whole House, and no further action was had thereon.

D. IRA BAKER, *of Counsel.*

Before me personally appeared Thomas C. Nye, the petitioner named in the above petition, who, being duly sworn, deposes and says that the facts stated in the foregoing petition are true to the best of his knowledge and belief.

Exhibits referred to in above petition and on file in this Court:

A, copy of proposals and regulations of the Post Office Department, under which these contracts were let.

B, copy of part section 18 of the act of Congress passed March 3, 1845.

C, copy of contract with United States.

D, copy of contract with United States.

E, copy of contract with United States.

F, copy of contract with United States.

G, copy of contract with United States.

H, copy of contract with United States.

I, copy of contract with United States.

J, copy of contract with United States.

No. 995.—$1,511 PER ANNUM.

This indenture of contract, made the twenty-first day of April, in the year one thousand eight hundred and forty-one, between Thomas C. Nye, contractor for carrying the mails of the United States, of one part, and the United States of America, of the other part, *witnesseth:* That the parties have mutually covenanted as follows, viz: The said contractor covenants with the said United States, in consideration of the covenant of the United States hereinafter expressed, to carry the mail of the United States from Cherry Valley, New York, by Middlefield Centre, Cooperstown, Oaksville, Burlington, West Burlington, Edmeston, South Edmeston, Columbus, Sherburne, Smyrna, and Otselic, to De Ruyter, numbered as route 995, New York, in manner following, to wit: three times a week, and back, in two-horse coaches, for and during the term commencing the first day of July, in the year one thousand eight hundred and forty-one, and ending with the thirtieth day of June, in the year one thousand eight hundred and forty-five; the said contractor hereby agreeing and stipulating under this covenant, 1st, to carry said mail within the times fixed in the annexed schedule of departures and arrivals, except that when more than seven minutes are taken for opening and closing the mails at any office, the surplus time so taken is to be allowed in addition to what is given by the schedule, and so carry until said schedule is altered by the authority of the Postmaster General of the United States, as hereinafter provided, and then to carry according to said altered schedule; 2d, to carry said mail in a safe and secure manner, free from wet or other injury, in a boot under the driver's seat, and in preference to passengers, and to their entire excusion if its weight and bulk require it; 3d, to take the mail and every part of it from, and deliver it and every part of it at, each post office on the route, or that may be hereafter established on the route, and into the post office at each end of the route, and into the post office at the place at which the carrier stops at night, if one is there kept; and if no office is there kept, to lock it up in some secure place at the contractor's risk.

The contractor also covenants with the United States, in and for the consideration above mentioned, to be answerable for the person to whom he shall commit the care and transportation of the mail, and accountable for any damages which may be sustained through his unfaithfulness or want of care; and that he will discharge any carrier of said mail whenever required to do so by the Postmaster General; also that he will not transmit, by himself or his agent, or be concerned in transmitting, commercial intelligence more rapidly than by mail, and that he will not carry out of the mail letters or newspapers which should go by post; and further to convey without additional charge post office blanks, mail bags, and the special agents of the department on the exhibition of their credentials; and give a preference to passengers brought in the connecting mail lines over those travelling in any other.

The said contractor further covenants, in and for the consideration above mentioned, to collect quarterly, if required by the Postmaster General, of postmasters on said route, the balances due from them to the General Post Office, and faithfully render an account thereof to the Postmaster General, in the settlement of quarterly accounts, and will pay over to the General Post Office all balances remaining in his hands.

The said United States covenant with the said contractor to pay him for his services aforesaid, at the rate of one thousand five hundred and eleven dollars a year, to wit, quarterly, in the months of May, August, November, and February, through the postmasters on the route or otherwise, at the option of the Postmaster General of the United States; said pay to be subject, however, to be reduced or discontinued by the Postmaster General as hereinafter stipulated, or to be suspended in case of delinquency.

It is hereby mutually stipulated and agreed by the said parties that the Postmaster General may alter the contract, and alter the schedule, he allowing a pro rata increase of compensation within the restrictions imposed by law for the additional service required or for the increased speed, if the employment of additional stock or carriers is rendered necessary; but the contractor may, in case of increased expedition, relinquish the contract, on timely notice, if he prefers it to the change; also, that the Postmaster General may discontinue or curtail the service, he allowing one month's extra pay on the amount dispensed with.

And it is also hereby mutually stipulated and agreed by the said parties that in all cases there is to be a forfeiture of the pay of the trip when the trip is not run; a forfeiture of at least one-fourth part of it when the running or arrival is so far behind time as to lose the connexion with a depending mail; and a forfeiture of a due proportion of it when a grade of service is rendered inferior to two-horse coach service, and that these forfeitures may be increased into penalties of higher amount, according to the nature or frequency of the failure and the importance of the mail; also that fines may be imposed upon the contractor, unless the delinquency be satisfactorily explained to the Postmaster General in due time, for failing to take from, or deliver at, a post office the mail or any part of it; for suffering it to be wet, injured, lost, or destroyed; for carrying in a place or manner that exposes it to depredation, loss or injury, by being wet or otherwise; for refusing after demand to convey a mail by any coach which the contractor regularly runs or is concerned in running, on the route beyond the number of trips above specified; or for not arriving at the time set in the schedule. And for setting up or running an express to transmit commercial intelligence in advance of the mail a penalty may be exacted of the contractor equal to a quarter's pay; but in all other cases no fine shall exceed three times the price of the trip.

And it is hereby further mutually stipulated and agreed by the said parties that the Postmaster General may annul the contract for repeated failures; for violating the post office laws; for disobeying the instructions of the department; for refusing to discharge a carrier

when required by the department; for assigning the contract without the consent of the Postmaster General; for setting up or running an express as aforesaid; or whenever the contractor shall become a postmaster, assistant postmaster, or member of Congress; 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."

In witness whereof, the said contractor and the Postmaster General have hereunto set their hands and seals, the day and year set opposite their names, respectively.

APRIL 12, 1842. C. A. WICKLIFFE, [L. S.]

$250. August 10, 1841. Contractor having accepted offer of two hundred and fifty dollars per year for additional tri-weekly mail from Cherry Valley to Cooperstown, ordered, that two hundred and fifty dollars additional per year be allowed him.

September 21, 1841. Postmaster certifies that contractor complied with above order on 27th July, 1841.

The schedule of Departures and Arrivals.

Leave Cherry Valley daily, except Sunday, at 8 p. m.

Arrive at Cooperstown same days, by 10.30 p. m., and at De Ruyter Tuesday, Thursday, and Saturday, by 7 p. m.

Leave De Ruyter Monday, Wednesday, and Friday, at 12 m.

Arrive at Cooperstown next days by 4.30 a. m., and at Cherry Valley daily, except Monday, by 7 a. m.

No. 631.—$3,500 PER ANNUM.

This indenture of contract, made the thirty-first day of May, in the year one thousand eight hundred and thirty-seven, between Thomas C. Nye, of Madison, Madison county, New York, contractor for carrying the mails of the United States, of one part, and the United States of America of the other part, *witnesseth*, that the said parties have mutually covenanted as follows, viz: The said contractor covenants with the said United States—

1. To carry the mail of the United States from Cherry Valley, by Middlefield Centre, Cooperstown, Oakville, Burlington, West Burlington, Edmeston, Columbus, Columbus Corners, Sherburne, Smyrna, and Otselic, to De Ruyter and back, three times a week, in four-horse post coaches, at the rate of eight hundred and seventy-five dollars for every quarter of a year during the continuance of this contract; to be paid by postmasters on the route above mentioned, or otherwise, at the option of the Postmaster General of the United States, *in the months of May, August, November*, and *February*.

2. That the mail shall be duly delivered at and taken from each

post office now established, or that may be established, on the route embraced in this contract; that it shall be conveyed on this route in the time specified in the annexed schedule, and in a secure and safe manner, free from wet or other injury, in a secure dry boot or box under the driver's seat, if the mail is carried by stage or coach, or under a sufficient oil cloth or bear skin when carried on horseback or sulky, as hereinbefore designated or hereafter directed by the Postmaster General; that it shall be duly delivered into the post office at the end of the route and into the post office at the place at which the carrier stops at night, if one is there kept, and if no office is there kept it shall be locked up in some secure place, at the contractor's risk.

3. That if the contractor shall run a stage, or other vehicle, more rapidly or more frequently than he is required by the contract to carry the mail, he shall give the same increased celerity and frequency to the mail, and without increase of compensation.

4. That the contractor, if on a stage or coach route, shall, in the conveyance of passengers, give a preference to those who are brought in the connecting mail lines over those travelling in any other, so that connecting mail stage routes shall form continuous travelling lines.

5. That he shall not, by himself or his agent, transmit, or be concerned in transmitting, commercial intelligence more rapidly than by mail.

6. That the contractor will, if required by the Postmaster General, collect quarterly of postmasters on said route the balances due from them to the General Post Office, and faithfully render an account thereof to the Postmaster General in the settlement of quarterly accounts, and will pay over to the General Post Office all balances remaining in his hands.

7. That in every case of failure to perform the trip, whatever may be the cause, there may be a forfeiture of the pay for the trip; and a failure to arrive at a post office so long after the time set in the schedule as to lose the connexion with a depending mail shall be considered as equal to a whole trip lost; which forfeiture may be increased into a penalty not exceeding one hundred dollars, according to the circumstances under which the failure occurred.

8. That the contractor shall be subject, for failure to take or deliver a mail or any part of a mail, for suffering the mail to be wet or otherwise injured, or lost, or destroyed, to a penalty of five dollars, which may be increased to one hundred dollars, according to the size and importance of the mail and the circumstances under which the failure occurred.

9. That a fine not less than the tenth part and not exceeding the half of the price of a trip may be imposed for each ten minutes' delay of the mail to arrive at the time specified in the schedule.

10. That the contractor shall be answerable for the persons to whom he 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, and that he will discharge any driver or carrier of said mail whenever required to do so by the Postmaster General.

11. That the schedules being arranged so as to allow seven minutes to each post office for opening and closing the mails generally, and one hour to the distributing post offices, the Postmaster General is to have, nevertheless, the power of extending the time, on allowing the like extension to the contractor, if he shall claim it.

12. That the Postmaster General may alter the schedule, and alter the route, he allowing a *pro rata* increase of compensation for any additional service required and for any increased speed, when the employment of additional stock or carriers is rendered necessary.

13. That the Postmaster General may curtail the service or dispense with it entirely, he allowing one month's extra pay on the amount deducted in case he wishes to place on the route a higher degree of service than is contracted for, first offering the privilege to the contractor on the route of performing such higher service on the terms that can be obtained; or whenever he shall deem it expedient to lessen the service, or to leave such route, or any part of it, out of operation, or to carry the mail by steamboat or railroad cars; provided, that reduction of compensation, in consequence of reduction of service, shall not exceed the exact proportion which the service dispensed with bears to the whole service.

14. That the Postmaster General may annul the contract for repeated failures of the contractor to perform any of the stipulations of the contract; for violating the post office law or disobeying the instructions of the department; or for assigning his contract without the consent of the Postmaster General first obtained.

15. The said United States covenant with the said contractor to pay as aforesaid, at the rate afore mentioned, quarterly, in the months of *May*, *August*, *November*, and *February*.

Provided always, That this contract shall be null and void in case the contractor or any person that may become interested in this contract, directly or indirectly, shall become a postmaster or an assistant postmaster. No member of Congress shall be admitted to any share or part of this contract or agreement, or to any benefit to arise thereupon; 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 first day of July, 1837, and continue in force until the 30th day of June, in the year 1841.

In witness whereof, the said contractor and the Postmaster General have hereunto set their hands and seals the day and year set opposite their names, respectively.

DECEMBER 28, 1837. AMOS KENDALL, [L. S.]

Schedule.

This schedule subject to alteration by the Postmaster General, agreeably to the provision contained in the twelfth section of the contract.

Leave Cherry Valley Monday, Wednesday, and Friday, at 8 a. m., and in winter at 5 p. m. preceding day.

Arrive at De Ruyter next days by 12 m.

Leave De Ruyter Tuesday, Thursday, and Saturday, at 12 m.

Arrive at Cherry Valley next days by 2 a. m., and in winter by 8 a. m.

No. 1019.—$500 PER ANNUM.

This indenture of contract, made the twenty-second day of April, in the year one thousand eight hundred and forty-one, between Thomas C. Nye, contractor for carrying the mails of the United States, of the one part, and the United States of America, of the other part, *witnesseth:* That the parties have mutually covenanted as follows, viz: The said contractor covenants with the said United States, in consideration of the covenant of the United States hereinafter expressed, to carry the mail of the United States from Canastota, New York, by Lenox, Clockville, Peterboro', Morrisville, and Eaton, to Hamilton, numbered as route ——, in manner following: six times a week and back, in two-horse coaches, for and during the term commencing the first day of July, in the year one thousand eight and forty-one, and ending with the 30th day of June, in the year one thousand eight hundred and forty-five; the said contractor hereby agreeing and stipulating under this covenant: 1st, to carry said mail within the times fixed in the annexed schedule of departures and arrivals, except that when more than seven minutes are taken for opening and closing the mails at any office, the surplus time so taken is to be allowed in addition to what is given by the schedule, and so carry until said schedule is altered by the authority of the Postmaster General of the United States as hereinafter provided, and then to carry according to said altered schedule. 2d, to carry said mail in a safe and secure manner, free from wet or other injury, in a boot under the driver's seat, and in preference to passengers, and to their entire exclusion, if its weight and bulk require it. 3d, to take the mail and every part of it from, and deliver it and every part of it at, each post office on the route, or that may be hereafter established on the route, and into the post office at each end of the route, and into the post office at the place at which the carrier stops at night, if one is there kept; and if no office is there kept, to lock it up in some secure place, at the contractor's risk.

The contractor also covenants with the United States, in and for the consideration above mentioned, to be answerable for the person to whom he shall commit the care and transportation of the mail, and accountable for any damages which may be sustained through his unfaithfulness or want of care; and that he will discharge any carrier of said mail whenever required to do so by the Postmaster General; also that he will not transmit, by himself or his agent, or be concerned

in transmitting, commercial intelligence more rapidly than by mail, and that he will not carry out of the mail letters or newspapers which should go by post; and further, to convey, without additional charge, post office blanks, mail bags, and the special agents of the department on the exhibition of their credentials; and give a preference to passengers brought in the connecting mail lines over those travelling in any other.

The said contractor further covenants, in and for the consideration above mentioned, to collect quarterly, if required by the Postmaster General, of postmasters on said route, the balances due from them to the General Post Office, and faithfully render an account thereof to the Postmaster General, in the settlement of quarterly accounts, and will pay over to the General Post Office all balances remaining in his hands.

The said United States covenant with the said contractor to pay him for his services aforesaid, at the rate of five hundred dollars a year, to wit: quarterly, in the months of May, August, November, and February, through the postmasters on the route or otherwise, at the option of the Postmaster General of the United States—said pay to be subject, however, to be reduced or discontinued by the Postmaster General as hereinafter stipulated, or to be suspended in case of delinquency.

It is hereby mutually stipulated and agreed by the said parties that the Postmaster General may alter the contract, and alter the schedule, he allowing a pro rata increase of compensation, within the restrictions imposed by law, for the additional service required, or for the increased speed, if the employment of additional stock or carriers is rendered necessary; but the contractor may, in case of increased expedition, relinquish the contract, on timely notice, if he prefers it to the change; also, that the Postmaster General may discontinue or curtail the service, he allowing one month's extra pay on the amount dispensed with.

And it is also hereby mutually stipulated and agreed by the said parties that in all cases there is to be a forfeiture of the pay of the trip when the trip is not run; a forfeiture of at least one-fourth part of it when the running or arrival is so far behind time as to lose the connexion with a depending mail; and a forfeiture of a due proportion of it when a grade of service is rendered inferior to two-horse coach service; and that these forfeitures may be increased into penalties of higher amount, according to the nature or frequency of the failure and the importance of the mail; also that fines may be imposed upon the contractor, unless the delinquency be satisfactorily explained to the Postmaster General in due time, for failing to take from or deliver at a post office the mail or any part of it; for suffering it to be wet, injured, lost, or destroyed; for carrying in a place or manner that exposes it to depredation, loss, or injury by being wet or otherwise; for refusing after demand to convey a mail by any coach which the contractor regularly runs or is concerned in running, on the route, beyond the number of trips above specified; or for not arriving at the time set in the schedule. And for setting up or running an express

to transmit commercial intelligence in advance of the mail, a penalty may be exacted of the contractor equal to a quarter's pay; but in all other cases no fine shall exceed three times the price of the trip.

And it is hereby further mutually stipulated and agreed by the said parties that the Postmaster General may annul the contract for repeated failures; for violating the Post Office laws; for disobeying the instructions of the department; for refusing to discharge a carrier when required by the department; for assigning the contract without the consent of the Postmaster General; for setting up or running an express as aforesaid; or whenever the contractor shall become a postmaster, assistant postmaster, or member of Congress. 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."

In witness whereof, the said contractor and the Postmaster General have hereunto set their hands and seals, the day and year set opposite their names, respectively.

C. A. WICKLIFFE, [SEAL.]

APRIL 12, 1842.

The schedule of Departures and Arrivals.

Leave Canastota every day except Sunday, at 8 a. m.
Arrive at Hamilton same day by 1 p. m.
Leave Hamilton every day except Sunday, at 12 m.
Arrive at Canastota same day by 5 p. m.

No. 913.—$2,700 PER ANNUM.

This indenture of contract, made the seventh day of September, in the year one thousand eight hundred and forty-two, between Thomas C. Nye and Hiram Lewis, contractors for carrying the mails of the United States, of one part, and the United States of America, of the other part, *witnesseth:* That the parties have mutually covenanted as follows, viz: The said contractors covenant with the said United States, in consideration of the covenant of the United States hereinafter expressed, to carry the mail of the United States from Albany, New York, by Guilderland, Dunnsville, Duanesburg, Esperance, Sloanesville, Carlisle, Sharon, Sharon Centre, and Leesville, to Cherry Valley, numbered as route 913, in manner following: six times a week and back in two-horse coaches, for and during the term commencing the first day of October, in the year one thousand eight hundred and forty-two, and ending with the 30th day of June, in the year one thousand eight hundred and forty five; the said contractor hereby agreeing and stipulating under this covenant: 1st, to carry said mail within the time fixed in the annexed schedule of departures and arrivals, except that when more than seven minutes are taken for opening and closing the mails at any office, the surplus time so

taken is to be allowed in addition to what is given by the schedule, and so carry until said schedule is altered by the authority of the Postmaster General of the United States, as hereinafter provided, and then to carry according to said altered schedule. 2d, to carry said mail in a safe and secure manner, free from wet or other injury, in a boot under the driver's seat, and in preference to passengers, and to their entire exclusion, if its weight and bulk require it. 3d, to take the mail and every part of it from, and deliver it and every part of it at each post office on the route, or that may be hereafter established on the route, and into the post office at each end of the route, and into to the post office at the place at which the carrier stops at night, if one is there kept; and if no office is there kept, to lock it up in some secure place, at the contractors' risk.

The contractors also covenant with the United States, in and for the consideration above mentioned, to be answerable for the person to whom they shall commit the care and transportation of the mail, and accountable for any damages which may be sustained through his unfaithfulness or want of care; and that they will discharge any carrier of said mail whenever reqired to do so by the Postmaster General; also that they will not transmit, by themselves or their agent, or be concerned in transmitting, commercial intelligence more rapidly than by mail, and that they will not carry out of the mail letters or newspapers which should go by post; and further, to convey, without additional charge, post office blanks, mail bags, and the special agents of the department on the exhibition of their credentials, and give a preference to passengers brought in the connecting mail lines over those travelling in any other.

The said contractors further covenant, in and for the consideration above mentioned, to collect quarterly, if required by the Postmaster General, of postmasters on said route, the balances due from them to the General Post Office, and faithfully render an account thereof to the Postmaster General, in the settlement of quarterly accounts, and will pay over to the General Post Office all balances remaining in their hands.

The said United States covenant with the said contractors to pay them for their services aforesaid, at the rate of twenty-seven hundred dollars a year, to wit: quarterly, in the months of May, August, November, and February, through the postmasters on the route or otherwise, at the option of the Postmaster General of the United States—said pay to be subject, however, to be reduced or discontinued by the Postmaster General as hereinafter stipulated, or to be suspended in case of delinquency.

It is hereby mutually stipulated and agreed by the said parties that the Postmaster General may alter the contract, and alter the schedule, he allowing a *pro rata* increase of compensation, within the restrictions imposed by law, for the additional service required, or for the increased speed, if the employment of additional stock or carriers is rendered necessary; but the contractors may, in case of increased expedition, relinquish the contract, on timely notice, if they prefer it to the change; also, that the Postmaster General may

discontinue or curtail the service, he allowing one month's extra pay on the amount dispensed with.

And it is also hereby mutually stipulated and agreed by the said parties that in all cases there is to be a forfeiture of the pay of the trip when the trip is not run; a forfeiture of at least one-fourth part of it when the running or arrival is so far behind time as to lose the connexion with a depending mail; and a forfeiture of a due proportion of it when a grade of service is rendered inferior to two-horse coaches; and that these forfeitures may be increased into penalties of higher amount, according to the nature or frequency of the failure and the importance of the mail; also that fines may be imposed upon the contractors, unless the delinquency be satisfactorily explained to the Postmaster General in due time, for failure to take from or deliver at a post office the mail or any part of it; for suffering it to be wet, injured, lost, or destroyed; for carrying in a place or manner that exposes it to depredation, loss, or injury by being wet or otherwise; for refusing after demand to convey a mail by any coach which the contractors regularly run or are concerned in running, on the route, beyond the number of trips above specified; or for not arriving at the time set in the schedule. And for setting up or running an express to transmit commercial intelligence in advance of the mail, a penalty may be exacted of the contractors equal to a quarter's pay; but in all other cases no fine shall exceed three times the price of the trip.

And it is hereby further mutually stipulated and agreed by the said parties that the Postmaster General may annul the contract for repeated failures; for violating the Post Office laws; for disobeying the instructions of the department; for refusing to discharge a carrier when required by the department; for assigning the contract without the consent of the Postmaster General; for setting up or running an express as aforesaid; or whenever the contractor shall become a postmaster, assistant postmaster, or member of Congress. 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."

In witness whereof, the said contractors and the Postmaster General have hereunto set their hands and seals, the day and year set opposite their names, respectively.

MARCH 27, 1843. C. WICKLIFFE. [L. S.]

The schedule of Arrivals and Departures.

Leave Albany every day, except Sunday, at 8 a. m.
Arrive at Cherry Valley same day by 7 p m.
Leave Cherry Valley every day, except Sunday, at 8 a. m.
Arrive at Albany same day by 7 p. m.

No. 987.—$4,000 PER ANNUM.

This indenture of contract, made the seventh day of September, in the year one thousand eight hundred and forty-two, between Thomas C. Nye and Hiram Lewis, contractors for carrying the mails of the United States, of one part, and the United States of America, of the other part, *witnesssth:* That the parties have mutually covenanted as follows, viz: The said contractors covenant with the said United States, in consideration of the covenant of the United States hereinafter expressed, to carry the mails of the United States from Cherry Valley, New York, by East Springfield, Springfield, Warren, Richfield Springs, Winfield, West Winfield, Bridgewater, Sangerfield, Madison, Bouchfield, Morrisville, Nelson, Cazenovia, Oran, Manlius, Fayetteville, and De Witt, to Syracuse, numbered as route 987, in manner following: six times a week and back, in two-horse coaches, for and during the term commencing the first day of October, in the year one thousand eight hundred and forty-two, and ending with the thirtieth day of June, in the year one thousand eight hundred and forty-five; the said contractors hereby agreeing and stipulating under this covenant: 1st, to carry said mail within the times fixed in the annexed schedule of departures and arrivals, except that when more than seven minutes are taken for opening and closing the mails at any office, the surplus time so taken is to be allowed in addition to what is given by the schedule, and so carry until said schedule is altered by authority of the Postmaster General of the United States as herinafter provided, and then to carry according to said altered schedule. 2d, to carry said mail in a safe and secure manner, free from wet or other injury, in a boot under the driver's seat, and in preference to passengers, and to their entire exclusion, if its weight and bulk require it. 3d, to take the mail and every part of it from, and deliver it and every part of it at, each post office on the route, or that may be hereafter established on the route, and into the post office at each end of the route, and into the post office at the place at which the carrier stops at night, if one is there kept; and if no office is there kept, to lock it up in some secure place, at the contractors' risk.

The contractors also covenant with the United States, in and for the consideration above mentioned, to be answerable for the person to whom they shall commit the care and transportation of the mail, and accountable for any damages that may be sustained through his unfaithfulness or want of care; and that they will discharge any carrier of said mail whenever required to do so by the Postmaster General; also that they will not transmit, by themselves or their agent, or be concerned in transmitting, commercial intelligence more rapidly than by mail, and that they will not carry out of the mail letters or newspapers which should go by post; and further, to convey, without additional charge, post office blanks, mail bags, and the special agents of the department on the exhibition of their credentials; and give a

preference to passengers brought in the connecting mail lines over those travelling in any other.

The said contractors further convenant, in and for the consideration above mentioned, to collect quarterly, if required by the Postmaster General, of postmasters on said route, the balances due from them to the General Post Office, and faithfully render an account thereof to the Postmaster General, in the settlement of quarterly accounts, and will pay over to the General Post Office all balances remaining in their hands.

The said United States covenant with the said contractors to pay them for their services aforesaid, at the rate of four thousand dollars a year, to wit: quarterly, in the months of May, August, November, and February, through the postmasters on the route or otherwise, at the option of the Postmaster General of the United States—said pay to be subject, however, to be reduced or discontinued by the Postmaster General as hereinafter stipulated, or to be suspended in case of delinquency.

It is hereby mutually stipulated and agreed by the said parties that the Postmaster General may alter the contract, and alter the schedule, he allowing a pro rata increase of compensation, within the restrictions imposed by law, for the additional service required or for the increased speed, if the employment of additional stock or carriers is rendered necessary; but the contractors may, in case of increased expedition, relinquish the contract, on timely notice, if they prefer it to the change; also, that the Postmaster General may discontinue or curtail the service, he allowing one month's extra pay on the amount dispensed with.

And it is also hereby mutually stipulated and agreed by the said parties that in all cases there is to be a forfeiture of the pay of the trip when the trip is not run; a forfeiture of at least one-fourth part of it when the running or arrival is so far behind time as to lose the connexion with a depending mail; and a forfeiture of a due proportion of it when a grade of service is rendered inferior to two-horse coaches; and that these forfeitures may be increased into penalties of higher amount, according to the nature or frequency of the failure and the importance of the mail; also that fines may be imposed upon the contractors, unless the delinquency be satisfactorily explained to the Postmaster General in due time, for failing to take from or deliver at a post office the mail or any part of it; for suffering it to be wet, injured, lost, or destroyed; for carrying in a place or manner that exposes it to depredation, loss, or injury by being wet or otherwise; for refusing after demand to convey a mail by any coach which the contractors regularly run or are concerned in running, on the route, beyond the number of trips above specified; or for not arriving at the time set in the schedule. And for setting up or running an express to transmit commercial intelligence in advance of the mail, a penalty may be exacted of the contractors equal to a quarter's pay; but in all other cases no fine shall exceed three times the price of the trip.

And it is hereby further mutually stipulated and agreed by the said parties that the Postmaster General may annul the contract for

repeated failures; for violating the post office laws; for disobeying the instructions of the department; for refusing to discharge a carrier when required by the department; for assigning the contract without the consent of the Postmaster General; for setting up or running an express as aforesaid; or whenever the contractor shall become a postmaster, assistant postmaster, or member of Congress; 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."

In witness whereof, the said contractors and the Postmaster General have hereunto set their hands and seals the day and year set opposite their names respectively.

MARCH 27, 1843. C. A. WICKLIFFE. [L. S.]

The Schedule of Departures and Arrivals.

Leave Cherry Valley every day except Sunday, at 8 p. m.
Arrive at Syracuse next day by 3 p. m.
Leave Syracuse every day except Sunday, at 12 m.
Arrive at Cherry Valley next day by 7 a. m.

No. 624—$3,800 PER ANNUM.

This indenture of contract, made the thirty-first day of May, in the year one thousand eight hundred and thirty-seven, between Silas D. Childs, Theodore S. Faxton, Milton D. Parker, and James V. P. Gardner, Utica, New York, of the firm of Parker & Company, Thomas C. Nye, of Madison, Madison county, New York, Ethan Clark, of Oxford, Chenango county, New York, contractors for carrying the mails of the United States, of one part, and the United States of America of the other part, witnesseth: that the said parties have mutually covenanted as follows, viz : The said contractors covenant with the United States—

1. To carry the mail of the United States from Utica by New Hartford, Paris, Waterville, Madison, Bouckville, Hamilton, Earlville, Sherburne, North Norwich, Norwich, Oxford, South Oxford, Green and Chenango Forks, to Binghamton and back daily, in four-horse post coaches, at the rate of nine hundred and fifty dollars for every quarter of a year during the continuance of this contract, to be paid by postmasters on the route above mentioned, or otherwise at the option of the Postmaster General of the United States, in the months of May, August, November, and February.

2. That the mail shall be duly delivered at and taken from each post office now established, or that may be established, on the route embraced in this contract ; that it shall be conveyed on this route in the time specified in the annexed schedule, and in a secure and safe manner, free from wet or other injury, in a secure dry boot or box under the driver's seat, if the mail is carried by stage or coach; or under a sufficient oil cloth or bear skin when carried on horseback or

sulky, as hereinbefore designated, or hereafter directed by the Postmaster General; that it shall be duly delivered into the post office at the end of the route, and into the post office at the place at which the carrier stops at night, if one is there kept, and if no office is there kept, it shall be locked up in some secure place at the contractor's risk.

3. That if the contractors shall run a stage or other vehicle more rapidly or more frequently than they are required by the contract to carry the mail, they shall give the same increased celerity and frequency to the mail, and without increase of compensation.

4. That the contractors, if on a stage or coach route, shall, in the conveyance of passengers, give a preference to those who are brought in the connecting mail lines over those travelling in any other, so that connecting mail stage routes shall form continuous travelling lines.

5. That they shall not, by themselves or their agent, transmit, or be concerned in transmitting commercial intelligence more rapidly than by mail.

6. That the contractors will, if required by the Postmaster General, collect quarterly of postmasters on said route the balances due from them to the General Post Office, and faithfully render an account thereof to the Postmaster General in the settlement of quarterly accounts, and will pay over to the General Post Office all balances remaining in their hands.

7. That in every case of failure to perform the trip, whatever may be the cause, there may be a forfeiture of the pay for the trip; and a failure to arrive at a post office so long after the time set in the schedule as to lose the connexion with a depending mail, shall be considered as equal to a whole trip lost; which forfeiture may be increased into a penalty not exceeding one hundred dollars, according to the circumstances under which the failure occurred.

8. That the contractors shall be subject for failure to take or deliver a mail or any part of a mail, for suffering the mail to be wet or otherwise injured, or lost, or destroyed, to a penalty of ten dollars, which may be increased to one hundred dollars, according to the size and importance of the mail, and the circumstances under which the failure occurred.

9. That a fine not less than the tenth part and not exceeding the half of the price of a trip may be imposed for each ten minutes' delay of the mail to arrive at the time specified in the schedule.

10. That the 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; and that they will discharge any driver or carrier of said mail whenever required to do so by the Postmaster General.

11. That the schedules being arranged so as to allow seven minutes to each post office for opening and closing the mails generally, and one hour to the distributing post offices, the Postmaster General is to

have, nevertheless, the power of extending the time on allowing the like extension to the contractors, if they shall claim it.

12. That the Postmaster General may alter the schedule and alter the route, he allowing a pro rata increase of compensation for any additional service required, and for any increased speed, when the employment of additional stock or carriers is rendered necessary.

13. That the Postmaster General may curtail the service or dispense with it entirely, he allowing one month's extra pay upon the amount deducted, in case he wishes to place on the route a higher degree of service than is contracted for, first offering the privilege to the contractors on the route of performing such higher service on the terms that can be obtained, or whenever he shall deem it expedient to lessen the service or to leave such route, or any part of it, out of operation, or to carry the mail by steamboat or railroad cars; Provided that reduction of compensation in consequence of reduction of service, shall not exceed the exact proportion which the service dispensed with bears to the whole service.

14. That the Postmaster General may annul the contract for repeated failures of the contractors to perform any of the stipulations of the contract; for violating the post office law, or disobeying the instructions of the department; or for assigning his contract without the consent of the Postmaster General first obtained.

15. The said United States covenant with the said contractors to pay as aforesaid, at the rate aforementioned, quarterly, in the months of May, August, November, and February.

Provided always, That this contract shall be null and void in case the contractors or any person that may become interested in this contract directly or indirectly, shall become a postmaster or an assistant posmaster. No member of Congress shall be admitted to any share or part of this contract or agreement, or to any benefit to arise thereupon; 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 convenanted and agreed by the said parties, that this contract shall commence on the 1st day of July, 1837, and continue in force until the 30th day of June, in the year 1841.

In witness whereof, the said contractors and the Postmaster General have hereunto set their hands and seals the day and year set opposite their names respectively.

FEBRUARY 9, 1838. AMOS KENDALL, [SEAL.]

This schedule subject to alteration by the Postmaster General, agreeably to the provisions contained in the twelfth section of the contract.

Leave Utica every day at 5 a. m.;
Arrive at Binghamton next day by 12 m.
Leave Binghamton every day at 1 p. m.;
Arrive at Utica next day by 9 p. m.

No. 627.—$6,416 PER ANNUM.

This indenture of contract, made the thirty-first day of May in the year one thousand eight hundred and thirty-seven, between M. D. Parker of Utica, Oneida county, New York, S. D. Childs, T. S. Faxon, J. V. P. Gardner, Thomas C. Nye, of Madison, Madison county, New York, C. L. Grant of Ithaca, Tompkins county, New York, contractors for carrying the mails of the United States, of one part, and the United States of America of the other part, witnesseth: that the said parties have mutually covenanted as follows, viz: The said contractors covenant with the United States;

1. To carry the mail of the United States from Utica by New Hartford, Clinton, Marshall, Madison, Eaton, Erieville, New Woodstock, De Ruyter, Cuyler, Truxton, Homer, Cortland Village, McLean, Dryden and Varna, to Ithaca, at the rate of one thousand six hundred and four dollars for every quarter of a year, during the continuance of this contract; to be paid by postmasters on the route abovementioned, or otherwise, at the option of the Postmaster General of the United States, in the months of May, August, November and February.

2. That the mail shall be duly delivered at and taken from each post office now established, or that may be established, on the route embraced in this contract; that it shall be conveyed on this route in the time specified in the annexed schedule; and in a secure and safe manner, free from wet or other injury, in a secure dry boot or box, under the driver's seat, if the mail is carried by stage or coach; or under a sufficient oil cloth or bear skin, when carried on horseback or sulky, as hereinbefore designated, or hereafter directed by the Postmaster General; that it shall be duly delivered into the post office at the end of the route, and into the post office at the place at which the carrier stops at night, if one is there kept, and if no office is there kept, it shall be locked up in some secure place, at the contractors' risk.

3. That if the contractors shall run a stage, or other vehicle, more rapidly or more frequently than they are required by the contract to carry the mail, they shall give the same increased celerity and frequency to the mail, and without increase of compensation.

4. That the contractors, if on a stage or coach route, shall in the conveyance of passengers, give a preference to those who are brought in the connecting mail lines over those travelling in any other, so that connecting mail stage routes shall form continuous travelling lines.

5. That he shall not, by himself, or his agent, transmit, or be concerned in transmitting commercial intelligence more rapidly than by mail.

6. That the contractor will, if required by the Postmaster General, collect quarterly of postmasters on said route, the balances due from them to the General Post Office, and faithfully render an account thereof to the Postmaster General, in the settlement of quarterly accounts, and will pay over to the General Post Office all balances remaining in his hands.

7. That in every case of failure to perform the trip, whatever may be the cause, there may be a forfeiture of the pay for the trip; and a failure to arrive at a post office so long after the time set in the schedule as to lose the connexion with a depending mail, shall be considered as equal to a whole trip lost. Which forfeiture may be increased into a penalty not exceeding one hundred dollars, according to the circumstances under which the failure occurred.

8. That the contractor shall be subject for failure to take or deliver a mail, or any part of a mail, for suffering the mail to be wet or otherwise injured, or lost, or destroyed, to a penalty of five dollars, which may be increased to one hundred dollars, according to the size and importance of the mail, and the circumstances under which the failure occurred.

9. That a fine not less than the tenth part and not exceeding the half of the price of a trip may be imposed for each ten minutes' delay of the mail to arrive at the time specified in the schedule.

10. That the 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; and that he will discharge any driver or carrier of said mail whenever required to do so by the Postmaster General.

11. That the schedules being arranged so as to allow seven minutes to each post office for opening and closing the mails generally, and one hour to the distributing post offices, the Postmaster General is to have, nevertheless, the power of extending the time, on allowing the like extension to the contractors, if they shall claim it.

12. That the Postmaster General may alter the schedule, and alter the route, he allowing a pro rata increase of compensation for any additional service required, and for any increased speed, when the employment of additional stock or carriers is rendered necessary.

13. That the Postmaster General may curtail the service or dispense with it entirely, he allowing one month's extra pay upon the amount deducted, in case he wishes to place on the route a higher degree of service than is contracted for, first offering the privilege to the contractors on the route, of performing such higher service, on the terms that can be obtained; or whenever he shall deem it expedient to lessen the service or to leave such route, or any part of it, out of operation, or to carry the mail by steamboat or railroad cars; provided that reduction of compensation in consequence of reduction of service shall not exceed the exact proportion which the service dispensed with bears to the whole service.

14. That the Postmaster General may annul the contract for repeated failures of the contractors to perform any of the stipulations of the contract; for violating the post office law, or disobeying the instructions of the department; or for assigning this contract without the consent of the Postmaster General first obtained.

15. The said United States covenant with the said contractors to pay as aforesaid, at the rate aforementioned, quarterly, in the months of May, August, November and February.

Provided always, That this contract shall be null and void, in case the contractors or any person that may become interested in this contract directly or indirectly, shall become a postmaster or assistant postmaster. No member of Congress shall be admitted to any share or part of this contract or agreement, or to any benefit to arise thereupon; 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 first day of July, 1837, and continue in force until the 30th day of June, in the year 1841.

In witness whereof, the said contractors and the Postmaster General have hereunto set their hands and seals the day and year set opposite their names respectively.

DECEMBER 30, 1837. AMOS KENDALL, [L. S.]

This schedule subject to alteration by the Postmaster General, agreeably to the provisions contained in the twelfth section of the contract.

Leave Utica every day at 5 p. m. Arrive at Ithaca next day by 3 p. m., and in winter by 10 p. m.

Leave Ithaca every day at 3 a. m. Arrive at Utica same day by 10 p. m., and in winter by 5 a. m., next day.

SEPTEMBER 26, 1837.

COURT OF CLAIMS OF THE UNITED STATES.

In the matter of the petition of THOMAS C. NYE, a citizen of the State of New York, *against* THE UNITED STATES.

Interrogatories to be propounded to Malgret P. Van Valkenburg, of the village of Lockport, Niagara county, New York, and David E. Lawrence, of the city of Utica, Oneida county, New York, and others, witnesses produced and sworn on the part of the claimant, Thomas C. Nye, against the United States, for violation of his mail contracts with the Post Office Department.

First interrogatory. What is your name, age, occupation, and place of residence for the last year?

Second interrogatory. Are you acquainted with the nature and character of the claim made by said Thomas C. Nye against the United States, which is the subject of the present inquiry; and if so, have you any interest, either direct or indirect, in said claim?

Third interrogatory. Are you related, and if so in what degree, to the claimant?

Fourth interrogatory. Where was your place of residence and what

was your occupation in the year 1845, and how long previous to said year had you been engaged in such occupation?

Fifth interrogatory. In what business was Thomas C. Nye, the claimant, engaged in 1845 and previous thereto?

Sixth interrogatory. Upon what post routes in the year 1845 did the claimant transport the United States mails? State fully and particularly.

Seventh interrogatory. At what time did the said claimant, in the year 1845, cease to transport the mails on said post routes?

Eighth interrogatory. In the said year, 1845, and before he ceased to transport said mails, what stage property did the claimant have on hand? State fully and in detail, item by item.

Ninth interrogatory. Was the stage property which claimant had on hand in said year used for the purpose of transporting said mail?

Tenth interrogatory. Are you acquainted with the value of said stage property; and if so, what was the value of the same at the time the claimant ceased to transport said mails? State particularly and in detail, as it respects each item of said stage property.

Eleventh interrogatory. Do you know what disposition was made by claimant of said stage property after he ceased to transport said mails; if so, state fully and particularly what became of said property? If any part was sold by claimant, state the prices at which the same were sold.

Twelfth interrogatory. What other property, either in the nature of fixtures or otherwise appertaining and necessary for use in and about the business of transporting said mails, did the said claimant possess at the period above referred to? State fully and particularly, together with the value thereof, item by item; and also what use or disposition was made by the claimant of said fixtures, and what was the depreciation, if any, in the value of the same, by reason of not being used for the purpose of transporting said mails.

Thirteenth interrogatory. Is the stock and vehicles for running post roads valuable for any other purpose; and if so, for what purpose?

Fourteenth interrogatory. What is the depreciation in value, if any, of said stage property when put to other uses—how much per cent.?

Fifteenth interrogatory. Do you know any other matter or thing relative to the claim in question? if so, state the same fully, as if you had been particularly interrogated thereto.

Cross-interrogatories filed by the solicitor of the Court of Claims, in the office of the chief clerk of said court, to be propounded to witnesses in the case of Thomas C. Nye *vs.* the United States, now pending in said Court.

Cross-interrogatory 1. What were your means of information as to property possessed by Nye?

Cross-interrogatory 2. When you speak of his ownership of property and the value of it, do you speak of his interest in it only, or the value of that interest?

Cross-interrogatory 3. So also of the losses sustained in the property, do you estimate the losses on his interest, or the loss on the whole property?

Cross-interrogatory 4. If you know what Nye's interest was in the property, or any part of it, state it particularly, and also who were the other owners or partners, and the extent of their several interests?

Cross-interrogatory 5. Do you know of any actual sales of the property? If so, to whom was it sold? State, if you know, the actual cost of the same property.

Cross-interrogatory 6. Did Nye and his associates keep books on which the purchases and sales of the stock in question were entered? If so, what has become of said books?

Cross-interrogatory 7. Is it not usual for persons in such business to keep books, or to make some contemporaneous memoranda of such transactions? If so, were any kept of them? If not, why not?

Cross-interrogatory 8. If you give in estimates on your examination in chief, state the basis of such estimates, that is, the reasons on which you found them?

COURT OF CLAIMS.

WASHINGTON, *April* 18, 1856.

I certify the foregoing to be true copies of interrogatories and cross interrogatories filed in the office of the chief clerk of the Court of Claims, to be propounded to witnesses in the case of Thomas C. Nye *vs.* the United States.

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

SAM'L H. HUNTINGTON,
Chief Clerk Court of Claims.

ALBANY, *May* 20, 1856.

STATE OF NEW YORK, *City and County of Albany, ss.*

I certify and return that I have taken the examinations of the above named Malgret P. Van Valkenburgh and David E. Lawrence, on oath on the behalf of the above named claimant, upon the foregoing interrogatories and cross-interrogatories, and in order, and that those respective depositions, duly certified, are hereto annexed and returned herewith.

R. J. HILTON,
Commissioner of Court of Claims.

The Hon. COURT OF CLAIMS.

ALBANY, *June* 11, 1856.

STATE OF NEW YORK, *City and County of Albany, ss.*

I further certify and return that I have taken the examinations of Joshua T. Blanchard and John R. Wilkins, on oath, on behalf of the above named claimant, and upon the foregoing direct and cross-interrogatories, and that their respective depositions and testimony, duly certified, are hereto annexed and herewith returned.

R. J. HILTON,
Commissioner of Court of Claims.

The Hon. COURT OF CLAIMS.

NEW YORK, *June* 14, 1856.

STATE OF NEW YORK, *City and County of New York, ss.*

I certify and return that I have taken the testimony of the above named Douglass L. Harris, on oath, on behalf of the above named claimant, upon the foregoing interrogatories and cross-interrogatories, and that the respective interrogatories and depositions are hereto annexed and herewith returned.

T. BAILEY MYERS,
Commissioner of Court of Claims.

The Hon. COURT OF CLAIMS,
Washington, D. C.

IN THE COURT OF CLAIMS OF THE UNITED STATES.

THOMAS C. NYE *against* THE UNITED STATES OF AMERICA.

STATE OF NEW YORK, *City and County of Albany, ss.*

Be it remembered that on this fifteenth day of May, A. D. 1856, at 1 o'clock p. m. of that day, personally appeared before me, Robert J. Hilton, of the city of Albany, in the State of New York, a commissioner of the Court of Claims, the above named claimant and D. Ira Baker, esq., his solicitor, for the purpose of taking the examination and testimony of Malgret P. Van Valkenburgh, of Lockport, New York, and others, as witnesses on the behalf of the said above named claimant in the above entitled cause or matter of controversy now depending in the said Court of Claims upon the interrogatories and cross-interrogatories duly settled and filed with the clerk of said court, a certified copy whereof is hereto annexed. And the above named witness, Malgret P. Van Valkenburgh, a resident of the village of Lockport, in the State of New York, who, being first duly cautioned and sworn on behalf of the above claimant, deposed and testified as follows:

First interrogatory. What is your name, age, occupation, and place of residence for the last year?

Answer. My name is Malgret P. Van Valkenburgh, aged forty-

eight years, by occupation a lumberman, and have resided for the year last past in the village of Lockport, in the State of New York.

Second interrogatory. Are you acquainted with the nature and character of the claim made by said Thomas C. Nye against the United States, which is the subject of the present inquiry, and if so, have you any interest, either direct or indirect, in said claim?

Answer. I believe I am acquainted with the nature and character of the claim made by said Thomas C. Nye against the United States, which is the subject of the present inquiry. I have no interest, either direct or indirect, in said claim.

Third interrogatory. Are you related, and if so, in what degree, to the claimant?

Answer. The claimant married my sister; he is my brother-in-law.

Fourth interrogatory. Where was your place of residence and what was your occupation in the year 1845, and how long previous to said year had you been engaged in such occupation?

Answer. During the year 1845 I resided at Madison village, in the county of Madison, in the State of New York, and my occupation during said year and the two years previous thereto was that of the general stage agent of Thomas C. Nye, the above claimant.

Fifth interrogatory. In what business was Thomas C. Nye, the claimant, engaged in 1845 and previous thereto?

Answer. The claimant, Thomas C. Nye, during the year 1845, and for two years previous thereto and upwards, was extensively engaged in the staging business and in the transportation of passengers and the United States mails.

Sixth interrogatory. Upon what post routes in the year 1845 did the claimant transport the United States mails? State fully and particularly.

Answer. Upon the following post routes, namely: from Albany to Syracuse, by the way of Cherry Valley; from Utica to Ithaca; from Utica to Binghamton; from Canistota to Hamilton; from De Ruyter to Cooperstown; from Cooperstown, by way of Cherry Valley, to Canajoharie, New York.

Seventh interrogatory. At what time did the said claimant in the year 1845 cease to transport the mails on said post routes?

Answer. On the 30th day of June, 1845.

Eighth interrogatory. In the said year 1845, and before he ceased to transport said mails, what stage property did the claimant have on hand? State fully and in detail, item by item.

Answer. The following described stage property, namely: one hundred and eighty horses, twenty stage coaches, twenty double stage wagons, twenty stage sleighs, forty sets of four-horse harness.

Ninth interrogatory. Was the stage property which claimant had on hand in said year used for the purpose of transporting said mails?

Answer. Yes.

Tenth interrogatory. Are you acquainted with the value of the said stage property, and if so, what was the value of the same at the time the claimant ceased to transport said mails? State particularly and in detail as it respects each item of said stage property.

Answer. I am acquainted with the value of said stage property, and the following was the value of the same at the time the claimant ceased to transport said mails: the one hundred and eighty horses were worth one hundred and fifty dollars each; the twenty stage coaches were worth four hundred and fifty dollars each; the twenty sleighs were worth two hundred and fifty dollars each; the twenty double stage wagons were worth two hundred and fifty dollars each; and the forty sets of four-horse harness were worth fifty dollars a set each.

Eleventh interrogatory. Do you know what disposition was made by claimant of said stage property after he ceased to transport said mails? If so, state fully and particularly what became of said property? If any part was sold by claimant, state the prices at which the same were sold.

Answer. It remained on the hands of the claimant. In 1847 the claimant sold two teams, but the prices he received therefor I do not know and have never heard, and I have no knowledge of his disposition of any more or any other portions of said stage property.

Twelfth interrogatory. What other property, either in the nature of fixtures or otherwise appertaining and necessary for use in and about the business of transporting said mails, did the said claimant possess at the period above referred to? State fully and particularly, together with the value thereof, item by item; and also what use or disposition was made by the claimant of said fixtures, and what was the depreciation, if any, in the value of the same, by reason of not being used for the purpose of transporting said mails?

Answer. The claimant, at the period above referred to, also owned and possessed and used as appurtenant and necessary, in and about this said staging business, the following other and additional property and fixtures, namely: one wagon shop, of the value of two thousand dollars; one blacksmith shop building and necessary tools therein, worth one thousand dollars; one barn, of the value of two thousand dollars; two sheds, worth together seven hundred dollars; and one granary building, of the value of three hundred dollars. These several valuations include the value of the site or land on which said buildings respectively are located and erected. I do not know what use or disposition was made by the claimant of said fixtures or buildings, and the depreciation in the value of the same by reason of not being used for the purpose of transporting said mails was, in my opinion, at least fifty per cent. on the above valuation.

Thirteenth interrogatory. Is the stock and vehicles for running post roads valuable for any other purpose; and, if so, for what purpose?

Answer. I know of no other purpose for which they are valuable.

Fourteenth interrogatory. What is the depreciation in value, if any, of said stage property when put to other uses; how much per cent?

Answer. Seventy-five per cent.

Fifteenth interrogatory. Do you know any other matter or thing relative to the claim in question? if so, state the same fully as if you had been particularly interrogated thereto.

Answer. I know nothing further material.

M. P. VAN VALKENBURGH.

Cross-examination.

First cross-interrogatory. What were your means of information as to property possessed by Nye?

Answer. By being in his service for several years, and being intimately conversant with all his property, business operations, and affairs.

Second cross-interrogatory. When you speak of his ownership of property and the value of it, do you speak of his interest in it only, or the value of that interest?

Answer. In speaking of claimant's ownership of property and the value of it, I mean that the claimant was the sole owner thereof, and its fair value for the uses and purposes for which he had acquired it.

Third cross-interrogatory. So also of the losses sustained in the property, do you estimate the losses on his interest, or the loss on the whole property?

Answer. On the whole property to him as sole owner.

Fourth cross-interrogatory. If you know what Nye's interest was in the property, or any part of it, state it particularly; and also who were the other owners or partners, and the extent of their several interests?

Answer. I know that Nye was the sole owner of said property. He had no partners or co-owners with him who had interest in said property, or any part or portion of it.

Fifth cross-interrogatory. Do you know of any actual sales of the property? If so, to whom was it sold; state, if you know, the actual cost of the same property?

Answer. No, except the sale of two stage teams of four horses each in 1847, to Mr. Moore, of Winfield, New York. I do not know what the price received was, nor do I know what their actual cost was.

Sixth cross-interrogatory. Did Nye and his associates keep books on which the purchases and sales of the stock in question were entered; if so, what has become of said books?

Answer. Nye had no associates in the ownership of said property, nor did he keep any book or books on which the purchases or sales of the stock in question were entered.

Seventh cross-interrogatory. Is it not usual for persons in such business to keep books or to make some contemporaneous memoranda of such transactions? If so, were any kept of them? If not, why not?

Answer. It is not usual in cases where the property is owned by one person solely. Mr. Nye did not consider it necessary, and did not keep any such book or memoranda, to my knowledge.

Eighth cross-interrogatory. If you give estimates on your examination in chief, state the basis of such estimates: that is, the reasons on which you found them?

Answer. The estimates I have stated and given in relation to said property, in my answer to the direct interrogatories, are based on my personal knowledge of said property, and an intimate acquaintance with its condition and fair value.

M. P. VAN VALKENBURGH.

STATE OF NEW YORK, }
City and County of Albany, } *ss.*

I certify that on this 15th day of May, A. D. 1856, before me personally came Malgret P. Van Valkenburgh, the witness above named, and after having been by me first duly sworn to tell the truth, the whole truth, and nothing but the truth in the above entitled cause or matter of controversy, the several interrogatories and cross-interrogatories contained in his foregoing deposition, were written down by me, the commissioner, and then proposed by me to the said witness, and the answers thereto and in their order were written down by me, the commissioner, in the presence of the witness, who then subscribed the said deposition in my presence. The deposition of Malgret P. Van Valkenburgh, of Lockport, in the State of New York, taken at the request of Thomas C. Nye, a citizen of the State of New York, to be used in the investigation of a claim against the United States for violation of his mail contracts with the Post Office Department, and now pending in the Court of Claims of the United States, in the name of the said Thomas C. Nye. The adverse party did not attend and did not object.

R. J. HILTON,
Commissioner of the Court of Claims, at Albany, New York.

Fees of witness : Travel from Lockport to Albany and returning, 466 miles, at 5 cents per mile, $23 30; witness attending one day before commissioner, $1 50 ; commissioner's fees for taking and certifying deposition, affidavit, and certificate, $5 85; postage on return of interrogatories and deposition, say $0 21. Total, $30 86.

COURT OF CLAIMS OF THE UNITED STATES.

THOMAS C. NYE *against* UNITED STATES OF AMERICA.

STATE OF NEW YORK, *City and County of Albany, ss:*

Be it remembered that on this twentieth day of May A. D. 1856, at ten o'clock in the forenoon of that day, personally appeared before me Robert J. Hilton of the city of Albany, in the State of New York, a Commissioner of the Court of Claims, the above named claimant for the purpose of having taken the examination and testimony of David E. Lawrence, (now) of city of Albany, in the State of New York, as a witness on the behalf of the said above named claimant in the above entitled cause or matter of controversy, now depending in the said Court of Claims upon the interrogatories and cross-interrogatories, duly settled and filed with the clerk of the said Court of Claims, a certified copy whereof is hereto annexed.

And the said above named witness David E. Lawrence, formerly of city of Utica, but now of city of Albany, New York, a witness produced on behalf of the said above named claimant, and who, having

been first duly cautioned and sworn to testify the truth, the whole truth and nothing but the truth relative to the above entitled cause, thereupon deposed, testified, and answered as follows:

First interrogatory. What is your name, age, occupation and place of residence for the last year?

Answer. My name is David E. Lawrence; I am forty years of age; my occupation is that of messenger for the American Express Company; I have resided since the first of May instant, in the city of Albany, and for the previous two years in the city of Utica, New York.

Second interrogatory. Are you acquainted with the nature and character of the claim made by said Thomas C. Nye against the United States, which is the subject of the present inquiry, and if so, have you any interest, either direct or indirect in said claim?

Answer. I am acquainted with the nature and character of the claim made by the said Thomas C. Nye against the United States, which is the subject of the present inquiry; I have no interest whatever, either directly or indirectly in said claim or any part thereof.

Third interrogatory. Are you related, and if so in what degree, to the claimant?

Answer. I am not related in any way to said claimant.

Fourth interrogatory. Where was your place of residence, and what was your occupation in the year 1845; and how long previous to said year had you been engaged in such occupation?

Answer. During the year 1845 I resided at Hamilton village, in the county of Madison, in the State of New York; and my occupation during said year, and the latter half of the year 1844, was that of general stage agent at that place, of the said Thomas C. Nye, the above claimant.

Fifth interrogatory. In what business was Thomas C. Nye, the claimant, engaged in 1845, and previous thereto?

Answer. The claimant Thomas C. Nye, during the year 1845, and for several years previous thereto, was extensively engaged in the staging business, and in the transportation of passengers and their baggage, and the United States mails upon several mail routes in the State of New York.

Sixth interrogatory. Upon what post routes in the year 1845 did the claimant transport the United States mails? State fully and particularly.

Answer. Upon the following post routes, namely: from the city of Albany to Syracuse, by the way of the village of Cherry Valley; from Utica to Ithaca; from Utica to Binghamton; from Canistota to Hamilton; from De Ruyter to Cooperstown; and from Cooperstown by way of Cherry Valley, to Canajoharie; all in the State of New York.

Seventh interrogatory. At what time did the said claimant in the year 1845, cease to transport the mails on said post routes?

Answer. On the last day of June A. D. 1845.

Eighth interrogatory. In the year 1845, and before he ceased to transport said mails, what stage property did the claimant have on hand? State fully and in detail, item by item.

Answer. The following described stage property, namely: one hundred and eighty horses; twenty stage coaches; twenty four-horse stage wagons; twenty four-horse sleighs; and forty sets of four-horse harness.

Ninth interrogatory. Was the stage property which claimant had on hand in said year, used for the purpose of transporting said mail?

Answer. Yes, it was.

Tenth interrogatory. Are you acquainted with the value of said stage property; and if so, what was the value of the same at the time the claimant ceased to transport said mails? State particularly, and in detail as it respects each item of said stage property.

Answer. I am acquainted with the value of said stage property, and the following was the value of the same at the time (June 30, 1845) when the said claimant ceased to transport said mails. The one hundred and eighty stage horses were worth on the average, at least one hundred and fifty dollars each; the twenty stage coaches were worth four hundred and fifty dollars each; the twenty sleighs were worth two hundred and fifty dollars each; the twenty double stage wagons were worth two hundred and fifty dollars each; and the forty sets of four-horse harness were worth fifty dollars each set; all of this stage property was at that time in good order and condition.

Eleventh interrogatory. Do you know what disposition was made by claimant of said stage property after he ceased to transport said mails? If so, state fully and particularly what became of said property; if any part was sold by claimant, state the prices at which the same were sold.

Answer. It remained on the hands and in possession of the claimant until I left his service, which was about the close of the year 1845. I have no knowledge that the claimant ever sold or disposed of any of it, or what has since become of it; how disposed of, or for what prices.

Twelfth interrogatory. What other property either in the nature of fixtures or otherwise appertaining and necessary for use, in and about the business of transporting said mails, did the said claimant possess at the period above referred to; state fully and particularly, together with the value thereof, item by item; and also, what use and disposition was made by the claimant of said fixtures, and what was the depreciation, if any, in the value of the same by reason of not being used for the purpose of transporting said mails?

Answer. At the period above referred to (June 30, 1845,) the said claimant owned, possessed, and used at Madison village, New York, and as appurtenant and necessary to, and in and about his said business of transporting the said United States mails, the following other and additional property and fixtures, namely: a coach shop, which he occupied and used for the building and repairing of his stage coaches, wagons, and sleighs, together with the necessary tools, worth and of the value of two thousand five hundred dollars; a harness shop and fixtures, worth one thousand dollars; a blacksmith shop and fixtures, worth five hundred dollars; two horse stables with shed and granary annexed to each, worth together, two thousand five hundred dollars. This limit of valuation includes only the fair value of the said build-

ings with their fixtures, &c., and not the value of the land they occupied. The said claimant at same time also owned and occupied a barn and stable for the accommodation of his stage horses and property at Hamilton village, New York, and which he built there for that purpose, worth eight hundred dollars exclusive of the land or site, I do not know what use or disposition was made by the claimant of said fixtures or buildings; they all remained in his hands for several years afterwards unoccupied and undisposed of. The fixtures of the coach shop were worth at the said period of time (June 30, 1845,) the sum of five hundred dollars; the fixtures of the harness shop at the same time were worth two hundred and fifty dollars; and the fixtures of the blacksmith shop, at the same time, were worth three hundred dollars; and the depreciation in the value of said fixtures of said buildings by reason of their not being used for the purpose of transporting said mails, was, at least, seventy-five per cent. on such valuation; and the depreciation in the value of the said above mentioned and described buildings, by reason of their not being used for the purpose of transporting said mails, was seventy-five per cent. on their above estimated value.

Thirteenth interrogatory. Is the stock and vehicles for running post roads valuable for any other purpose; and if so, for what purpose?

Answer. They are not.

Fourteenth interrogatory. What is the depreciation in value, if any, of said stage property when put to other uses; how much per cent?

Answer. Very considerable; at least from seventy-five to eighty per cent.

Fifteenth interrogatory. Do you know any other matter or thing relative to the claim in question? if so, state the same fully, as if you had been particularly interrogated thereto.

Answer. I wish here to correct my answer to the fourth interrogatory. I went into the employ of the claimant at Hamilton village, New York, as his general stage agent, in the summer or early in the autumn of 1843, and continued there and in his employment as such general stage agent until the close of A. D. 1845, and during which period of time I was intimately acquainted with the stage property belonging to the claimant, and with its condition, extent, and value.

D. E. LAWRENCE.

Cross-examination.

First cross-interrogatory. What were your means of information as to property possessed by Nye?

Answer. Being in his employ for two years and upwards, as already stated, and being acquainted with his property, seeing it in daily use during that time, and being acquainted with the original cost which he paid for a greater portion of it.

Second cross-interrogatory. When you speak of his ownership of property, and the value of it; do you speak of his interest in it only, or the value of that interest?

Answer. I speak of it as the same was owned by him at the time I have mentioned, and its then value.

Third cross-interrogatory. So also of the losses sustained on the property, do you estimate the losses on his interest, or the loss on the whole property?

Answer. On the whole property above described, and of which the claimant was the sole owner and proprietor?

Fourth cross-interrogatory. If you know what Nye's interest was in the property, or any part of it, state it particularly, and also who were the other owners or partners, and the extent of their several interests?

Answer. I know that said Nye was the sole owner of said property; I never knew or heard that he had any associate or partner who owned or had any interest in said property, or any part thereof.

Fifth cross-interrogatory. Do you know of any actual sales of the property; if so, to whom was it sold? State, if you know, the actual cost of the same property.

Answer. I no not know of any actual sales of the property.

Sixth cross-interrogatory. Did Nye and his associates keep books in which the purchases and sales of the stock in question were entered; if so, what has become of said books?

Answer. I never knew that Nye had associates in the ownership or purchase of said property, or that they or he ever kept books or a book in which the purchases and sales of the stock in question were entered.

Seventh cross-interrogatory. Is it not usual for persons in such business to keep books, or to make some contemporaneous memoranda of such transactions; if so, were any kept of them; if not, why not?

Answer. It is not, I think, customary for sole owners and proprietors of stage property to keep books, or to make contemporaneous memoranda of such transactions. It would be attended with a great deal of difficulty in consequence of the nature of such property; its extent and mode of use; repair and management. Mr. Nye did not consider it necessary to keep or make such entries or memoranda, and did not keep any within my knowledge.

Eighth cross-interrogatory. If you give estimates in your examination in chief, state the basis of such estimates; that is, the reasons on which you found them.

Answer. My estimates of the valuation of the claimant's stage property, and which he used in transporting the United States mails, and also my estimates of its depreciation in consequence of the same not being used for such purpose—stated and given in my examination in chief—is based on my personal knowledge of the character, nature, and extent of such stage property and fixtures, and appertaining and necessary for such use thereof, and from my intimate acquaintance with its use by said claimant.

D. E. LAWRENCE.

STATE OF NEW YORK, }
City and County of Albany, } *ss.*

I certify that on this twentieth day of May, A. D. 1856, before me personally came David E. Lawrence, of the city of Albany, New York, the witness above named, and after having been by me first duly sworn to tell the truth, the whole truth, and nothing but the truth, in the above entitled cause or matter of controversy, the several interrogatories and cross-interrogatories contained in his foregoing deposition were written down by me and then proposed by me to the said witness, and the answers thereto, and in their order, were written down by me in the presence of the witness, and who then subscribed the said deposition in my presence.

The deposition and examination of David E. Lawrence, of the city of Albany, New York, taken at the request of Thomas C. Nye, a citizen of the State of New York, to be used in the investigation of a claim against the United States for a violation of his mail contracts with the Post Office Department, and now pending in the Court of Claims of the United States in the name of the said Thomas C. Nye. The adverse party did not attend, and did not object.

I do further certify that I am not of counsel nor attorney for either of the parties in the said deposition and caption named, nor in any way interested in the event of the said claim or cause named in the said caption. In testimony whereof, I have hereto subscribed my name officially, on the day and year and at the place above written.

R. J. HILTON,
Commissioner of the United States Court of Claims,
at City of Albany, in the State of New York.

Witness' fees: Witness attending 2 days, at $1 50 per day, $3. Commissioner's fee for taking and certifying deposition, affidavit, and certificate, $7 05. Postage on return, estimated, 21 cents. Total, $10 26.

IN THE COURT OF CLAIMS OF THE UNITED STATES.

THOMAS C. NYE, *vs.* THE UNITED STATES OF AMERICA.

STATE OF NEW YORK, *City and County of Albany, ss.*

Be it remembered that on this 10th day of June, A. D. 1856, at 10 o'clock in the forenoon of said day, personally appeared before me, Robert J. Hilton, of the city of Albany, in the State of New York, a commissioner of the Court of Claims of the United States, Thomas C. Nye, the above named claimant, for the purpose of taking the examination and testimony of *Joshua T. Blanchard*, a resident of Saratoga Springs, in the State of New York, as a witness on behalf of the above named claimant in the above entitled cause or matter of

controversy now depending in the said Court of Claims of the United States upon the interrogatories and cross-interrogatories duly settled and filed with the Clerk of the said Court of Claims, a certified copy whereof is hereto annexed. And the said witness, *Joshua T. Blanchard*, of Saratoga Springs, in the State of New York, produced on behalf of the above claimant, and being by me first duly cautioned and sworn to testify the truth, the whole truth, and nothing but the truth, relative to the above entitled cause, thereupon deposed and answered as follows:

First interrogatory. What is your name, age, occupation, and place of residence for the last year?

Answer. My name is Joshua T. Blanchard; my age fifty-four years; by occupation a farmer; and am now, and have been for the last year, a resident of Saratoga Springs, in the State of New York.

Second interrogatory. Are you acquainted with the nature and character of the claim made by Thomas C. Nye against the United States, which is the subject of the present inquiry; and if so, have you any interest, either direct or indirect, in said claim?

Answer. I am acquainted with the nature and character of the claim made by the said Thomas C. Nye against the United States, and have no interest, either direct, or indirect in said claim, or any part thereof.

Third interrogatory. Are you related, and if so, in what degree, to the claimant?

Answer. I am not in any way related to the said claimant.

Fourth interrogatory. Where was your place of residence, and what was your occupation in the year 1845; and how long previous to said year had you been engaged in such occupation?

Answer. During the year 1845 I resided at the village of Saratoga Springs, New York, and my occupation during that year was that of a general stage proprietor; and that had been my occupation for about fifteen years previous to said year 1845.

Fifth interrogatory. In what business was Thomas C. Nye, the claimant, engaged in 1845, and previous thereto?

Answer. I do not know personally, but by reputation he was an extensive stage proprietor, and engaged in the staging business, and in the transportation of passengers and the United States mails upon several mail routes in the State of New York.

Sixth interrogatory. Upon what post routes in the year 1845 did the claimant transport the United States mails? State fully and particularly.

Answer. I do not know, and I cannot state particularly.

Seventh interrogatory. At what time did the said claimant, in the year 1845, cease to transport the mails on said post routes?

Answer. I do not know.

Eighth interrogatory. In the year 1845, and before he ceased to transport said mails, what stage property did the claimant have on hand? State fully and in detail, item by item.

Answer. I do not know, and I cannot state items.

Ninth interrogatory. Was the stage property which claimant had

on hand in said year used for the purpose of transporting said mails?

Answer. I do not know anything about it.

Tenth interrogatory. Are you acquainted with the value of said stage property; and if so, what was the value of the same at the time the claimant ceased to transport said mails? State particularly and in detail, and as it respects each item of said stage property.

Answer. I know nothing about the value of said stage property, or any part thereof.

Eleventh interrogatory. Do you know what disposition was made by claimant of said stage property after he ceased to transport said mails? if so, state fully and particularly what became of said property. If any part was sold by claimant, state the prices at which the same were sold.

Answer. I do not know what disposition was made by claimant of said stage property after he ceased to transport said mails. I cannot answer any of the inquiries contained in this interrogatory.

Twelfth interrogatory. What other property, either in the nature of fixtures, or otherwise, appertaining and necessary for use in and about the business of transporting said mails, did the said claimant possess at the period above referred to? State fully and particularly, together with the value thereof, item by item; also what use or disposition was made by the claimant of said fixtures; and what was the depreciation, if any, in the value of the same, by reason of not being used for the purpose of transporting said mails?

Answer. I do not know; I cannot answer any of the matters inquired of in this interrogatory.

Thirteenth interrogatory. Is the stock and vehicles for running post roads valuable for any other purpose; and if so, for what purpose?

Answer. They are not valuable for any other purpose.

Fourteenth interrogatory. What is the depreciation in value, if any, of said stage property when put to other uses; how much per cent.?

Answer. Its depreciation is very large—at least eighty per cent.

Fifteenth interrogatory. Do you know of any other matter or thing relative to the claim in question? If so, state the same fully, as if you had been particularly interrogated thereto.

Answer. I know nothing further material in relation to the claim in question.

J. T. BLANCHARD.

Cross-examination.

First cross-interrogatory. What were your means of information as to property possessed by Nye?

Answer. None whatever beyond the general reputation that he was an extensive stage proprietor; but I never saw any of it, to my knowledge.

Second cross-interrogatory. When you speak of his ownership of

property, and the value of it, do you speak of his interest in it only, or the value of that interest?

Answer. I do not know what interest he had or owned in said property beyond the fact of his reputed ownership.

Third cross-interrogatory. So also of the losses sustained on the property, do you estimate the losses on his interest, or the loss on the whole property?

Answer. When I stated, in my answer to the fourteenth direct interrogatory, the depreciation on stage property when put to other uses, I meant the loss on the whole property.

Fourth cross-interrogatory. If you know what Nye's interest was in the property, or any part of it, state it particularly, and also who were the other owners or partners, and the extent of their several interests?

Answer. I do not know what Nye's interest in said property was, nor that he had any partners or co-owners, nor the extent of their several interests; in short, I know nothing about the matters inquired of in this interrogatory.

Fifth cross-interrogatory. Do you know of any actual sales of the property; if so, to whom was it sold? state, if you know, the actual cost of the same property.

Answer. I know of no sales of the said property, or any part of it, nor what it actually cost.

Sixth cross-interrogatory. Did Nye and his associate keep books in which the purchases and sales of the stock in question were entered; if so, what has become of said books?

Answer. Not to my knowledge.

Seventh cross-interrogatory. Is it not usual for persons in such business to keep books or to make some contemporaneous memoranda of such transactions; if so, were any kept of them; if not, why not?

Answer. No, it is not usual, although some persons in the staging business do keep books in which they enter such transactions; but I do not know that any were kept by the claimant, or why not.

Eighth cross-interrogatory. If you give estimates in your examination in chief, state the basis of such estimates; that is, the reasons on which you found them.

Answer. My estimate of depreciation or loss, the only one I have given in my examination in chief, as stated in my answers to the thirteenth and fourteenth direct interrogatories, are based on my own personal experience and observation, and personal knowledge of my own stage property under similar circumstances.

J. T. BLANCHARD.

STATE OF NEW YORK, *City and County of Albany*, *ss.*

I certify that on this tenth day of June, A. D. 1856, before me personally came Joshua T. Blanchard, of the village of Saratoga Springs, in the State of New York, the witness above named, and after having been by me first duly sworn to tell the truth, the whole truth, and nothing but the truth, in the above entitled cause or matter of controversy, then the several interrogatories and cross-interroga-

tories, and in order, were put, and his respective answers to each in same order were written down by me in the presence of the witness, and he then subscribed the said deposition in my presence.

The above is the deposition and examination of the said Joshua T. Blanchard, of Saratoga Springs, New York, taken at the request of Thomas C. Nye, a citizen of the State of New York, to be used in the investigation of a claim against the United States for a violation of his mail contract with the Post Office Department, and now pending in the Court of Claims of the United States in the name of the said Thomas C. Nye. The adverse party did not attend, and did not object.

R. J. HILTON,
Commissioner of Court of Claims of United States,
at Albany, N. Y.

Fees of witnesses: Attending one day before commissioner, $1 50; travelling 68 miles, from Saratoga Springs to Albany, and back, $3 40; commissioner's fees, taking and certifying depositions, $4 60; postage on return, estimated at 12½ cents; amount, $9 62.

IN THE COURT OF CLAIMS OF THE UNITED STATES.

THOMAS C. NYE *vs.* THE UNITED STATES OF AMERICA.

STATE OF NEW YORK,
City and County of Albany, } *ss.*

Be it remembered that on this tenth day of June, A. D. 1856, at five o'clock in the afternoon of said day, personally appeared before me, Robert J. Hilton, of the city of Albany, in the State of New York, a commissioner of the Court of Claims of the United States, at my office, No. 74 State street, in the said city of Albany, New York, Thomas C. Nye, the above named claimant, for the purpose of taking the examination and testimony of John R. Wilkins, of the village of Cohoes, Albany county, New York, as a witness on behalf of the above named claimant, in the above entitled cause or matter of controversy now depending in the said Court of Claims of the United States, upon the interrogatories and cross-interrogatories duly settled and filed with the clerk of the said Court of Claims, a certified copy whereof is hereto annexed; and the said witness, John R. Wilkins, a resident of the village of Cohoes, in the county of Albany, in the State of New York, produced on behalf of the above claimant, and being by me first duly cautioned and duly sworn to testify the truth, the whole truth, and nothing but the truth, relative to the above entitled cause; and being thereupon examined on said interrogatories and cross-interrogatories, and in their due order, thereupon deposed and answered as follows:

First interrogatory. What is your name, age, occupation, and place of residence for the last year?

Answer. My name is John R. Wilkins; I reside at the village of Cohoes, in the county of Albany, and have resided there for the past year; I am fifty-two years of age, and by occupation an inn-keeper.

Second interrogatory. Are you acquainted with the nature and character of the claim made by said Thomas C. Nye against the United States, which is the subject of the present inquiry; and if so, have you any interest, either direct or indirect, in said claim?

Answer. I am acquainted with the nature and character of the claim made by said Thomas C. Nye against the United States; I have no interest therein, either directly or indirectly.

Third interrogatory. Are you related, and if so, in what degree, to the claimant?

Answer. I am not in any way related to said claimant.

Fourth interrogatory. Where was your place of residence, and what was your occupation in the year 1845; and how long previous to said year had you been engaged in such occupation?

Answer. I resided in the village of Cherry Valley, in the State of New York, and was an inn-keeper and stage proprietor at said village during the year 1845; and that had been my occupation for eight years previously at said place.

Fifth interrogatory. In what business was Thomas C. Nye, the claimant, engaged in 1845, and previous thereto?

Answer. He was an extensive stage proprietor, and engaged in the staging business, and the transportation of passengers and their baggage, and also the United States mails, upon several mail routes in the State of New York.

Sixth interrogatory. Upon what post routes, in the year 1845, did the claimant transport the United States mails? State fully and particularly.

Answer. Upon the following post routes, viz: From Albany to Syracuse, by way of Cherry Valley; from Utica to Ithaca; from Utica to Binghampton; from Cannistota to Hamilton; from De Ruyter to Cooperstown; and from Cooperstown, by way of Cherry Valley, to Canajoharie, in the State of New York.

Seventh interrogatory. At what time did the said claimant, in the year 1845, cease to transport the mails on said post routes?

Answer. On or about the first day of July, 1845.

Eighth interrogatory. In the said year 1845, and before he ceased to transport said mails, what stage property did the claimant have on hand? State fully and in detail, item by item.

Answer. The claimant had a large quantity of stage property, consisting of carriages, coaches, sleds, wagons, horses, harness, &c., sufficient and ample for his business as stage proprietor, but I cannot state or give the items, or a particular description of same.

Ninth interrogatory. Was the stage property which claimant had on hand in said year used for the purpose of transporting said mails?

Answer. Yes, it was so used.

Tenth interrogatory. Are you acquainted with the value of said stage property; and if so, what was the value of the same at the time

the claimant ceased to transport said mails? State fully and in detail as it respects each item of said stage property.

Answer. I am not sufficiently acquainted with the value of said stage property to express any certain opinion in regard to the value of the same at the time the claimant ceased to transport said mails, or the value of any part thereof, or to give items in detail.

Eleventh interrogatory. Do you know what disposition was made by claimant of said stage property after he ceased to transport said mails? if so, state fully and particularly what became of said property. If any part was sold by claimant, state the prices at which the same were sold.

Answer. I have no knowledge that claimant ever sold or disposed of any of said stage property; it remained on his hands after he ceased to transport said mails.

Twelfth interrogatory. What other property, either in the nature of fixtures or otherwise, appertaining and necessary for use in and about the business of transporting said mails, did the said claimant possess at the period above referred to? State fully and particularly, together with the value thereof, item by item, and also what use or disposition was made by the claimant of said fixtures; and what was the depreciation, if any, in the value of the same, by reason of not being used for the purpose of transporting said mails.

Answer. The claimant owned and occupied shops, barns, sheds, offices, blacksmith shop and carriage shop, and harness shop, but I cannot state the value of the same or its depreciation, or what disposition was made thereof by claimant.

Thirteenth interrogatory. Is the stock and vehicles for running post roads valuable for any other purpose; and if so, for what purpose?

Answer. They are of little value for any other purpose.

Fourteenth interrogatory. What is the depreciation in value, if any, of said stage property when put to other uses; how much per cent.?

Answer. At least seventy-five per cent. average, on gross valuation.

Fifteenth interrogatory. Do you know any other matter or thing relative to the claim in question? If so, state the same fully, as if you had been particularly interrogated thereto.

Answer. Nothing, except to state that stage property is a very depreciable commodity even when not used. This remark applies to all kinds of stage property, and I speak on this point from actual experience in the stage business.

J. R. WILKINS.

Cross-examination.

First cross-interrogatory. What were your means of information as to the property possessed by Nye?

Answer. I saw his stages and teams when engaged in the business, and was familiar with his business operations and their extent for several years previous to July, 1845.

Second cross-interrogatory. When you speak of his ownership of property, and the value of it, do you speak of his interest in it only, or the value of that interest?

Answer. I speak of him as the sole owner and proprietor of such stage property, and of its value to him as its sole owner and proprietor.

Third cross-interrogatory. So also of the losses sustained on the property, do you estimate the losses on his interest, or the losses on the whole property?

Answer. On the whole property which he then owned and had engaged in the transportation of the mails on the post routes above named.

Fourth cross-interrogatory. If you know what Nye's interest was in the property, or any part of it, state it particularly, and also who were the other owners or partners, and the extent of their several interests?

Answer. He (Nye) was, as I believe and always heard, the sole owner of the stage property used by him, and I never heard that he had any partners or co-owners.

Fifth cross-interrogatory. Do you know of any actual sales of the property; if so, to whom was it sold? State, if you know, the actual cost of the same property.

Answer. I know of no actual sales of the property, or the actual cost of the same.

Sixth cross-interrogatory. Did Nye and his associates keep books in which the purchases and sales of the stock in question were entered; if so, what has become of said books?

Answer. I do not know that Nye or his associates kept books in which he or they entered or kept an account of the purchases or sales of the stock in question; and if there were any such book or books kept, I do not know what has become of the same.

Seventh cross-interrogatory. Is it not usual for persons in such business to keep books, or to make some contemporaneous memoranda of such transactions; if so, were any kept of them; if not, why not?

Answer. It is not usual for persons in such business to keep books, or even to make a contemporaneous memoranda of such transactions. I do not know that the claimant kept or made any, nor can I state why he did not.

Eighth cross-interrogatory. If you give in estimates on your examination in chief, state the basis of such estimates; that is, the reasons on which you found them.

Answer. My estimates are founded on my experience and observations while engaged myself in conducting the staging business for twenty-five years.

J. R. WILKINS.

STATE OF NEW YORK,
City and County of Albany, } *ss.*

I certify that on this tenth day of June, A. D. 1856, before me personally came John R. Wilkins, of the village of Cohoes, in the county of Albany, State of New York, the witness above named, and after having been by me first duly sworn to tell the truth, the whole truth, and nothing but the truth, in the above entitled cause or matter of controversy, then the several interrogatories and cross-interroga-

tories, in order, were put to him by me, and his respective answers to each in same order written down by me in the presence of the said witness, and he then subscribed the said foregoing deposition in my presence. The above is the deposition and examination of John R. Wilkins, of Cohoes village, New York, taken at the request of Thomas C. Nye, a citizen of the State of New York, to be used in the investigation of a claim against the United States, for a violation of his mail contract with the Post Office Department, and now pending in the Court of Claims of the United States, in the name of the said Thomas C. Nye. The adverse party did not attend, and did not object.

R. J. HILTON,
Commissioner of the Court of Claims of United States,
at Albany, New York.

Fees of witness, 1 day's attendance, $1 50. Travel to and from Albany to Cohoes village, 20 miles, $1. Commissioner's fees for taking and certifying deposition, oaths, certificate, &c., $4 60. Postage on return, (estimate,) 6 cents. Total, $7 16.

IN THE COURT OF CLAIMS OF THE UNITED STATES.

THOMAS C. NYE *vs.* THE UNITED STATES OF AMERICA.

STATE OF NEW YORK,
City and County of New York, } *ss.*

Be it remembered that on this fourteenth day of June, A. D. 1856, at three o'clock of that day, p. m., personally appeared before me, Theodore Bailey Myers, of the city of New York, a commissioner of the Court of Claims, the above named claimant, and D. John Baker, esq., his solicitor, for the purpose of taking the examination and testimony of Morgan L. Harris, a witness on the behalf of the above named claimant in the above entitled cause or matter of controversy now depending in the said Court of Claims, upon the interrogatories and cross-interrogatories duly settled and filed with the clerk of said court, a certified copy whereof is hereto annexed; and the above named Morgan L. Harris, a resident of the city of New York, a witness produced on behalf of the above named claimant, being by me first duly sworn to tell the truth, the whole truth, and nothing but the truth, relative to the above entitled cause, the questions contained in the within depositions were written down by the commissioner in the presence of the witness, who then subscribed the deposition in the presence of the commissioner as his answer thereto as follows:

First interrogatory. What is your name, age, occupation, and place of residence for the last year?

Answer. My name is Morgan L. Harris; I reside at No. 12 and 14 College Place, New York; keep the Clermont House; have done so for one year.

Second interrogatory. Are you acquainted with the nature and character of the claim made by said Thomas C. Nye against the United States, which is the subject of the present inquiry; and if so, have you any interest, either direct or indirect, in the said claim?

Answer. I am familiar with the character and facts of the claim made by said Thomas C. Nye against the United States; I know the nature of the claim, but have no interest therein, either direct or indirect.

Third interrogatory. Are you related, if so, in what degree, to the claimant?

Answer. There is no relationship or connexion between the claimant and myself.

Fourth interrogatory. Where was your place of residence, and what was your occupation in the year 1845; and how long previous to said year had you been engaged in such occupation?

Answer. I resided at Canajoharie, Montgomery county, New York, in 1845; I was keeping public house, and pretty heavily engaged in staging and livery business; I had mail contracts previous to and up to that time; one from Canajoharie to Leboharie Court-house, and one from there to Durham, Greene county.

Fifth interrogatory. In what business was Thomas C. Nye, the claimant, engaged in 1845 and previous thereto?

Answer. He was an extensive stage proprietor, and largely engaged in the transportation of the United States mails and of passengers and their baggage upon several mail routes in the State of New York.

Sixth interrogatory. Upon what post routes in the year 1845 did the claimant transport the United States mails? State fully and particularly.

Answer. Upon the post route extending from Albany to Syracuse, by the way of Cherry Valley; upon the route between Utica and Ithaca; on that between Utica and Binghampton; the route between Canastota and Hamilton; that from De Ruyter to Cooperstown; and that from Cooperstown to Canajoharie, via Cherry Valley, all in the State of New York, as I was informed and believe.

Seventh interrogatory. At what time did the said claimant, in the year 1845, cease to transport the mails on said post routes?

Answer. On or about the first day of July, 1845. I think on the first.

Eighth interrogatory. In the said year 1845, and before he ceased to transport said mails, what stage property did the claimant have on hand? State fully and in detail, item by item.

Answer. The claimant had a large stock of stage property, consisting in part of coaches, carriages, sleighs, horses, wagons, and harness, being the usual appliances of a large stage proprietor, and the full equipment necessary for his business. I cannot now particularly designate the items or specify them.

Ninth interrogatory. Was the stage property which claimant had on hand in said year used for the purpose of transporting said mails?

Answer. Yes, it was so used. It was a kind of property indispensable to the carrying on the business.

Tenth interrogatory. Are you acquainted with the value of said stage property; and if so, what was the value of the same at the time the claimant ceased to transport said mails? State fully and in detail as it respects each item of said stage property.

Answer. I am not now able to go into detail as to the value of the stage property owned by the claimant at the time he ceased to transport the mails. Any statements of its value, or of any part, therefore, would be an estimate, and not based on certain knowledge.

Eleventh interrogatory. Do you know what disposition was made by claimant of said stage property after he ceased to transport said mails? If so, state fully and particularly what became of said property. If any part was sold by claimant, state the prices at which the same were sold.

Answer. The claimant had the stage property alluded to on hand after he lost the mail contract. I do not know what he did with it. I do not know of his selling or disposing of it.

Twelfth interrogatory. What other property, either in the nature of fixtures or otherwise, appertaining and necessary for use in and about the business of transporting said mails, did the said claimant possess at the period above referred to? State fully and particularly, together with the value thereof, item by item, and also what use or disposition was made by the claimant of said fixtures, and what was the depreciation, if any, in the value of the same, by reason of not being used for the purpose of transporting said mails.

Answer. I do not know what other property or fixtures he had, but presume he had all that was necessary to carry on the business. It was usual for the stage proprietors to have barns, sheds, shops, &c., at the places where they stabled.

Thirteenth interrogatory. Is the stock and vehicles for running on post roads valuable for any other purpose, and if so, for what purpose?

Answer. They depreciate very rapidly, are generally very unsalable, and, in most cases, of little value. It is very difficult to dispose of that class of property.

Fourteenth interrogatory. What is the depreciation in value of any of said stage property when put to other uses? How much per cent?

Answer. I should put the depreciation at at least seventy-five per cent. This depreciation is always considered by parties engaging in the business of staging, and forms a large sink hole for profits. The wear and tear is so great that property that served the purpose of carrying on the business very well if sold is of little or no value compared to its costs or to its value for service, as it is not suited to other purposes, and can rarely be disposed of at all, particularly coaches. I sold my own stage property at auction last year at a depreciation of from seventy-five to eighty per cent.

Fifteenth interrogatory. Do you know any other matter or thing relative to the claim in question? If so, state the same fully as if you had been particularly interrogated thereto.

Answer. Nothing, except that I speak of the staging business from actual experience, having been long engaged in it, and know the loss sustained by being thrown out of occupation with a large stock like the claimant's on hand was a serious hardship and loss to him.

M. L. HARRIS.

Subscribed and sworn to before me, this 14th day of June, A. D. 1856, by the said M. L. Harris.

T. BAILEY MYERS,
Commissioner for United States Court of Claims.

First cross-interrogatory. What were your means of information as to the property possessed by Nye?

Answer. I was frequently over his routes, in his stables or barns; have conversed with him frequently in reference to his property; have ran in connexion with him for a time, that is, connecting routes, and possessed that knowledge and information that one acquires of his neighbor's business when similar to his own.

Second cross-interrogatory. When you speak of his ownership of property, and the value of it, do you speak of his interest in it only, or the value of that interest?

Answer. I speak of him as being the sole owner and proprietor of the stage property alluded to; I never heard of any other interest in it than his; I considered him the sole owner and proprietor of that property.

Third cross-interrogatory. So also of the losses sustained in the property, do you estimate the losses on his interest, or the losses on the whole property?

Answer. I speak of the property as his solely, and of the losses as his losses on his property, used by him in the transportation of mails on the routes I have named in my direct examination.

Fourth cross-interrogatory. If you know what Nye's interest was in the property, or any part of it, state it particularly, and also who were the other owners or partners, and the extent of their several interests?

Answer. He (Nye) was, as I believe and always heard, the sole owner of the entire property alluded to—I knew him as such; if he had partners I was ignorant of it, and cannot state their names.

Fifth cross-interrogatory. Do you know of any actual sales of the property; if so, to whom was it sold? State, if you know, the actual cost of the same property.

Answer. I know of no actual sales of the property, or the actual cost of the same.

Sixth cross-interrogatory. Did Nye and his associates keep books in which the purchases and sales of the stock in question were entered? If so, what has become of said books?

Answer. I had no knowledge of what books Mr. Nye kept, and, as I have answered, had no knowledge of any associates. If he kept such books containing entries of purchase and sale, I do not know where they are, and have never had them in my possession.

Seventh cross-interrogatory. Is it not usual for persons in such

business to keep books or to make some contemporaneous memoranda of such transactions? If so, were any kept of them? If not, why not?

Answer. Stage proprietors do not usually keep regular books of account when running; also, as to purchases or sales of stock or appendages; I never did. If I bought a horse or a coach I made no entry, only keeping accounts of receipts from passengers. This was the usual mode when there were not partnership accounts and separate interests.

Eighth cross-interrogatory. If you give in estimates on your examination in chief, state the basis of such estimates, that is, the reasons on which you found them.

Answer. My estimates are founded on my experience, and that experience was derived in pursuing a similar business for many years.

MORGAN L. HARRIS.

Subscribed and sworn to before me, on the said 14th day of June, A. D. 1856, by the said Morgan L. Harris.

T. BAILEY MYERS,
Commissioner of United States Court of Claims.

And I, the said commissioner, do further certify that the said interrogatories and cross-interrogatories were duly filed with the clerk of this court.

In witness whereof, I have set my hand to this certificate, at the city of New York, on the day and in the year first above written.

T. BAILEY MYERS,
Commissioner of the Court of Claims of the United States, at New York.

Fees of witness, $1 50; commissioner's fees for taking and certifying deposition, $4 60; postage, 12 cents; total, $6 22.

DISTRICT OF COLUMBIA, *Washington County,* } *ss.*

On this 29th day of December, A. D. 1856, personally came John E. Reeside, the witness within named, and, after having been first sworn to tell the truth, the whole truth, and nothing but the truth, the questions contained in the within deposition were written down by the commissioner and proposed by him to the witness; and the answers thereto were written down by the commissioner in the presence of the witness, who then subscribed the deposition in the presence of the commissioner.

The deposition of John E. Reeside, taken at the request of Thomas C. Nye, to be used in the investigation of a claim against the United States now pending in the Court of Claims, in the name of Thomas C. Nye *vs.* The United States.

The adverse party was not notified, it being understood that notice was waived, and did not attend.

A. AUSTIN SMITH, *Commissioner.*

Commissioner's fees, $6 90
Witness' fees, 1 25

The deposition of John E. Reeside, taken at the request of Thomas C. Nye, to be used in the investigation of a claim against the United States now pending in the Court of Claims, in the name of Thomas C. Nye *vs.* The United States.

General interrogatory by the commissioner. What is your name, occupation, age, and where you resided for the past year? Have you any interest, direct or indirect, in the claim which is the subject of inquiry, and are you in any degree related to the claimant?

Answer. My name is John E. Reeside; a mail contractor; about thirty-seven years of age, and have resided in Georgetown, in the District of Columbia, for the last seven years. I am not interested in this claim, and am not related to the claimant.

First interrogatory by solicitor of the claimant. What opportunities have you had to become acquainted with the business of carrying the mails in stage coaches?

Answer. This has been the business of my life; from the age of thirteen years to my majority, in managing for my father, and since then on my own account.

Second interrogatory. State what, in your judgment, would be the depreciation in value of stage property, coaches, horses, harness, and fixtures, if the same should be thrown out of its intended employment and forced to find other uses.

Answer. On horses, the depreciation would be not less than 60 per cent., and from that to 75 per cent.; on coaches and harness, not less than 75 per cent. My experience has shown the depreciation to be greater. The same is the case with sleighs and wagons.

Third interrogatory. Please explain the cause of this great depreciation in stage property when diverted from its intended use.

Answer. As to horses, the use of them at rapid speed, with heavy loads, causes them to become stiff and sore, their feet to give out; and those same horses sold with the harness on hooked to a coach, as it is usual for a contractor purchasing from another contractor to ride behind the team hitched up, would sell for a price far exceeding that they would bring if led out of the stable by a halter. Their service in stage coaches induces habits which render them unfit and unsafe for other service, while they continue to be very efficient as *stage* horses; so much so that the timidity of people to purchase stage horses has become proverbial—I mean purchases for any other use. As to coaches, sleighs, wagons, and harness, they are worth very little for any other purpose. I have frequently had coaches on hand for a year before I could sell them for one-fourth of their value for any other purpose. I have frequently sold a set of harness for four horses at from $12 to $15 which cost from $50 to $75.

Fourth interrogatory. Do you know the witnesses, James Upperman, John L. Whaley, and Wesley McNeir? If yea, state what opportunities they have to know the value of stage property and the depreciation when diverted to other uses.

Answer. I have known John L. Whaley as an omnibus driver for the last six years; never knew him as a stage man. James Upper-

man drove omnibus for me in this city. I never knew him as a stage driver on a mail route. I have known him about ten or twelve years, and always as an omnibus driver, in Philadelphia, before he came here. Wesley McNeir was an hostler in my stable in Georgetown. I have since seen him driving an omnibus for Vanderwerken. I never knew him to drive a stage or four horses. I do not think these men competent to judge of the value of stage property, being inexperienced in this business, as far as I know of them.

Fifth interrogatory. Is it or is it not customary, when two or more parties take a mail contract jointly, for each party to select some portion of the road and stock it, and run separately over their respective portions of the route?

Answer. It is usual to do so. The passenger fare on through and way passengers, together with the mail pay, is divided among the parties at pro rata per mile, according to the number of miles run by each. It is sometimes agreed that the way fare received on each division of the route shall be retained by the party running the same, and the through fare and mail pay is only divided among the parties.

General interrogatory by commissioner. Do you know of any other matter material to the claim in question?

Answer. I do not, except that the keeping of a large number of horses, at an average cost of about forty cents per day each, without employment for them, renders it exceedingly expensive and onerous, and induces the proprietor to sell at a sacrifice.

J. E. REESIDE.

Witness: A. AUSTIN SMITH, *Commissioner.*

DECEMBER 29, 1856.

DISTRICT OF COLUMBIA, }
Washington County. } *ss.*

On this 18th day of December, A. D. 1856, personally came John L. Whaley and James Upperman, the witnesses within named, and, after having been sworn to tell the truth, the whole truth, and nothing but the truth, the questions contained in the within depositions were written down by the commissioner and then proposed by him to each of the witnesses; and their several and respective answers thereto were written down by the commissioner in the presence of the several witnesses, who each subscribed his respective deposition in the presence of the commissioner.

The depositions of John L. Whaley and James Upperman, taken at the request of the United States, to be used in the investigation of a claim against the United States now pending in the Court of Claims, in the name of Thomas C. Nye *vs.* United States.

Notice waived, neither party present.

A. AUSTIN SMITH,
Commissioner.

Witness' fees	$2 50
Commissioner's fees	6 62

Deposition of John L. Whaley, taken at the request of the United States, to be used in the investigation of a claim against the United States, now pending in the Court of Claims, in the name of Thomas C. Nye *vs.* The United States.

General interrogatory by the commissioner:

What is your name, occupation, age, place of residence now and for the past year. Have you any interest, direct or indirect, in the claim which is the subject of inquiry; and are you in any degree related to the claimant?

Answer. My name is John L. Whaley, a stage driver by occupation, aged fifty-two years, and am now, and have been, a resident of Washington city for the past year. I have no interest, direct or indirect, in the claim which is the subject of inquiry, and do not know the claimant.

Interrogatories by the United States Solicitor:

First interrogatory. Are you acquainted with stage property, and if so, what have been your means of knowledge?

Answer. I am acquainted with stage property of all kinds, and have derived my knowledge by having been engaged in staging and hacking for the past thirty years.

Second interrogatory. What would be the probable depreciation of stage property when suddenly diverted from the purposes of staging?

Answer. If a road be thoroughly stocked with everything appertaining to a stage route, and the use of the property be suddenly stopped or diverted, the depreciation on the whole stock would be about 25 per cent.

Third interrogatory. State particularly the depreciation upon horses, harness, stages or coaches, and other vehicles in said business, and also the depreciation on other property, such as coach shops, harness shops, blacksmith shops, stables, &c., connected with the running of stages?

Answer. The depreciation I have stated to be about 25 per cent. on the whole; this I state from my experience. I cannot state particularly what would be the amount of depreciation on the different articles mentioned.

Fourth interrogatory. What would be the depreciation of such property as referred to if put to other uses?

Answer. I cannot answer this question without knowing to what use the property might be put to; for it might be profitable, and it might not be.

General interrogatory by commissioner:

Do you know of any other matter relative to the claim in question?

Answer. I do not.

JOHN L. WHALEY.

In presence of—

A. A. SMITH, *Commissioner.*

DECEMBER 18, 1856.

Deposition of James Upperman, taken at the request of the United States, to be used in the investigation of a claim against the United States, now pending in the Court of Claims, in the name of Thomas C. Nye *vs.* The United States.

The witness, James Upperman, having had proposed to him the same interrogatories as were proposed to the witness John L. Whaley, made part of the return hereof, answers and says as follows to—

General interrogatory by commissioner. My name is James Upperman. I am now a keeper of a gate at the Capitol; aged thirty-nine years; reside now in the city of Washington, and have been a resident of the same place for four years past. I have no interest, direct or indirect, in the claim in question; am not acquainted with the claimant, and not in any way related to him.

To the first interrogatory by United States Solicitor: Answer. I am acquainted with stage property. I was mail agent and mail carrier on an express horse route in North Carolina for two years and upwards in the employ of Messrs. King & Williams. I drove a stage for two or three months on an adjoining route, and I was in the employ of G. Vanderwerken, proprietor of an omnibus line between Georgetown and Washington, for four years, three years of which time I was agent, having charge of the stock and coaches, and one year I was a driver.

To the second interrogatory: Answer. Including all kinds of stage property, horses, coaches, harness, &c., the depreciation would be about twenty per cent. if the same were diverted from their use suddenly.

To the third interrogatory he answers: I cannot state the depreciation on the articles enumerated separately. My answer to the foregoing interrogatory is all I can say.

To the fourth interrogatory he answers: I do not know.

To the last general interrogatory by commissioner he answers: I do not know of any other matter.

JAMES UPPERMAN.

In presence of—

A. A. SMITH, *Commissioner.*

DECEMBER 18, 1856.

DISTRICT OF COLUMBIA, *Washington County, ss.*

On this 19th day of December, A. D. 1856, personally came William Wesley McNeir, the witness within named, and after having been sworn to tell the truth, the whole truth, and nothing but the truth, the questions contained in the within deposition were written down by the commissioner and then proposed by him to the witness, and the answers thereto were written down by the commissioner in the presence of the commissioner, who then subscribed the deposition in the presence of the commissioner.

The deposition of William Wesley McNeir, taken at the request of the United States, to be used in the investigation of a claim against the United States, now pending in the Court of Claims, in the name of Thomas C. Nye *vs.* The United States.

Notice waived. Adverse party present, and did not object.

A. AUSTIN SMITH,
Commissioner.

Fees of witness, $1 25; commissioner's fees, $5 90.

General interrogatory by commissioner. What is your name, occupation, and age? Where have you resided during the past year? Have you any interest, direct or indirect, in the claim which is the subject of inquiry, and are you in any degree related to the claimant?

Answer. My name is William Wesley McNeir, an omnibus driver by occupation, aged thirty-five years, and have resided during the past year in Georgetown, District of Columbia. I have no interest in the claim in question, and am not related to the claimant.

Interrogatories by the United States Solicitor:

First interrogatory. Are you acquainted with stage property, and if so, what have been your means of knowledge?

Answer. I am acquainted with stage property, and have been in the business of omnibus staging for five or six years.

Second interrogatory. What would be the probable depreciation of stage property when suddenly diverted from the purposes of staging?

Answer. Including all stage stock, the depreciation would be from twenty to twenty-five per cent.

Third interrogatory. State the depreciation particularly upon horses, harness, stages, or coaches, and other vehicles in said business, and also the depreciation on other property, such as coach shops, harness shops, blacksmith shops, stables, &c., connected with the running of stages?

Answer. About ten per cent. on horses and harness, and on coaches and the rest of the stock mentioned about twenty-five per cent.

Fourth interrogatory. What would be the depreciation of such property as referred to if put to other uses?

Answer. I cannot say.

General interrogatory by commissioner. State whether you know of any other matter relative to the claim in question?

Answer. I do not.

WILLIAM WESLEY his × mark. McNEIR.

Witness:

A. A. SMITH, *Commissioner.*

DECEMBER 19, 1856.

DISTRICT OF COLUMBIA, *Washington county, ss.*

On this 30th day of December, A. D. 1856, personally came Gilbert Vanderwerken, the witness within named, and after having been first sworn to tell the truth, the whole truth, and nothing but the truth, the questions contained in the within deposition were written down by the commissioner, and then proposed by him to the witness; and the answers thereto were written down by the commissioner in the presence of the witness, who then subscribed the deposition in the presence of the commissioner.

The deposition of Gilbert Vanderwerken, taken at the request of the United States, to be used in the investigation of a claim against the United States, in the name of Thomas C. Nye *vs.* The United States.

The adverse party was not notified, it being understood that notice was waived, and did not attend.

A. AUSTIN SMITH,
Commissioner.

Fees of witness, $1 25; commissioner's fees, $6 40.

Deposition of Gilbert Vanderwerken, taken at the request of the United States, to be used in the investigation of a claim against the United States, now pending in the Court of Claims, in the name of Thomas C. Nye *vs.* The United States.

Interrogatory by the commissioner. What is your name, occupation, and age, and where have you resided during the past year? Have you any interest, direct or indirect, in the claim which is the subject of inquiry, and are you in any degree related to the claimant?

Answer. My name is Gilbert Vanderwerken, a coachmaker, and proprietor of an omnibus line between Georgetown and the Navy Yard at Washington city, aged about forty-six years, and have resided in Georgetown for the past five years; I am not interested in the claim in question, and do not know the claimant.

Interrogatories by the Solicitor of the United States:

First interrogatory. Are you acquainted with stage property, and if so, what have been your means of knowledge?

Answer. I have been engaged in the building of stage coaches and omnibusses, and running them since 1835, and am acquainted with that kind of property.

Second interrogatory. What would be the probable depreciation of stage property when suddenly diverted from the purposes of staging?

Answer. If stage property was suddenly diverted from its intended use in the fall of the year, I think the depreciation would be about forty or forty-five per cent. If this diversion was made in the spring, the depreciation would be about from twenty-five to thirty-five per cent.

Third interrogatory. State the depreciation particularly upon horses, harness, stages or coaches, and other vehicles in said business, and also the depreciation on other property, such as coach shops, harness shops, blacksmith shops, stables, &c., connected with the running of stages.

Answer. On horses the depreciation would be the highest; in the fall of the year, the depreciation would be as great as fifty-five per cent.; in the spring of the year, it would be from thirty to thirty-five per cent. On coach stock, I think the depreciation would be about thirty per cent., and on harness about the same. On coach, harness and blacksmith shops, and stables connected with a line in running order, I think the depreciation would be about sixty per cent. if suddenly diverted from the purposes intended.

Fourth interrogatory. What would be the depreciation of such property as referred to if put to other uses?

Answer. I do not think that the depreciation would be much less than what I have stated, as I had in view in making my former answers that the property would be sold for other uses.

Interrogatory by the commissioner. Do you know of any other matter relative to this claim?

Answer. I do not.

G. VANDERWERKEN.

POST OFFICE DEPARTMENT,
Contract Office, July 8, 1858.

SIR: I am instructed by the Postmaster General to refer you for information in regard to the case of Thomas C. Nye, of New York, late mail contractor, to papers which accompanied the annual report to the President of Postmaster General Johnson, dated December 1, 1845; being copies of a letter addressed to him by sundry contractors in New York and the New England States, of the date of April 12, 1845, and his reply thereto, dated April 17, 1845. A copy of the circular or "supplementary notice" referred to in these papers, of the 8th March, 1845, is enclosed.

Your note of the 27th ultimo states that the claim of Nye is for "breach of law and violation of contract." No law of Congress ever existed requiring successful bidders to take the stock of their predecessors; the section of the act of March 8, 1825, (4th volume Stat. at Large, page 103,) referred to in the petition, having no bearing on the subject; but there was a regulation of the department to that effect, which is correctly quoted in the petition. The enforcement of this regulation was forbidden by the 18th section of the act of March 3, 1845, and it was the object of the "supplementary notice" of March 8 to make this fact known to all concerned.

Respectfully, your obedient servant,

WM. H. DUNDAS,
Second Assistant Postmaster General.

M. BLAIR, Esq.,
Solicitor Court of Claims Washington, D. C.

POST OFFICE DEPARTMENT,
January 29, 1857.

DEAR SIR: In reply to your note of the 27th instant, enclosing the petition of Thomas C. Nye to the Court of Claims, I beg leave to say that the "regulation" 13, therein quoted, was, as stated by the petitioner, one of the "notes" attached to the advertisement inviting proposals for carrying the mail in New York from 1841 to 1845, and had been in use for many years in all the advertisements for mail letting throughout the Union, until the passage of the act of Congress of March 3, 1845, containing this provision: "Nor shall any new contractor hereafter be required to purchase out or to take at a valuation the stock or vehicles of any previous contractor for the same route;" since which time it has been omitted. It was a regulation or requirement of the department only and founded on no law of Congress. In the advertisement of the New York routes from 1845 to 1849, the regulation again appears; but this advertisement bears date and was issued prior to the passage of the act referred to. Bidders were informed of the passage of this act by a "supplementary notice," dated March 8, 1845, and extensively circulated throughout the State, and correspondence on the subject took place between Mr. Nye and other contractors and Postmaster General Johnson, which was communicated to Congress and printed with the annual report of the department, dated December 1, 1845.

I am, very respectfully, your obedient servant,

JAMES CAMPBELL.

Hon. GEORGE P. SCARBURGH,
Court of Claims, Washington, D. C.

POST OFFICE DEPARTMENT,
December 30, 1856.

SIR: In answer to your inquiries of the 23d instant I have to state that the following individuals were the successful bidders, at the lettings in the spring of 1845, for the routes referred to by the petition of Mr. T. C. Nye, viz:

Route 1024, (1025 old,) Utica to Ithaca, N. Randall.

Route 1025, (1006 old,) Utica to Binghamton, C. A. Stevens & Co.

Routes 983 and 997, (995 old,) De Ruyter to Cherry Valley, L. R. Hopson for the part to Cooperstown, R. Rudd for the residue.

Routes 922 and 994, (913 and 987 old,) Albany to Syracuse, George W. White for the part to Cherry Valley, W. P. Holdridge for the balance.

Route 1022, (1019 old,) Hamilton to Canastota, N. Buckingham.

None of these parties were old coach contractors.

By the 13th note to the advertisement, recited in Mr. Nye's petition, it will be seen that the accepted bidder for new service on coach routes was not required to buy out the stock of a previous contractor, provided he had the necessary stock of his own. It often happened

that persons not engaged in carrying the mails ran accommodation or opposition stages on the department's routes. Such individuals, becoming the successful bidders for the routes, would not, of course, be required to purchase the stock of superseded mail contractors, as they possessed sufficient for their necessities already.

It is impossible, therefore, for the department to answer positively, at this late period, the query of the Court as to the possession, or the contrary, by the persons who superseded Mr. Nye on his routes in 1845, of the stock and other property necessary for the performance of their contracts.

Very respectfully, your obedient servant,

JAMES CAMPBELL,
Postmaster General

S. H. HUNTINGTON, Esq.,
Chief Clerk of the Court of Claims.

Post Office Contracts—Supplementary Notice.

A part of the 19th section of the act of Congress entitled "An act to reduce the rates of postage," &c., approved March 3, 1845, is in the following words:

"*And be it further enacted*, That it shall be the duty of the Postmaster General, in all future lettings of contracts for the transportation of the mails, to let the same, in every case, to the lowest bidder, tendering sufficient guaranties for faithful performance, without other reference to the mode of such transportation than may be necessary to provide for the due celerity, certainty and security of such transportation; nor shall any new contractor hereafter be required to purchase out, or take at a valuation, the stock or vehicles of any previous contractor for the same route."

Bidders for contracts under the advertisement, now in course of publication, for the States of Maine, New Hampshire, Vermont, Massachusetts, Rhode Island, Connecticut, and New York, are hereby notified that the contracts will, agreeably to the foregoing law, be awarded to the lowest bidder for carrying the mail, provided he tenders sufficient guaranties for the faithful performance of the service on the days and within the hours specified in the advertisement, without other reference to the mode of transportation than may be necessary to provide for the due celerity, certainty, and security of such transportation; and that accordingly proposals to carry the mails in a mode inferior to those specified for the routes in the pending advertisement will be considered, provided such inferior mode shall give the speed called for in the schedule, and shall afford due protection and security to the mails.

Bidders should be careful to furnish adequate guaranties, and will observe the form of guaranty given in the advertisement.

The 13th note to the advertisement, requiring the under bidders to

take the stock of the present contractors in certain cases, is, in pursuance of the act aforesaid, hereby abrogated.

The immediate attention of all disposed to bid for mail contracts is called to the advertisement issued in December and January last, published in the Madisonian; and for the State of Maine in the Portland American, Augusta Age, and Bangor Democrat; for New Hampshire in the Portsmouth Gazette, Hill's Patriot, and Haverhill Republican; for Vermont in the Montpelier Patriot, Bennington Gazette, and Woodstock Spirit of the Age; for Massachusetts in the Boston Post, Boston Times, and Worcester Palladium; for Rhode Island in the Providence Gazette; for Connecticut in the New Haven Register, and Norwich News; and for New York in the New York Plebian, Albany Argus, Plattsburgh Republican, Syracuse Empire, State Democrat, Rochester Advertiser, Buffalo Gazette, and Norwich Journal. The advertisement will be found also in pamphlet form at the post offices at the ends of the routes.

The last day for receiving bids at the General Post Office is the 15th April, 1845, at 9 o'clock, a. m.

The advertisement states the number of trips required and between what hours they are to run. These are to be conformed to in the proposals; but the proposer will be allowed to bid for carrying the mail in such mode as he chooses, without regard to the conveyance specified in the advertisement, carefully observing that he is to convey it in the time set, and in such way as to give it full protection and security.

C. JOHNSON,
Postmaster General.

POST OFFICE DEPARTMENT, *March* 8, 1845.

UNITED STATES COURT OF CLAIMS.

THOMAS C. NYE *vs.* THE UNITED STATES.

Claimant's Brief.

The 1st section of the act of 1825 (4 Stat. at Large, 102) authorizes the Postmaster General to "provide for the carriage of the mails on all post roads that are or may be established by law, and as often as he, having regard to the productiveness thereof and other circumstances, shall think proper."

These very general and comprehensive powers are restrained in only two particulars, viz: requiring contracts to be made after twelve weeks' advertisement, and limiting them to the term of four years.—(Sec. 10th, same act.) The last section of the act repeals all prior laws.

Under this broad power, the "regulation" quoted in the petition was established by the department. It was regularly inserted in all the advertisements, even down to that of December, 1844. This is not disputed; but we have proved it by the production of the books from the department, containing the advertisements for a series of years.

The Postmaster General, in his report of December 1st, 1845, (1st vol. Ex. Doc., 1st sess. 29th Cong., p. 852,) recognizes the "regulation of the department which required the under bidder, in certain cases, to take the stock of the former contractor."

The Solicitor, who has access to the department, admits that the "regulation" was established and acted upon down to the passage of the act of 1845. He disputes only the operation and effect claimed for it.

The "regulations" of the departments, when not contrary to law, are themselves laws. They are recognized as such in the act which establishes this honorable Court, and in the very section which defines its jurisdiction.—(10 Stat., 612.)

This regulation or law of the department enters into and forms part of the contract. It was evidently so intended. The bidder takes the contract subject to the obligation, under proper circumstances, to buy the stock of his predecessor, and with the right to claim the same advantage from his successor. If the rule had not this double operation, it was most unwise and pernicious in its effects upon the interests of the government. For, if it was designed only to force the new contractor to buy old stock at valuation, without reference to a similar right at the end of his term, then its only influence would have been to increase the amount of his bid and enhance the cost of mail transportation, without any advantage whatever to the government. On the other hand, if the rule was designed to operate both at the beginning and the end of the term, it was judicious and beneficial to the interests of the department. This latter is the only rational construction which can be put upon the regulation.

The requirement would never have been made at any of the lettings if the department had not been bound by the pledge of its good faith given to every contractor who made his bid under the regulation. It was for the benefit of the old contractor; it was always a burden and a disadvantage to the new contractor, unless he too should have the right to claim its benefit at the end of his term.

It is obvious that the right arising from the regulation was a material consideration in the mind of the contractor when he made his offer. When he agreed to be liable to take the stock of the old contractor, he must have estimated the value to himself of a similar liability on the part of his successor. It is evident, if he had omitted this latter consideration, his bid would have been different. A consideration for this pledge on the part of the government is therefore necessarily involved in the transaction.

In what manner and to what extent, usages or customs, and laws, enter into and control the terms of written contracts without being specially stated in them, may be seen in the following authorities: Dorsey *vs.* Eagle, 7 Harr. and Gill, 321; Stultz *vs.* Dickey, 5 Binn, 285; Carson *vs.* Blaze, 2 ibid, 187; Van Ness *vs.* Pacard, 2 Pet. 137; Hutton *vs.* Warren, 1st M. & W. 466; Boorman *vs.* Johnson, 12 Wend. 574; Renner *vs.* Bank of Columbia, 9 Wheat. 581, '84, '85; 4 Phill. on Ev., C. & H.'s notes, 1409 and 1456; Story's Con. of Laws, 225, '6, '7. If such be the force of a mere usage or custom, much greater would be that of a departmental regulation, having all the authority of law.

It has been suggested that the regulation might have the effect of extending the contract beyond the term of four years. But this view cannot be correct. The old contract ends at the moment when the new one begins. The regulation itself requires the new contractor to give the old one "*early notice of his intention to take or not to take his stock.*" The evident object was to secure the unbroken continuance of the service by such timely arrangements as were necessary for that purpose. The arrangement did not extend the contract one moment beyond its legitimate term. As soon as the new contract was made, the regulation became attached, and executed itself at the end of the new term. It was a permanent subsisting rule or law, operating upon and controlling the several contracts when respectively made; but the contracts themselves did not partake of the permanence of the rule, or derive from it any extension whatever beyond their stipulated terms.

It is also objected that the old contractor was not compelled to sell to the new contractor, while the latter was bound to buy or forfeit his bid ; and therefore, it is said, there was no mutuality. This view is based upon the misapprehension that the obligation was between the old and the new contractor, whereas it was only between the government and the respective contractors. The government pledged itself to the old contractor to give him the option at the end of his term to sell or not to sell his stock at a fair valuation to the new contractor ; and at the same time, it also pledged itself to force the new contractor to abide by the choice of the old one in this par-

ticular, upon pain of losing his contract and having it transferred to the other. This option or privilege, of selling or not selling, was valuable to the old contractor. It is this valuable privilege of which the claimant was deprived by the act of 1845, and for the loss of which he now claims damages. Nothing can be more clear than the mutuality, materiality, and controlling character of this positive stipulation between the government and the old contractor. It was an inducement held out by the government of its own accord, enacted into a law of the department, and embodied in all its advertisements, for the express purpose of operating upon the bids of contractors. To say it had not this effect would be to stultify the department, as well as to repudiate its plighted faith.

The act of March 3, 1845, inaugurated a new policy. It prohibited the Postmaster General from "having regard to the other circumstances" which, by the act of 1825, he was required to consider in providing for the carriage of the mails. He was forbidden to look to the incidental object of facilitating travel in connexion with the carriage of the mails, and he was not to take into consideration the interests, or the effects upon the department, of competing lines of stage coaches on the mail routes. Under the former policy of the government, all these important considerations entered into the policy of the department, and its regulations were made accordingly. The one in question was undoubtedly designed, by giving some degree of security to the large investments of the contractor, to save the department from the fluctuating and uncertain influence of the competition and combination of the powerful class of stage proprietors. It might well have considered this particular provision as necessary to place the service upon a substantial footing, so as to secure fair and reasonable bids from the contractors. The regulation was well adapted to the circumstances under which the department was acting up to 1845, and to the policy which had been established under the previous laws of Congress.

The Postmaster General, in his report of December 1, 1845, boasts of having saved $250,000 at the lettings in April of that year, for the New England States and New York alone. This immense saving was accomplished, in part, by the sacrifice of the claimant's rights under his contract. For this very purpose, and solely with a view to economy in the service, the regulation aforesaid was abolished.

The present claimant does not presume to attack the altered policy of the new law. But he insists that this new policy could not have been put in operation, and, in fact, was not carried into effect without a serious sacrifice of his own rights under his then existing contract. The advertisements for the new service were published in December, 1844, and the contracts were to be let, and were actually let, in April following. By joint resolution No. 13, approved the same day, (March 3, 1845,) the act itself was not to go into effect until the 1st of July following. By his proclamation of the 8th of March, the Postmaster General abrogated the old regulation, and, to that extent, abrogated the old contracts, before the new law went

into operation. This he did upon the ground that the new service was to commence on the 1st of July. Whether this was, or was not, the proper construction of the act, is not now, in the least degree, material; for whether the contract was abrogated by the Postmaster General without law, or by virtue of the true construction of the act of Congress, the claimant, in either case, has been deprived of his just rights and is entitled to full remuneration. He was left with fifty thousand dollars' worth of stock upon his hands, and was deprived of the advantage, in disposing of it, which was guarantied to him by his contract with the department. The fact that the advertisement of December, 1844, contained the regulation in question, was an admission on the part of the government, if any such admission were necessary, that the claimant was entitled to its benefit.

The government having thus (for wise purposes it may be) abrogated an important part of the claimant's contract, the latter is entitled to the full amount of damages suffered in consequence of the act. He is not bound to show anything more than the breach on the part of the government, without any fault of his own, and the loss which it occasioned.

The letter of the department, in answer to inquiries by the court, admits that the new contractors were previously unknown to the department as contractors, and, *prima facie*, had not the stock necessary for the service. Such is the presumption of law, and the claimant is not bound to prove a negative. If the fact were not in accordance with this presumption, the government would undoubtedly have proved it. The contract having been abrogated by the legislative power, the claimant could have had no right to call upon the new contractor, or in any particular to inquire into his business. The government had absolved the new contractor from all liability, not having made it a condition that he should take the old stock, or surrender the contract to his predecessor.

Neither did the claimant forfeit his right to run an opposition line of coaches on the routes. The government had thrown the property on his hands, not giving him the opportunity to sell to the new contractor. He had the perfect right to find for it whatever use he could, without forfeiting his claim to damages from the government. But he did not so employ his stock. The proof is, that the stock remained for some time useless on his hands—the horses consuming provender, and the coaches and harness depreciating by rust and rot. This fact is sufficiently clear from the testimony of the witnesses; but the Solicitor has introduced the affidavit of the claimant and the statements of his original petition to Congress, in which the fact is positively stated and sworn to. But, as we are not required to prove a negative, the burden of proof in this respect, also, is upon the government.

It only remains to show the actual loss of the claimant. This we have done by the most ample proof, showing the great depreciation of value in such property when thrown out of its legitimate employment. We have not followed every separate horse, &c., to the auctioneer's block, or to the hands of the purchaser. This would

have been an endless task, most unreasonable to require at the hands of the claimant.

The following is a statement of the items of stock on hand actually employed by the claimant in carrying the mails:

180 horses, at $150 each	$27,000
20 coaches, at $450 each	9,000
20 sleighs, at $250 each	5,000
20 wagons, at $250 each	5,000
40 sets harness, at $50 per set	2,000
	48,000

The testimony of the witnesses as to the depreciation varies from 30 to 80 per cent.; the average would be 55 per cent.; and this would make the loss amount to $26,400.

This is claimed to be the loss sustained by the claimant. No other rule for estimating it has been, or probably can be, suggested by the Solicitor. The principle involved seems to have been admitted in the reports made by the committees of both Houses of Congress, and in the bill which was passed by the Senate of the United States, and which would doubtless have passed the lower House, if it had been acted on at all.—(See Senate Rep. 191, Bill No. 307, 1st sess. 33d Cong.)

The petitioner claims interest upon his losses. If this cannot be allowed, he at least begs that the Court will consider the hardship of his case; the arbitrary, even if politic, act of the government, in destroying his rights, without at the same time providing indemnity; and finally, the long delay and expense which have attended his effort to obtain justice. These considerations ought to secure an allowance in the shape of damages fully equal to the loss, with interest to the present day.

FRED. P. STANTON,
For the Claimant.

IN THE COURT OF CLAIMS—No. —.

THOS. C. NYE *vs.* THE UNITED STATES.

Solicitor's Brief.

The case stated by the petitioner is, that he became a mail contractor in the year 1837, and that his contracts were renewed in 1841. At the time these contracts were taken, there were notes attached to the proposals, that when a new bidder superseded a present contractor, and had not the stage property requisite for the performance of the contract, he was required to purchase from the old contractor (if the old contractor would sell) his coaches, horses and harness; and, if they could not agree on the price, the property was to be taken at

a fair valuation. He says this was a regulation of the department, and under it he felt safe in making large investments in stock, &c. That by the 18th section of the act of 1845, the Postmaster General was forbidden to require the new contractor to purchase the stock of the old contractor. That this was a breach of his contract, whereby he has lost the sums stated in his account. In this case, on behalf of the United States, we contend:

I. That the 4th section of the act of 1825 contains no such stipulation as the petitioner relies on. It is to be found only in the note thirteen in the advertisement for contracts made in 1841, and in other years. It is no part of the contracts made with the petitioner. It is not incorporated in them. The petitioner neither avers nor proves that he ever under bid any other contractor, or came under the operation of this rule in any form or manner. He is, then, seeking to make a regulation of the department, which never bore on him, the means of recovering damages from the government.

II. This regulation is not a part of the contract, or of any of the contracts, made with him. It is not inserted in those contracts, and cannot, by any rule of interpretation, be made part of them.

Let us see what is the true character of this regulation:

1st. It requires every under bidder who has not the requisite stage stock to purchase or take at valuation the coaches, &c., of the contractor he under bids.

2d. If the old contractor continues to run on the route, then the under bidder is not required to take his property.

3d. If the under bidder refuses to take the property, then the contract is to be offered to the old contractor; and if he refuses to take it at the under bidder's offer, after then it is to be let unconditionally to the under bidder.

4th. If the under bidder offer to take the stock, the old contractor may refuse to sell it.

From this statement of the terms of the regulation, it is clear they are conditions imposed on competing bidders, and not part of the contract entered into between the department and the contractors; for it is not to be imagined that the government, by its regulation, would contract with a contractor to insure him a purchaser of his property, without requiring him to sell the same. There is such a want of mutuality as could not enter into the contract. The department does not, by this arrangement, propose to take the property itself, or to make itself responsible in damages to the old contractor for the conduct of the under bidder; but it imposes these complicated terms on the under bidder as prerequisites to obtaining the contract, and the only penalty for non-compliance is, he shall not have the contract. Clearly, the government has never stipulated with this or any other contractor that it would impose any such restrictions on competing bidders, nor has it in any way stipulated it would be responsible if the under bidder would not take the property of the old contractor.

III. This is a claim on the government for damages because the new contractors were not required to buy the property of the old contractors. It is an effort to charge the government with damages, not

for property used and received by it, but because it would not compel a third person to take the property of the plaintiff; no such promise has been made expressly—no such promise can be implied without an adequate consideration, and no such consideration has either been averred or proved.

IV. The law of 1845 was passed on proper and just considerations, and by its provision a new mode of contracting is introduced.

See letter of Postmaster Johnson, Senate Doc., page —.

The policy of the regulation in question is doubtful. It was designed doubtless by the department to protect the government from the losses incurred by incompetent men thrusting themselves into contracts without means to execute them. The practical effect was perhaps to create a monopoly of contracts in the hands of the old contractors; such a result could not have been designed, and was of itself sufficient to have produced the rescision of the rule. Clearly, when Congress was about to introduce cheap postage, and with it a cheap system of contracts, this monopoly could not remove the inhibition to impose such restrictions on competition illegal. If loss was sustained by the old contractors, it was *damnum absque injuriâ.*

V. But if in proper cases this thirteenth note was part of the contract, the plaintiff has not shown that he is entitled to its benefit; for he does not show—

1st. That he got his contracts by under bidding other contractors, and was compelled to take their property.

2d. He does not show that the competing bidders had not themselves the property requisite to execute their contracts.

3d. He does not show that he did not run opposition to them.

4th. He does not show that he would have taken the contracts at the bids of his competitors if they would not have purchased his property.

VI. On the face of the accounts and evidence, the plaintiff's claim is an exaggerated and inflamed estimate, and therefore unjust to the government.

The regulation requires the under bidder to take from the old contractor, at a fair price, his coaches, teams, and harness. The account states one hundred and eighty horses at $150 each, and makes the loss, by failure to compel the new contractor to take them, one hundred and twenty dollars on each horse. Horses are things valuable for general purposes. If these horses were worth for other purposes no more than $30 a head, it is absurd to say they were worth $150 for stage purposes; and the conclusion that the government should pay petitioner $120 per head for not compelling the new contractor to take these horses is manifestly illogical and unjust. If, under the regulation, the new contractor could have been compelled to take them, it must clearly have been at their value when he took them. The plaintiff has not proved what he did with these horses. But if, on the 1st of July, 1845, they were worth $150 each for the arduous service of staging, they must have been worth more than $30 in the market for other purposes.

The same course of reasoning shows the injustice of claim for loss

on twenty coaches and forty sets of harness. The charge for two sleighs, twenty wagons, coach shops, blacksmith shops, and harness shops, are for things not in the regulations, and their only effect on this case is to manifest a desire to make an enormous bill against the government.

D. RATCLIFFE,
Assistant Solicitor of Court of Claims.

IN THE COURT OF CLAIMS.

THOMAS C. NYE *vs.* THE UNITED STATES.

SCARBURGH, J., delivered the opinion of the Court.

The petitioner alleges that he was a contractor for carrying the mails of the United States prior to the year 1837.

On the 31st day of May, A. D. 1837, the petitioner and others entered into a contract with the United States to carry the mail from Utica to Ithaca, at the rate of $1,605 for every quarter of a year during the continuance of the contract; the contract to commence on the 1st day of July, A. D., 1837, and continue in force till the 30th day of June, A. D. 1841.—See "Exhibit I."

On the same 31st day of May, A. D. 1837, the petitioner and others entered into a contract with the United States to carry the mail from Utica to Binghamton, at the rate of nine hundred and fifty dollars for every quarter of a year during the continuance of the contract; the contract to commence on the first day of July, A. D. 1837, and continue in force until the 30th of June, A. D. 1841.—See "Exhibit H."

On the same 31st day of May, A. D. 1837, the petitioner entered into a contract with the United States to carry the mail from Cherry Valley to De Ruyter, at the rate of eight hundred and seventy-five dollars for every quarter of a year during the continuance of the contract; the contract to commence on the 1st day of July, A. D. 1837, and continue in force until the 30th day of June, A. D. 1841.—See "Exhibit C."

On the 22d day of April, A. D. 1841, the petitioner entered into a contract with the United States to carry the mail from Canastota to Hamilton, for and during the term commencing the first day of July, A. D. 1841, and ending with the 30th day of June, A. D. 1845, at the rate of *five hundred dollars a year.*—See "Exhibit E."

On the 21st day of April, A. D. eighteen hundred and forty-one, the petitioner entered into a contract with the United States to carry the mail from Cherry Valley to De Ruyter, for and during the term commencing on the first day of July, A. D. 1841, and ending with the 30th day of June, A. D. 1845, at the rate of *one thousand five hundred and eleven dollars* a year.—See "Exhibit D." On the tenth day of August, A. D. 1841, this route was extended to Cooperstown,

at the rate of the additional sum of *two hundred and fifty dollars* a year.—Ibid.

The petitioner alleges that in 1837 he was largely interested in the mail contract of J. M. Sherwood from the city of Albany to Salina, and that in 1842 or 1843, "the contract of said Sherwood from Albany to Salina aforesaid, was transferred to your petitioner, who became thereby, with the assent and approval of the Post Office Department, together with Hiram Lewis, a contractor with said department for carrying said mails from Albany to Cherry Valley, and from Cherry Valley to Syracuse." The proof is, that on the seventh day of September, A. D. 1842, the petitioner and Hiram Lewis entered into a contract with the United States to carry the mail from Cherry Valley to Syracuse, for and during the term commencing the first day of October, A. D. 1842, and ending with the 30th day of June, A. D. 1845, at the rate of *four thousand dollars* a year; and that on the 7th day of September, A. D. eighteen hundred and forty-two, the petitioner and Hiram Lewis entered into a contract with the United States to carry the mail from Albany to Cherry Valley for the same term, at the rate of *twenty-seven hundred dollars* a year.—(See "Exhibit G" and "Exhibit F.") There is no evidence amongst the papers on file to connect these last two contracts with any contract with J. M. Sherwood, or to show that the Post Office Department ever made any contract with him.

The petitioner alleges that, under his contracts with the United States, he found it necessary to invest a large amount of capital in horses, post-coaches, &c., and that from the year 1841 up to 1845 he "owned and employed in such service constantly about two hundred horses and a large number of post-coaches." The witnesses, Van Valkenburgh and Hilton, concur in testifying that in 1845 when the petitioner ceased to carry the mail, he had on hand the following property which he used in the transportation of the mail, and which they estimate as follows: 180 horses, at $150 each; 20 stage-coaches, at $450 each; 20 stage sleighs, at $250 each; 20 double stage wagons, at $250 each; and 40 sets of four-horse harness, at $50 each—making a total of $48,000.

The 13th note to the proposals for carrying the mail, from the 1st day of July, A. D. 1841, till the 30th day of June, A. D. 1845, both days inclusive, is as follows: "On coach routes where the present contractor shall be superseded by an underbidder who may not have the stage property requisite for the performance of the contract, he shall purchase from the present contractor such of his coaches, teams, and harness belonging to the route, as shall be needed, and may be suitable for the service, at a fair valuation, and make payment therefor by reasonable instalments, as his pay becomes due, unless the present contractor shall continue to run stages on the route. Should they not agree as to the suitableness of the property, the terms of the security, each may choose a person who may appoint a third, and their decision shall be final; or the Postmaster General will name the umpire. Should the underbidder fail to comply, his bid will be offered to the contractor; but should he decline it, the

proposals of the underbidder will be accepted unconditionally. The underbidder should give early notice of his intention to take or not to take the stock, and if the latter, of his reasons; and the present contractor is to determine on the first application, whether he will sell it or not.'' This note is treated by the petitioner as a regulation of the Post Office Department. The Postmaster General in his annual report of December 1, A. D. 1845, and in his letter to the mail contractors appended to that report, speaks of it as a regulation of his department.—(See 1 vol. Ex. Doc., 1 Sess. 29th Cong., pp. 852, 876.) The present Postmaster General in his letter of the 29th day of January, A. D. 1857, says: ''It was a regulation or *requirement* of the department.'' And the present Second Assistant Postmaster General in his letter of the 8th day of July, A. D. 1856, speaks of it as a regulation of the department, and says that it is correctly quoted in the petition.

By the act of Congress approved March 3, A. D. 1845, it was provided, ''that it shall be the duty of the Postmaster General, in all future lettings of contracts for the transportation of the mail, to let the same in every case to the lowest bidder, tendering sufficient guarantees for faithful performance, without other reference to the mode of such transportation than may be necessary to provide for the due celerity, certainty, and security of such transportation; nor shall any new contractor hereafter be required to purchase out, or take at a valuation, the stock or vehicles of any previous contractor for the same route.—(5 Stat. at L., p. 738, ch. 43, § 18.)

In the month of December, A. D. 1844, the Postmaster General advertised for proposals for carrying the mails on the routes above mentioned for the term of four years from the first day of July, A. D. 1845; and in his advertisements was inserted the 13th note already noticed; but on the 8th day of March, A. D. 1845, he issued a circular in which he called the attention of persons desiring to contract to the provisions of the act of March 3, A. D. 1845, and gave notice that no new contractor would be required to purchase out, or take at a valuation, the stock or vehicles of the previous contractor for the same route.

By a joint resolution of the Senate and House of Representatives, it was provided that the act of March 3, A. D. 1845, above referred to, should go into effect on and after the 1st day of July then next following, and not sooner.—(5 Stat. at L., p. 800.)

The petitioner alleges that in the letting of the mail contracts in the year 1845, on the respective routes and lines on which he was a contractor previous and up to the letting, he was an unsuccessful bidder, and lost all his contracts for transporting the mails thereon; that the new contractors not being required to purchase out, or take at a valuation his stock and vehicles, the whole thereof was left on his hands without any employment or use for the same; that the failure of the Postmaster General to require the new contractors to purchase out, or take at a valuation his stock and vehicles, was a direct violation of his contracts with the United States; and that he has thereby sustained heavy damages.

None of the contractors at the lettings in the spring of 1845, on the routes embraced by the petitioner's contracts, were "old coach contractors."—(See the letter of the Postmaster General to the clerk of this court, dated December 30, A. D. 1856.)

The principal inquiry presented for our consideration in this case is, has the petitioner shown a contract, either express or implied, with the United States, by which they undertook that if he should be succeeded by an underbidder, the latter should be required to purchase his stock and vehicles; or, in other words, that such underbidder should be required to comply with the 13th note?

In determining this question it is necessary to understand the true character of the 13th note, and the purpose for which it was used. It is called, as we have seen, a regulation of the Post Office Department. How and in what sense it was a regulation of that department is shown by the letter of the Postmaster General to the mail contractors appended to his annual report of December 1, A. D. 1845, and in the letter of the Postmaster General of the 29th day of January, A. D. 1857. In the former he says: "The condition requiring a new contractor to take the property of a prior one was a regulation of the department attached to the advertisement, and not exacted by any law, and can have no bearing upon any other contract than the one made under it." In the latter he says: "I beg leave to say that the 'regulation' 13, therein quoted was, as stated by the petitioner, one of the 'notes' attached to the advertisement inviting proposals for carrying the mail in New York from 1841 to 1845, and had been in use for many years in all the advertisements for mail letting throughout the Union, until the passage of the act of Congress of March 3, 1845." From these statements we infer that whenever advertisements were issued inviting proposals for carrying the mail on coach routes, the 13th note, by order of the department, constituted a part of them; and that it was not designed to bear on any other contracts than those made under such advertisements. There was no act of Congress, and no regulation of the department requiring the 13th note to be inserted in *all* such advertisements. When the period at which advertisements were to be issued arrived, whether it should be inserted in them or not was a matter resting entirely in the discretion of the Postmaster General for the time being. It was called a regulation merely because it was the creature of the department. A compliance with it by an underbidder was imposed as a condition precedent to the acceptance by the United States of his proposals, That was its whole object; and when that object was accomplished the 13th note had performed its office in reference to the particular contract to which it applied.

Such is our understanding of the true character and purpose of the 13th note. So considering it, it seems to us that in its very nature it was applicable only to the proposals of underbidders, made under the particular advertisements to which it was annexed; and that the mere fact that it had been over and again, at many successive lettings, inserted in the advertisements and made a condition precedent to the acceptance of the proposals of underbidders, created no

obligation whatever on the part of the United States to use it in subsequent advertisements.

Each particular contract for carrying the mail is, under the acts of Congress, a special contract, and the mutual rights and obligations of the parties are to be found in the contract itself. The mere fact that the advertisements inviting proposals for such contracts have for a series of lettings contained a particular provision, cannot constitute a usage. Each particular insertion of the provision was made, not because it had been made before, but because in the opinion of the head of the department the public interests required it; and the insertion of one year had no more influence on the insertion of the succeeding year than the latter had upon the former. Each insertion was a separate and independent transaction in itself—a special regulation for that particular occasion—and was unaffected by anything of the same kind which preceded or followed it. The use of it, therefore, no matter how often, created no obligation to continue its use. It was as new on each succeeding occasion on which it was used as if it had never been used before. The reason of this is obvious. The whole business connected with each contract for carrying the mail was matter of special arrangement, and all its details were expressly, item by item, declared and agreed upon; and each contract was a separate, distinct, and independent transaction. If a special contract be made to continue for a limited period, and it be renewed again and again, no matter how often—if on each occasion the same formalities are observed as at the beginning and a special contract is made—there would be no more obligation to make it the hundredth time, after it had been made ninety and nine times, than there was to make it the second time, after it had been made once. The mere repetition of a special contract no matter how often can not create a usage.

We do not mean to say that a special contract cannot be affected by usage. The language of such a contract may be interpreted by usage; and *incidents* may be annexed to it by usage. Usage is admissible to show the meaning of the words "cotton in bales," (Taylor *vs.* Briggs, 2 C. & P., 525;) and a lessee by deed may show that by the custom of the country he is entitled to an away-going crop, though no such right is reserved in the deed.—(Wigglesworth *vs.* Dallison, 1 Doug. R., 201; Dorsey *vs.* Eagle, 7 Harr. & Gill, 321; Stultz *vs.* Dickey, 5 Binn., 285; Carson *vs.* Blaze, 2 ibid., 487; Van Ness *vs.* Pacard, 2 Peters' R., 137; Hutton *vs.* Warren, 1 Mees. & W., 466.) This is allowed upon the presumption that the parties did not intend to express in writing the whole of the contract, but to make the contract with reference to the usage.—(Hutton *vs.* Warren, 1 Mees. & W., 475; Boorman *vs.* Johnston, 12 Wend. R., 574.) The rule it is said does not add new terms to the contract, but it shows the full extent and meaning of those which are contained in the instrument.—(1 Greenlf. on Ev., § 294.)

And so where negotiable paper is payable with grace, parol evidence of the known and established usage of the bank at which it is payable is admissible to show on what day the grace expired.

(Renner *vs.* Bank of Columbia, 9 Wheat. R., 581.) Evidence of usage is received for the purpose of ascertaining the sense and understanding of parties by contracts made with reference to such usage; for the usage then becomes a part of the contract, and may not improperly be considered the law of the contract; and it rests upon the same principle as the doctrine of the *lex loci.*—Per Thompson, J., in ibid., 588.

But in all these cases the usage existed independently of the contracts, and was by implication made a part of them, because they were made with reference to it. The contracts did not create the usage, but the usage showed that the contracts so made had the meaning which the usage attached to them. There is nothing of this sort connected with the contracts in question. At some period, when, does not distinctly appear, the Postmaster General invited proposals by advertisements to which the 13th note was appended. This was done again and again till the year 1845. In the meantime the petitioner had become interested as a contractor. It may be that he was an underbidder, and required to comply with the 13th note. Was he so required because the same condition had been imposed on his predecessors for many previous lettings, and it had thereby become a law that such a condition should be imposed, or was it for some other reason? The answer to this question is easy and simple. The reason for imposing this condition was the same in each particular instance. It was because the Postmaster General who had authority to prescribe it, had ordered it, and in ordering it was governed by a due regard to the public interests. No one would contend that after having imposed this condition in the first instance, there was any obligation on the government to impose it a second time. Hence the first contractor on whom it was imposed had no reason to regard its imposition upon his successor as a certainty. There can be no ground to insist that he had. Hence, if the petitioner were such first contractor, his claim, it is obvious, would be groundless. But why? Because a single instance would not establish a usage? But if a single instance would not, how many would? It would, indeed, be difficult to distinguish between the rights of the first underbidder on whom this condition was imposed, and those of the petitioner whose contracts were made many years afterwards. The one had just as much reason to expect that the 13th note would be imposed on his successor as the other; neither had a right to require it. Both of them stood upon the same footing, enjoying precisely the same rights, neither having any advantage over the other. And this is as it should be. But why? Because they both made precisely the same kind of contracts, in reference to the same subject matter, and under precisely similar circumstances.

These views are strengthened if not rendered conclusive, by that provision of the act of 1825, which requires that no contract for carrying the mail shall be entered into for a longer term than four years. 4 Stat. at L., p. 105, ch. 64, § 10. The policy of this provision is manifest. Under its operation, each contract for carrying the mail must necessarily be a separate transaction and confined within the limits of four years.

It was a measure suggested by a due regard to the interests to be affected by it. It was easy to see that a more enlarged experience would from time to time suggest various improvements in every branch of the Post Office Department. To meet these and profit by them, it was but ordinary prudence to keep the government as untrammeled as practicable in all respects. The United States are, accordingly, divided into four sections, in one of which contracts for carrying the mail are made every year, no contract being entered into for a longer term than four years. A more apt illustration of the necessity and propriety of such a policy could not be suggested than that which is furnished by the important changes which were made by the act of 1845. If the claim set up by the petitioner be well founded, the alternative was then presented to the United States of either postponing the commencement of the "new policy" then "inaugurated" for four years, and its introduction into all parts of the United States for seven years, or of submitting to the payment of damages to all contractors for carrying the mails, situated like the petitioner, for a breach of the contracts made with them. But if the system be such as we suppose it to be, then no such contracts were made, and the United States were at full liberty to enter upon the new policy on the 1st day of July, A. D. 1845, and to complete its introduction into all parts of the Union at the expiration of three years thereafter. It was, we think, for the very purpose of keeping themselves thus untrammeled, that the act of 1825 required that no contract for carrying the mail should be entered into for a longer term than four years. And hence, the pretensions of the petitioner are inconsistent with the policy of that act.

So far, therefore, from the petitioner being at liberty to look to the imposition of the 13th note on his successors as a matter embraced by his contracts, he must be presumed to have known that under the operation of the act of 1825, they could not be so made as to interfere with those which were to follow them. There was nothing in his contracts—not a word or syllable—which justified such an extension of them. He was not authorized to look to the renewal of the 13th note as anything more than a contingency, and we cannot presume that as a prudent man he contracted with reference to it under any other aspect. But we are obliged to presume that he contracted with reference to the act of 1825, and that he made his estimates accordingly. If he did more, it was his own folly, and he alone must suffer the consequences. The government of the United States is in no respect responsible to him.

We are of the opinion that the petitioner is not entitled to relief.