36TH CONGRESS, 1st Session. } SENATE. { REP. COM. No. 3.

IN THE SENATE OF THE UNITED STATES.

DECEMBER 23, 1859.—Ordered to be printed.

Mr. YULEE made the following

REPORT.

[To accompany bill S. 23.]

The Committee on Post Offices and Post Roads, to whom was referred the memorial of Arnold Harris and Samuel F. Butterworth, respectfully report:

That the committee refer to the report, (No. 151,) 1st session, 35th Congress, upon the same memorial, and recommend the passage of the same bill for the relief of the memorialists which was passed by the Senate during its last session. They accordingly report a bill.

IN THE SENATE OF THE UNITED STATES, *April* 5, 1858.

The Committee on Post Offices and Post Roads, to whom was referred the memorial of Arnold Harris and Samuel F. Butterworth, respectfully report:

That the petitioners ask relief from a penalty they have incurred as sureties of William G. Kendall, lately a deputy postmaster at New Orleans. The memorial is as follows:

MEMORIAL,

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

The memorial of Arnold Harris and Samuel F. Butterworth respectfully showeth:

That on the 14th of April, A. D. 1853, they signed the official bond of William G. Kendall, late postmaster of New Orleans, as his sureties in the penal sum of sixty thousand dollars. On the 7th May, 1855, Kendall was dismissed from the office of postmaster at New Orleans; was arrested, charged with having robbed the mails; was

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indicted, tried, and acquitted. After his arrest, and before his trial, his account was stated by the Post Office Department, showing a balance against him, as postmaster at New Orleans, of $10,839 19. This account was presented to Kendall; he failed to pay any part of it. Early in January, 1856, your memorialists were called upon by the Post Office Department to pay up the sum of $10,839 19, as sureties for Kendall; on the 7th January, 1856, your memorialist, S. F. Butterworth, deposited with the United States assistant treasurer at New York the sum of $5,000 to the credit of this account; on the 19th of January, 1856, he deposited, in like manner, the further sum of $1,950. And on the 21st January, 1856, your memorialist, Arnold Harris, deposited with the Auditor of the Post Office Department at Washington the sum of $3,889 19, being the balance claimed by said account to be due from Kendall, as postmaster at New Orleans, to the United States. Soon after this, Kendall was tried by a jury at New Orleans, and acquitted. He immediately left the United States and went to Mexico, where he now resides. After he had thus left the United States, on the 18th day of September, 1856, your memorialist, Samuel F. Butterworth, received a letter from the Auditor of the Post Office Department, (see copy annexed,) informing him that in making out the account against Kendall an error had been made, and that there was still due the department, from Kendall, the sum of $5,365 47.

When the account was first stated by the department, showing a balance against Kendall of $10,839 19, he (Kendall) insisted that there was no such amount due from him, and that the claim was made merely to present him as a defaulter, and thus prejudice his case before the jury. Your memorialists, not doubting his statements, and certain of his innocence, paid the claim without investigation as soon as it was presented to them, and they did this to insure Kendall a fair trial, and because they knew that all of his available means were required by him to prepare for his defence; but your memorialists distinctly state that if the department had at first claimed a balance of $16,204 66 as due from Kendall, they certainly would not have paid that large sum without investigation and legal resistance, unless first indemnified by Kendall or his relatives.

By direction of the government, suit was instituted against Kendall (whose last known place of residence was in Missouri) and your memorialists in the United States circuit court of Missouri to recover this last claimed balance of $5,365 47; process was served at the late residence of Kendall; your memorialists appeared by attorney, and suffered judgment to be obtained against them by default.

The only explanation, or rather excuse, given by the Post Office Department for the "grave error" in rendering the first account against Kendall for a sum of $5,365 47 less than was really due the government, was the fact that the clerk who made out the account was intemperate!

Your memorialists ask the Congress of the United States to release them from the payment of the judgment rendered against them as above stated, and they assign as a sufficient reason for such request the fact that, by the action of an intemperate clerk in the Post Office

Department, (since dismissed,) they have been deprived of all remedy against Kendall, who had departed from the country before the last claim of $5,365 47 was made known to either of your memorialists.

A further fact your memorialists present: Kendall, charged with a high crime, was vigorously prosecuted; extraordinary means were used to procure his conviction; the United Sates district attorney at New Orleans was not deemed equal to the occasion; other distinguished counsel was employed, who boasted that he was to receive a fee of $5,000 from the government in the event of Kendall's conviction. To meet this unjust persecution and monstrous proceeding, on the part of the United States, Kendall was compelled to expend large sums of money to retain the services of Senator Benjamin and other eminent lawyers; to procure the attendance of important witnesses; and to conduct his defence to a successful issue, more than his life, his honor, and his liberty were involved in the contest, not a particle of proof of guilt was produced, he was acquitted.

The moneys thus expended by Kendall, but for the action of the government, would have constituted a means of paying any real balances due from him as postmaster. By the oppressive action of the government he was deprived of these means. Under these circumstances your memorialists submit that his sureties ought not to be called on to make good the moneys thus expended.

The above facts considered, your memorialists ask such relief as the Congress of the United States may deem just and proper.

S. F. BUTTERWORTH.
ARNOLD HARRIS.

Subsequently a letter from one of the petitioners, in reply to an inquiry from the committee, was submitted, which is as follows:

NEW YORK, *March*, 20, 1858.

DEAR SIR: A memorial from Arnold Harris and myself, as sureties of William G. Kendall, late postmaster at New Orleans, has been referred to the Committee on Post Offices and Post Roads, of which you are chairman. We omitted to state in that memorial anything in relation to the capacity of Mr. Kendall, at the time of his acquittal, to pay or secure the amount claimed as due the Post Office Department from him. It may be said that unless we can show that Mr. Kendall could have been forced to pay, we lost nothing by his departure from the country. The fact is, that Mr. Kendall possessed a valuable property at Biloxi, Mississippi, (represented to be worth over $12,000,) which property he settled upon his wife before he left the country, and proceedings are now pending in the United States circuit court, in behalf of the United States, to set aside this settlement, and to subject this property to the satisfaction of the judgment rendered against Kendall. Had we have known of the existence of this large claim against us, as sureties of Kendall, before his departure from the country, we certainly could, by the application of the sub-treasury law, have compelled Mr. Kendall to apply this property to the payment of this claim, instead of settling it on his wife. There can be no doubt of this. Mr. Kendall would have exhausted his own prop-

erty not only, but also that of his relatives, rather than have suffered the penalties of the law as a defaulter.

I am, with great respect, your obedient servant,

SAM. F. BUTTERWORTH.

The facts alleged by the memorialists are sustained upon inquiry.

The parties appeal to the equity of the government to protect them from a loss caused by the laches of one of its officers.

When these parties became sureties they reasonably looked with reliance upon the guards which the laws created against default of its officials for their protection. They had a right to expect correct and accurate accounts to be kept by the government, quarterly settlements, and such prompt resort to the vigorous and sufficient means of enforcing payment of balances as the sub-treasury law provided. They had a right also to expect early and accurate notice of any default, that they might employ the usual means of securing themselves from damages.

It appears that through the fault of the government, no matter from what cause, they were deceived as to the amount due to the government by Mr. Kendall, and were not apprised of a different state of the account, and of a further balance claimed, until the principal had disposed of his property and left the jurisdiction of the United States. If the government had used the proper care and diligence, his departure would have been prevented, and in all reasonable probability the amount recovered. The government was the custodian of the accounts. It alone could know the true state of indebtedness; the sureties could only know through the government. When, upon being informed by the government of the balance owing, they generously came forward and paid the amount from their own private means, they had a right to regard their obligation as discharged, and to discharge their minds from any further vigilance in the transactions of Mr. Kendall. Thus, by the default of the government, they have suffered a damage, and although the case is not one which would secure them immunity in a court of law, yet it presents a fair case for the clemency and consideration of the government.

The committee think that the government may properly relax its strict legal claim, and in consideration of the large amount already voluntarily paid by these sureties, and the injury caused to them by the laches of its own officers, release them from from further liability. They accordingly report a bill for the relief of the petitioners.