

University of Oklahoma College of Law
University of Oklahoma College of Law Digital Commons

American Indian and Alaskan Native Documents in the Congressional Serial Set: 1817-1899

2-17-1838

Avery, Saltmarsh, & Co

Follow this and additional works at: <https://digitalcommons.law.ou.edu/indianserialset>



Part of the [Indian and Aboriginal Law Commons](#)

Recommended Citation

H.R. Rep. No. 561, 25th Cong., 2nd Sess. (1838)

This House Report is brought to you for free and open access by University of Oklahoma College of Law Digital Commons. It has been accepted for inclusion in American Indian and Alaskan Native Documents in the Congressional Serial Set: 1817-1899 by an authorized administrator of University of Oklahoma College of Law Digital Commons. For more information, please contact darinfox@ou.edu.

AVERY, SALTMARSH, & CO.

[To accompany bill H. R. No. 550.]

FEBRUARY 17, 1838.

Mr. HALL, from the Committee on the Post Office and Post Roads, made the following

REPORT :

The Committee on the Post Office and Post Roads, to which was referred the petition of Avery, Saltmarsh, & Co., report :

That the claim was examined by the Committee on the Post Office and Post Roads of the second session of the last Congress, and a favorable report made, which the present committee adopt, and make a part of their report. The committee, in ascertaining the amount of the claim, have reduced the sum 925 dollars below that found by the former committee, and report a bill accordingly.

FEBRUARY 23, 1837.

The Committee on the Post Office and Post Roads, to which was referred the petition of Avery, Saltmarsh, & Co., submit the following report :

The petitioners are the present contractors for carrying the mail from Columbus, Georgia, to Montgomery, Alabama, a distance of about ninety miles. The contract was for the term of four years, and will end the 31st of December next. The route is one of much importance, being that on which the great mail from the North to Mobile and New Orleans is carried; and, by contract, it was to be transported daily each way in four-horse post-coaches.

About seventy miles of the eastern portion of the route runs through the territory occupied by the Creek nation of Indians. In consequence of the wild and unsettled character of the country, the contractors were under the necessity of erecting stables and other buildings at several stands on the road, and of laying in supplies of provender for their horses, which supplies they were compelled to obtain and transport from a considerable distance. There were seven of these stands; and, in order to execute their contract with the Department, several coaches were required, and sixty-four horses were in constant employment, besides others necessarily kept in readiness to meet contingencies.

While the petitioners were in the execution of their contract with the Department, the late war with the Creek Indians broke out, in which the Indians attacked and destroyed, or carried off, several coaches, horses, har-

nesses, and other property of the contractors, in use in the performance of their contract ; and it is for an indemnity for the loss of this property that the present claim is made.

The facts in relation to the depredations of the Indians, so far as the petitioners' claim is concerned, appear to have been as follows :

About the 1st of May last, apprehensions existed in the vicinity of the Creeks of an approaching war. By a letter from Major McIntosh, of the United States army, to the Adjutant General, published in the Globe of the 17th of May, it appears that the Indian depredations commenced as early as the 5th of that month. On the 9th of May, the same officer writes as follows : " Hostilities have commenced in serious earnestness. Within a few days four individuals have been murdered, and it is feared many others have fallen. * * * * The war-whoop is now sounding throughout the nation." [See Globe, May 20, 1836.] A letter from the postmaster at Columbus to the Postmaster General, dated May 9th, states that the Creeks had commenced hostilities ; and on the 10th, the postmaster writes as follows : " Since yesterday, five persons have been killed by the Indians, and three of them within ten miles of Columbus. Probably five hundred persons have come into town from the nation within the last twenty-four hours, and have left their houses and property entirely unprotected." [See Globe, May 19, 1836.] The committee have no doubt that as early as the 9th of May, the contractors would have been justified, by the laws of common prudence, in withdrawing their property from the Indian territory ; and they probably might thereby have saved the greater portion, if not the whole of it. One of the petitioners testifies that, after the alarm commenced, he did draw off from the route the property employed in running an accommodation passenger line ; and that he would have withdrawn the property of the mail line also, but for the advice and directions of the postmaster at Columbus, and Mr. Plitt, an agent of the Post Office Department, then at Columbus, who entertained the belief that the Indians, whatever depredations they might commit on individuals and their property, would not venture to obstruct the transportation of the mail. This testimony is also confirmed by an agent of the contractors then on the ground. The mail property was accordingly continued on the route. The danger of attack continuing to increase, the postmaster at Montgomery was instructed by the agent of the Department to employ a guard for the protection of the mail. He accordingly employed four men, and, as a means of adding to the security of the mail, seven others were received as passengers by the contractors, the whole armed with muskets and other weapons, and acting as a guard. On the 15th of May the mail, with this guard, left Montgomery ; the whole in two four-horse post-coaches. Before reaching the Indian country, one of the coaches was exchanged for a mail-wagon. The mail proceeded until it arrived within about eighteen miles of Columbus, when, on the 16th, an attack was made by a party of Indians, supposed to be between fifty and one hundred in number, two persons killed, and the guard overpowered, one horse killed, several wounded, and all taken by the Indians, and the coach and wagon destroyed. No further attempts were made to keep up the mail communication on the route, until after the Indians were subdued by military force ; and all the property of the contractors, then in the Indian country, was captured and carried off, or destroyed. It is shown, by the testimony of several witnesses, that the contractors lost of their mail property, by the

depredations of the Indians, four coaches, one mail-wagon, twenty-eight horses, seventeen sets of harness, and a quantity of corn and fodder laid in at their stands for the supply of their horses; the whole valued at the sum of \$10,704. From the testimony submitted to the committee, and which is appended to the report, they see no reason to doubt that the petitioners have actually sustained the losses they state, and that the witnesses give a fair valuation of the property. Indeed, the petitioners appear to have sustained severe and great losses, in addition to those for which they claim indemnity of the Government.

It is a principle of our legislation, long established and well settled, that individuals have a valid claim on the Government for property captured or destroyed by an enemy while it is in the public service. Under the circumstances in which this property of the claimants in this case was placed, the committee cannot entertain any doubt but that it must be considered as in the public service; and they, therefore, report a bill for their relief.

There are, also, sundry other items of claim made by the petitioners, which will appear by the papers appended to this report, but which the committee are of opinion cannot be allowed.

I, Justin Forbes, of Athens, in the county of Bradford, and State of Pennsylvania, being duly sworn, depose and say: That, at the time of the commencement of hostilities with the Creek Indians, in May last, I was, and am still, one of the firm of Avery, Saltmarsh, & Co., who were under contract with the Post Office Department for carrying the mail from Columbus, (Georgia,) to Montgomery, (Alabama.) The company was then, and continues to be, composed of John H. Avery, Orlando Saltmarsh, and myself; Messrs. Ward Taylor and Richard C. Stockton, two of the original contractors, having previously sold and transferred their interest in the contract to us, or some one of us. The contract was to carry the mail daily each way—the distance about ninety miles, and the average weight of the mail about one thousand pounds—being the great southern mail route to Mobile and New Orleans. About seventy miles of the route next to Columbus, is through a wilderness territory, occupied by the Creek nation of Indians. In consequence of the unsettled character of the country, the contractors were under the necessity of building stables for their horses at the different stands on the road, of which there were seven, and also shops and houses for blacksmiths, wheelwrights, and harness makers; and were obliged, at a great expense, to transport corn and fodder for their horses; and were also at great expense in repairing the road over which they travelled. The number of horses required to execute their contract with the Department was sixty-four kept constantly in employ, besides extras to meet contingencies, and eight wagon-horses employed in drawing corn and fodder to supply the stands. Besides the mail stage, the said company, previous to May last, were running another line of stages along the same road, called “the accommodation line,” for the purpose of carrying passengers; in the running of which, they employed seventy horses in addition to the number above specified. At the commencement of the difficulties with the Creek Indians, I was at Columbus, in the management of the mail and other line

of stages above mentioned ; and about the 10th of May, and several days before an attack had been made on the mail by the Indians, in consequence of their hostile proceedings in the vicinity, I had ordered the property belonging to the accommodation line to be drawn off the route; and when the depredations were committed on the mail line, the accommodation line had, for some days, ceased running. The danger from the Indians was considered so great, that I would not risk my individual property on the route, when pursuing my own interest according to my own inclination ; but, as we were employed by the Government to carry the mail, I felt bound to consult its officers, and to act according to their advice and direction in regard to it. For several days previous to the 16th of May, Mr. Plitt, an agent of the Post Office Department, was at Columbus, and I was in the daily practice of consulting him in regard to carrying the mail through the Creek country, and also with Mr. Van Ness, the postmaster at Columbus ; and, by their directions, I acted in regard to carrying the mail. Had I been under no contract with the Government, I would have had all my property withdrawn from the line, before any attack of the Indians upon it ; but the anxiety of the officers to keep up the mail communication, and their directions, induced me to continue running the mail line, which occasioned the losses for which I now ask a compensation of Congress.

I further say, that, soon after the destruction of our mail stages by the Indians, I came to Washington and advised with the Postmaster General of the situation of our property and business in regard to the mail contract, and he directed me to keep sufficient stage property on hand to start the mail whenever the road should be cleared. I accordingly wrote to that effect to our agents near the route, and it was done. The route was recommenced about the last of July, as I think ; though, not having been on the ground myself, I cannot speak with certainty as to the time.

The loss of the company of Avery, Saltmarsh, & Co., of *mail property*, by Indian depredations, in consequence of carrying the mail after they had commenced hostilities, was, according to my best knowledge and belief, as follows, to wit :

4 mail-coaches, worth	-	-	-	-	\$1,650 00
1 mail-wagon, worth	-	-	-	-	100 00
17 sets of harness, at \$40	-	-	-	-	680 00
28 horses, at \$150	-	-	-	-	4,200 00
1,800 bushels corn, at \$1 63	-	-	-	-	2,934 00
38,000 lbs. fodder, at 3 cents	-	-	-	-	1,140 00
Expense of keeping mail horses in readiness during the stoppage of the mail	-	-	-	-	1,314 79
1 mail stable and crib burnt	-	-	-	-	100 00
Damages for taking negro man by Indians	-	-	-	-	20 00

In addition to the above, the company suffered other losses of their property, and damages to a very great amount—in the whole, not less than fifty thousand dollars, as this deponent believes.

JUSTIN FORBES.

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

On this 27th day of January, 1837, before the subscriber, a justice of the peace in and for said county, personally appeared Justin Forbes,

whose name is subscribed to the foregoing affidavit, and made oath on the Holy Evangely of Almighty God that the facts therein stated are true, to the best of his knowledge and belief.

Sworn before

B. K. MORSELL, J. P.

I, Dixon H. Lewis, Representative of the district in Alabama in which the depredations of the Creek Indians, during the last year, were committed, have examined the within statement of Mr. Forbes, and believe all the *facts* stated are true. I am acquainted with the road, and know the description he has given of the country; the necessity of putting up the various buildings mentioned, to keep up his mail, on account of its being a very new and unsettled country; the necessity, in most instances, of transporting forage from the older parts of Alabama, and the western part of Georgia, are facts which I know to be true. I do not think the price of corn and fodder is too high; in fact, I have scarcely ever known corn at less than two dollars a bushel on most of that road. The price of the horses and stages is, I think, reasonable; and, as a general remark, I feel confident that every thing necessary to keep up the transportation of the mail in that country is higher than in any place I know in the South, from many causes, but mostly from its being an Indian country, with a population composed of Indians and new settlers, who are almost all buyers and not sellers of corn and other provisions.

DIXON H. LEWIS.

JANUARY 28, 1837.

I, George W. Avery, of Petersburg, Virginia, being sworn, state: That I acted as agent for the mail stage company (Avery, Saltmarsh, & Co.) during the spring of 1836, in the Indian nation, Alabama. I was in the nation in the month of May, at the time when the war commenced. I came in from the nation on the 6th, I think; and should have had the whole stock drawn off the road immediately, but for the anxiety to keep up the mail communication; urged to the risk by the authorized agent of the Post Office Department, and the postmaster of Columbus. The agent of the Department, Mr. G. Plitt, authorized me to hire guards, and wrote to the postmaster of Montgomery to do the same. He took upon himself the management of this affair entirely, and assured me, both before and after the attack, that the Post Office Department would remunerate the mail contractors for any loss sustained in consequence of this risk.

The postmaster of Montgomery, directed by Mr. George Plitt, the authorized agent of the Post Office Department, hired guards sufficient, as he thought, to protect the mail: he hired six guards, I think, at one time, and they were with the mail in one of the attacks. I have seen the deposition of Justin Forbes, Esq., giving a statement of the loss of property by the Indians in the Creek nation. With most of the facts set forth I am acquainted, and know them to be substantially correct.

GEO. W. AVERY.

DISTRICT OF COLUMBIA, }
 Washington county, } *to wit:*

This 22d February, 1837, before the subscriber, a justice of the peace in and for said county, personally appears George W. Avery; and after signing the above statement in my presence, makes oath that the facts therein stated are true, according to the best of deponent's knowledge and belief.

W. THOMPSON,
Justice of the Peace.

STATE OF GEORGIA, *Muscogee county:*

Personally appeared before me, a justice of the peace for the county of Muscogee, in the State of Georgia, Samuel H. Muzzy, of Columbus, in said county, who, being duly sworn, deposeth and saith: That, at the time of the commencement of the difficulty with the Creek Indians in May last, he then was in the employ of Avery, Saltmarsh, & Co., contractors for conveying the mail between Columbus, Georgia, and Montgomery, Alabama, as agent on the line from Columbus to Montgomery, and was acting in that capacity during the continuance of that difficulty; and, in consequence of being so employed, is acquainted with the description and number of horses and coaches employed by them in the conveyance of the mail on the route, and the quantity of corn and fodder by them owned at different stands in the Creek nation at the time of the commencement of the difficulty with the Creek Indians.

And the deponent saith that, during the difficulty with the Creek Indians, there were four mail-coaches taken and burnt by the Indians, and one mail-wagon taken, and sixteen or seventeen sets of harness taken and burnt, or destroyed. And deponent further saith that, according to his best judgment, the harnesses lost were worth at least, on an average, forty dollars per set, and the mail-coaches worth one thousand six hundred and fifty dollars in all; and the mail-wagon was worth one hundred dollars. And deponent further saith, that there were lost twenty-eight valuable horses, then in service, which cost at least, on an average, one hundred and fifty dollars per horse, and were worth at the time full that sum.

And deponent further saith that there were, at the different stands in the Creek nation, belonging to said company of Avery, Saltmarsh, & Co., at the time of the commencement of the difficulty with the Indians, according to his best judgment, about two thousand bushels of corn, and all of which was lost, except about two hundred bushels; and that there was destroyed from thirty-five to forty thousand weight of fodder; and that the corn was worth at least one dollar and sixty-three cents per bushel, and the fodder cost at the stands three dollars per hundred weight—the most part of that purchased since the war, to replace that destroyed, being purchased by deponent.

And deponent saith that there were kept on the line by said company, in readiness for the mail, sixty-four horses, during the Indian war, the expense of keeping which was thirteen hundred and fourteen dollars and seventy-nine cents; which sum he paid, as agent, as aforesaid. And deponent further saith that there were one stable and one corn-crib (in which a part of the corn was deposited) burnt by the Indians; which stable and crib were used for the teams belonging to the mail line, and were worth

one hundred dollars; and that the man employed by said company at one of the stables, having charge of the mail teams, was taken by the Indians, and by them detained about one month, to the damage of said company twenty dollars. And deponent further saith that, at the time of the attack on the mail-wagon, on the 16th day of May last, he was present in the coach then used in conveying the guard intended for the protection of the mail, and says that the mail was heavy, and a part in the mail-wagon and the other part in the coach, and that both wagon and coach were on that day used solely for the purpose of conveying the mail, and the guard in attendance; and upon being attacked, were overpowered by the superior number of Indians, and were obliged to abandon the mails and coach, wagon and teams, with the loss of two men.

S. H. MUZZY.

Sworn to and subscribed before me, this 7th day of December, 1836.
 SAMUEL E. BUCKLER,
Justice of the Peace.

STATE OF GEORGIA, }
 Muscogee county, December 5, 1836. }

Personally appeared before me, Samuel E. Buckler, a justice of the peace for the county of Muscogee, in the State of Georgia, William S. Adams, of said county, who, being duly sworn, deposeth and saith: That, at the commencement of the difficulty with the Creek Indians in May last, and during the continuance of that difficulty, he was one of the drivers in the employ of Avery, Saltmarsh, & Co., contractors for conveying the mail between Columbus, (Georgia,) and Montgomery, (Alabama;) and that during the time of the difficulty, he was on the route from Columbus to Tuskegee, in Alabama; and in consequence of being so on the route, is acquainted with the description and number of horses and stages employed by said company on said mail route, used for the conveyance of the mail, and is also acquainted with the description and number of horses and stages lost by said company on said route, during the time of said difficulty, in consequence of the same. And the deponent further saith that, at the time of the attack made on the mail-wagon, on the 16th day of May, 1836, there were eight horses in company, four of which were attached to the mail-wagon, and four attached to a coach belonging to the mail line, which was at that time occupied by a guard and two of the agents of the mail line, and was intended to afford greater security and protection to the mail, which on that day was large and valuable. And this deponent further saith that these horses used in the conveyance of the mail, and also those attached to the coach conveying the guard, were fine and valuable horses, and that all of these horses were either killed or taken by the Indians. And this deponent further saith that there were twenty other horses taken from the line, (including eight taken from the stable, eight attached to the coach attacked on the 14th day of May, and four which a man was leading,) all of which were taken on the 14th day of May; making in all twenty-eight horses, worth at least, on an average, according to the best of his judgment, one hundred and fifty dollars each. And the deponent further saith that the mail-wagon, and coach occupied by the guard at the time of the attack, on the 16th

day of May, were valuable carriages, and both entirely destroyed, together with both sets of harness, being burnt by the Indians; also, that there were three other mail-coaches on the line destroyed, and fifteen other sets of harness; which harnesses, being partly worn, were worth, according to the best of his judgment, forty dollars per set.

And the deponent further saith that said contractors had in the Creek nation, at different stands on the road, at the time of the attack, on the 16th of May, one thousand nine hundred and fifty bushels of corn, worth one dollar and fifty cents per bushel, and thirty-eight thousand weight of fodder, worth two dollars and twenty-five cents per hundredweight; and that one thousand seven hundred and fifty bushels of corn were used, destroyed, and carried away, and that all of the fodder was also taken and carried away; the above statement regarding the amount of corn and fodder being made according to his best judgment and belief.

WILLIAM S. ADAMS.

Sworn to and subscribed before me, this 5th December, 1836.

SAM. E. BUCKLER,

Justice of the Peace.

On the 15th day of May last, I was instructed by Mr. Blue, postmaster at Montgomery, to employ a guard of four men to accompany the mail to Columbus, Georgia; I was acting as agent for the proprietors, Saltmarsh & Co. I did employ a guard of four men, and agreed to carry seven other men through, on the condition that they would carry muskets, and act as a guard on the way. With the four men as a hired guard, and with seven others as a volunteer guard, all armed with muskets, the mail left Montgomery for Columbus, on the evening of the 15th day of May last, in two four-horse post-coaches. At Dumont's, one of the coaches was left, and a mail-wagon taken in lieu thereof. The mail proceeded till an attack was made by a body of Indians (supposed to be between fifty and one hundred) between Tuskegee and Columbus; the guard overpowered; two of the volunteer guard killed; one horse killed; several wounded, and all taken by the Indians; and the coach and wagon destroyed.

A. T. KINGSBURY.

STATE OF ALABAMA, *Montgomery county* :

Before me, David Campbell, a justice of the peace for said county, came A. T. Kingsbury, and made oath that the above statement is true, in substance and fact.

A. T. KINGSBURY.

Sworn to and subscribed before me, December 2, 1836.

D. CAMPBELL, *J. P.*

STATE OF GEORGIA, *Crawford county* :

Personally appeared before me, a justice of the peace for the county of Crawford, in the State of Georgia, Alfred B. Williams, of Knoxville, in the said county, who, being duly sworn, deposeth and saith: That, at the time of the commencement of the difficulty with the Creek Indians, in May last, he was in the employ of Avery, Saltmarsh, & Co., contractors for carrying the mail between Columbus, (Georgia,) and Montgomery, (Alabama,) as a driver on said line; and, in consequence of being so employed, is acquainted with the description and number of horses and

coaches employed by them in the conveyance of the mail on the route, and the quantity of corn and fodder by them owned at different stands in the Creek nation, at the time of the commencement of the difficulty with the Creek Indians. And the deponent saith, during the difficulty with the Creek Indians there were four mail-coaches taken and burnt by the Indians, and one mail-wagon taken, and seventeen sets of harness taken and burnt, or destroyed. And deponent further saith that, according to his best judgment, the harnesses lost were worth at least, on an average, forty dollars per set; and the mail-coaches worth one thousand six hundred and fifty dollars in all; and the mail-wagon was worth one hundred dollars. And deponent further saith, that there were lost twenty-eight valuable horses, then in service, which cost at least, on an average, one hundred and fifty dollars per horse, and were worth at the time full that sum. And deponent further saith, that there were, at the different stands in the Creek nation, belonging to said company of Avery, Saltmarsh, & Co., at the time of the commencement of the difficulty with the Indians, according to his best judgment, about two thousand bushels of corn, and all of which was lost, except about two hundred bushels; and that there was destroyed from thirty-five to forty thousand weight of fodder; and that the corn was worth at least one dollar and sixty-three cents per bushel, and that the fodder cost, at the stands, three dollars per hundred weight. And deponent further saith, that there were kept on the line by said company, in readiness for the mail, sixty-four horses, during the Indian war. And deponent further saith, that there were one stable and one corn-crib (in which a part of the corn was deposited) burnt by the Indians, which stable and crib were used for the teams belonging to the mail line, and were worth one hundred dollars; and that the man employed by said company at one of the stables, having charge of the mail teams, was taken by the Indians, and by them detained about one month, to the damage of said company twenty dollars. And deponent further saith, at the time of the attack on the mail-wagon, on the 16th day of May last, he was present, (on the coach, then used in conveying the guard, intended for the protection of the mail,) and says that the mail was heavy, and a part in the mail-wagon and the other part in the coach; and that both wagon and coach were, on that day, used solely for the purpose of conveying the mail and the guard in attendance.

ALFRED B. WILLIAMS.

Sworn to and subscribed before me, this 14th day of December, 1836.
P. M. CALHOUN, J. P.

I am well acquainted with the road passing through the Creek nation, and I am fully aware that corn and fodder cost more on that road than in any portion of the State of Alabama. The price stated by Mr. Forbes is probably as low as it could be procured. I have no knowledge of the value of the horses or stages lost by him; and can only say, that every description of property commands there a high price.

WILLIAM R. KING.

JANUARY 29, 1837.

Having been instructed by the Post Office Department to employ a guard to accompany the mail from this place, (Montgomery, Alabama,) to Columbus, Georgia, on the 15th day of May last I instructed Mr. A. T. Kingsbury, agent for the contractors, to ascertain what persons could be procured to perform that service. He (Mr. Kingsbury) accordingly employed four men to accompany the mail as a guard; these men were well armed. To carry this guard, it became necessary to take an extra carriage. The mail left Montgomery on the evening of the 15th of May, with the guard and some passengers, all armed, in two four-horse post-coaches; the whole could not have been carried in one coach, and the passengers added additional security. The next that was heard from the mail was, the attack made by the Indians, and the destruction of the mail carriages, &c., between Tuskegee and Columbus, Georgia.

N. BLUE,

Postmaster of Montgomery, Alabama.

MONTGOMERY, December 2, 1836.

STATE OF ALABAMA, *Montgomery county* :

Before me, David Campbell, a justice of the peace for said county, personally came Noel Blue, and made oath that the above statement is true.

N. BLUE.

Sworn to and subscribed before me, December 2, 1836.

D. CAMPBELL, J. P.