

Who Caused the Reduction of Postage?

Ought He to be Paid?

by Lysander Spooner

Boston: Wright & Hasty's Press, No. 3 Water Street., 1850

TO THE PUBLIC

LETTER to M.D. PHILLIPS, by Lysander Spooner

STATEMENT. Including –

1. – The Constitutional Question – the opinions of the press, the certificates of Hon. Rufus Choate, Hon. Simon Greenleaf, Hon. Franklin Dexter, Hon. Benjamin F. Butler, Hon. William Kent, Hon. William H. Seward, and Hon. Robert Rantoul Jr., the imination of Juedge Sotry, the declaration of Senators Woodbury, Allen, and Simmons, and of Hon. Mr. Dana, of the House of Representatives
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TO THE PUBLIC

The reduction of postage, which was made in 1845, was forced upon Congress, against the determined opposition of that body, by the establishment of private mails, and such an exposure of the unconstitutionality of the laws prohibiting private mails, as satisfied

Congress of their inability to suppress the competition, and preserve the revenues of the Post-Office Department, otherwise than by the reduction of the government postage. And they accordingly reduced the postage to a point that made competition unprofitable, without even bringing the constitutionality of their prohibitory laws to the test of a decision by the Supreme Court.

The further reduction, made by the law of 1851, is but a natural consequence of the former one—it being proved, by the surplus revenue that accrued under the act of 1845, that a low rate of postage will pay the expenses of the Department.

The first reduction was forced; the second was the result of the surplus revenue that accumulated under that forced reduction.

Whoever, therefore, caused the first reduction, is the real author also of the second – and thus of the whole reduction – that is, from the original rates of 6 $\frac{1}{4}$, 10, 12 $\frac{1}{2}$, 18 $\frac{3}{4}$, and 25 cents, for each piece of paper, (less than four,) to an uniform rate of three cents, the half ounce, for all distances, within the United States, if prepaid, or five if not prepaid.

The law of 1851 also provides that so soon as the revenue of the post office Department shall exceed the expenditures by five per cent in a year, the postage shall be reduced to two cents the half ounce.

The laws both of 1845 and 1851 also make large reductions in the postage of newspapers, circulars, periodicals, and pamphlets.

The subscribers present to the public the following "letter" and "Statement" of Lysander Spooner – together with a copy of his argument of the " Unconstitutionality of the Laws of Congress Prohibiting Private Mails," – as proof that Mr. Spooner has been the principal, and by far the most efficient agent in effecting the reduction of postage.

Our object, in presenting this evidence, is to submit to the public the question, whether the accomplishment of so great a service, by Mr.

Spooner, does not demand some compensation at the hands of those who are enjoying the fruits of his exertions?

The English people, by voluntary contribution, gave to Rowland Hill, a munificent testimonial of their gratitude for his services in reducing postage. The English government also honorably rewarded him. Shall Mr. Spooner go entirely unrewarded?

Mr. Spooner's claims to a compensation, are enhanced by the fact that, in his contest with the government in 1844, (which caused the first reduction of postage,) he became involved in debts which he has hitherto been unable to discharge. We cannot believe the public will be content to enjoy the fruits of such a service, and make no remuneration for the exertions and losses by which it was accomplished.

It will be seen by the "Letter " and "Statement " of Mr. Spooner, and the evidence he produces in support of them, that he published his argument in January 1844, and established his private mails in the same month – avowing, in his public advertisements, his "intention thoroughly to agitate the question, and test the constitutional right of free competition in the of carrying letters," if he should be sustained in his business enterprise by the patronage of the public. This patronage was not extended to him, in a sufficient degree to meet the expenses of his mails, and of the conflict which the government carried on against him. And in six or seven months he was obliged to surrender the business – but not until the principle which he had established by argument, had become so far fixed in the public mind as to make the suppression of the private mails impossible, otherwise than by a reduction of the postage.

The merit of Mr. Spooner consists in his being the first to establish by argument the unconstitutionality of the laws prohibiting private mails, and the first to establish mails on that principle, and challenge the government to test the question whereby a reduction of the postage was coerced.

That Mr. Spooner's argument, and the establishment of his mails, had the merit and the efficacy we have ascribed to them, we subjoin the following opinions expressed by the press, and by distinguished legal gentlemen:

The New York Express (January 13, 1844,) says of the argument "The writer has certainly made out a very strong case."

January 30, 1844, the same paper called it "A very able argument," and said " We do not see how it can be got over."

February 7th, 1844 the same paper said, "Mr. Spooner has discussed that great question with surpassing ability."

The New York Tribune (January 18, 1844,) said, "This pamphlet deserves attention. It is certainly an able statement of one side of the subject, and the people may find after all that the Postmaster has stretched a point in the constitution."

The New York Evening Post (January 29, 1844,) called it "A very able pamphlet," and said, "We hold with Mr. Spooner in this matter."

The New York Journal of Commerce (February 29, 1844,) said, ":It has been concurred in by the general voice of the legal gentlemen who have examined it."

Hon. Rufus Choate certifies that he "had occasion to examine it carefully," and that "the author's leading and important position, that all laws prohibiting private mails were unconstitutional, was maintained with a force and cogency, calculated under the obvious limitations applicable to it, to convince every unbiassed judgment."

Hon. Franklin Dexter certifies that he "considers it as quite unanswerable;" that "as U.S. District Attorney," he "had occasion to consider it carefully, and could make no answer to it satisfactory to himself."

Hon Simon Greenleaf, (late Law Professor in the Cambridge Law School,) certifies that he has read it, and "should think it a very difficult work to refute it."

Hon. Benjamin F. Butler, (late U.S. Attorney General,) although, out of deference to the practice of the government, he forbears to say the laws prohibiting private mails are unconstitutional, yet says that Mr. Spooner's argument does very far to show that no power to pass any such laws has been delegated to the Congress of the United States. If the questions were a new one, I should expect the courts to repudiate the claim of the Federal Government to any such authority.

Judge Story, in June 1844, (five months after the publication of Mr. Spooner's argument,) on the trial of a case for the violation of the Post-office laws, said, (as reported in the Boston Daily Advertiser of June 18,) that "there were many difficulties in maintaining in the United States any exclusive right to establish post-offices and post roads."

Senator (now Judge) Woodbury, February 6, 1845, (about one year after the publication of Mr. Spooner's pamphlet,) said in the Senate of the U. S.: "Were the question a new one at this moment, the whole restrictions on private enterprise and private competition in carrying letters themselves, could not stand an hour."

Senator Simmons said February 6, 1845, in the Senate of the U. S. . "The power to establish a mail was not given to enable the government to make exorbitant charges for service, much less to enable it to enforce a compliance with them, if made."

Hon. Mr. Dana, M. C. of New York, said in the U. S. House of Representatives, February 25, 1845. "The validity of that (the government) monopoly is not beyond all doubt. Stake not the Department, under present circumstances, upon the hazard of a law suit. Prejudice is too strong against you. Success is almost impossible; victory is useless; defeat ruin."

We think these opinions of Messrs Story, Woodbury, Simmons, and Dana, are fairly to be attributed to Mr. Spooner's argument – inasmuch as such opinions, (so far as we know,) had never before been heard from the Bench, or in Congress.

We think also, that the reduction of the government rates, without bringing the constitutional question before the Supreme Court, is a virtual admission, on the part of Congress themselves, that they did not feel it safe to subject the constitutionality of their prohibitory laws to the investigation of that tribunal; otherwise they would not have succumbed to such a defiance of their authority, without bringing the question to a judicial decision, as the Postmaster General was invited by Mr. Spooner to do.

Mr. Spooner's "Statement," which follows this card, will be found to contain numerous extracts from debates in Congress, and from reports of the Post-office Committees, all showing, conclusively that the necessity of getting rid of the competition of the private mails, and the acknowledged impossibility of doing it otherwise than by a reduction of postage, were the motives which induced Congress to make the reduction in 1845.

It is on these grounds that we think that Mr. Spooner's argument, and the establishment of his private mails, (with other private mails, which grew up, as we think, mainly under the, protection of his argument and example,) were the immediate and most efficient causes of that reduction.

Hon. Simon Greenleaf certifies that "the reduction of postage (in 1845) seems justly attributable to his (Mr. Spooner's) exertions."

Judge Kent, of New York, certifies that "one thing is certainly evident, that Mr. Spooner has displayed talent and energy in obtaining a reduction of the charges of postage, and deserves the gratitude of all of us for the obtaining of a great public benefit."

Hon. Benjamin P. Butler says, "That your (Mr. Spooner's) efforts have largely contributed to awaken attention to this great interest, no man can deny. And whatever I may have thought of them, before my recent perusal of your pamphlet, (published by you in 1844,) I am now satisfied that you were induced to engage in those efforts under a deep conviction of the unconstitutionality of the laws with which they conflicted, and that you may, therefore, be regarded as having rendered, in this matter, good service to the country."

Hon. Robert Rantoul, Jr., says, "I think Mr. Spooner entitled to the gratitude of his country for his able and efficient labors to illustrate the constitution, and to facilitate correspondence."

Hon. William H. Seward also says, in reference to the same services, "I am quite satisfied that Mr. Spooner deserves well of the country, and of the age."

For further evidence of the efficiency of Mr. Spooner's efforts in effecting the reduction that was made in 1845, we must refer to his "Letter " and "Statement," which follow this card; and especially to the extracts he has given from the report of the Postmaster General, the reports of Committees, and the Debates in Congress. And we take leave to repeat that the reduction of 1851 is a legitimate result of the reduction of 1845, and is therefore attributable also to Mr. Spooner's exertions.

It is due to Mr. Spooner to say that he was not the first to suggest this contribution. At the time the new postage law went into operation, in 1845, it was proposed to him that the public be called upon to remunerate him for his services in bringing it about; and he was requested to prepare such a statement of the facts as was necessary to be laid before the public for that purpose. He then declined, from motives of delicacy, to furnish the statement, and the matter was necessarily dropped. It has since been proposed to him again; and a sense of duty to

himself and his creditors, has induced him to furnish the "Statement" which follows.

From the mercantile, manufacturing, banking, and professional community, who have already realized large sums from the reduction of 1845, and who will realize similar profits from the one of 1851, we are confident something liberal may be expected. We trust also that other persons, whose savings have been, and will be less, will yet feel it a pleasure and a duty to contribute such small sums, (one dollar each, for instance,) as, if numerous as we think they ought to be, will, in the aggregate, make, up a testimonial that will honorably mark the public gratitude for so great a service as the reduction of the postage.

As it will necessarily be impossible for agents to visit all those, who may be disposed to contribute, we invite each person, without waiting for further solicitation, to send his contribution, by mail, to "Lysander Spooner; Boston, Mass."

In the cities we invite the merchants to move in the matter, by sending their contributions individually, or by acting collectively, as may seem to them proper.

In each village, where many will be disposed to contribute sums too small to be sent singly by mail, will not some public spirited individual take it upon himself to act as a collector of contributions, and forward them as above directed?

To ensure the success of the objects in view, it is important that each one should feel the obligation to do his own part, and not omit it, in the confidence that others will be more just or liberal than himself.

P. S. Will not editors, whose interests have been largely promoted by the reduction of postage, give the foregoing card an insertion, with such comments as the facts given in the following "Letter " and "Statement" may seem to them to justify ?

LETTER

Boston 1851

M. D. PHILLIPS, Esq.,

DEAR SIR: – You were pleased to suggest to me, as have many others, that the public were indebted to me for the Cheap Postage Law, that was passed in 1845. And you and others have proposed that those persons who have realized large savings from the reduction of postage, be requested to recognize the obligation. With this view you have desired me to put on paper the facts necessary to enable the public to understand my agency in the matter.

The question of indebtedness and obligation, on the part of the public, is one to be settled by each individual for himself; but the following pages will probably satisfy those who may read them, of these facts, viz: That I was the first to prove by argument – certainly the first to prove to the satisfaction of any considerable portion of the public – that Congress had no Constitutional power to forbid the establishment of mails, by the States, or by private individuals, in competition with the mails of the United States; 2, that I was the first to establish mails on that principle, and invite the government to test the question before the judicial tribunals; 3, that these events were followed by a recognition of the correctness of the principle, by an important portion of the bar, the press, the people, and, in one instance, by the bench, (Judge Story,) and, – in another instance, in the Senate, (by Levi Woodbury; 4, that numerous other private mails were speedily established, whose operations, by diminishing the revenues of the general Post office, threatened the Department with bankruptcy ; and, finally, that Congress were compelled, in order to save the Department from becoming a burden upon the treasury, to reduce the postage to a rate that would rid the Department of the competition of the private mails; and that these were the immediate causes that led to the passage of the cheap postage act of 1845.

The importance of the Constitutional principle I contended for, whether viewed politically, socially, or commercially, will be in some measure appreciated, when it is considered that, if the government of the United States have the power to forbid the States and individuals carrying letters, newspapers, and other mailable matter, it can, at will, suppress, to any extent it pleases, all written and printed communications between man and man. Theoretically, this absolute power – was claimed by the government; practically, it was exercised to a very injurious and tyrannical extent.

The right of the States and individuals to establish mails has not yet been fully established by judicial decisions. The act of 1845, in terms, denies it; although the act itself was practically a concession to it – for it is not to be supposed that Congress would have yielded to a competition so destructive of their revenues, and based, as the Post-office Committee of the House of Representatives said, "upon the impudent assumption that the government of the United States have no authority to restrain or punish" the competitors – it is not, I say, to be supposed that Congress would have been so regardless, both of their own dignity, and of the duty of maintaining their Constitutional prerogatives inviolate, as to have thus succumbed to the usurpations of a few private persons, without so much as bringing the case before the Supreme Court, if they had had any real confidence that their authority would there have been sustained. They would naturally have vindicated their authority first, and considered the reduction of postage afterwards.

It was my intention – had I been sufficiently sustained by the public – to carry the question to the last tribunal. But after a contest of some six or seven months, having exhausted all the resources I could command, I was obliged to surrender the business, and with it the question, into the hands of others, who did not see sufficient inducement for contesting the principle, after the reduction of postage had taken place.

But, great as was the relief afforded by the act of 1845, the value of my movement did not end there. That act, by the proof it afforded that a low rate of postage will support the Department, became but a preparatory step to the still further reduction made by the act of 1851.

I understand that my claim to be remunerated for my services and losses, has been objected to, on the ground that I engaged in the enterprise with a view to make money; that, so far as I was concerned, it proved to be a losing business – that, in this respect, it stands but on a level with enterprises generally that prove unfortunate, presenting no claim for indemnity or compensation from the public. The error of this objection consists in this, that it leaves entirely out of view the benefits the public have received from my unrewarded labors. Those benefits distinguish this case from all those unfortunate private adventures, which propose no benefit to the public, in which the public have no interest, from which they derive no advantage, and whose authors they are consequently under no obligation to compensate.

It is true I hoped to realize a profit from the enterprise–, although I trust I had also a proper sense of pride and duty in the establishment of so important a principle. But no person – no one certainly in my circumstances – would have been justified in entering upon so expensive a contest with the government, unless he had trusted to come out of it, at least without loss.

With reference to my prospects of profit, it is also to be considered, that although the legal idea, and the argument sustaining it, may have had as much originality as any of those mechanical or chemical ideas, which the government protects by securing to their authors an exclusive property in them and although my ideas were of far greater value to the public than almost any one of those that have ever been thus guaranteed to their authors; still, being legal ones, I could obtain for them no patent, and secure for them no monopoly. All persons, who could read my argument, or hire a lawyer to read it for them, were at once free to avail themselves,

as many did, of my thoughts, and establish themselves in competition with me in carrying them into practice. The idea and the argument were therefore necessarily a free gift, on my part, to the public, because the public were sure to get the benefit of them, without being under any compulsion to make any payment to me.

Nevertheless, I looked for a profit from the undertaking – a legitimate profit from the business of carrying letters in the midst of free competition – for I could not believe that the public would be so unmindful of one who should vindicate for them so great a right – a right so vital to civil liberty, so important in a pecuniary view, and the establishment of which was sure to result in the reduction of the government postage to the lowest rate to which free competition could bring it – as to give him no preference in business over those who had done nothing for them in that behalf. Probably such would not have been the case, had not the fact of my being the first to establish mails in avowed defiance of the authority of Congress, and the fact that my mail arrangements were at the outset more extensive than those of any other person, (to wit, from Boston to Baltimore,) induced the Postmaster General to direct nearly or quite all his efforts, for the suppression of private mails, against me alone. By employing a large police in the cities and on the roads, he was enabled occasionally to detect and arrest my carriers, and thus obstruct my mails. In this way the confidence of the public in the certain transmission of their letters through my mails was diminished, and their patronage accordingly withheld. In the mean time, other private mails were allowed to pursue their business, either in entire, or comparative, quiet; and their mails being the surer conveyance, they secured the larger share of business, and their proprietors reaped the profits which should have been the reward of my labors.

The consequence was that, after having sustained the conflict for some six or seven months, and placed the principle, on which I acted, so fully before the public as that it finally compelled the concession of Congress

to it, I was obliged, by want of means, to abandon the business, after having incurred debts which to this day I have been unable to discharge.

I subjoin the following "Statement," and a copy of my argument. The two embrace the proofs of all the more important assertions made in this letter.

With these remarks I leave the question of obligation, on the part of the public, to be determined by each person individually, to whom application may be made for contributions.

Very truly,

Your Obt. Servt.,

LYSANDER SPOONER

STATEMENT

THE CONSTITUTIONAL QUESTION.

My argument on the "Unconstitutionality of the Laws of Congress Prohibiting Private Mails," was published in January, (about the 10th,) 1844.

Copies were sent to most of the members of Congress, and to the Postmaster General.

On the 6th of Feb., 1844, it was published at length, in the New York Express.

Of this argument the New York Express said, (January 13th, 1844,)- "The writer has certainly made out a very strong case."

January 30th, the same paper called it, "A very able argument," and said, "we do not see bow it can be got over."

February 7th, the same paper said, "Mr. Spooner has discussed that great question with surpassing ability."

The New York Tribune, (January 18th, 1844,) gave an extended synopsis of the argument, and said:

"This pamphlet deserves attention. It is certainly an able statement of one

side of the subject, and the people may find, after all, that the Postmaster has stretched a point in the Constitution."

The New York Evening Post, (January 29th, 1844), called it "A very able pamphlet," and said, "we hold with Mr. Spooner in this matter.

The New York Journal of Commerce, (February 29th, 1844), said, "It has been concurred in by the general voice of the legal gentlemen who have examined it."

Hon. Rufus Choate, Hon. Simon Greenleaf, Hon. Franklin Dexter, Hon. Benjamin P. Bittler, Hon. William Kent, Hon. William H. Seward, and Hon. Robert Rantoul, Jr., give the following certificates :

"I have been requested to express an opinion respecting a pamphlet entitled "The Unconstitutionality of the Laws of Congress Prohibiting Private Mails, by Lysander Spooner,' published in 1844. Having had occasion to examine this pamphlet carefully, soon after it appeared, I am happy to say that I was impressed with the ability and research displayed in it. The arguments it presented were, to a great extent, original, and the author's leading and important position, that all laws prohibiting private mails were unconstitutional, was maintained with a force and cogency, calculated, under the obvious limitations applicable to it, to convince every unbiased judgment.

"Boston, 9 Feb. 1849. RUFUS CHOATE."

"Andover, May 2, 1849.

GENTLEMEN, – have received your favor of April 27, requesting, my opinion on the constitutionality the laws against private mails. "My attention has never been specially called to that question, and it is out of my power, at present, to command the time necessary for a thorough examination of it. I can only say that, having read over Mr. Spooner's argument, I have been deeply impressed with its cogency, and the research it displays, and should think it a very difficult work to refute it. In effecting a reduction of the postage, which seems justly attributable to his exertions, he has performed a service deserving not only the gratitude

of the community, but a remuneration of the expenses it must have cost him.

"Respectfully, your Obedient Servant, "

S. GREENLEAF."

"To Messrs. John W. Wetherell, John C. Wyman, and Oliver H. Blood."

"Boston, January 31, 1850.

SAMUEL E. SEWALL, Esq., – Dear Sir, – In answer to the inquiry contained in Mr. Lysander Spooner's letter to you, I very willingly state that I consider his printed argument, against the power of Congress to prohibit private mails, as quite unanswerable.

"That argument was produced, and substantially repeated, in the defence of certain prosecutions which I was, as U.S. Dist. Attorney, specially required to institute against persons who had set up private mails. I had, of course, occasion to consider it carefully, and I could make no answer to it satisfactory to myself. Since that time my attention has been again drawn to the subject, as Lecturer on Constitutional Law at the Cambridge Law School, and I felt obliged to state the opinion that Congress possessed no such power.

"FRANKLIN DEXTER."

(Hon. B. P. Butler's letter discusses the question, at too great length to be inserted entire. I give the more important portions.)

New York, Feb. 26, 1850.

"LYSANDER SPOONER, Esq., – Sir, – * * * I regard the provisions of the existing Acts of Congress, creating a government monopoly in the transmission of 'mailable matter, ' as inexpedient and oppressive; and, so far as those provisions impose penalties on individuals for carrying, for hire, on their persons, or in their vehicles or vessels, by land or water, letters, newspapers, or packages, your argument goes very far to show, that no power to pass any such laws has been delegated to the Congress of the United States. If the questions were a new one, I should expect the courts to repudiate the claim of the Federal Government to any such authority. * * * * *

"I am not prepared to say the the several Congresses that passed, and the several Presidents that approved, these laws, transcended their powers, and violated the Constitution. *

"That your efforts have largely contributed to awaken attention to this great interest, no one can deny; and, whatever I may have thought of them before my recent perusal of your pamphlet, (published by you in 1844,) I am no-w satisfied that you were induced to engage in those efforts under a deep conviction of the unconstitutionality of the laws with which they conflicted, and that you may therefore be regarded as having rendered, in this matter, good service to the Country.

"Very Respectfully, your Obedient Servant,

"B. F. BUTLER."

New York, May 18, 1849.

"My DEAR MR. HOWE – I return the pamphlet containing the argument of Mr. Lysander Spooner, on the Unconstitutionality of the Laws Prohibiting Private Mails.

"That he has established this point, I am not prepared to say, while I appreciate the force of his reasoning." " One thing is certainly evident, that Mr. Spooner has displayed talent and energy in obtaining a reduction of the charges of postage, and deserves the gratitude of all of us for the obtaining of a great public benefit.

"I am Faithfully Yours,

"W. KENT."

"Auburn, June 2, 1849.

"GENTLEMEN, – My engagements leave me no leisure to examine the interesting question discussed by Mr. Spooner in the pamphlet you have submitted to me. It seems clear enough, however, that his opinion of the Unconstitutionality of the Laws Prohibiting Private Mails was adopted by him in good faith, and upon at least plausible grounds, while it has been discussed with great ability and fairness. Inasmuch as the agitation of the question, very proper under such circumstances, contributed to the reformation of our Post system and the establishment of cheap postage, I

am quite satisfied that Mr. Spooner deserves well of the country and of the age.

"I am, with great Respect, your Humble Servant,

"WILLIAM H. SEWARD."

"To Messrs. John W. Wetherell, Oliver H. Blood, and John C. Wyman."

"Beverly, Dec. 27, 1849.

"I have read and examined with some care Mr. Spooner's pamphlet on the supposed power of Congress to prohibit private mails. His argument against the existence of such a power is lucid and thorough – indeed it seems to exhaust the inquiry on that side of the question.

"As it is of transcendent importance that the constitutional limits of the action of the Federal Government should be clearly defined and settled by general acquiescence, and as this can only be done by a consideration of the whole argument for and against every questionable claim of Federal power; as nothing can contribute more towards the progress of civilization and social improvement, and to perpetuate and strengthen the bonds of our glorious Union, than the cheap, rapid, safe and unrestricted intercommunication of thought, through written or printed vehicles, over the whole territory comprised in this group of republics, I think Mr. Spooner entitled to the gratitude of his country, for his able and efficient labors to illustrate the Constitution, and to facilitate correspondence.

"ROBERT RANTOUL, JR."

The public will judge whether this argument, or the agitation of the question produced by it, and by the establishment of my mails, had any thing to do in calling out the following opinions.

Judge Story's Opinion.

In June, 1844, (five months after the publication of my argument,) the first intimation, so far as I know, that ever came from the Bench, that the laws prohibiting private mails were unconstitutional, came from Judge Story, on the trial of Winsor Hatch.

After giving the case to the defendant, on the ground that the facts proved, did not bring the case within the letter of the statute, Judge Story, (as he is reported in the Boston Daily Advertiser of June 18th,) said :

"That there was a very grave and important question behind all this, which was not raised by this case, but which had been of late agitated and whenever a case occurred, requiring its decision, must be decided at Washington, by the Supreme Court of the United States. This was, whether the United States had any exclusive right to establish post offices and post routes. This was a question of great importance, and there were many difficulties in maintaining that power in the United States."

As reported in the Boston Mail, of June 17th, Judge Story said:

"That a still more important question lay behind all these, and that was, whether the government had, by the Constitution, any exclusive right to set up post offices and post roads, or whether its jurisdiction extended any farther than the right to make laws regulating the conductor those actually employed in the service of the United States mail. This question, he said, he should embrace the first proper opportunity to carry before the full bench of the Supreme Court, plainly intimating that his own opinions were opposed to any such exclusive right on the part of the government." [1]

Senator Woodbury's Opinion.

February 6th, 1845. In a debate in the Senate, on the new postage bill, pending an amendment to restrict the transmission of newspapers out of the mail, Senator Woodbury, now Judge Woodbury, of the Supreme Court of the United States, (as reported in the Globe, and the report copied in the Boston Times of Feb. 14,) said:

"How abhorrent, also, was the principle involved in such a prohibition! We choose to become common carriers, on tile great highways of the nation, of letters, and newspapers, and periodicals, and therefore assume the

power to punish all others who choose to exercise their individual rights to be likewise common carriers. * * *

"What, sir! – are we to interfere in this way with the mails in which our constituents shall carry or send their own property? Are we to regulate the prices of labor or freight, or the private rights of the people in any thing, merely by construction? No power was ever given in the old Confederation, or in the present Constitution, to exercise such officious and restrictive interference.

"He was alarmed at the progress of the government in setting up such a monopoly, as well as officious interference. WERE THE QUESTION A NEW ONE AT THIS MOMENT, THE WHOLE RESTRICTIONS ON PRIVATE ENTERPRISE AND PRIVATE COMPETITION IN CARRYING LETTERS THEMSELVES, COULD NOT STAND AN HOUR.[2] Government should be left to carry its own letters, at its own prices; and individuals placed in the same position, or both hire others who would do it best or cheapest."

Senator Woodbury made other remarks of a similar character, too long to be quoted at length.

Senator Allen's Opinion.

February 6, 1845. Pending the same amendment, on which Senator Woodbury expressed the opinions just quoted,

Senator Allen said,

"It was very easy to see that, if the United States had a right and absolute control over the printed matter of the country, and therefore absolute power to make it circulate through one channel, they likewise had a right to say how much should circulate through that channel, and consequently had entire control over the press of the United States. That was the consequence. If Congress could prohibit the editors of newspapers from circulating their journals except through the public mail, so Congress could prohibit them from circulating more than a given number of their '

journals, or circulating them upon particular roads, and thus put the entire business under the administration of the Congress of the United States. *

* * * * * If that power exist in the Constitution, it ought not to exist there, and the Constitution ought to be amended for that reason. He had no idea of allowing this government to put its hand upon the press of the country, and interdict, between it and the country, any communication." January 27, 1845.

Senator Merrick said, "It is known to all who hear me, that this (exclusive) power on the part of Congress to control this system, has of late been called into question in some quarters of the country." * *

"Some (Senators) have ridiculed the idea of resorting at all to the use of penal enactments, as being, under any clircumstances, unavailing and incapable of execution."

Why "incapable of execution under any circumstances?" Because unconstitutional. It is not to be supposed that Senators would "ridicule " the idea that constitutional laws could be enforced.

Senator Simmons' Opinion.

February 6, 1845. Senator Simmons said,

"The power to establish a mail was not given to enable the government to make exorbitant charges for service, much less to enable it to enforce a compliance with them, if made."

Hon. Mr. Dana's Opinion.

February 25, 1845. Hon. Mr. Dana (of New York) said, (in the House of Representatives,)

"But it may be said that the constitutionality of the penal laws, to suppress the expresses, may be easily ascertained by a trial. Sir, the Post Office is too great a blessing to this country to be lightly put in jeopardy. Your monopoly and exorbitant charges are extremely odious. The validity

of that monopoly is not beyond all doubt. Stake not the department, under present circumstances, upon the hazard of a law-suit. Prejudice is too strong against you. Success is almost impossible; victory is useless; defeat ruin."

When such opinions as have now been cited were expressed by the Press, the Bar, the Bench, in the Senate and in the House of Representatives, it is easy to see, (as, it will hereafter appear, was repeatedly asserted in Congress,) that the reduction of postage was the only thing that could save the Post Office Department from complete prostration.

MY PRIVATE MAILS.

On the 23d day of January 7 1844, my mails were started from New York, to Philadelphia, Baltimore and Boston, as will appear by my advertisements in several of the New York papers of that date.

In my advertisements I stated,

"The Company design, (if sustained by the public,) thoroughly to agitate the question, and test the constitutional right, of free competition in the business of carrying letters. The grounds on which they assert this right are published, and for sale (at the offices) in pamphlet form."

Some days before starting my mails, I wrote to the Postmaster General, informing him that I was about to establish mails, and inviting him to try the constitutional question.

The enterprise was strenuously supported from the beginning, by the New York Express, Journal of Commerce, and Evening Post. Other papers subsequently advocated the principle. Many stood neutral for a time. Few opposed, so far as they came under my observation, except those that had the patronage of the Post-office Department.

THE ACTION OF THE GOVERNMENT.

The action of the government in relation to the matter will be seen by the following extracts from the reports of Committees, the resolutions of the

House of Representatives, the debates of the Senate, and the report of the Postmaster General.

The interesting epithets, which some of them apply to my conduct, would indicate that they had sufficient spirit, and a sufficient appreciation of the enormity of my offence, to have induced them to carry the question before the Supreme Court, before condescending to yield by reducing the postage, if they had not been overruled by others, or if, in their cooler moments, they had not themselves doubted what the decision of that Court might be.

The effect, which a little time and reflection had upon the feelings and language of some of the members, is quite noticeable, as, for example, in the case of Mr. Merrick, the Chairman of the P. O. Committee of the Senate. Those persons, who, on the 22d Feb., 1844, were described by him as "destitute of all patriotic or moral principles," are, on the 27th Jan., 1845, spoken of as "private competitors, sustained by public opinion." And their acts, which, at the former date, were designated by him as "such flagrant outrages," and "such flagitious conduct," became at the latter date, "private enterprise." And "the conclusion, to which he comes" is, that after all Congress themselves have been the great sinners, and their first duty is to reform their own legislation, and thus satisfy and propitiate an enlightened public.

FIRST RESOLUTION OF THE HOUSE OF REPRESENTATIVES.

On the 29th of January, 1844, six days after my mails were started, the House of Representatives

"Resolved, That the Committee on the Post Offices and Post Roads be instructed to inquire if any person or persons have, in opposition to the laws of the United States, established offices, and provided conveyances for transporting letters, papers, and other mail matter, in violation of the regulations adopted by Congress, from time to time, for the government

of the Post Offices of the United States; and report to this House the result of their inquiry."

FIRST REPORT OF THE P. O. COMMITTEE OF THE HOUSE.

On the 28th of February, 1844, the Committee reported, in answer to the foregoing resolution, that they

"Have become satisfied from information which has reached them through the public press, through letters, pamphlets, and other sources, that the laws of the United States, establishing and regulating the Post Offices of the Union, passed in pursuance of the Constitution, are daily violated and evaded. These infractions of existing laws, prompted by a sordid feeling of selfishness and avarice, are now openly and wantonly perpetrated by individuals, under the impudent assumption that the government of the United States have no authority to restrain or punish them. They claim the right, in contempt of all existing law, and in open defiance of its sanctions, to establish 'offices, and provide conveyances for transporting letters, papers, and other mail matter.' And they further contend that the power 'to establish Post Offices, and Post Roads, delegated to the government of the United States, is not exclusive, but may be exercised either by the States or private individuals. In conformity to these opinions, real or pretended, extensive combinations have been formed, and are now daily violating existing laws, to the evident injury of the revenue of that important branch of the national service.

The committee are unanimously of opinion, that the power granted by the Constitution, to establish Post Offices and Post Roads, and the laws passed in pursuance of it, are both fraudulently evaded, and wantonly violated and defied, and that the government ought without hesitation to interpose its strong arm to arrest, and forever suppress such lawless conduct. The power to do this, if ever before questioned, has hitherto been regarded as the constitutional prerogative of Congress; for, from the foundation of the Post Office Department, the power has been

exercised: and, in other times, the exercise of such a power has been submitted to in a it of loyalty and patriotism. That time has gone by; and the recent discovery, that a power that has been exercised by this government from its infancy, without a question, and without a doubt, may be violated with impunity, renders further legislation necessary to protect the public service, and presents a question no less momentous than this: Whether the Constitution and Laws of the country, or a lawless combination of refractory individuals shall triumph?

These outrages are of daily occurrence upon the principal lines of intercommunication between the important cities and towns of the Union, and, in some instances, are carried on under a belief, or pretence, that the existing laws cannot be enforced; and one of the active agents in their perpetration, and who is represented to be irresponsible in a pecuniary point of view, has even challenged a prosecution, in order to test the power of the government to restrain, prevent, or punish him for offences of that kind."

SECOND RESOLUTION OF THE HOUSE OF REPRESENTATIVES.

On the 5th March, 1844, the House of Representatives

"Resolved, That the Postmaster General be requested to report to this House, what steps have been taken to prevent and punish the infractions of the laws of the United States prohibiting the establishment of any private mail or post, for the transportation of letters and packets: and whether in his opinion the existing laws are adequate to the suppression of such offences."

REPORT OF THE POSTMASTER GENERAL.

On the 30th March, 1844, the Postmaster General made a report in answer to the call of the preceding resolution. The following are extracts.—

"One Lysander Spooner, at the head of what he has been pleased to denominate the 'American Letter Mail Company,' openly established his headquarters in New York, and commenced the business of transporting letters between that city and Baltimore, and to other points. He professed to do this business openly, and defied the existing laws; invited a prosecution to test their constitutionality; and (as he supposed generously) offered to admit all facts necessary to establish his guilt. This offer, however, was coupled with a condition, that he was to be permitted to pursue his business unmolested until the Supreme Court of the United States had decided his acts illegal, and the laws of Congress referred to constitutional.[3] I could not consent thus to countenance for a single moment this open and lawless movement; and declined the conditions of Mr. Spooner, and gave orders and took the necessary steps to have him and his agents arrested by appropriate writs. When his agents could be certainly identified, they were denied a transit in the railroad cars, engaged in the transportation of the mail.[4]

One of these cases has been decided in the District Court of Maryland, and Mr. Spooner's agent subjected to a fine of fifty dollars. * * * *

"Upon the decision of this case in Maryland, the head of the 'American Letter Mail Company,' issued his card, announcing his intention to confine his operations in the free States; alleging as his reason, that he was of opinion that no judge or jury in a free state would sustain the opinion of Judge Heath. Entertaining an opinion that the law was the same in both States, and equally confident that the result would be the same, whether tried in Maryland or Pennsylvania, New York or Massachusetts, [5] I have caused Mr. Spooner and his coadjutors to be arrested in all those States, whenever they have been found violating the law.

"This Company does not desist, and await the event of the suits instituted, but is still, as the reports of the agents inform me, in the daily violation of the existing laws. The daily expense of keeping up a police to

detect these men is very considerable, and will not, I apprehend, be met by all the penalties which may be recovered. Who constitute this American Letter Mail Company,' besides Mr. Spooner, is a fact heretofore concealed from the public.

"I have deemed it unnecessary to accompany this report with any of the numerous letters and reports from postmasters, and the agents of the department, connected with this subject. I wish I could say, in answer to the resolution, that the 'American Letter Mail Company,' are the only persons engaged in this business of transporting letters over mail routes, for hire, to the very great injury of the revenue of the department. Other persons, in various parts of the United States, are engaged in this business, against whom prosecutions have been ordered, where the proof could be obtained. The extent of the business thus carried on, can only be measured by the evident decline in the revenue of the department, which, I regret to say, from present appearances, will fall below the expenditures of the current year, notwithstanding the utmost economy has been pursued."

SECOND REPORT OF THE P. O. COMMITTEE OF THE HOUSE.

On the 15th of May, 1844, Mr. Hopkins, in behalf of the majority of the Committee of the House, on Post Offices and Post Roads, made a report, from which the following are extracts:

"At this time, the necessity of adopting measures to preserve our national mail system is forcibly presented to our deliberations."

"Events are in progress of fatal tendency to the Post Office Department, and its decay has commenced. Unless arrested by vigorous legislation, it must soon cease to exist as a self sustaining institution, and either be cast on the treasury for support, or suffered to decline from year to year, till the system has become impotent and useless."

"Why this loss of revenue, when the general business and prosperity of the country is reviving, and its correspondence is on the increase ?

Because the correspondence, to a great and increasing extent, is conveyed by individuals and companies, who have embarked in this species of business in competition with the government, and the present provisions of law are not fully sufficient to prevent the abuse."

"If individuals are permitted to engage in the business, by confining their operations to the routes in which they incur but a small expense, and transact a large business, they can perform the service on such routes at a less charge than the government, and will necessarily, in time, deprive it of all the business arising within the sphere of the competition. Individual enterprise, if left unchecked, will engross the productive routes, and the government must be left to convey the unproductive mails only."

"This illicit business has been some time struggling through its incipient stages. * * * It has now assumed a bold and determined front, and dropped its disguises; opened offices for the reception of letters, and advertised the terms on which they will be despatched out of the mail."

"Regarding it as a flagrant wrong, morally and politically, that the will and interests of this nation, as involved in the assumption and exercise of the Post Office power, should be defeated to create employment for individuals, and gratify the spirit of private gain, we propose to punish the transaction, in whatever form carried on or undertaken."

"Let us first bring the correspondence of the country into the mails, by passing effectual laws against the private cupidity that makes a business of carrying it out of them."

"We propose the discontinuance of the privilege, (the franking privilege in the State, the Treasury, the War, and the Navy Departments, and in all the bureaus attached to them. In fine, an entire abrogation of the frank, except for the official correspondence of the President, of Congress, and of the General Post Office."

REPORT OF THE MINORITY OF THE P. O. COMMITTEE OF THE HOUSE OF REPRESENTATIVES.

On the same day, May 15th, 1844, Mr. Dana, on the part of the minority of the Committee, (consisting of Messrs. Dana, Grinnell and Jenks,) made a report, from which the following are extracts:

"If it were possible for the Post Office Department to sustain itself without the interposition Of Congress, we might shrink from the responsibility of making any suggestions on the subject. But such a course is not open to us. Action cannot be avoided; for if Congress remain passive, the department must be prostrated."

"Until very recently, the establishment has been a special favorite with the peop!6. We regret to say, (but such is the fact,) that its popularity, like its revenue, has of late been greatly reduced."

"While the people are thus unitedly pressing for a reform, the condition of the department itself, in trumpet tones, proclaims its necessity. Although its affairs are ably and faithfully administered, it is a lamentable truth that the department is involved in serious and lasting embarrassment; its revenue is greatly diminished from causes which are still in active operation, and daily extending; and unless an effective remedy be speedily applied, the whole establishment must be overwhelmed and prostrated."

"An opposition Post Office was openly and publicly organized; its arrangements advertised; and it is now in active operation; continually spreading its lines of transportation."

"The opposition Post Office is extensively patronised. We have no desire to scrutinize the motives of its patrons. Many, we have no doubt, are actuated by the mere selfishness of gain; but there are others whom we believe to be governed by other and higher motives. Having for years remonstrated in vain against what they deem to be exorbitant and oppressive rates of postage, they have at last adopted the conclusion that

it is right to oppose and evade laws which they consider as unjust and oppressive; and they have accordingly taken redress into their own hands. We are far from sanctioning this view of the subject. Patriotism demands of all men obedience to laws constitutionally enacted, until they can be modified or repealed by legitimate means; but, while we pointedly condemn the conduct of these men, we cannot but respect the motives of such as sustain the opposition post office, from conscientious but mistaken views of duty, impelling them to resist what they deem to be an unjust and oppressive monopoly."

"From the circumstances already noticed, there is reason to fear that the receipts of the present year will fall half a million short of those of last year."

"The opposition are already dividing with the government the revenues of the routes from the city of New York to Buffalo, to Baltimore, and to Boston, and are extending their lines to routes of secondary importance, which operate as feeders to the main lines; and if they proceed unchecked, it is doubtful whether, in 1845, a single State in the Union will furnish sufficient postage to meet its own mail disbursements."

" It is clear that a crisis has arrived requiring decisive action. Temporizing expedients, and half-way measures, will not answer. Pressing evils demand an immediate and efficient remedy. What remedy shall be applied? The first object to be accomplished, clearly is, to get rid of the expresses or private mails. Any measure which will not accomplish this object, is unsuited to, or at least insufficient for, the occasion. Penal enactments, inflicting fines and imprisonment on all persons concerned in the transportation of letters out of the mail, have been suggested as the remedy. With such a reduction of postage as will satisfy the public, and insure united action to execute the laws, the proposed remedy might be effectual: but without such a concession to the popular will, we fear the remedy would not only be inefficient, but, by exciting stronger prejudices against the department, aggravate the existing evil. The

people, with great unanimity, in person, and through their State legislatures, ask for a radical reduction of postage, and instead of the fish they ask, we give them the serpent they detest. We greatly fear that such an answer to their petitions will arouse a spirit of opposition to the department dangerous to encounter, and difficult to allay. Our government is entirely based on popular opinion; the House of Representatives, the laws, and the Constitution itself, are the mere reflection of the popular will. If laws are enacted by their representatives, in opposition to the will of the people, it is impossible to enforce them; the decided resistance of a respectable minority is sufficient to nullify a law for all practical purposes; and so difficult is it to convict even a single individual of wealth and influence of an offence, that it has grown into a proverb, – that penal laws are spider's webs, in which small flies get entangled, and the large ones break through. How can it be possible, then, to enforce penal sanctions against the combined power of wealth, influence, and numbers, sustained by a strong public sympathy? We do not believe it can be done, and, under present circumstances, we should regret to see the experiment tried, lest it produce evils more serious than those it is intended to cure."

"But if we can secure the popular feeling in favor of the department, the laws to suppress private post offices can be readily executed."

"As yet, public opinion has not entirely arrayed itself on either side of this question – it is in suspense, waiting the action of Congress in relation to the reduction of postage. Grant the demands of the people, and they will go with you in sustaining the department, and in enforcing the laws for its protection; deny their petitions, and the great mass of the community will take ground against the department, and the final result will be its prostration, and the establishment of private mails in its stead. We believe there is one way, and only one way, in which the department can be sustained, its popularity redeemed, and its revenue restored, and its accommodations and benefits extended, –and that is, by making it the

safest, the cheapest, and the most expeditious mode of transmitting letters and intelligence. Reduce radically the tariff of postages, and the increase of mail matter will compensate for the reduction of the rates, and, in a short time, restore the revenue to its former flourishing condition, and secure to the department the confidence and co-operation of the people. Then, if attempts are made to violate or evade the laws, their sanctions, however severe, may be enforced; for the community will unite in their execution. We again repeat that, in our opinion, the first thing to be accomplished is, to get rid of the expresses ; and any sacrifice that may be necessary to accomplish this object, ought to be made unhesitatingly. So long as the present high rates of postage are sustained, there will be great pecuniary inducements for the opposition to continue their operations, even at some risk of prosecutions, – and letter writers have strong motives to patronise the opposition; but if the tariff of postage be reduced to the rates charged by the express, neither, for so small a chance of gain, will be willing to incur the risk of penalties. Any reduction which is insufficient to drive away the express competition, will only diminish the revenue, without a hope of compensation by the increase of mail matter. A proposition to reduce postage to five cents for one hundred miles, and to ten cents for any greater distance, we should consider of this character. About two-thirds of the letters sent along the mail routes between Washington and Boston would be subject to the ten cent rate; the express will carry them for six cents, and realize a good profit, sufficient to make it an object to brave prosecutions; and the people, indignant at being put off with so small an abatement, will, to a great extent, patronise and countenance the opposition. Without a greater reduction of postage, we fear the expresses cannot be suppressed."

"The reduction we propose will conciliate the popular feeling, expel the expresses, and bring nearly all the correspondence of the country into the mails."

"The entire abolition of the franking privilege, except as to the business of the Post Office Department itself, we unqualifiedly recommend. This is a reform which, more than all others, is demanded by the people; and the demand is enforced by the necessities of the department as a revenue measure."

REPORT OF THE P. O. COMMITTEE OF THE SENATE.

On the 22d of February, 1844, Mr. Merrick, Chairman of the P. O. Committee in the Senate, made a report, from which the following are extracts:

"The indispensable duty of doing something is upon us, and an effort must be made to reform this most important and useful branch of the public service. This necessity is imposed both by a proper regard to the public will, and the pecuniary condition of the Post Office Department itself."

"The cause of this great falling off, in a season of reviving prosperity in the trade, business, and general condition of the country, cannot be regarded as transient, but, on the contrary, is known to be deep and corroding, and, unless arrested in its operation by the timely interposition of Congress, must so cripple the revenues of the department as either to destroy its usefulness, or throw it as a burden upon the general Treasury. This cause is the dissatisfaction felt generally throughout the country, but most strongly in the densely peopled sections, with the rates of postage now established by law, and the consequent resort to various means of evading its payment, leading first to the clandestine employment of private expresses, and more recently to the unblushing violation and open defiance of the laws. Your committee would be far from recommending any concessions whatever to those who have shown themselves to be destitute of all patriotic or moral principles, and are engaged in the daily perpetration of such flagrant outrages; but it forms no part of their duty to deal with them now ; they leave them,

therefore, to the care of the executive, and judicial officers of the government, and turn to lament countenance such flagitious conduct. Much as they deprecate the loss of the fair and proper revenues of the department, deeply and sincerely as they should regret any material abridgment of the advantages and utility of the Post Office establishment, both sink into insignificance when weighed with the fatal effects of a loss of reverence for the laws, or an alienation from government of the affections of large bodies of its citizens."

"We have seen that dissatisfaction with the existing regulations of the Post Office Department prevails with a large number of the people of the country; that the consequences of that discontent have been a heavy diminution of its revenues during the past year, and a disregard in several striking instances of the laws enacted for its protection, with the apparent sanctions or at least connivance, of large numbers of the people. Let us, then, carefully inquire whether this discontent does not arise from some such discordant action of that department as is above alluded to, and whether it be not in the power, and consequently the duty, of Congress, promptly to correct this evil, and, by restoring the harmonious action of the department, bring to its support the good feelings of the public."

'We come now to consider the still more important provisions of the bill, (reported by the committee,) which propose an average reduction of the existing rates of postage by about one half."

"Enough has been said to show the opinion of your committee to be, that the rates of postage should be reduced as much as possible, consistently with the preservation of the usefulness and efficiency of the Post Office Department, and the support of that department by contributions levied equally upon all who are served by it, according to the amount of service rendered. Can the reduction proposed by the bill be made, consistently with these views? We have seen in the outset that something must be done; that the revenues of the department are rapidly falling off, and a

remedy must in some way be found for this alarming evil, or the very consequences dreaded by some, from the reduction of rates proposed, will inevitably ensue, namely, a great curtailment of the service, or a heavy charge upon the national Treasury for its necessary expenses. It is believed that, in consequence of the disfavor with which the present rates and other regulations of this department are viewed, and the open violations of the laws before adverted to, not more than, if as much as, one-half the correspondence of the country passes through the mails ; the greater part being carried by private hands, or forwarded by means of the recently established private expresses, who perform the same service, at much less cost to the writers and recipients of letters than the National Post Office."

"The question then recurs, can the reduction of the rates of postage proposed by the bill be made, consistently with the purposes to continue the present amount of mail service, and provide for the expenditures of the Post Office Department by its own revenue?

"The committee think it can. And further, they are persuaded that it is the only certain means of effecting those very desirable objects!"

"The public will be satisfied and pleased, the committee think, with the reduction proposed by the bill."

DEBATES IN CONGRESS IN 1844, AND 1845.

(Extracted from the National Intelligencer and Congressional Globe.)

In the Senate.

March 22d, 1844.

" MR. SIMMONS offered an amendment increasing the distance from one hundred to two hundred and fifty miles for the lowest rate of postage," proposed by the bill, (5 cents.)

"The object, (he said,) was to ensure the transmission of their letters by mail instead of the express. Gentlemen would see, by looking at the

distance between Albany and Boston, Boston and New York, and other routes on which expresses were established, that they exceeded a hundred miles. But the private expresses carried letters on those routes at six and a quarter cents. If we put the postage at ten cents, it would not have the effect to bring all that matter into the mail. The lowest rate of postage was five cents under this bill, and he was of the opinion that it ought to extend to distances not exceeding two hundred and fifty miles. If not, the provision would not have the intended effect."

March 22d, 1844. MR. BUCHANAN said,

"That the Senator from Rhode Island, (Mr. Simmons,) had stated, that if the rate of postage were not reduced, according to his proposed amendment, private expresses would continue to carry the greater part of the letters between the principal cities. Mr. B. said he could not recognize the existence of such expresses as an argument in favor of the amendment. They were plainly and palpably in violation of the constitution of the United States. That instrument granted to Congress the power, and, as a necessary consequence of this grant of power, imposed upon them the duty, 'to establish post offices and post roads.' This was a sovereign power, and if individuals could establish private expresses, or opposition lines to rival the public mails, we might as well at once surrender the important powers of government. This grant of power was exclusive in its nature, and neither states nor individuals could impair or arrest its exercise. Constitutionally speaking, as (well) might individuals establish a mint, and undertake to coin money, as to establish these private expresses. In point of principle, both were equally destitute of foundation. These private expresses must be put down ; and if the present laws were not sufficiently severe for the purpose, new laws must be enacted. It concerned both the interest and honor of the country, that Congress should not suffer the exercise of its unquestionable constitutional powers to be impaired or defeated by the lawless action of individuals. And well was it for the country that we did possess the

power. What would become of the mail facilities, which the people now enjoyed in the thinly settled portions of our country, if all the leading routes were rendered profitless to the government by these private expresses !"

March 29th, 1844. MR. MERRICK, (Chairman of the P.O. Committee,) said, –

"In what condition did the Committee find the Post Office Department when they took up this subject! He would ask the Senate to look at that condition, and then say whether they were to fold their arms and do nothing. The Post Office laws had become odious and unpopular, and were therefore evaded by the people everywhere. The system was everywhere and universally contemned and despised, and considered as grievously unjust to the body of the people. This state of things held out a pernicious example to the country. An habitual trampling upon the laws was injurious to public morals, and to the stability of free government. Apart from other considerations, this alone ought to prompt us to render the laws worthy of support."

"The principal cause (of the decrease of revenue,) is stated to be the number of private posts, called express mails, established on all the leading steamboat and railroad routes through the country. The Post Office establishment must become a burden on the public Treasury, unless you adopt a new system. * * * * You must do something, or appeal to the national treasury for the support of the establishment. It was out of the question, when the revenues were so rapidly decreasing, to attempt to defray the expenses of the unprofitable routes. Something should be done that would prevent evasions of the law by satisfying public opinion. We could not stand still where we are."

"As to the private expresses, every guard was resorted to for the purpose of arresting them. But the committee had thought it impossible, in the present state of feeling in regard to the system, to enforce the laws against the conveyance of letters out of the mail."

April 1st, 1844. MR. PHELPS said,

"As to putting down private expresses, it was idle to talk of doing it by any other legislation than that which would carry public opinion along with it. The public must be shown that the Post Office Department will transport mail matters as cheap as private expresses, and as expeditiously, or all laws to put down private expresses will become nugatory." * * "He was opposed to the principle of enforcing a law by penalties, against the general feelings of the community."

April 1st, 1844. MR. SIMMONS said,

"The operation of private expresses was considered by the Department the chief cause of its embarrassment. To this, therefore, the Senate should look as the first thing to be remedied." * * * He "entered into various calculations to show that a small reduction on the express routes would not put down the competition which interfered with the income of the Department."

April 17th, 1844. MR. MERRICK said,

"He wished to impress upon the minds of Senators that the Department was in such a condition that it was impossible to stand still. Something must be done for its relief. Some legislation must take place, or the Department must become a charge upon the treasury." * *

"He adverted to recent decisions of the judiciary against the Department and in favor of the private expresses, and quoted various newspaper paragraphs to show the excitement got up against the General Post Office, and in favor of those expresses."

April 17th, 1844. MR. BREESE advocated "a uniform rate of postage of five cents per half ounce for all distances." * * "He felt satisfied that, by going at once to the root of the disease, such a reform could be accomplished as would effectually resuscitate the revenues of the Department, and give universal satisfaction to the people. Any thing short of this would be

wholly inadequate to effect such a reform as the public expected." * * "He believed that a reduction ought to be made to two cents, and that it would be a more productive rate than any other that could be adopted."

April 17th, 1844. MR. HANNEGAN said he "had been assailed for his opposition to the illegal expresses. He should, nevertheless, do all he could to put them down as violations of law. He was certain that the plan of the committee would not remedy the evil. But if we reduced the rates further, it would be attended with an increase of the number of letters mailed."

April 18th, 1844. MR. ATHERTON said he "hoped the motion to strike out the rate of 3 cents for distances less than 30 miles would not prevail. This reduction he conceived to be, perhaps, the most important of any that had been proposed. It would be found particularly so at the North, where towns of considerable size were frequently near each other. And it was also important, considered in relation to its operation on the private expresses, of which so much had been said."

In the House.

June 12th, 1844. MR. HALE said,

"The Committee recommend vigorous legislation, pains and penalties, as if they could afford a sovereign remedy. "Now, Mr. Chairman, I undertake to say that if the action proposed by the Post Office Committee be adopted by this House, and the relief asked for be withheld, instead of putting down, you will increase the private expresses; and ten will spring up where there now is only one. The difficulty lies deeper than some gentlemen imagine. It is in this. The system, as at present conducted, with its present high rates of postage, does not commend itself to the favorable consideration of the people. Instead of looking upon it as intended for their benefit and accommodation, they look upon it with jealousy and distrust, and regard it as a monopoly. * * * It is to counteract this state of things, and present this Department to the

country in a position commending itself to their judgments and their hearts, that we should now exert ourselves. Will penal enactments effect this? No, Sir, no. Far different from this must be our course, if we would attain the object which all profess to desire."

June 12th, 1844. MR. PATTERSON thought "if this bill, (a bill for putting down the private expresses), should be passed without a bill reducing the rates of postage, that such was the feeling throughout the country, that it would be impossible to carry it out."

June 12th, 1844. MR. THOMPSON said, "It had struck him as something strange that members should be found willing to justify the setting at naught the Post Office laws – for such he understood to be the tenor of the remarks of some who had spoken on the subject."

A bill passed the Senate at this session, (April 29th, 1844,) reducing the rates to

3 cents for 30 miles—for a single letter.

5 cents for 100 miles

10 cents for 300 miles

15 cents fo all over 300 miles

This bill was sent to the House, referred to the Committee on Post Offices and Post Roads, and by that Committee "reported to the House without amendment," June 12th, 1844. But as Congress adjourned but five days afterwards, (June 17th,) the House had not time to act upon the bill, and it was lost.

In the Senate.

January 16th, 1845. Mr. NILES said,

"The law is openly violated, and private expresses are established between all the important commercial cities, which convey a large portion of the letters which would otherwise be conveyed in the mail."

"The people see and appreciate the immense advantages of a system of low postage. They have had a foretaste of these advantages, through the private expresses, and they will not relinquish them." * * * "Reduce the postage to a reasonable rate, so as to satisfy the public mind, and the violations of the law will cease."

January 27th, 1845. MR. MERRICK [6] said,

"Private competitors for the performance, and, of course, for the profits of the service, are springing up upon all the important and valuable routes, and, under the public countenance, are superseding the mails of the United States, to the great detriment of the service, to the injury of the public morale, to the great real disadvantage of the very public by whom they are countenanced and encouraged, and, if not checked, to the certain ultimate prostration of the whole Post office system. These are grave and alarming evils, and demand the most serious and grave consideration."

"Private enterprise is successfully competing with the government in the performance of the service on all the important and valuable routes, and deprive it of the income necessary to support the existing Post Office establishment."

"Sustained by public opinion, these private competitors are daily extending their operations, and unless the power and authority of Congress is wisely, and prudently, and promptly interposed, they must soon prostrate the Department."

"Others again advance the opinion that extreme reduction of rates is the only means of putting down this private competition, and advise a reliance solely upon underbidding by the Government as the means of securing to it the whole business, and repudiate the idea of deriving any aid from penal enactments."

"The conclusion to which I have come is, that we should first reform all the evils complained of, so far as they have any real existence, and by

this means satisfy and propitiate an enlightened public. Remove all just causes for dissatisfaction, and the dissatisfaction will soon cease ; and that public, which is now in some quarters willing to see your Post Office establishment go down, nay, are even ready to aid in its destruction, will soon begin to look upon it with very different feelings."

"Some have ridiculed the idea of resorting at all to the use of penal enactments, as being, under any circumstances, unavailing and incapable of execution."

January 27th, 1845. "MR. WOODBURY was in favor of reducing the postage to three cents upon letters conveyed not more than thirty miles. If you keep up the rates for short distances, you have no chance of breaking up the expresses running from the great cities. He supposed that the increase of letters by cheap postage would fully keep up the revenue, and by low rates you will break up the great evil now complained of, and which we were aiming to reach – the expresses."

January 28th, 1845. MR. MILLER "objected that five cents for 100 miles would not meet the, competition of private expresses, nor ten cents for greater distances. * * To compete with them the reduction should be to 5 cents. Besides, unless for short distances the reduction was to 3 cents, none of the correspondence carried by private hands or private expresses, would come into the mail."

January 28th, 1845. MR. MERRICK said,

"First make a reasonable reduction of postage to meet the expectation of the public, and then trust to stringent laws to protect the monopoly of the Department. That was the only practicable way of putting down the private competition of these expresses, so injurious to the Post Office revenue."

January 28th, 1845. "MR. WOODBURY considered the proposition of three cents for short distances, and so on ratably for greater distances to ten

cents, likely to effect both objects – that of putting down the expresses and increasing the revenue."

January 29th, 1845. "MR. MILLER felt assured that the rates and distances proposed in the original bill would fail of meeting public expectation, or of remedying the grievances complained of by the Department in relation to the interference of private or public expresses."

January 29th, 1845. MR. SIMMONS said, "What was the object in view in the passage of this bill 1 To prevent the interference of expresses, and to preclude the carrying of letters by private hands." * * It was manifest, then, that the reduction proposed by the Senator from Maryland would not have the slightest influence upon this private interference."

January 29th, 1845. MR. BREESE said, The present high rates have brought the Department and the a stem into disrepute, and means are sought by which to be relieved from its oppressions. Penal laws cannot effect the object. It is in vain to resort to them. Your law must be in accordance with public sentiment, or it will be evaded." * *

"Mr. B. repeated that he did not believe any such measure as the one now proposed would gratify the public. * * They (the people) will see that letters are carried more than one hundred miles for five or six cents, (by the private mails), and they will demand that the government shall carry them for the same, or they will abandon the use of the mails and patronize private enterprise. This is natural : and all the penal laws you can enact will not prevent it."

January 30th, 1845. MR. PHELPS said,

"In spite of all the penal enactments that could be devised, so long as private expresses would carry single letters for 5 cents while the government charged 10, penal laws would be disregarded, and the expresses would flourish and be sustained by public sentiment."

February 3d, 1845. MR. MERRICK said,

"The point in which the whole success of the measure depended, was the protection of the Department from the competition of the private expresses."

February 6th, 1845. MP. SIMMONS said,

"One question presented is, whether or not the reduction to ten cents for distances over one hundred miles will remove one of the difficulties in our way, which is the interference of private mails or expresses in the business of letter carrying, and the consequent reduction of our receipts."

"I have no faith in the sentiment that you can prevent the people of this country from employing such of their own citizens as will do their work the cheapest, by a system of prosecutions such as this bill contemplates ; and I should have no favor for it if I thought it would produce that result."

"I believe the right and the only practicable way to command business sufficient to support the Post Office Department is to do it better and cheaper than individuals can. This the government can afford to do, and is, in my judgment, bound to do. The power to establish a mail was conferred on the government in this expectation, and for this purpose. It was not given to enable the government to make exorbitant charges for service, much less to enable it to enforce a compliance with them, if made. I think the existing charges for letter-carrying are of this character; and I am not disposed to denounce all who afford or employ other means of communication than the United States mail."

"If further reduction is refused, the people will, in greater numbers than at present, leave your mail, and seek other modes of conveyance. They may regret this, but they will submit to 'the necessity that impels them to the separation.' No man can expect any thing else who knows the history, or can appreciate the character of this people."

"The Post Office Department is at present without adequate means, because it has not the public opinion in its favor. This will continue as long as the cause of it is allowed to remain, and after the passage of this

bill, as well as now, unless our postage is as low as that of individual carriers. Our object should be to gain the good opinion and business of the public."

"A prudent course demands an effectual reduction – one that will secure the business to our mail. Can we hope to do this by reducing our charge for letter-carrying from threefold, as it now is, to double the rates charged by our competitors, as he proposes? Individuals have not succeeded in taking the business from the mail by such a course; they underbid to get business, and do the same to regain it when lost. It is a new idea that this may be easier done by a prosecution for penalties, as this bill contemplates. Nobody should expect to succeed in getting custom for the mail by prosecuting or persecuting the people whose support it wants. There are obvious reasons against trying such an experiment."

"Do you expect to induce people to patronize your mail by commencing prosecutions against them? If any individual were to propose to do any such thing, he would be thought a fit subject for a mad-house."

February 6th, 1845. "MR. PHELPS said the bill would be ineffectual, and you would never get rid of these expresses until you carry as cheap as they do. There is only one course to be taken, and that is to come down in your prices and satisfy the public that you carry letters as cheap for them as any one else will do."

February 7th, 1845. MR. ATHERTON "urged the necessity and great importance" of an amendment to the effect that the postage of letters not exceeding 50 miles be 3 cents; saying " it was on short distances that competition had to be put down, which could only be done by a reduction to 3 cents."

In the House.

February 25th, 1845. MR. DANA said,

"The condition of the Post Office Department itself requires some change in the system. The Department is running down—its revenues and its accommodations are diminishing." * *

"Your high rates of postage have driven the letters from the mails, and they have found cheaper channels of transportation. On nearly every important mail route expresses have been established. They carry letters at one third or one fourth of the regular postage, and deliver them personally as soon, if not earlier, than the mailed letters are ready for delivery at the Post Office. The people find them a great convenience. They don't know how to dispense with them, unless you will so modify your Post Office system as to provide a substitute."

" What is the remedy for the diversion of the letters from the mails? Some of our friends suggest that it is to be found in penal enactments. * * But your penal laws against the expresses will remain a dead letter upon your statute book. Public opinion is against them—they cannot be executed. * * Nothing can be more absurd than to attempt to fetter the great mass of the people, contrary to their will, by penal laws. * * Such laws cannot be executed here. If it is as easy, as some suggest, to suppress the expresses by prosecutions, why has it not been done ? They are in constant, open, and avowed operation."

" The Department is here openly braved. If it be so easy to put down the expresses, why has it not been done? "

"What then is the remedy? Reduction—make your conveyance the cheapest and best. To do this you must reduce the rates of postage radically, and at once. Bring them down below competition, and do it now. Wait for another Congress to assemble and it may be too late. As yet the people have not taken a decided stand against you—they are waiting for your action. Reform your system, cheapen postages, expedite transportation, and the people will go with you, and sustain you. They will clear the expresses and all other impediments from your path. Adjourn without

doing any thing, and when you assemble here again you will find the Department bankrupt, new and extended facilities provided to dispense with mail accommodations, and a large majority of the people disposed to encourage and patronise them. A reduction that would have been satisfactory at the last session would be unavailing now ; one which would be gladly accepted at this session would be contemned at the next. The longer you delay, the greater must be the concession. A .5 cent uniform rate of postage now will bring all letters into the mail. A 2 or 3 cent rate will be required for that purpose when you meet again. Come down, then, at once, with a good grace, to 5 cents, and agitation will cease. Delay, and the demand will continue to increase, and agitation become more violent. The ultra reductionists hope there will be no action at this Congress; they think us behind the spirit of the age, and are willing to endure the infliction of high postage another year, in the expectation of a greater reduction than can now be had. Sir, their calculations are correct – the consequences they anticipate will surely come. But I hope that this question may not be thrown over; that we shall act promptly and liberally –respond to the just demands of the people, and quiet this agitation. The Post Office will thus regain its lost popularity."

"The first object is to get rid of the expresses and private mails. Any reform short of this is futile and useless. A cheap and dear system of postage cannot long continue in operation together. Cheapen your system, or the expresses will drive you off the road."

March 1st, 1845. MR. PATTERSON said, "There appears to be no difference of opinion, from one end of the land to the other, that the present rates of postage are inequitable and grievously burdensome, rendering the Post Office Department so unpopular with the people as to make it impossible to prevent its revenues from being infringed upon by private enterprise in a thousand ways, in bold and open violation of the laws. As deplorable and demoralizing as this state of things is, it will

continue so long as the people have before them daily evidence of the great injustice of the rates of postage, in the fact that private enterprise will perform the service for one third the money."

A bill passed the Senate at this session, fixing a uniform rate of postage of five cents, for a half ounce, for all distances. This bill was sent to the House, and there changed so as to fix the rates at five cents, for three hundred miles, and ten cents for any greater distance. In this form it was agreed to by the Senate, and became a law.

No Considerable debate was had in the House at either session. In 1845, debate was cut off by the "previous question."

THE ACTION OF CONGRESS IN 1843, CONTRASTED WITH THAT IN 1844 AND 1845.

To see more distinctly the effect produced upon the minds of Congress, by the establishment of private mails, and the denial of the power of Congress to prohibit them, we have but to contrast the action of Congress immediately before those events, with their action immediately afterwards – as follows:

February 28th, 1843, the Senate passed a bill, fixing the rates of postage for a "single sheet,"

At 5 cents for 30 miles,
at 10 cents fo 100 miles
at 15 cents fo 220 miles
at 20 cents for 400 miles
at 25 cents for all over 400 miles.

And double and triple those rates for double and triple letters. This bill was sent to the House, and on the 2d of March, 1843, amended so as to fix the rates of postage, at
5 cents under 50 miles, and
10 cents over 50 miles

for quarter ounce letters; and double and triple those rates for the second and third additional quarter ounce.

This amendment could hardly be considered a reduction, except on the condition of the people's stinting themselves to quarter ounce letters. Under this amendment, letters weighing over a quarter of an ounce, would pay 10 cents for all distances under 50 miles, and 20 cents for all distances over 50 miles.

As regards letters weighing over a quarter of an ounce, this would probably have been a positive increase on the old rates of postage.

On the same day, (March 2d, 1843,) the Senate "disagreed " to this amendment of the House, without a division. On the 3d of March, 1843, the House insisted on its amendment, and asked a conference. On the same day, the Senate insisted on their disagreement, and granted a conference. But the conference made no report, and it being the last day of the session, the bill was lost.

This was the condition in which the postage reform stood, in both branches of Congress, on the 3d of March, 1843, the last day of the session previous to the publication of my argument, and the establishment of the private mails. The Senate proposed nothing that deserved the name of reduction. The House proposed no reduction, except on the petty and vexatious condition of restricting the people to quarter ounce letters.

On the 29th of April, 1844, (about three months after the establishment of my mails,) the Senate passed a bill, fixing the rates of postage, for a single letter,

At 3 cents for 30 miles

at 5 cents for 100 miles,

at 10 cents for 300 miles,

at 15 cents for all over 300 miles

This bill was not agreed to by the House, and the matter went over to the next session.

February 8th, 1845. The Senate, by a vote of 38 to 12, passed a bill, fixing a uniform rate of postage, of 5 cents, for a half ounce, for all distances. This bill was amended in the House, so as to make the postage 5 cents for 300 miles, and

10 cents for over 300 miles,

for a half ounce. This amendment was agreed to by the Senate, March 1st, 1845; and this was the bill that became a law.

What was it that produced, in the minds of Congress, the remarkable changes evinced by these several bills, between the 3d of March, 1843, and the 1st of March, 1845? There can be but one answer to this question.

THE EXAMPLE OF ENGLISH POSTAGE.

Some persons have supposed that the example of cheap postage in England had much to do in bringing about the reduction of postage here.

It undoubtedly did something to increase, among the people, the desire – (an unavailing desire of long standing) – for cheap postage. But it had but little effect upon Congress.

The English system went into operation January 10th, 1840; yet on January 10th, 1844, (four years after,) no change had been made in this country; and, so far as I am aware, no radical change had ever been proposed, or had many friends, in Congress. The reason was this. The diminished receipts, and the increased expenses, under the cheap system in England, caused a loss of about half their original revenue. This loss could be borne in England, because under their high rates their revenue had been about double their expenses. But in this country, the expenses had entirely consumed the revenue. And it was a fixed principle, with our government, that the department should support itself. This principle was adhered to by Congress with bigoted tenacity. The English example, therefore, really operated upon the minds of a large portion of Congress,

to deter them from a reduction. It was quoted, along with other statistics, as proving that a reduction of rates would be attended with a reduction of revenue; and consequently that no reduction of rates could be made consistently with the principle of making the department sustain itself.

It was only when opposition post offices were established, and the constitutional right of individuals to establish mails had begun to be the prevalent doctrine, and Congress saw that it was only at low rates that their mails could long get any considerable number of letters to carry, that they discovered that the principle of making the department support itself was about to operate differently from what it ever had done before, viz: in favor of low rates, rather than high ones. And it was for this reason, more than any other, that the act of 1845 was passed, as the debates show. The great argument in Congress, in favor of the reduction, was, not the blessings of cheap postage, but that, without a reduction, the department would inevitably be prostrated by competition.

HALE AND CO'S LETTER MAIL.

I have said before, in my letter to Mr. Phillips, that I was the first to establish mails in avowed defiance of the authority of Congress," – " on the principle that Congress had no Constitutional power to forbid the establishment of mails by the States, or by private individuals, in competition with the mails of the United States and "that I was the first to invite the government to test that question before the judicial tribunals."

This renders it necessary that I should make an exhalation in regard to the mails of Hale & Co.

The clandestine transmission of letters through the Expresses established for the transportation of packages and merchandise, had doubtless been carried on for years previous to 1844, as appears by the Annual Reports of the P. M. General in 1841, (and document D. appended thereto,) 1842 and 1843.

A case of this kind was tried in New York, in November, 1843, before Judge Betts. On this trial, Judge Betts held that the statutes of Congress prohibiting the setting up of "any foot or horse post," and forbidding "any stage coach, or other vehicle, packet boat or other vessel," to carry letters, did not apply to passengers on board vessels and land carriages.

The omission to prohibit passenger posts was obviously accidental, occasioned by the fact that, at the time these statutes were passed, (1825 and 1827,) there were no railroads, and comparatively few steamboats in the country, and the facilities for establishing passenger posts had not become such as to attract the attention of Congress.

Under cover of this decision, that the letter of the laws then in existence did not apply to passengers, Hale and Kimball, as appears by their advertisement, commenced carrying letters, between New York and Boston, December 21, 1843, thirty-two days before my mails were started, and about twenty days before the publication of my argument.

The point of distinction between Hale & Co. and myself is this:

They made no denial of the validity of the then existing laws of Congress, or of the Constitutional power of Congress to pass other laws prohibiting passenger posts; they only evaded the plain design of the law, by availing themselves of an accidental omission in its letter, after the omission had been pointed out to them by Judge Betts. They acted within the letter of the law, although they violated its spirit. I denied and disproved, not only the validity of the then existing laws, but the Constitutional power of Congress to pass any other laws, prohibiting either passenger posts, or any other private posts, which individuals or the States might choose to set up on the highways of the nation. I established my mails avowedly on that principle, (as will appear from my advertisements, an extract from which is quoted on pages 24 and 25,) – published an argument in defence of it – sent copies of that argument to Congress, and publicly challenged,* and privately invited, the P.M.

General to test that question (so far as my advertisement, before mentioned, was such a challenge).

There was nothing in the movement of Hale & Co. to threaten the security of the government monopoly, or to coerce the government into a reduction of postage. Congress had only to supply the omission in the letter of the law, (as they could do in three lines,) so as to make it apply to passenger posts, as well as to "horse," "foot," and other private posts, and their monopoly would then have been perfectly safe as against Hale & Co.[7] And the action of Congress in 1843, (as has already been exhibited,) sufficiently proves that Congress would have supplied this omission, without making any very important reduction in the postage, had not the Constitutional question been raised. But the want of Constitutional power, which I alleged and proved, on the part of Congress, to pass any prohibitory laws at all, was an omission, which Congress could not supply; and this it was that opened the door to the general establishment of private mails throughout the country, and compelled a reduction, as the only means left of sustaining the Department.

It was not the evasions, either of the intent or the letter, of the existing laws, that alarmed Congress for the safety of their monopoly; for those evasions had been going on for years, as Congress were particularly informed by the P. M. General, as early as 1841. But it was, (as the P. O. Committee of the Senate said,) 11 the unblushing violation, and open defiance, of the laws, and, (as the P. O. Committee of the House said,) "the impudent assumption that the government of the United States had no Constitutional power to restrain or punish " the establishment of private mails, – that created the first effervescence in Congress. And it was this same "unblushing violation," "open defiance," and "impudent assumption, sustained, as they chanced to be, by argument which could not be met, by several of the most influential presses in the country, by the opinions of large numbers of the bar, by the intimation of Judge

Story, by the declaration of Senator Woodbury, and doubtless also by the opinions of many other members of Congress who did not think it wise to express them in advance of a decision by the Supreme Court, that compelled the general admission, on the part of Congress that their iniquitous usurpations over the free transmission of intelligence could not be maintained, and that the only means by which the Post Office Department could be saved from prostration, was a reduction of postage.

That the P. M. General considered the mail of Hale & Co., and the grounds on which they acted, as of little or no importance, is evidenced by the fact that in his report, before given, in part, (p. 28,) although he goes into particulars in regard to my mails, he does not so much as mention Hale & Co., although they commenced carrying letters thirty days before I did.

In short, their mails were only a new form of evasion, involving no principle, and based on no denial of the authority of Congress, and could therefore be of no practical importance as coercive of a reduction of postage.

BACK TO BIBLIOGRAPHY

[1]When it is considered that judges are always extremely reluctant to hold any legislation unconstitutional, and that the Supreme Court of the United States have never, except, I think, in one or two instances only, held a law of Congress unconstitutional, since the foundation of the governments I think those who knew Judge Story, will hardly suspect that he would thus have gone beyond the necessities of the case then before him and thrown out so distinct an intimation against the power of the government, at a time too when his opinion would naturally have so much influence in encouraging the establishment of additional private mails, and in inducing the public to give them their support, to the prejudice of the revenues of the government, unless he were not only clear in his own mind on the question, but had also learned the opinions of his associates on the bench of the Supreme Court—(as he could hardly have failed to do—

for that Court remained together at Washington some two or three months after the agitation of the question had commenced.)

[2] Were the question a new one." The Constitution is the same now, on this point, that it was when it was " new," and the constitutional question is, therefore, the same now that it would have been then.

[3] The Postmaster General here misrepresents my proposed admission, by leaving out the most important part of it. Before starting my mails, I informed him of my intention to start them, and added, "I shall be ready at any time to answer to any suit, which you may think it your duty to institute. "Until I know the course intended to be pursued by the Department, I can of course give no assurance as to the defence I shall choose to make. I will say, however, that if an amicable suit only should be instituted, it is not my present intention to put you to any trouble in proving facts, or to take advantage of any defects in the existing law; but to meet the constitutional question fully and distinctly." Previous to this time, Judge Betts had decided that there was a loop-hole in the law prohibiting private posts, which prevented its applying to passengers on board public conveyances. Judges Story, Sprague, and Conklin subsequently confirmed this opinion, while it was controverted by Judges Randall and Heath. It was this defect, (which was sufficient for my defence), that I proposed to take no advantage of, if an amicable suit only should be instituted. But it was no part of his purpose to try the constitutional question—but only to break me down by brute force, without having either the law or the constitution on his side—and hence my proposal was declined.

[4] In this report, the Postmaster General seeks to convey the impression that he considered my conduct plainly illegal. If he really did so consider it, it was his morn duty to have me prosecuted; and he would have committed perjury in neglecting to do so—for the law which he was sworn to execute, required him to "prosecute offences against the post office establishment." Yet, after my mails had been in operation some weeks,

three or four, I think, an agent of the department called upon my counsel, Josiah Howe, Esq., of New York City, and proposed that if I would then desist from conveying letters, no prosecutions should be instituted on account of those that had been carried. And it was only when this proposition was promptly and peremptorily rejected, that the prosecutions were commenced.

[5] Undoubtedly "the law was the same in both (all) the States; "but the Judges in New York and Massachusetts, proved to be different from those in Maryland and Pennsylvania. The Postmaster General never obtained any verdicts in New York or Massachusetts. It is proper to say, however, that all the decisions were made upon the construction of the statute, and not upon the meaning of the constitution.

[6] See the full report of his speech in the Tri-weekly National Intelligencer of February 1, 1845.

[7] That Hale & Co. had no intention of contesting any principle, is evidenced not only by the fact that they made no denial of the power of Congress, when they commenced carrying letters, but also by the fact that the P. M. General, in his report, before given, (page 28,) makes no allusion to them, or to any one but myself, as having invited him to test the Constitutional question; and still further by the fact that, on the very day that the omission in the letter of the law was supplied, (so as to make it apply to passengers,) Hale & Co. abandoned their business – though their pockets were full of money – thus showing that they had no idea of spending any money in defence of any Constitutional principle, that was important to the public, or restrictive of the power of Congress.