

## Opinion of the Court.

by an appointment made by the governor and the council of the Territory, as required in the act of Congress.

*The judgment of the Supreme Court of the Territory of Utah is affirmed.*

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## JACK v. UTAH TERRITORY.

APPEAL FROM THE SUPREME COURT OF THE TERRITORY OF UTAH.

No. 144. Argued December 5, 1889. — Decided January 6, 1890.

*Clayton v. Utah*, ante, 632, affirmed and applied to this case.

THE case is stated in the opinion.

*Mr. Eppa Hunton*, (with whom was *Mr. Jefferson Chandler* on the brief,) for appellant.

*Mr. Solicitor General* for appellee.

MR. JUSTICE MILLER delivered the opinion of the court.

This case, which is an appeal from the Supreme Court of the Territory of Utah, differs from the preceding case of Clayton against the same appellees, in the fact that Jack was charged with usurping and intruding into the office of territorial treasurer for the Territory of Utah, as Clayton was alleged to be an intruder into the office of auditor of public accounts. These two offices were created by the same statute of the Territory, at the same time, and the mode of election prescribed by that statute was changed at the same time by the same statute to an election by the people, and Jack claims to have been elected treasurer at the same general election in which Clayton was elected auditor; that he received the commission of the governor of the Territory, and that he has held the office ever since by reason of the fact that no other election had been held and no other person had been lawfully appointed to the office. The same principles govern this case as

## Statement of the Case.

govern the other. The judgment of the Supreme Court of the Territory of Utah was based upon the same grounds, and for the reasons given by us in that case we affirm the judgment in this.

*Affirmed.*

UNITED STATES *v.* CARR.

## APPEAL FROM THE COURT OF CLAIMS.

No. 411. Submitted December 3, 1889. — Decided January 6, 1890.

When a sum of money has been voluntarily paid by the United States to a mail contractor, by mistake of fact, or under circumstances to bring the payment within the provisions of Rev. Stat. § 4057, the amount may be applied by the government towards the payment of any balance that may be found due him, in the settlement of his accounts, for other services under his contract.

A contract to carry the mails from one station to another station, by way of two intervening specified stations, a stated number of miles and back, is not performed by carrying them over that route one way, returning from the terminal station to the place of beginning by a shorter route, avoiding the intermediate stations.

When a contractor for carrying the mails seeks to recover the full contract price, for a service which, as actually performed, was less than that contracted for, the burden of proof is on him to show knowledge or information by the Department of his conduct in the premises.

Knowledge by the Post-Office Department of the failure of a mail contractor to perform the full service required by his contract is not to be presumed from reports of the local postmaster to the Department that the service had been performed.

CARR filed his petition against the United States in the Court of Claims on the 17th of February, 1885, averring that the Postmaster General entered into a contract in writing with him in April, 1878, for carrying the mails of the United States from Salinas City, in the State of California, to Gabilan, in that State, and back from Gabilan to Salinas City for the annual sum of \$796, a copy of which contract he attached to his petition; that at the time of the letting of the contract, and for upwards of four years prior thereto, the mails were carried upon the route aforesaid, outward from Salinas to Santa Rita,