

A

BRIEF EXPOSITION

OF THE CASE OF

ELBERT ANDERSON,

LATE ARMY CONTRACTOR, &c. &c.



WASHINGTON CITY:
PRINTED BY WILLIAM COOPER, JUN.

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1826.

To the Honourable

SIR,

The undersigned, Elbert Anderson, of the State of New York, late an ~~Army~~ Contractor for the army of the United States, very respectfully solicits your attention to the facts and principles of his claims on the justice of his country, arising from two contracts with it, one dated November 7th, 1811, and the other dated February 25th, 1813, copies of both which are hereto annexed. By the first of them the Petitioner contracted to supply, from June 1, 1812, to May 31, 1813, the rations which should be required of him for the use of the United States, within the limits of the State of New York, Niagara and its dependencies excepted, and the State of New Jersey; and by the second, to supply, from June 1, 1813, to May 31, 1814, such rations within the State of New York, and its western and northern vicinities. Under these contracts the Petitioner conceives himself fully entitled to an allowance by Congress of sundry claims, of which he submits to your consideration, the following exposition.

CLAIM FOR CASKS, PACKAGES, &c. &c.

This claim amounts to \$29,700 06, of which sum, \$24,894 20, are the value of such of the casks, barrels and packages, furnished in consequence of his aforesaid contracts, as were, after their expiration, retained by the government;—\$1,901 11, are the value of such as had been captured or destroyed by the enemy;—and \$2,904 75 cents, are the value of such as had been lost or destroyed by the troops of the United States.

1. The first item of this claim is \$13,972 30 cents, the value of the casks, barrels and packages, furnished in consequence of the contract of November 7, 1811, which were retained, after its expiration, by the United States. On reference to this contract, it will appear that the Petitioner was bound, by the 1st article of it, to furnish "rations" only; and the 2d article declares, that a ration shall consist of "one pound and a quarter of beef, or three quarters of a pound of pork, eighteen ounces of bread or flour, one gill of rum, whisky or brandy, and at the rate of two quarts of salt, four quarts of vinegar, four pounds of soap, and one pound and a half of candles, to every hundred rations." In the absence, then, of an express stipulation by the Petitioner, to furnish something beside the rations, no sound rule of construction will imply such a stipulation, unless on principles derivable from general usage, or from some special usage obligatory on the parties. It is not the general usage for the vendor to furnish, free from a separate charge, the enclosure of the article sold: Though sometimes he increases the nominal price of the article, so as to include the value

of the enclosure;—And then the article is sold by its own name and that of the enclosure, *jointly*; as for example, a *barrel* of beef, a *cask* of whisky, &c. But in no other instances is the buyer exempt from a separate charge for the enclosure. And so it is in the case of an importer. In regard to any special usage applicable to this item, the most cogent argument in its support, exists in the practice of the government itself; which, so far as the Petitioner is informed, has, in all contracts made in reference to the Atlantic States, allowed a separate charge for casks, barrels and packages. The report on the Petitioner's claim, made on the 12th of August, 1824, by Mr. Calhoun, then Secretary of War, admits that such charges had been allowed to the Petitioner, under previous contracts, in cases where he had issued provisions to troops on march, or on board of transports: And there is surely no difference between the principle which allows a charge made under these circumstances, and that of which the benefit is claimed for enclosures of provisions deposited by the contractor in the storehouses of the United States. In both cases, these enclosures were retained by the Government; in both cases had they been paid for by the Petitioner, and lost to him by its act in so retaining them. That the construction for which the Petitioner contends has been heretofore adopted by the Government, can be manifested by many examples. Of these, one is the case of Mr. James Byers, who asked and obtained \$ 14,502 49 in payment of casks, boxes, &c. used by him in depositing rations, and retained by the United States. In this case, Mr. Monroe, acting Secretary of War, on the 13th of October, 1814, directed, in a letter of that date, the Accountant of the War Department that "it did not appear by Byers' contract that he was bound to furnish casks and boxes; or in other words, "it did appear that when the rations were issued, the casks and "boxes belonged to the contractor; and that if, therefore, the casks, "boxes, &c. had not been returned to him, and were charged at a "fair price, the amount should be passed to his credit." It should be observed, that the Petitioner's contract of November 7, 1811, was contemporaneous, and substantially identical in its covenants, with that of Mr. Byers, which was the subject of a decision emanating from authority so high, and so well calculated to inspire confidence in it as an operative precedent. This decision was in full force when the item of the Petitioner's claim, now under consideration, accrued: But in March, 1815, the letter aforesaid was shown to him, with the addition of an interpolation or postscript by Mr. Monroe, assigning a reason for the allowance to Mr. Byers, different from that stated in the letter itself. The Petitioner pretends not to conjecture the history of this interpolation, nor can he ascertain its precise date. But as it was certainly made subsequently to the birth of his claim, it cannot prejudice that claim, unless invested with an ex-post-facto efficacy, which must be odious to Congress, as it has ever been to the moral sense of mankind. Precedents are substitutes for laws, and resemble them in character; and if an ex-post-facto law be per se inequit-

able, so also must be an ex-post-facto precedent. The Petitioner contends, then, for the unimpaired benefit of Mr. Monroe's original decision, and in thus contending, is sustained by the proceedings of the Government in a case where the facts just referred to passed before its deliberate review, and received its most authoritative determination. Matthew L. Davis, under his contract of April 26, 1814, commencing June 1, 1814, and ending May 31, 1815, obtained a credit for casks and boxes amounting to \$2,814 57, under the following circumstances: He placed in depot, at New York and its vicinity, in December, 1814, provisions in bulk, for which he took the officers' receipts, including the casks and boxes; and on settlement of his accounts by the then Accountant, January 17, 1815, he received a credit for the casks, &c. in which the provisions were contained, as well as for the provisions themselves. Afterward, (the Third Auditor supposes on settlement of March 28, 1815) the same Accountant reversed this credit, alleging "that it had been admitted in the previous statements prior to the ultimate decision of the Secretary of War, that no allowance shall be made to contractors, for barrels, casks, &c. except in special cases of contract with the War Department;" what the Accountant is here pleased to style "*an ultimate decision*," being the interpolation or postscript to which the Petitioner has before referred. Mr. Davis's account remained in this situation until March 2d, 1817, when Mr. George Graham, then acting Secretary of War, decided that "the amount of the charge for casks, barrels, boxes, &c. which had been admitted to the credit of the contractor previous to the decision of the Secretary of War, and for which a warrant had issued, will be allowed." Mr. Davis having received back for issue most of the provisions, in the same casks and boxes in which they had been deposited, the Third Auditor submitted, on March 26, 1817, to the Secretary of War, an inquiry whether the above decision went to exonerate Davis from any charge for these casks and boxes. On this subject, the Second Comptroller, on the 24th of November, 1818, decided that he "could not interfere with the decision of Mr. Graham, acting Secretary of War, sanctioned by the late President of the United States; and that the amount allowed to the credit of Mr. Davis, for casks, barrels, boxes, &c. would remain so, without being re-charged to him." Of President Madison's opinion, which was a written one, as the Petitioner is informed, his earnest endeavours have hitherto been unable to obtain a copy; and he has equally failed in procuring a copy of an opinion in favour of this, and the next, item of the claim now under consideration, which was given by the late Mr. Dexter, a former Secretary of War, and who was the author of the blank forms of the very contracts under which the Petitioner's claim arises. From the foregoing facts, it appears that the original decision of one Secretary of War, on Mr. Byers' case, has been adhered to by another Secretary of War, as the rule for determining a claim arising before a new principle was infused into this decision; that the Second Comptroller has declined to interfere with a construction so accord-

ant to equity and reason; and that it had been sustained by the enlightened mind of Mr. Madison, while acting, with characteristic tenderness of conscience, under the highest responsibility known to the Constitution. The Petitioner invokes, therefore, these considerations in aid of his claim, with a hope of success, which is animated by the reflection that one of the profoundest lawyers who ever presided over the Department of War, prepared, in effect, the very contract under which this claim arises, and sanctioned the construction of it, which is now contended for. Unwilling to vex Congress with an application which might possibly be unfounded, the Petitioner submitted this and the subsequent item to the scrutiny of individuals, whose moral and professional reputation entitled them to his confidence, and whose authority on a question arising under the law of contracts he could not avoid regarding as being at least equal to that of the Third Auditor.

If, contrarily to the Petitioner's deliberate expectations, the supplement to Mr. Monroe's original letter be deemed applicable to this item, he would respectfully urge the propriety of its being allowed on the very principle of that supplement.

The Petitioner and Mr. Byers were in January, 1812, called to Washington, by the Secretary of War, in consequence of "new arrangements being required in the provision department of the army," and directed to provide rations for a nominal force, at places not fortified, and to deposit rations at places where was no actual force, and therefore no immediate consumption; they were required to supply salted beef and pork "wholly" and flour "wholly," for periods during portions of which their contracts did not restrict them to these articles: And it was understood that for complying with these, and other requisitions, not authorized by contract, the Contractors should be compensated. The Petitioner complied with them, nor did Mr. B. do any thing more to entitle him to a compensation not stipulated in his contract. It would be superfluous for the Petitioner to say how difficult obedience to these requisitions was rendered by existing circumstances, or with what zealous alacrity he endeavoured to meet the wishes of Government, and the exigencies of the service. It must be observed moreover, that the Government, while admitting the usage entitling the Contractors to a return or payment of the casks &c., expected them to issue in detail, when necessary, the component parts of the rations already deposited, and that the deposits should be charged to the Contractor at the prices fixed in the contract of November 7, 1811, subject to a commissariat allowance for issuing. From the contemporaneous correspondence it will appear, that at the date of the deposits the Government had received from Mr. B., as well as from the Petitioner, a promise to make the issues in detail, on the principles just stated. This promise was performed by the Petitioner, but Mr. B. receded from it, thereby obliging the Government to transport, at its own hazard and expense, for several hundred miles, the provisions he had deposited, which, from their nature, were subject to great loss and decay. Such consequences

to the Government, in the instance of the Petitioner, were averted by the promptitude of his issues; But he sustained a heavy loss by taking, at the increased price of his subsequent contract, such of the provisions as had been deposited by Mr. B., and transported to Lake Champlain. It should too be observed that the casks, barrels, packages, &c. returned to the Petitioner were, through the hard and rough service which they had undergone, materially impaired in value;—a loss for which he has not claimed, and does not claim, remuneration, however equitably deserving it.

Additionally to these facts, the Petitioner must remark that his purchases and requisitions were the same as those of Mr. Byers; that in most instances Mr. B. was enabled to procure rations at places, where the remoteness of them from all markets rendered provisions cheap, and whence a long transportation, at the risk and expense of the U. States, became necessary;—and that, on the other hand, the Petitioner's purchases were made in the State of New York, on navigable waters, where provisions were high, and contiguous to places afterward the seat of War. On every ground then, it would seem, that any compensation for extra services to which Mr. B. was entitled, on the principle of the supplement to Mr. Monroe's original letter, may, with at least equal justice, be claimed by the Petitioner.

That "all claims arising from loss sustained by requisitions not authorized by the contract," must be allowed by the Government, is a principle undisputed hitherto, and in terms recognised by Mr. Crawford, then Secretary of War, in his directions, received by the Accountant, January 27, 1816, concerning contracts for the years 1814—15.

2. The second item of this claim is \$10,921 90, the value of casks &c. furnished in consequence of the contract of February 25, 1813, and retained after its expiration, by the United States. To this item, most of the previous remarks are applicable, as the contract under which it arises, like that of November 7, 1811, obliged the Contractor to provide "rations" only.

If for the payment of this and preceding item, no stipulations were made in the contracts, it was because the general usage of business, and the previous practice of the Government rendered such stipulations unnecessary.

The Petitioner has held contracts with the U. States, since the year 1809, and invariably obtained compensation for casks &c. which had been required of him for the use of the army. So complete was the understanding at the War Department on this subject, that whenever it appeared that he had omitted to make a charge for them, the officers voluntarily corrected the omission by introducing the charge into the final settlement, to the debit of the United States. These charges were, it is true, from the extent of the supply, less in amount than the present charge;—but a difference in the amount makes no difference in the principle. The expectation of the Government to pay this and the former item, should they arise, is plainly inferible, too, from the facts, that on November 7, 1812, the Petition-

er exhibited to the Secretary of War a written schedule of the rations deposited, and to be deposited, under the contract of November 7, 1811, in which schedule the casks, barrels &c. containing those rations were separately and distinctly charged to the United States, at the prices now claimed; that the Secretary offered no objection to the charge; and that on February 25, 1813, another contract was made between the Government and the Petitioner, in which were covenants exactly similar to those under which he had made that charge.

That on every presentment at the War Department of his accounts in the years 1812,—13,—14, a demand of payment for the casks, packages, &c. containing the rations, was made by the Petitioner, will appear on reference to those accounts: And from the absence of any objection to that demand, an acquiescence in it by the Department must be inferred. The Petitioner must therefore seek the origin of the "*suspension*," on the exhibition of his account current in March, 1815, of the items now claimed, to afterthought suggested by their amount. Hence too, he must suppose, they were, by an ex-post-facto decision, forced out of the operation of a principle in which, in similar cases, compensation had been granted to contemporaneous Contractors, and to one of his successors.

3. The third item is \$4,805 86. Of this sum, \$1901 11 are the value of casks &c. captured and destroyed by the enemy, and \$2,904 75, are the value of casks &c. lost and destroyed by the troops of the United States, in descending the St. Lawrence. The item arises under the contract of February 25, 1813, of which the 6th article provides, "that all losses sustained by the depredations of the enemy, or by means of the troops of the United States, in articles intended to compose rations, to be issued under this contract, being the property of the Contractor, as well as in other property necessarily used in transporting the same, shall be paid for at the contract price of the rations, or the component parts, and at the appraised value of the other articles, on the deposition of one or more credible characters," &c. If the reasoning in favour of the first item of this claim is correct, the casks &c. captured, destroyed, or lost, were the property of the Contractor, and having been "necessarily used in transporting" the rations, are, of course, a subject of compensation. It should be observed that the phraseology of this extract from the contract of February 25, 1813, contemplates something beside the rations, as the subject of loss and payment, and it is difficult to be imagined what it could have contemplated, except the enclosures used in transporting them.

CLAIM FOR INTEREST ON DECLARED BALANCES.

This claim is for \$ 10,000, the interest at six per cent per annum, arising from the delay of the Government in paying certain warrants issued, and certificates given, in favour of the Petitioner: Of these, the Third Auditor reports one for \$ 181,243 57, to be dated March 14, 1815, and paid January 5, 1816; one for \$ 56,756 43, to be dated June 27, 1815, and paid August 28, 1815, and one for \$ 7,389 34, to be dated July 10, 1815, and paid January 5, 1816. But from the Report of the Register of the Treasury, it appears that the amounts of the warrant for \$ 181,243 57, and that for \$ 7,389 34, were not remitted till January 11th, 1816, and that the amount of the warrant for \$ 56,756 42, was not remitted till *September 1st* 1815. The interest accruing from the date of the certificates, to September 5, 1815, when the Petitioner received in New York the remittance for the warrant for \$ 56,756 43 cents, and to January 16, 1816, when he there received the remittances on the other two warrants, is \$ 10,019 51, and was stated by the Petitioner, on presenting his accounts at the War Department, in round numbers at \$ 10,000.

The tenth article of the contract of February 25, 1813, under which this claim originates, provides that any balance which shall be found, on "any settlement of his accounts," to be due to the Petitioner, shall be immediately paid. The issuing of the warrants aforesaid, admits debts to their amount to be due from the Government to the Petitioner; and for the delay occurring in the payment of those debts, there seems no reason why the Petitioner should not receive the same compensation which the law would have compelled an individual debtor to make to him. It is true that the Tenth article of the contract requires the Petitioner, in case of a failure on his part to comply with the contract, to pay interest at the rate of six per cent. per annum, on the surplus of advances which might have been made to him, and that it does not express any contingency on which the Government is to pay interest. But interest universally commences whenever the principal becomes due, and the object of the stipulation obtained from the contractor was merely to define, what would otherwise have been uncertain, the period when the interest, which under given circumstances might be due from him, should commence. That the obligations of every contract are reciprocal, is undeniable: and the Petitioner needs not advert to the numerous instances in which a rule, so radicated in reason and conscience, has been sanctioned by the Legislature of the Union.

CLAIM FOR DAMAGES ON PROTESTED BILLS.

This claim is for \$20,000, that sum being the damages, at the rate of 10 per cent. on two bills of exchange, one for \$150,000, and the other for \$50,000, drawn October 27, 1814, by the Petitioner on the Secretary of War, and protested for non-payment.

By the 10th article of the contract of February 25, 1813, the officers of the United States are prohibited from opposing any "unreasonable or unnecessary delay" to settling the Petitioner's accounts. This contract expired by its own limitation on the 31st of May, 1814, previously to which time the Petitioner had become in advance to the government in the sum of \$263,004 53 $\frac{1}{2}$, of which sum, \$245,000, on the vouchers then produced, were since admitted. In July and August of this year, his accounts, leaving a balance in his favour exceeding \$200,000, had been presented at the War Department for settlement, and on the next ensuing 15th of October he transmitted to that Department his account current, stating a balance in his favour of the aforesaid sum of \$263,004 53 $\frac{1}{2}$. The interval between October 15th and October 27th, the date of the bills, was sufficient for a view of this account current. The interval between August and October 27th, was far more than sufficient for the examination of his former accounts, resulting in the aforementioned balance exceeding \$200,000. There occurred, therefore, an "unreasonable or unnecessary" delay in the settlement, which places the Government in the same attitude that it would have taken by making the settlement, and refusing payment of the sum which would then have appeared due to the Petitioner. Established usage would, as will, in the exposition of another claim, be more particularly mentioned, have entitled him to draw on the Government, for advances necessary for the execution of the contract: But he did not draw till, by strenuous exertions of his private credit, he had himself become in advance to an amount considerably exceeding that of his bills; a forbearance, which the exigencies of the country induced him, to his heavy injury, to continue for nearly five months after the value for his bills had been received by the Government; and eight months after his right to draw them had accrued.

The Petitioner being, then, entitled to draw these bills, and they not being paid is not the responsibility of the Government, which by its own act came within the operation of commercial law, identical with that of any other defaulting drawee? And has not this Law fixed a rule for measuring the damage in credit and estate, occasioned to the drawer of a dishonoured bill? In fact, the Government so far from asserting an invidious exemption from a responsibility at once equitable and universal, has repeatedly acknowledged it. One case is that of Ward and Taylor, who, under their contract of March 21, 1814, commencing June 1, 1814, and ending May 31, 1815, were allowed by the Government for Discounts, Interest, *Damages*, &c. on bills drawn by them on the Secretary of War, and protested, \$20,958 88. Another case is that of John H. Piatt who, under his con-

tract dated January 26, 1814, commencing June 1, 1814 and ending May 31, 1815, received \$21,000, or 10 per cent., as damages for the protest of his drafts on the Government. In stating the case of Ward and Taylor, the Third Auditor does not specify what part of the sum allowed to them was for damages, and describes that sum to be for money which they had paid to the Pennsylvania and Schuylkill Banks. But these Banks must be considered not only as the creditors, but as the collectors, of Ward and Taylor, and the charge for damages was incidental to the Protest.

The obligation of the Government to pay damages on protested bills is confessed by Mr. Crawford, the Secretary of War, in his directions of January 27, 1816, before cited, to the Accountant of the War Department in settling the accounts of the contractors for 1814 -15, and has been emphatically recognised by Congress.

The Petitioner's contract was, it is true, for 1813—14; but he was therefore a contractor for 1814: And moreover, Mr. Crawford's decision is surely applicable on principles of equitable construction to a contract of another date, which substantially resembles the contracts of 1814—15 for supplying the army. But if a distinction be taken between the contracts of 1813—14, and those of 1814—15, it must be favourable to the former: For, from the high credit of the Government at the date of the Petitioner's contract, he had no reason to apprehend a dishonour of its paper;—whereas when this state of things became reversed, such a contingency would more probably enter into the calculations of a subsequent Contractor.

The same rule which entitles the Petitioner to damages for the protest of his bills, entitles him to interest also on them; but his demand for it is merged in the next claim to which your attention is invited.

CLAIM FOR INTEREST ON ADVANCES WITHHELD.

This claim arises under the contract of February 25, 1813, and is for \$15,625, the interest at the rate of 6 per cent. annually, on \$250,000, from March 1, 1814, to March 14, 1815.

Until the year 1820, the constant usage of the government had been to make advances, for the use of a contract to which it was a party, to a contractor who had furnished satisfactory security for the performance of that contract. Every contractor was presumed to have furnished such security; and in the Petitioner's instance, it was ample, unquestioned, and unquestionable: Every contractor was presumed, too, to have given in such security, and in the lowness of his bid, a consideration for the capital to be advanced to him. From the aforesaid usage, the amount which it would entitle him to receive in advance from the government became his own property: This amount was the money necessary for the execution of the contract during the interval between any two settlements of his accounts, and its criterion was the amount which had been expended in executing the contract during the equal and next preceding period. Moreover, when any order for deposit was received by the contractor, he was authorized to draw on the government to the amount of that order; it being a principle inherent in all such agreements that the contractor was never expected to be in advance to the government.

The contract of February 25th, 1813, expired by its own limitation on May 31, 1814. The period for a settlement of his accounts prescribed by it to the Petitioner was "at least once in every three months." Had these accounts been settled in due time, it would have appeared on March 1, 1814, that taking the expenses, even exclusively of the orders for deposits, of the three months next preceding, as a criterion, the *minimum* estimate for the next three months would be \$250,000, and that the contractor had therefore, on March 1, 1814, a right to an advance of this sum at least, beside what the execution of the orders for deposit might require. This right is not impaired by an infraction of the tenth article of the contract, caused by the delay of the officers of Government. Being then entitled on March 1, 1814, to receive from the government, for the use of the contract, at least \$250,000, exclusively of orders for deposit; that sum being withheld, and he being nevertheless obliged to execute the contract, he must do so either by employing his own money, in which case he would be entitled to interest, or by borrowing money, in which case he must pay interest, and would be entitled to receive it in return. In point of fact, the Petitioner was compelled, by the withholding of this advance, thus to borrow, and to pay bank interest for the loan: And the orders for deposit, from November, 1813, to May 17, 1814, exceeded the sum required for current issue; and this will be seen by a reference to the orders for deposit during this period:—In truth, the deposits made within the two quarters next preceding the 1st of June, amounted to nearly half a million of dollars.

The interest due on \$250,000 from March 1, 1814, to June 1, 1814, depends, the Petitioner admits, on merely equitable grounds. But at the last mentioned date, all the services having been performed, and all the provisions having been delivered, which his contract required, and the United States being then indebted to him in \$263,000, he is strictly and legally entitled to interest from June 1, 1814, to March 14, 1815, when his accounts, to the amount of \$245,000, were passed at the War Department, after a long delay on its part in performing the covenant contained in the Tenth article of the contract, and an inattention to his solicitous importunities for a settlement.

It must be remarked, that of the \$250,000 on which interest is now claimed, \$200,000 constitutes the amount of the Petitioner's aforesaid Bills of Exchange: So that his right to interest on \$200,000 is sustainable not only on general grounds, but on the rule of commercial law which makes interest as well as damages incidental to Protested Bills, and on the practice of the Government under that rule.

The usage of the Government on the subject of interest, is directly in support of this claim. Mr. Secretary Crawford's decision of January 27, 1816, directs the Accountant, in settling the accounts of Contractors for 1814-15, to "allow all claims supported by evidence of loss sustained by payment of interest or damages *in consequence of the Department being unable to make the necessary advances.*" The Petitioner has before mentioned the allowance to Ward and Taylor of \$20,958 88 for discount, *interest &c.*, and that to John H. Piatt of \$21,000, or 10 per cent. on \$210,000, in consideration of the damages sustained by him through the Protest of his drafts on the Government. Mr. P. was also allowed \$3,750, and \$4,320, for charges made on him by the Companies who had negotiated his drafts on the Government; which charges will, when analysed, be found, as the Petitioner is informed, to be substantially charges for *interest*. It is moreover, expressly stated in a Report made, December 17, 1817, under the authority of the War Department, to the President of the United States, that "after the war was ended, the Secretary of War paid the legal interests on all Mr. Piatt's drafts, to the different Banks which held them." Under the Act of Congress passed in 1824 for his relief, Mr. P. was also allowed by the Comptroller the farther sum of \$4,707 21 for *interest* expressly, on money which the failure of Government to pay his drafts, had obliged him to borrow.

These, and similar allowances which might be instanced, involve an admission on the part of the Government that, having once assumed the character of a party to a contract, it becomes liable to the resulting losses of that contract, in like manner as an individual or a company would be liable. Indeed so far from arrogating privileges contrariant to the rights of individuals, a just and generous Government must ever feel in its dignity, its power, and its exemption from the force of law, the strongest incentives to a punctilious, if not to a liberal discharge of its engagements. These considerations are

made applicable to the Petitioner's case, not only by the injury and loss inflicted on him through the delays which have been represented, but by the advantage derived to the country, and the inconvenience averted from it, through his zealous execution of the contract, after the proceedings of the other party had paralysed its obligations on him, whether legal or moral. At no period of the late war were supplies more important, within the State of New York, than during the interval between the close of the year 1813, and the middle of the year 1814, when the success of the next campaign must require large deposits, exclusive of the current issue, to be provided beforehand, and with promptitude. For his strenuous and unre-laxed exertions to prepare for this exigence, the Petitioner asks indemnification only; disclaiming that he ever expected, or has ever realized, from the contract, any profits which entitle the United States to the unrecompensed use of his money and credit, or of the money and credit of his friends. And even had the profits as foreseen by the parties, promised to be great, would they not be diminished by a denial of interest on the use of this money and credit?

Confiding in the justice and strength of this claim, the Petitioner would respectfully invite such a reference by Congress to any impartial Accountant of the Government, as will elicit a full exhibition of his interest account with the United States: And should such an account, if stated on fair principles, consistent with the terms of the contract, and with the usage entitling him to advances for the current issue and orders for deposit, disclose any balance, at the termination of the contract, against the Petitioner, he will become responsible for its payment on any terms which the wisdom of Congress may indicate. Should, however, the balance be in his favour, he doubts not the willingness of the Legislature to extend to him the same justice which, under an opposite result, it would exact.

CLAIMS ARISING FROM DEPRECIATION OF TREASURY NOTES.

This claim is for \$6,237, the discount at 11 per cent., on \$56,700, received in Treasury notes, September 5, 1815, and for \$15,977 20 the discount at $8\frac{17}{100}$ per cent., on \$188,632 91, received in Treasury notes, January 16, 1816.

It is a principle of the Constitution of the United States, that pecuniary payments are to be made in specie. The Government was bound to pay to the Petitioner, under the contract of February 25, 1813, specie, or something equivalent thereto; but after a long, and to him deeply embarrassing delay, he finally received from it Treasury notes, which he was obliged to sell at a discount. The Government, then, being bound to do one thing, was reduced by the public exigency to do another thing, thereby subjecting the Petitioner to a loss for which he asks compensation.

The principle of the claim now advanced rests on obvious grounds of justice. It was, moreover, applied by the Government to the case of James Byers, and sanctioned by Congress in that of his brother John Byers. The former had contracted with the War Department to supply rations from June 1, 1814, to May 31, 1815, for the States of Connecticut, Rhode Island, Massachusetts and New Hampshire; and when the contract was made, the supply for Connecticut and Rhode Island was transferred to John Byers. At the date of the contracts, Treasury notes were at par, but afterward became uncurrent in the places where the supplies were to be furnished. Foreseeing the consequent impossibility of executing the contracts, without a great sacrifice, these Contractors resolved to surrender them to the Government, and for this purpose James Byers repaired to Washington. There, however, an understanding took place between the Secretary of War and himself, that he should go on to execute the contract, and be remunerated on the final settlement of accounts for loss arising from the depreciation of Treasury notes. Doubts being entertained by the Accounting officers whether this understanding extended to Connecticut and Rhode Island, Congress decided that it did, and granted relief to the Contractors.

Mr. Monroe, Secretary of War, in his letter of July 11, 1815, to Mr. James Byers, says, "I recollect receiving the letter addressed to me by you while I was in the Department of War, bearing date on the 4th January last, and am satisfied that I assured you that you should sustain no loss which I could prevent—The troops in the Eastern States were in great distress. I was aware of the depreciation of Treasury notes; it was indispensable to supply the troops, and it seemed to be just that, as the Government could not furnish you with a paper which circulated at par in that quarter, you ought to be indemnified against the loss arising from the depreciation. I considered your case, at the time, as rendered peculiar by the situation of the troops, and the exigency of the public service in the quarter to which your contract applied." The necessities of the service alluded to by the Secretary were even less severe than those which the Petitioner met; for his State and

District were the actual seat of War; both Southern and Western frontiers were menaced and invaded by a vindictive enemy, and immediate supplies were required by frequent and sudden calls for the Militia.

The act of Congress of February 24, 1815 (4 L. U. S. 810. Bioren's edit.) authorizes the issuing of Treasury notes, and provides, it is true, that they shall be paid "to such person and persons as shall be willing to accept the same in payment." An opposite provision would have derogated from the honour of the Government; for in compelling public creditors to receive in payment a depreciated currency, Congress would, while violating the spirit of the Constitution, have made the humiliating admission that the Government, being unable to pay its creditor, must force on him a dividend in extinguishment of a debt. But nothing in the law of February 24, 1815, bars the Petitioner's present claim. The clause just cited left an option with every individual to receive or to refuse Treasury notes, but did not divest him of the right to receive them conditionally. The correspondence between the Petitioner and the War Department will show that he was understood to take the Treasury notes as all which it was then possible for the Government to give, and that so far from waiving his right to indemnification for the loss he might occasion to him, he expressly protested against any adjustment of his claims "on terms different from the most favoured." True it is, that he did not during an almost vital crisis of the war, hasten to Washington, menace the Government with the abandonment of his contract, and thus endeavour to extort from its apprehensions, assurances made superfluous by his faith in its justice. That he used no such means to fortify his contract must ever be among the proudest of his recollections, and would console him under even heavier disappointments than the possible defeat of this claim.

The views of its paper taken by the Government, appear in Mr. Crawford's decision, before cited, of January 27, 1816, which declares "that the Contractors will be required to account for all premiums received on the sale of bills negotiated by them on the Government." This decision was made when the credit of the Government had revived. Its principle is, that a Contractor shall receive *no more* than his promised reward. Is it not then incalculable that he ought to receive *no less*? If he must not speculate on the Government, ought the Government to speculate on him?

On reference to the records of the Treasury Department, it will appear that the government has often admitted and discharged its responsibility for the depreciation of its paper. In the years 1815 and 1816, about the dates when the Treasury Notes on which this claim arises, were remitted to the Petitioner, it funded paper of that description and other of its debts at the rate of \$ 100 in stock, for \$ 80 of Treasury Notes, or other Government debts, thus confessing and compensating a depreciation of 20 per cent. on its paper. The records of the Treasury Department disclose, among other cases, that a debt of the United States to the Corporation of Charleston, amounting to \$ 163,911 39, principal and *interest*, was,

on January 11, 1816, paid in funded 6 per cent. stock of 1814, at the rate of \$100 in stock for \$80 of debt, amounting to \$ 204,889 23; and that on February 13, 1815 a similar arrangement for nearly five times that amount was made with the Corporation of New York. Had the Petitioner's claim been thus liquidated, (and he had strenuously urged an adjustment of it on the most favoured terms) the result would have prevented, because it would have more than covered, his present claim; that for Damages on the Protested bills; that for Interest on Declared balances; and that for Interest on Withheld advances. So far, however, from receiving the justice extended to other public creditors, the Petitioner, after having reluctantly acceded to a proposal in April 1815, of Mr. Dallas, Secretary of the Treasury, and acting Secretary of War, to fund his claim at \$95 for \$100 in stock, he was informed that a deficiency of appropriations for the War Department rendered it impracticable for the Secretary to carry that proposal into effect. A compliance by the Government with even these severe terms, would have given the Petitioner all that he now asks in recompense for the Depreciation of Treasury notes, and all that he has before asked as Interest on Balances declared. The hardship of his case is still more peculiarized by the facts that Mr. Dallas, after retreating from his aforesaid proposal, made, on September 21, 1815, to Messrs. Prime, Ward and Sands, of New York, and on March 26, 1816, to the Merchants' Bank at Salem, the very same proposal, in letters of those dates; which facts and letters have but recently come to the knowledge of the Petitioner.*

It is a mournful fact incident to national wars, that public credit often sinks under their pressure. Had not the credit of the Petitioner been based on foundations independent on his contract, he could never have discharged that contract, and would now be reduced to ask Congress not merely to compensate him for losses, but to lift him up from ruin.

* Additional illustrations are derivable from the following facts, viz :

In April 1815, U. States 6 per cent. stock was sold at \$80 to \$82, payable in specie, or bills on Boston. The local bank paper of N. York was then from 6 to 7½ per cent. below specie, and Treasury notes were of less value than such paper. Hence if the debt of \$245,389 32, ascertained to be due to the Petitioner, had been funded at the par value of specie, or on the same terms which were granted to other public creditors, the arrangement would have covered his claims for Damages on Protested Bills, Interest on Declared Balances, Interest on Withheld Advances, and Depreciation of Treasury Notes.

Mr. Dallas in the letter to the Petitioner, referred to in the text, says, "I am ready to receive proposals for subscribing to the 12 million loan, at the rate of 100 dollars in stock for 95 in the payment which you propose." The Petitioner in a letter to Mr. Dallas, dated "New York, May 15, 1815" expresses "a well grounded hope" that the Secretary will extinguish his, the Petitioner's, claim, "by giving 6 per cent. stock" according to the "offer of 95 of debt for 100 of stock." Mr. Dallas, in a memorandum, dated 6th June, 1815, says, "My letters and overtures, respecting the payment of Mr. Anderson's claim, are all correct;" "Mr. Anderson's debt is ascertained; and it could be paid in Treasury notes, or it might be received in subscription to the loan;" but, in a letter, to the Petitioner dated "Treasury Department, August 23, 1815," he says, "the appropriations for the War Department are not sufficient to cover all the demands upon it."

CLAIM ARISING FROM THE WHISKY TAX.

This claim is for \$ 45,709 51; and arises under the contract of February 25, 1813, in consequence of an act of Congress passed, *at an extra session*, on July 24, 1813, to take effect January 1, 1814, and laying a duty on stills and boilers employed in distilling spirits from domestic materials during the year 1814.

1. The first item of this claim is \$ 32,776 52, the charge, at the price, enhanced by the operation of this law, of 14½ cents per gallon for the Whisky part of the ration required by the contract; the Petitioner having furnished during its term 226,045 gallons of whisky.

He believes this item to stand on preeminent grounds. Had the price of whisky been augmented by the agency of ordinary causes, or of causes within his control, or of causes not proceeding from the volition of the United States, any risk thence to arise must have been presumed to be within his contemplation when he signed the contract:—But when the price was raised by the act of the other party, and that party a supreme and irresistible power, the assumption of a risk so stupendous cannot have been ascribed to the Petitioner, without supposing in him not merely gross imprudence, but infatuation. Any principle which would deny to him relief in this item, must imply in the Government a power to break up any contract, at any time, by taxing, without limit, the articles which this contract had bargained to supply, and by throwing the loss on the Contractor to leave him a ruined victim to his confidence in the public faith. Against such consequences the Petitioner never thought of guarding himself by a covenant;—for this covenant must have had for its basis suspicions incompatible with the reliance which he has ever felt, and ever must feel, on the justice of his country. This contract was founded on his previous proposals of December 28, 1812 to the Secretary of War, in which he vindicates his estimate of the component parts of the rations by stating the grounds on which it was formed, and refers especially to leakage and wastage, to the diminished importations of foreign spirits, to the high price of grain, the consequently probable increase in the price of home distilled spirits, and to the difficulty in obtaining them, as reasons for the price of rations, (liquor being one of their components,) which was fixed in that estimate. On an inviolate principle of construction, this enumeration is exclusive of any particular not contained in it, and must be deemed the rule for ascertaining the motives, inducements and circumstances of the parties to the contract. It affords no colour for inferring that any exercise, to his detriment, of the sovereign power of the nation, ever entered into the calculations of the Petitioner, or into those of the Secretary of War.

That the Government never meant to divest itself of the power to impose taxes, is clear; that the Government exerts it for wise and beneficent objects, is also clear: But it is equally clear, that the Government cannot mean to apply this power, through the *ex-post-facto* instrumentality of any enactment, to the invalidation of its

engagements. Such a consequence is repugnant, not only to the practice of every nation mindful of its good faith, but to the spirit of the Constitution, and to the dictates of universal justice. The law of July 24, 1813, was passed five months after the date, and took effect five months before the expiration, of the contract of February 25, 1813. Its object was to sustain public faith, an object very doubtfully achieved, if it lead to an indirect and unredressed violation of a contract between the Government and a citizen. Its effect was to take from the Petitioner by means of the contract, without compensation, the excess of the price of whisky, produced by the law, above the price which would have obtained it, had no such law been enacted. It is observable that the Fifth article of the contract of February 25, 1813, empowers "the Commanding General, or person appointed by him, at each place or post, in case of absolute failure or deficiency in the quantity of provision contracted to be delivered and issued, to supply the deficiency by purchase, at the risk and on account of the" Contractor: And that the Tenth article makes any *sums of money* which the commanding officer may disburse in order to procure supplies in consequence of such failure, a charge against the Contractor on the settlement of his accounts.

Now it is a settled principle of law, recently and solemnly recognised by the Supreme Court of the United States, that "in an action by the buyer against the seller for breach of a contract, in not delivering the thing sold, the proper measure of damages is not the price stipulated in the contract, but the value at the time of the breach."—By obvious analogy to this doctrine, if the Petitioner had failed to supply rations, after the passage of the law aforesaid, and the Commanding General had procured them at the enhanced prices produced by that law, as he must have done, the Contractor would have been charged with them at these prices. Of the principle of this doctrine, the Petitioner claims an application to the present item.

2. The second item of this claim is \$ 12,932 99, the value, at 14½ cents a gallon, of 89,193 gallons of Whisky, furnished by the Petitioner under the contract of February 25, 1813, between July 24, 1813, when the law passed, and January 1, 1814, when it took effect.

This item is susceptible of the same reasoning as that advanced in support of the former, because the rise in the price of whisky was immediate on the passage of the law;—a law, which affected the Petitioner not with any remote or consequential influence, but by acting directly and *in rem* on the subject matter of his contract,

CLAIM ARISING FROM THE TRANSPORTATION BY LAND, OF FLOUR AND WHISKY, FROM PHILADELPHIA, BALTIMORE, AND ALEXANDRIA, TO NEW YORK.

The transportation was made during the blockade of the coast in 1813, and cost \$7,939. The freight by water would have been \$1,990, and for \$5,949, the difference between these sums, this claim is made.

By the contract of February 25, 1813, the contractor was bound to furnish supplies at places within its scope: But it made the United States liable for all losses in articles intended to compose the rations, which might be "sustained by the depredations of an enemy." The Petitioner, in a letter to the Secretary of War, dated New York, February 4, 1813, says, "When I was last at the seat of Government, I stated the necessity of, and my intention to purchase Flour and Whiskey at a Southern Port, for the supply of the U. S. Troops, accordingly I have purchased and paid for one thousand barrels of flour, in Alexandria, and one hundred and fifty hhd. Whiskey at Philadelphia, to be brought to this port.—The Sea risk of the whole is at my hazard, the risk of the Government is the hazard of capture. I deem it prudent for me to procure insurance in this place to the full amount of my invoices, and I beg leave to request your instructions whether I shall procure at the same time insurance against capture, to the amount, that these articles are charged to government, under my contract. I am ever desirous of receiving, and obeying the instructions of the Government."* The Secretary's answer is in these words, viz: "War Department, February 13th, 1813. Sir—Your letter of the 4th inst. has been received. You will please to state in what quantities the flour and whiskey have been shipped in the same vessel. If shipped in small parcels by different vessels, it would not seem advisable to procure any insurance. Respectfully, sir, your ob't. servant, John Armstrong." In conformity with this answer, the Petitioner declined making Insurance, and endeavoured to ship "in small parcels by different vessels" the flour and whisky, mentioned in the letter of February 4, 1813, and subsequent purchases, at Philadelphia and Baltimore, of those articles. After repeated and fruitless efforts to procure vessels to take these partial freights, the Petitioner resolved to make a single shipment of them, but early in the ensuing March the enemy's blockade became complete. Instead of subjecting the U. States, as the contract would have permitted him to do, to the imminent risk of a capture of the vessel and cargo, he preferred the safety of a land transportation; thereby incurring a certain and heavy additional expense, and saving to them a sum, equal to a premium of insurance against capture. This sum, under the existing circumstances, must have immeasurably exceeded the amount now claimed.

The Petitioner was certainly bound under his contract to transport, in some way, the flour and whisky, to New York, where they were required, and therefore only asks a reimbursement of the extra

expense of that mode of conveyance, which a regard for the public interest, and not any obligation of his contract, prompted him to adopt;—a claim obviously within the spirit and equity of the provision in that contract embracing losses by capture.

As the acts of any nation, when founded on principles of social justice, merit respect, this claim may be farther and properly illustrated by a foreign precedent. Before, and at the time of, the aforementioned blockade, and within its waters, American merchants were loading vessels, under licenses granted to them, previously to the blockade, by the British Government, to supply with breadstuffs its armies in Spain and Portugal. The consequence of the blockade, and of the perishable nature of breadstuffs, was, that large quantities of these articles decayed, and were lost, aboard the vessels in which they had been laden. In numerous instances, the British Government compensated the injured owners; thus extending to an enemy the justice which a citizen now asks from his country.

CLAIM FOR THE BALANCE OF DAMAGES ARISING FROM GENERAL HAMPTON'S INTERFERENCE.

The claim for this injury was originally \$ 14,343 75, of which sum the War Department allowed \$ 9,843 75.

The Third and Fifth articles of an agreement, between the Secretary of War and the Petitioner, supplementary to the contract of February 25, 1813, and bearing even date with it, provided that for all supplies issued and receipted for under that agreement, the Petitioner should be allowed 12½ per cent. as a full allowance for wastage, leakage and damage of whatever nature, excepting only such losses as might be occasioned by fire, water, an enemy or by the troops of the United States; and one cent for every ration which he should issue according to the terms thereof.

In pursuance of the Contract of February 25, 1813, the Petitioner in September of that year, repaired, attended by a numerous and necessary train of assistants, to the Northern frontier, in order to issue from Deposites which he had, under requisitions from the War Department, made there, and to supply any deficiency in those Deposites. For these purposes he presented himself to General Wade Hampton, who stated an intention to supply the troops, without resort to the Petitioner or respect for his contract: And thus not only obliged him to compensate largely the bakers, butchers, and other assistants, who had accompanied him; but deprived him of the benefits arising from the issue, and of highly favourable opportunities to supply deficiencies, and of opportunities, which existed at that season only of the year, to provide for contingent winter supplies. So fully aware too was the Petitioner of the injury caused to his credit and reputation by this proceeding, that he represented it to the War Department as one of the reasons which would deter him from of-

fering proposals for any future contract. In the November following, and after Gen. Hampton's extraordinary commissariship had darkened the campaign with many disasters, he required the Petitioner to resume the functions of a contractor. In obeying, the Petitioner was compelled to meet existing deficiencies, and to provide for prospective necessities, at a season when the manufacture of flour had ceased, when the procurement of the other articles constituting the rations was extremely difficult, and when the roads were almost impassable.

The Petitioner offered to the War Department evidence of his having sustained, through General Hampton's violation of the contract, damages exceeding \$20,000. The Department admitted the infraction, but, instead of examining this evidence, determined to consider as the measure of damages, the $12\frac{1}{2}$ per cent. for leakage and wastage, covenanted to the Petitioner in the Third article of the supplementary agreement, and the allowance of one cent per ration for issue, to which the Fifth article of that agreement entitled him. Though aware that an estimate of damages under this test, would reduce them considerably below the amount which he had actually sustained, the Petitioner assented to it, and was directed to obtain from the Adjutant General's Office a statement of the number of men under General Hampton's command when the breach of the contract took place. Finding this number to be 5000 men, for 90 days, the term of the suspension, by Gen. Hampton, of the Contract, the Department would allow to the Petitioner, the $12\frac{1}{2}$ per cent. only, arising under the Third article, as aforesaid, and amounting to \$9,843 75. but refused the compensation it had promised, arising under the Fifth article, and amounting to \$4,500.

The Petitioner now asks from Congress this sum, as incident to a contract of which the execution was interrupted by one of their military officers, and to the full benefit of which he is entitled; as having been deliberately promised to him by the Department of War; and as being far less than the merits of the case would justify him in claiming.

CLAIM ARISING FROM THE CAPTURE AND DESTRUCTION OF BEEF HIDES.

The Sixth article of the contract of February 25, 1813, requires the U. States to pay for, at the contract price of the rations, or the component parts, and at an appraised value of the other articles, all losses sustained by the depredations of an enemy, or by troops of the U. States, in articles intended to compose rations to be issued under that contract, as well as *for other property necessarily used in transporting the same*. In order to supply the troops with beef, a component part of the rations required by this contract, the Petitioner caused to be transported a certain number of beeves, five hundred and five hides of which were, in November and December, 1813, captured and destroyed on the Niagara frontier. The value of these hides was \$1,750, and constitutes the present claim.

There being nothing in the contract to prevent the Contractor from driving the cattle alive; that being the most eligible mode of transporting them; and the hides having thus been "*necessarily used in transporting the same*," this claim is clearly protected by the Sixth article of the contract.

The necessity of submitting this claim to the consideration of Congress, was unexpected to the Petitioner, as the very question involved in it. had been decided by the War Department in allowing to him, under the aforesaid article of his contract, \$112 for twenty-eight beef hides, captured and destroyed by the enemy at French Mills.

CLAIM FOR DAMAGE ARISING FROM RECEIVING A. PORTER'S DEPOSITE, AND CAPTURED PROVISIONS.

This claim arises under the contract of February 25, 1813, and is for \$9,190 14, the value, at 3 cents per ration, of 306,338 flour rations, the extra proportion of flour in Augustus Porter's deposite, and in captured provisions, which the Petitioner's agent received on General Dearborn's requisition.

The Petitioner's agent, James Thorne, was on June 14, 1813, required to receive a deposite previously made by Augustus Porter, and certain provisions which had been captured from the enemy. The deposite consisted of rations, of which the component parts were in proportions not authorized by the Petitioner's contract, the Second article of which requires only "eighteen ounces of bread or 'flour' to a ration, and the captured provisions were not only thus disproportionate, but damaged also. The agent was not bound by the contract to receive either, nor to receive any provisions, even in equal proportions of the component part of the rations, other than such as had been deposited by the Petitioner under that contract. In receiving them, he yielded to a peremptory military order, issued for the accommodation of the Government. Even had this act been voluntary, no loss to the Petitioner ought to result from it, because it

was not an act within the competence of Mr. Thorne's agency, which was special, and without power to bind the Petitioner beyond the obligations imposed on him by the contract. The instructions to Mr. T. expressly say "The provisions should be delivered to you, in "due proportions of all articles comprising the rations." The incapacity of an agent to "bind his principal beyond the extent of his "authority," is a settled principle which, if it needed any sanction, would find it in the Acts of Congress.

But whatever character be ascribed to Mr. Thorne's act, the Petitioner is entitled to indemnification for the loss which it inflicted on him, because "it was a loss sustained by requisitions not authorized by the contract."

The Government allowed Mr. Porter for the flour that had been deposited by him, 5 cents per ration. which together with the captured flour they afterward charged to the Contractor at 7½ cents per ration. If the damaged state of the captured flour, and the injury resulting from a want of the storehouses which the contract required the U. States to provide, be taken into the estimate, an average allowance of 3 cents per ration, on the extra quantity of flour, must be deemed moderate.

A reviving hope of attracting the attention of the War Department to this claim, deters the Petitioner from now urging in its support any additional considerations.

CLAIM FOR LEAKAGE, WASTAGE, &c. &c.

This claim is for \$5,749 06, the amount of 12½ per cent. allowance for Leakage and Wastage on the issue of the rations to the U. S. troops in descending the St. Lawrence, and of one cent per ration for the issue. It arises under the Third and Fifth articles of the aforementioned supplementary agreement, of even date with the contract of February 25, 1813, between the Secretary of War and the Petitioner.

The Petitioner feels entire confidence in the justice and strength of this claim. But as he cannot avoid still expecting that the War Department will consider an admission of it as coming within the authority of that Department, he desires to avoid the impropriety of inviting Congress to investigate what may possibly be a question of evidence merely. He now mentions it in order that his country may perceive every claim arising to him under his contracts during the War, and it is only when all hope of obtaining redress from the Executive Department becomes extinct, that he can willingly resort, in any case, to Legislative relief.

These remarks are applicable to the Petitioner's claim, also, for § 114, the value of provisions belonging to him, which were sold by John Bliss A. D. Q. M. and credited by said Bliss to the U. States; —to his claim for § 832 87 the cost of transporting 327 barrels of Flour from Handford's storehouse, on Genesee river, to Williams-

vile; and to his claim for \$12,303 37 the cost of transporting, by order of Gen. Hall, provisions from the Genesee river to Williamsville, &c. Of the strength of every and all of these claims, the Petitioner entertains no doubt, and trusts that a similar opinion at the War Department will preclude any necessity of their being submitted to the consideration of Congress.

ONE item of the Petitioner's accounts has been brought before the notice, without requiring the interposition, of Congress. After the termination, in June 1813, of a contract between the Secretary of War and Augustus Porter, certain Deposites which Mr. P. had made, were transferred to the Petitioner's special agent, on the Niagara frontier, in the vicinity of which the Petitioner had also made Deposites. By a mistake on the part of the U. S. Commandant at Fort Niagara, and of the Accounting officers, 287 barrels of hard bread, and 394 gallons of Whisky, amounting in value to \$2,593 78, were charged to the Petitioner, as a part of Mr. P's transferred Deposites, when in fact they were a part of the Petitioner's Deposites, and never had been the property of Mr. P., *nor claimed by him*. Such testimony on this subject was adduced before the Treasury Department, that the Comptroller reversed the charge, which had been thus erroneously made to the Petitioner. It, therefore, though still unpaid, makes no part of his application to Congress; because he believes the Executive Department will direct the amount to be paid to him, the proper Accounting officer having decided that it should be so paid.

THE foregoing claims, Sir, are founded on principles which, in a controversy between the Petitioner and any adversary but the Government, would oblige the courts of law and equity to award to him all that he now asks. But in cases like his, the dispensation of justice becomes at once the privilege and the duty of Congress, and in requesting your examination of his appeal to that august Assembly, he is unconscious of attempting an improper trespass on your time. The minutest scrutiny of the grounds and statements of that appeal will show that every claim which he has advanced, is meritorious, authorized by usage, responsive to the most exacting rules of evidence, and requiring compensation from the most penurious justice.

When the Petitioner recollects that during the term of the contracts under which he claims, his disbursements were nearly three millions of dollars; That neither under these, nor any other of his engagements with the Government, was he, for one moment, a defaulter: That his contracts were discharged, not with a cold obedience to their stipulations, but with a zeal for the service, which the difficult responsibilities so often, during the last war, arising to him, served only to increase: That influenced by this high motive, instead of exercising the right secured to him by the contracts of receiving thirty days notice for furnishing supplies, he provided them on immediate requisition: That this promptitude, however unusual, was, at some periods of the war, important, and at others almost vital, to military operation: That among duties not imposed on

him by his contracts, he performed without reward, and with the most exact frugality, those of Quarter Master and Storekeeper: That during the inability of the Government to make the usual and necessary advances, the Petitioner instead of retiring from his contract, exerted, with unsparing efforts, his own credit and the credit of his friends, on behalf of the public service: That so far from having expected, or obtained any extravagant gains from the contracts, these gains are not commensurate with those of an ordinary mercantile adventure, and were preceded by various and complicated risks, and a compliance, at every sacrifice on his part, with every requisition, however sudden and severe:—When the Petitioner recollects these facts, he comes before the Legislature of his country not only without embarrassment, but with all the confidence which a just cause, and the candour of his judges can inspire.

Each of these claims, so soon as it was ascertained, he made known to the War Department; and surely it is not the greatest of his offences that he forbore, so far as forbearance was possible, to urge them on an exhausted Treasury. They are now submitted to the consideration of Congress, with undoubting reliance, that should its enlightened wisdom sanction the views of them that the Petitioner has exhibited, he will obtain the relief which a tender regard for the purity of public faith may suggest to its Constitutional guardians, and which a citizen, who serves his country well and devotedly in the hour of her peril, has a right to expect in the hour of her peace and prosperity.

I am, Sir, very respectfully,
Your Fellow citizen,
ELBERT ANDERSON.

Washington, April 12, 1826.

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APPENDIX:

CONTAINING

CONTRACTS, &c, WITH THE WAR DEPARTMENT,

FOR THE

SUPPLY AND ISSUE OF PROVISIONS

FOR THE

Army within the State of New York, &c.

FOR THE YEAR 1812....13....14,

WITH

ELBERT ANDERSON,

LATE AN ARMY CONTRACTOR.



WASHINGTON CITY:

PRINTED BY WILLIAM COOPER, JUN.

.....

1826.

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APPENDIX.



CONTRACT,

Dated 7th November, 1811, to take effect on the 1st day of June, 1812, and terminate on the 31st day of May, 1813: and supplementary Agreement for the issue of Rations from deposits made under this Contract.

ARTICLES OF AGREEMENT made on the 7th day of November, Anno Domini one thousand eight hundred and eleven, between William Eustis, Secretary for the Department of War of the United States of America, of the one part, and Elbert Anderson, Junior, of the city of New York, of the other part.

This Agreement Witnesseth, That the said William Eustis for and on behalf of the United States of America, and the said Elbert Anderson, Jun. his heirs, executors and administrators, have mutually covenanted and agreed, and by these presents do mutually covenant and agree to and with each other, as follows, *viz* :

First. That the said Elbert Anderson, Jun. his heirs, executors or administrators, shall supply, and issue all the rations. to consist of the articles hereinafter specified, that shall be required of him or them for the use of the United States, at all and every place or places where troops are or may be stationed, marched or recruited within the limits of the State of New York (Niagara and its dependencies excepted) and the State of New Jersey, thirty days notice being given of the post or place where rations may be wanted, or the number of troops to be furnished on their march, from the first day of June, eighteen hundred and twelve, until the thirty-first day of May, eighteen hundred and thirteen, at the following prices; that is to say, at any place where rations shall be issued within the city and harbour of New York for thirteen cents five mills per ration, within all other parts of the state of New York at fourteen cents per ration, and within the state of New Jersey for fifteen cents five mills per ration. Where the price of the ration is thirteen cents five mills, the component parts thereof shall be, for meat five cents, bread or flour four cents, liquor three cents five mills, small parts one cent. Where the price of the ration is fourteen cents, the component parts thereof shall be for meat five cents five mills, flour or bread four cents,

liquor three cents five mills, small parts one cent. Where the price of the ration is fifteen cents five mills, the component parts shall be, for meat six cents, flour or bread five cents five mills, liquor three cents, small parts one cent. The prices of the component parts of the small parts of the ration shall be eighteen cents per pound for candles, twelve cents five mills per pound for soap, four cents five mills per quart for vinegar, and two cents five mills per quart for salt.

Second. That the ration to be furnished and delivered by virtue of this contract, shall consist of the following articles, *viz*: One pound and a quarter of beef, or three quarters of a pound of pork, eighteen ounces of bread or flour, one gill of rum, whiskey or brandy, and at the rate of two quarts of salt, four quarts of vinegar, four pounds of soap, and one pound and an half of candles, to every one hundred rations.

It is understood, that it shall be in the option of the general, or officer commanding an army or a great military district, in all cases not otherwise provided for by this contract, to direct when and how often fresh or salted meat shall be issued by general orders, to be promulgated a reasonable time before the issue is to commence; that in all cases where salted provisions are issued, the article of salt shall not be required; that the contractor shall always issue flour two days in every week, and the option of bread or flour for the remainder of the week be with the contractor.

Third. That supplies shall be furnished by the said Elbert Anderson, Jun. his heirs, executors or administrators, at the fortified places and military posts, that are or may be established in the states of New York and New Jersey aforesaid upon the requisition of the commandant of the army or a post, in such quantities as shall not exceed what is sufficient for the troops to be there stationed, for the space of three months in advance, in good and wholesome provisions, consisting of due proportions of all the articles forming the ration. And the said Elbert Anderson, Junior, when required by the Secretary of War, shall, instead of the ardent spirits mentioned, furnish to the troops of the United States, stationed in the harbor of New York, an equivalent in good malt liquor or light wines, at such season of the year, as in the opinion of the President of the United States, may be necessary for the preservation of their health.

It is understood that if the contractor shall be required to deposit provisions at one place or post and shall afterwards be required to move them, to be delivered at another place or post, the expenses of transportation to such other place or post shall be borne by the United States. It is also understood that all supplies are to be originally delivered at the posts where they may be required, without expense to the United States.

Fourth. That whenever and as often as the provisions stipulated to be furnished under this contract, shall, in the opinion of the commanding officer of the post or place, where they are offered to be issued, be unsound, unfit for use, or of an unmerchantable quality, a survey shall be held thereon, by two disinterested persons, one to be chosen by the commanding officer, and the other by the said

Elbert Anderson, or his agent, and in case of disagreement, a third person to be chosen by mutual consent, who shall have power to condemn such part of the provisions as to them may appear unfit for use. But if the said Elbert Anderson, Jun. or his agent, shall fail, or neglect to appoint a person to inspect the said provisions, after reasonable notice in writing, it shall be permitted to the said commanding officer to appoint such persons as he may think proper, to inspect the provisions, under oath, with power to condemn, as aforesaid. And all provisions condemned by such survey may be destroyed by the commanding officer.

Fifth. That the commanding general, or person appointed by him, at each post or place, in case of absolute failure, or deficiency, in the quantity of provisions contracted to be delivered and issued, shall have power to supply the deficiency by purchase, at the risque and on account of the said Elbert Anderson, Jun. his heirs, executors or administrators.

Sixth. That all losses sustained by the depredations of an enemy, or by means of the troops of the United States, in articles intended to compose rations, to be issued under this contract, being the property of the contractor, as well as in other property necessarily used in transporting the same, shall be paid for at the contract price of the rations, or the component parts, and at an appraised value of the other articles, on the deposition of one or more creditable characters, and the certificate of a commissioned officer, when the same can be obtained, ascertaining the circumstances of the loss, and the amount of the articles for which compensation is claimed.

Seventh. That escorts and guards for the safety of the provisions, and for the protecting of the cattle against an enemy shall be furnished, whenever in the opinion of the commanding officer of the army, or of any post, to whom application may be made, the same can be done without prejudice to the service, and that the said Elbert Anderson, Jun. his heirs, executors or administrators shall not be answerable for any deficiency of supplies, at any of the said posts or places, if it shall appear, upon satisfactory proof, that such deficiency was occasioned by the want of proper escorts and guards.

Eighth. That at all stationary posts, proper store-houses shall be provided on behalf of the public, for the reception and safe-keeping of the provisions deposited from time to time, at such posts respectively; and the contractor shall suffer no loss for want of such stores.

Ninth. That the said Elbert Anderson, Jun. his heirs, executors or administrators, shall render his or their accounts to the Accountant of the Department of War, for settlement, at least once in every three months, agreeably to such form as by the said Accountant may be established and made known to

Tenth. That all such advances of money as may be made to the said Elbert Anderson, his heirs, executors or administrators, for and on account of the supplies to be furnished, pursuant to this contract, and all such sums of money as the commanding officer of the troops

or recruits that are or may be within the States above mentioned, may cause to be disbursed, in order to procure supplies, in consequence of any failure on the part of the said Elbert Anderson, Jun. his heirs, executors or administrators in complying with the requisitions herein contained, shall be duly accounted for by him or them by way of set-off against the amount of such supplies, and the surplus if any, repaid to the United States, immediately after the expiration of the term of this contract, together with an interest at the rate of six per centum, per annum, from the time of such expiration, until the same shall be actually repaid. And that if any balance shall, on any settlement of the accounts of the said Elbert Anderson, Jun. his heirs, executors or administrators, be found to be due to him or them on account of the rations which shall be supplied, pursuant to this agreement, the same shall immediately be paid. And that no unreasonable or unnecessary delay, on the part of the officers of the United States, shall be given to the settlement of the accounts of the said Elbert Anderson, Jun. his heirs, executors or administrators. Provided however, that no member of Congress, shall be admitted to any share or part of this contract or agreement, or to any benefits to arise therefrom.

IN WITNESS whereof, the said Secretary of War, for and on behalf of the United States, hath hereunto subscribed his name, and affixed the Seal of the War Office of the United States; and the said Elbert Anderson, Junior, hath hereto set his hand and seal the day and year first above written.

W. EUSTIS.

(SEAL U. S.)

ELBERT ANDERSON, JUN.
(L. S. E. A.)

Signed sealed, and delivered }
in the presence of }
DANIEL PARKER,
JOHN J. ABERT.

A true copy from the original.

WHEREAS, by a certain agreement made on the seventh day of Nov., 1811, between W. Eustis, Secretary of War, and Elbert Anderson, Jun. of the State of New-York, it was stipulated, that the deposits of three &c. months supplies of rations may be required. Now therefore it is agreed by the order of the said W. Eustis to Major-General H. Dearborn, that when issues are required from the public deposits, that he might call on the said Elbert for that purpose.

First. That an inventory shall be taken as soon as possible, which shall comprise all such supplies as shall have been actually

delivered on or before the last day of May, 1813, next, by virtue of the said agreement, and shall on that day remain unexpended.

Second. That the inventory shall be taken in the presence of the commanding officer of the post, and the party of the second part of this agreement, or his agent, and duplicate receipts given therefor by the said party of the second part, or his agent, expressing the quantity and quality of each article, or delivery to be made by the public store-keepers or other agents who have charge of the deposits.

Third. That the party of the second part shall account to the United States for all the supplies which shall be receipted for, as in the preceding article, he being allowed however a deduction of twelve and a half per cent. as a full allowance for wastage, leakage and damage of whatever nature, excepting only such losses as may be occasioned by fire, water, an enemy, or by the troops of the United States.

Fourth. That the party of the second part shall issue all the supplies as aforesaid, to the troops at the several posts, in rations to consist as follows, viz :

Eighteen ounces of bread or flour.

One pound and a quarter of beef, or three quarters of a pound of pork.

One gill of rum, brandy or whiskey.

And at the rate of two quarts of salt, four quarts of vinegar, four pounds of soap, and one pound and an half of candles to every hundred rations.

Fifth. That the said party of the first part shall pay or cause to be paid to the said party of the second part, one cent for every ration which he shall issue as before recited, as a full compensation for his trouble and expense in issuing the same.

IN WITNESS whereof, the said *H. Dearborn*, in behalf of the Secretary of War, on behalf of the United States, hath hereunto subscribed his name, and affixed his seal; and the said *Elbert* hath hereto set his hand and seal the day and year last above written.

H. DEARBORN. (L. S. H. D.)

ELBERT ANDERSON.
(L. S. E. A.)

Signed, sealed and delivered, }
in the presence of }

A true copy from the original.

War Department, November 27, 1812.

SIR,

In my letter of October 29th, you were advised that arrangements would be made with the contractors for issuing the deposits of provisions which had been required of them. Messrs. Anderson and Byers expressed a willingness to make the issues;

and in case you should find it for the public interest to employ them in preference to other agents, you are authorized to fill the blank attached to their contracts accordingly.

I have the honour to be, very respectfully, Sir, your ob't servant,

W. EUSTIS.

Major-General Henry Dearborn, Plattsburg.

A true copy from the original.

Washington, Dec. 28, 1812.

The Honble Sec. at War.

SIR,

In behalf of myself and associates, I will *supply* all rations that may be required for the troops of the United States, marched, stationed or recruited within the City and Harbor of New York, at Greenbush, from the first day of June, 1813, to 31st May, 1814, at 14 cents 8 mills, to viz :

Meat	5 5
Liquor	3 5
Small parts	1
Bread or Flour	4 8

14 8

In all other parts State of New-York, including its northern vicinity as far as St. John's, on Lake Champlain, at 17 cents 5 mills, to wit,

Meat	5 5
Liquor	3 5
Small parts	1
Bread or Flour	7 5

17 5

For the State New-Jersey, 16 cents 2 and an half mills per ration.

If the troops U. States should enter the Canadas at any time previous to the 31st May, 1814, this proposal will embrace all supplies that may be required in the enemy's country, from Fort George along the shores of Lake Ontario and the river St. Lawrence, until it intersects the out-let of Lake Champlain.

The price of the rations to be *augmented* in proportion to the difficulty and expense of transporting in the enemy's country, with a reserve on the part of the United States to reduce the component price of the bread ration, to bear a *proportionate value* to the other parts of the ration, when the price of bread-stuff shall, in the opinion of the Honorable Sec'y at War, justify such alteration or reduction.

The Honorable Sec'y at War will perceive that the price of the component parts of the rations are the same as the present contract, the bread or flour excepted : And that the price of this article is not in proportion to its increased value and *alarming scarcity* of bread on the northern frontier.

When the price of the bread ration is 4 cents 8 mills, the value of flour is at the ratio of \$8 35 per barrel, when the flour ration is estimated at 6 cents 2½ mills, note, the value of Flour is only 10 dollars 87½ cents per barrel.

It is believed that all the other component parts of the rations are estimated as low as possible: The article of liquor bearing the highest proportion, being subject to great leakage and wastage; and in consequence of the partial importations of foreign spirits, and the very high price of grain in our own country, there must be an inevitable rise take place in the value of home distilled spirits.

The aforesaid proposal is made without reference or regard to any opposition bid, but from a perfect knowledge of the intrinsic value of the articles contracted to be delivered and issued, and the difficulty of obtaining bread-stuff and liquor, without transporting from southern Atlantic ports, early in the spring, to places contiguous to the Northern Frontier.

All of which is humbly submitted by

(signed) Your ob't servant,
ELBERT ANDERSON, Jr.

NOTE.—The transportation of flour from the Hudson to Lake Champlain is equal to 1 cent 2½ mills per ration on Flour.
Department of War, Aug. 16, 1823. E. A. JUN.

A true copy,

C. VANDE VENTER.

War Department, February 8, 1813.

Sir—

On examining the different proposals made for subsisting the army for one year, after the 1st of June next, within the state of New-York and its Northern vicinity, I have given the preference to yours. It would be well therefore you should repair to this place as promptly as possible, that the contract may be closed.

I am, &c.

JOHN ARMSTRONG.

E. Anderson, Jun. Esq. N. York.

CONTRACT,

Dated 25th February, 1813, to take effect on the 1st day of June, 1813, and terminate on the 31st day of May, 1814: and supplementary Agreement for the issue of Rations from deposits made under this Contract.

ARTICLES OF AGREEMENT made on the twenty-fifth day of February, Anno Domini, one thousand eight hundred and thirteen, between John Armstrong, Secretary for the Department of War of the United States of America, of the one part, and Elbert Anderson, Junior, of the City of New-York, of the other part.

This Agreement witnesseth, that the said John Armstrong, for and on behalf of the United States of America, and the said Elbert Anderson, Jun. his heirs, executors, and administrators, have mutually covenanted and agreed, and by these presents do mutually covenant and agree to and with each other, as follows, viz :

First.—That the said Elbert Anderson, Jun. his heirs, executors or administrators, shall supply and issue all the rations, to consist of the articles hereinafter specified, that shall be required of him or them for the use of the United States, at all and every place or places where troops are or may be stationed, marched, or recruited, within the limits of the State of New-York and the Western and Northern vicinity, within the Canadas, thirty days' notice being given of the post or place where rations may be wanted, or the number of troops to be furnished on their march, from the first day of June, eighteen hundred and thirteen, to the thirty-first day of May, eighteen hundred and fourteen, both days inclusive, at the following prices; that is to say: at any place where rations shall be issued within the City and Harbor of New-York, and at the encampment of Greenbush, at fourteen cents eight mills the ration. At all other places within the state of New-York and the Canadas. at seventeen cents five mills per ration; provided however. that for all rations required within the enemy's territory, the price of the ration shall be augmented in proportion to the expense of transportation and issue in the enemy's country, the supplies having been delivered on account of Government at magazines designated for that purpose, within the state of New-York; and when it may become necessary, the public agents, boats and teams shall be employed in transporting from such depots by order of the Commanding General, on representation of the Contractor, or his proper agent, that such transportation cannot be furnished independently of the army assistance; Provided also, that the Contractor shall at all times have reasonable notice, when and where deposits are to be made for transportation into the enemy's country, as well as the amount required for that purpose. Where the price of the ration is fourteen cents eight mills, the prices of the component parts of the same shall be, for meat five cents five mills; for bread or flour four cents eight mills; liquor three cents five mills, small parts one cent. Where the price of the ration is seventeen cents five mills, the prices of the component parts

of the same shall be, for meat five cents five mills; bread or flour seven cents five mills; liquor three cents five mills; small parts one cent. The prices of the component parts of the small parts of the ration shall be, eighteen cents per pound for candles; twelve cents five mills per pound for soap; four cents five mills per quart for vinegar; and two cents five mills per quart for salt; Provided also, that the thirty days notice required to be given by the government of the post or place where rations may be wanted shall not be understood to apply when the rations shall be taken from any deposit previously made on account of the Government.

Second. That the ration to be furnished and delivered by virtue of this contract, shall consist of the following articles, viz: one pound and a quarter of beef, or three quarters of a pound of pork; eighteen ounces of bread, or flour; one gill of rum, whiskey, or brandy; and at the rate of two quarts of salt, four quarts of vinegar; four pounds of soap, and one pound and a half of candles, to every one hundred rations.

It is understood that it shall be in the option of the General, or Officer commanding an army or a great military district, in all cases not otherwise provided for by this contract, to direct when and how often fresh or salted meat shall be issued, by General orders, to be promulgated a reasonable time before the issue is to commence; that in all cases where salted provisions are issued, the article of salt shall not be required; that the Contractor shall always issue flour two days in every week, and the option of bread or flour for the remainder of the week be with the Contractor.

Third. That supplies shall be furnished by the said Elbert Anderson, Jr. his heirs, executors, or administrators, at the fortified places and military posts, that are or may be established in the limits aforesaid, upon the requisition of the Commandant of the army, or a post, in such quantities as shall not exceed what is sufficient for the troops to be there stationed, for the space of three months in advance, in good and wholesome provisions, consisting of due proportions of all the articles forming the ration.

It is understood that if the Contractor shall be required to deposit provisions at one place or post, and shall afterwards be required to move them, to be delivered at any other place or post, the expenses of transportation to such other place or post, shall be borne by the United States. It is also understood that all supplies are to be originally delivered at the posts where they may be required, without expense to the United States.

Fourth. That whenever and as often as the provisions stipulated to be furnished under this contract, shall, in the opinion of the commanding officer of the post or place where they are offered to be issued, be unsound, unfit for use, or of an unmerchantable quality, a survey shall be held thereon, by two disinterested persons, one to be chosen by the commanding officer, and the other by the said Elbert Anderson, Jun. or his agent, and in case of disagreement, a third person to be chosen by mutual consent, who shall have power to condemn such part of the provisions as to them may appear unfit for

use. But if the said Elbert Anderson, Jun. or his agent, shall fail or neglect to appoint a person to inspect the said provisions, after reasonable notice in writing, it shall be permitted to the said commanding officer to appoint such persons as he may think proper to inspect the provisions, under oath, with power to condemn as aforesaid. And all provisions condemned by such survey or inspection, may be destroyed by the Commanding Officer.

Fifth. That the commanding general, or person appointed by him, at each post or place, in case of absolute failure, or deficiency in the quantity of provisions contracted to be delivered and issued, shall have power to supply the deficiency by purchase, at the risk and on account of the said Elbert Anderson, Jun. his heirs, executors or administrators.

Sixth. That all losses sustained by the depredations of an enemy, or by means of the troops of the United States, in articles intended to compose rations, to be issued under this contract, being the property of the Contractor, as well as in other property necessarily used in transporting the same, shall be paid for at the contract price of the rations, or the component parts, and at an appraised value of the other articles, on the deposition of one or more credible characters, and the certificate of a commissioned officer, when the same can be obtained, ascertaining the circumstances of the loss, and the amount of the articles for which compensation is claimed.

Seventh. That escorts and guards for the safety of the provisions, and for the protecting, of the cattle against an enemy, shall be furnished, whenever, in the opinion of the commanding officer of the army, or of any post, to whom application may be made, the same can be done without prejudice to the service. and that the said Elbert Anderson Jun. his heirs, executors or administrators, shall not be answerable for any deficiency of supplies, at any of the said posts or places, if it shall appear, upon satisfactory proof, that such deficiency was occasioned by the want of proper escorts and guards.

Eighth. That at all stationary posts, proper storehouses shall be provided on behalf of the public, for the reception and safe-keeping of the provisions deposited from time to time, at such posts, respectively; and the Contractor shall suffer no loss for want of such stores.

Ninth. That the said Elbert Anderson, Jun. his heirs, executors or administrators, shall render his or their accounts to the accountant of the department of war, for settlement, at least once in every three months, agreeably to such form as by the said accountant may be established and made known to him or them.

Tenth. That all such advances of money as may be made to the said Elbert Anderson, Jun. his executors or administrators, for and on account of the supplies to be furnished pursuant to this contract, and all such sums of money as the commanding officer of the troops or recruits that are or may be within the limits aforesaid may cause to be disbursed, in order to procure supplies, in consequence of any failure on the part of the said Elbert Anderson, Jun. his heirs, executors or administrators, in complying with the requisi-

tions herein contained, shall be duly accounted for by him or them by way of set-off against the amount of such supplies and the surplus, if any, repaid to the United States, immediately after the expiration of the term of this contract, together with an interest at the rate of six per centum per annum, from the time of such expiration, until the same shall be actually repayed. And that if any balance shall, on any settlement of the accounts of the said Elbert Anderson, Jun. his heirs, executors or administrators, be found to be due to him or them, for or on account of the rations which shall be supplied pursuant to this agreement, the same shall immediately be paid. And that no unreasonable or unnecessary delay, on the part of the officers of the United States, shall be given to the settlement of the accounts of the said Elbert Anderson, Jun. his heirs, executors or administrators. Provided however, that no member of congress shall be admitted to any share or part of this contract, or to any benefit to arise therefrom.

IN WITNESS whereof, the said secretary of war, for and on behalf of the United States, hath hereunto subscribed his name, and affixed the seal of the war office of the United States; and the said Elbert Anderson hath hereto set his hand and seal the day and year first above written.

(Seal of the War Office.)

JOHN ARMSTRONG.

ELBERT ANDERSON, JUN.

*Signed, sealed, and delivered, }
in the presence of }
DANIEL PARKER,
GEORGE BOYD.*

Whereas by a certain agreement made on the twenty-fifth day of February, eighteen hundred and thirteen, between John Armstrong, Secretary of War, and Elbert Anderson, Jun. of the State of New York, it was stipulated that Magazines of Provision may be required of the said Anderson, for the armies and troops of the United States. Now therefore, it is agreed between the said John Armstrong and Elbert Anderson, Junior :

First. That whenever deposits are ordered and have been made accordingly, an inspection shall be had, and an inventory shall be taken as soon as practicable, which shall comprise all such supplies as shall have been actually deposited for the United States by virtue of the said Agreement, and a certificate of such inspection and inventory furnished to the said Elbert Anderson, Jun. or his agent.

Second. That when issues are to be made from such deposites, the said Anderson, or his agent, shall be called on for that purpose, and duplicate receipts given therefor by the said party of the se-

cond part or his agent, expressing the quantity and quality of each article.

Third. That the party of the second part shall account to the United States for all the supplies which shall be receipted for, as in the preceding article, he being allowed however a deduction of twelve and an half per cent. as a full allowance for wastage, leakage, and damage of whatever nature, excepting only such losses as may be occasioned by fire, water, an enemy, or by the troops of the United States.

Fourth. That the party of the second part shall issue all supplies as aforesaid to the troops at the several posts, in rations to consist as follows, viz :

Eighteen ounces of bread or flour.

One pound and a quarter of beef, or three quarters of a pound of pork.

One gill of rum, brandy or whisky.

And at the rate of two quarts of salt, four quarts of vinegar, four pounds of soap, and one pound and an half of candles to every hundred rations.

Fifth. That the said party of the first part shall pay, or cause to be paid, to the said party of the second part, one cent for every ration which he shall issue as before recited, as a full compensation for his trouble and expense in issuing the same, the transportation being furnished by the government when the same may become necessary, and always at the public expense within the enemy's country.

IN WITNESS whereof, the said Secretary of War, on behalf of the United States, hath hereunto subscribed his name, and affixed the seal of the War Office of the United States; and the said Elbert Anderson hath hereunto set his hand and seal the day and year last above written.

(Seal of the
War Office.)

JOHN ARMSTRONG.

ELBERT ANDERSON, Jun.

Signed, sealed and delivered, }
in the presence of }
DANIEL PARKER,
GEORGE BOYD.

KNOW ALL MEN BY THESE PRESENTS, That we, Elbert Anderson, junior, of the City of New York; Theodorus Bailey of the same city; Thomas Ward of New Ark, New Jersey; Thomas Jenkins of Hudson (N. Y.) Elisha Jenkins of Albany (N. Y.) James Thorne of Albany (N. Y.) and Isaiah Townsend of Albany (N. Y.) are held and firmly bound unto the United States of America, in the sum of one hundred thousand dollars, lawful money of the said

United States, to be paid to the said United States, for which payment well and truly to be made, we bind ourselves and each of us, our and each of our heirs, executors, and administrators, for and in the whole, jointly and severally, firmly, by these presents. Sealed with our seals; dated the twentieth day of March in the year of our Lord one thousand eight hundred and thirteen, and in the thirty-seventh year of the independence of the said states.

THE CONDITION OF THIS OBLIGATION IS SUCH, That if the above bounden Elbert Anderson, Jun. his heirs, executors, or administrators, or any of them, shall and do in all things well and truly observe, perform, fulfil, accomplish, and keep, all and singular the covenants, conditions, and agreements whatsoever, which, on the part and behalf of the said Elbert Anderson Jun. his heirs, executors, or administrators, are or ought to be observed, performed, fulfilled, accomplished, and kept, comprised or mentioned in certain articles of agreement or contract bearing date twenty-fifth day of February eighteen hundred and thirteen, for supplying rations within the limits of the state of New York and the western and northern vicinity within the Canadas, from the first day of June eighteen hundred and thirteen, to the thirty-first day of May eighteen hundred and fourteen, both days inclusive, according to the true intent, meaning, and purport, of the said articles of agreement or contract, then the above obligation to be void, otherwise to remain in full force and virtue.

		Elbert Anderson, Jun. (Seal.)
		Theodorus Bailey (Seal.)
Sealed and delivered in the } presence of }		Thomas Ward (Seal.)
		Thomas Jenkins (Seal.)
A. Wiley } J. R. Bailey }	Witnesses to the signatures of Elbert Anderson, Jr.	Elisha Jenkins (Seal.)
	Theo. Baily and Thos. Jenkins.	James Thorne (Seal.)
Isaac Ward } Eliza Ward }	Witnesses to the signature of Thos. Ward.	Isaiah Townsend (Seal.)
John Townsend } Peter Townsend }	Witnesses to the signatures of Elisha Jenkins, James Thorne and Isaiah Townsend.	

TREASURY DEPARTMENT,

Register's Office, 23d March, 1826.

PURSUANT to "An Act providing for the prompt settlement of public accounts," approved 3d March, 1817, I, *Joseph Nourse*, Register of the Treasury of the United States, do hereby certify, that the foregoing is a true copy of the bond and contract of Elbert Anderson; the original of which is on file in this Department.

JOSEPH NOURSE, *Register.*

BE IT REMEMBERED, That *Joseph Nourse, Esq.* who certified the foregoing transcript, is now, and was at the time of doing so, Register of the Treasury of the United States, and that faith and credit are due to his official attestations.

IN TESTIMONY WHEREOF, I, Richard Rush, Secretary of the Treasury of the United States, have hereunto subscribed my name, and caused to be affixed the seal of this Department, at the city of Washington, this twenty-third day of March, in the year of our Lord one thousand eight hundred and twenty-six.

(Seal of the Treasury Department.)

RICHARD RUSH,

Secretary of the Treasury.

War Department, May 17, 1813.

SIR,

Your letter of the 12th inst. has been received; orders have been given regulating provision returns, a copy of which will be transmitted to you. The superintendant General of military supplies has been instructed relative to the kind and form of vouchers necessary to entitle you to a credit for deposits.

I am, Sir, Yours, &c.

JOHN ARMSTRONG.

Elbert Anderson, Jun. Army Contractor.

CIRCULAR—INSTRUCTIONS.

In addition to my Circular of the 20th May, (a duplicate of which you will find inserted below) I now enclose you the President's Proclamation, announcing a Declaration of War against Great Britain and her Dependencies. At this important epoch in the history of our country, it becomes me in my official capacity to call your attention to the duties assigned to you respectively, as Agents or Sub-Contractors for the supply and issue of rations to the troops of the United States.

Your principal has contracted with the government to supply all rations that may be required in the states of New-York and New-Jersey, containing a maritime frontier extending from the Eastern extremity of Long-Island to the capes of the Delaware, and of a Northern inland frontier from Niagara to the outlet of Lake Champlain. You must, at one view, perceive the seat of war your country is justly and necessarily engaged in, and your united exertions are of the utmost importance in the contest for our rights as an independent nation. You are associated with your principal in the share of censure, if censure is due, and you are to partake with him in the applause that your countrymen may be disposed to give your honest exertions. For the want of activity and industry in the general and subordinate concerns of this department, disasters may

occur that *might otherwise have been avoided, if the proper steps required of you had been taken in time.* You have previously been instructed to look to the resources of your district, and to inform me, at proper intervals, what reliance can be placed on your district, county or town, for supplies that may be required. This necessary information will enable me to communicate with the Commanding General, and state to him where and how supplies may be had with the least inconvenience to the public service. By possessing this information, it will give me time to meet any scarcity in your district, by transporting supplies from other places, or either of the depositories.

You have likewise been instructed not to offer or issue any provision that should appear unsound, or of an unmerchantable quality. For this purpose, it will be necessary for you to be extremely vigilant, frequently examining the state of your *issues*, and take especial care that your salt provision at this season of the year has its proper quantity of salt, and each barrel full of good pickle. Our country is blessed with plenty of *wholesome food*; and as the health and vigor of the Army depend, in a great measure, on a strict and faithful fulfilment of your duties, you are seriously to reflect if, at this crisis, your talents and resources are fitted for the station you now hold; and should you conclude to decline this Agency, you will immediately inform me, so that other arrangements may be made in season.

In addition to the just and proper scrutiny of the officers of the army, the eyes of the public will be continually upon you; and without the greatest prudence and discretion on your part, your station at this time will excite the envy of some, and the jealousy of others. You are not now to learn, that men are as different in their sentiments and opinions as in their countenances and numbers; consequently you may expect that your best exertions will not always be rewarded, and that universal satisfaction is not to be expected—but this will not deter you from doing your duty. You will listen to objections against your provisions with patience, and investigate any complaints with temper and moderation; at the same time you will maintain your own rights, and the just rights of your principal, with dignity and firmness. Go straight forward in the path of your duty, and you will sooner or later obtain the good opinion of the Officers, the love and respect of the Soldiers, and what is more, the approbation of your own conscience.

You will have the enclosed instructions made known to those who supply Recruiting Rendezvous in your district: and it will be proper at this time to give publicity to that article of the contract which regulates the condemnation of unmerchantable provisions.

The Contractor requires all Agents and Sub-Contractors to issue, on the 4th of July next, one gill of whisky to each man in his district, and one bushel of peas or beans to every sixty men, or an equivalent in other vegetables, being extra from their allowance by law, which issue will be charged to me when you transmit your next account, separately from the abstract.

ADDITIONAL INSTRUCTIONS.

IT is necessary for every issue to be accompanied by a regular Provision Return, signed by the commanding officer; if one or more companies are stationed at a post or place, the senior officer on command, will embrace the whole number as per form annexed; otherwise the signature of the senior officer will be required to each company return; but it being more consistent with military practice to embrace the whole issue in one schedule, the contractor will issue the whole, or distribute to each company. At the end of each month these returns will be inserted in an abstract, from the commencement to the end of the *calendar month*, in the form and manner prescribed. If any extra liquor, or other parts of a *ration* are issued, the total amount of rations issued, and the extra, (if any) must be *inserted in words at full length*, at the foot of the provision return, as well as in the body of the certificate of the monthly abstract. The column of *remarks*, should always explain to whom the issue is made, "*to troops on a march*," "*to militia*," &c. at a station.

Your's Respectfully,

ELBERT ANDERSON, JR. *Contractor.*

DECISION ON THE CASK CLAIM.

(Copy from the Records of the War Office.)

War Department, October 13, 1814.

SIR,

Your letter of the 3d instant, enclosing the contract, correspondence and accounts of James Byers Esqr. Contractor, has been received.

The question submitted to this Department appears to have been anticipated in Mr. Byers' proposal of January 27th 1812, to furnish the deposits referred to, reserving to himself a claim on the Government for reasonable and equitable allowance beyond the price stipulated in his contract for all supplies furnished before that contract should take effect. It does not appear by the contract referred to, that Mr. Byers was bound to furnish casks and boxes, or in other words, it does appear that when the rations were issued the casks and boxes belonged to the contractor. If therefore, the casks, boxes, &c. have not been returned to him and are charged at a fair price, the amount should be passed to his credit.

I am, Sir, very respectfully,

Your obedient servant,

(signed)

JAS. MONROE.

Col. T. Lear, Acct. of the War Dept.

A true copy,

C. VANDE VENTER.

Dept. of War, 16th August 1823.

The general principle to pay for casks, boxes, &c. that had been left with provision in Depot, was practically acted upon by the Accountant Department, and, among other cases, a contemporaneous contractor, Mr. Byers, who, by the Third Auditor's Report of 22d March 1826, received \$ 14,502 49; and the same principle was extended to M. L. Davis, a successive contractor to Mr. Anderson, who was allowed as per report aforesaid, on the 17th January 1815, \$ 2,814 57, for casks, &c. with provisions delivered in depot. at New York, in December 1814; now the claimant's provision and packages as before observed were charged in his accounts, and were delivered contemporary with Mr. Byers, in 1812—13—14; the new version or interpolation to the general principle was written on the original document about March 1815, at the time of the *pro forma* exhibition of Mr. Anderson's account current. To do justice to the views of the Executive Dept. who *then* gave this new construction a special operation, it could be only meant to bar claims arising out of subsequent contracts. It is the accounting officers who have applied the ex-post-facto construction to the injury of Mr. Anderson, and not the "ultimate decision" itself.

"The above allowance to Mr. Byers for casks and boxes, was intended to compensate him for his trouble and expense sustained in supplying rations, and making deposits before his contract commenced; and no allowance for casks or boxes must be made, except in cases of special contract with this Department.

(Signed)

JAMES MONROE."

ON COMPENSATION FOR DEPRECIATION OF TREASURY NOTES.

Washington, July 11th, 1815.

SIR,

I recollect receiving the letter addressed to me by you while I was in the Department of War, bearing date on the 4th January last, and am satisfied that I assured you that you should sustain no loss which I could prevent—The troops in the Eastern States were in great distress. I was aware of the depreciation of Treasury notes; it was indispensable to supply the troops, and it seemed to be just that, as the government could not furnish you with a paper which circulated at par in that quarter, you ought to be indemnified against the loss arising from the depreciation.* I considered your case, at the time, as rendered peculiar by the situation of the troops,

and the exigency of the public service in the quarter to which your contract applied.

I am, sir, with great respect,
Your very ob'dt servant,
Signed, JAMES MONROE.

James Byers, Esq.

True copy.

PETER HAGNER, Auditor.

* This letter was applied to the claim of James Byers; the principle however is general, and shows the just and enlightened views of the *writer*. The *case* of the present claimant was stronger, and required the peculiar protection of the U. States—his *state and district* was the actual seat of war; both Southern and Northern Frontiers menaced and invaded by a vindictive foe, and the constant and unexpected calls for the Militia had to be met by immediate supplies.

**SECRETARY CRAWFORD'S DECISION ON ALLOWANCE
TO CONTRACTORS FOR DAMAGES & INTEREST.**

The Accountant in settling the accounts of the Contractors for 1814-15, will allow all claims supported by evidence of loss sustained by payment of interest or damages, in consequence of the department being unable to make the necessary advances.

Also all losses sustained upon the issue of rations, not requirable by the contract.

All claims arising from loss sustained by requisitions not authorized by the contract.

The Contractors will be required to account for all premiums received upon the sale of bills negotiated by them on the Government.

(Signed)

W. H. CRAWFORD.

Received by the Accountant 27th January, 1816, from the Secretary of War.

True copy,

PETER HAGNER, Auditor.

**PRACTICAL OPERATION OF THE FOREGOING DECISIONS BY THE
ACCOUNTANT DEPARTMENT.**

Treasury Department,

Third Auditor's Office, 22d March, 1826.

SIR,

I have the honor to return the letter of the Honorable C. C. Cambreling of the 18th instant, wherein he asks that Mr. Ander-

son be furnished with information to whom and what sums have been paid for interest, and damages on protested bills of exchange, under the decision of the Secretary of War, of the 27th January, 1816, and to whom and what allowances have been made by the Department for casks, boxes, &c. under two decisions, one by President Madison, and the other by the Secretary of War, and which you have referred to me for a report of the facts in the case of allowances referred to by Mr. Cambreling.

I have accordingly the honor to state that the following credits have passed in the cases referred to, in a memorandum accompanying the letter stated to have been derived from Mr. Anderson, viz: Under the rule laid down by the Secretary of War, of the 27th January, 1816, Ward and Taylor, under their contract of 21st March, 1814, commencing on the 1st June, 1814, and ending 31st May, 1815, amount of payments made by them for discount, interest, damages, &c. on protested bills drawn by them on the Secretary of War, and on the Cashiers of the Pennsylvania and Schuylkill banks, in Philadelphia, for the supply of the army with provisions, \$20,958 88.

John H. Piatt, under his contract, dated 26th January, 1814, commencing 1st June, 1814, and ending 31st May, 1815, \$21,000, being 10 per cent. on \$210,000 in consideration of the damages sustained by him in consequence of his drafts on the government being protested; \$3,750, being the amount charged by the Farmers' and Mechanics' Bank of Cincinnati, for negotiating sundry bills drawn on the Secretary of War by J. H. Piatt, from 20th June, 1814, to 31st October, 1814; \$4,320, being the amount charged by the Miami Exporting Company, for negotiating sundry bills, drawn as above stated, from 6th June, 1814, to 7th February, 1815.

\$4,707 21, allowed in addition to the above, by the Second Comptroller, under the act passed for the relief of J. H. Piatt, for interest paid by him to the Farmers' and Mechanics' Bank of Cincinnati, on money he was obliged to borrow on account of the failure of the government to pay his drafts.

No allowance was made, under the rule, to Orr and Greely: their contract not coming within it, being from 1st June, 1813, to 31st May, 1814.

James Byers, under his contract of 6th November, 1811, commencing 1st June, 1813, and ending 31st May, 1814, received the following credit on settlement of his accounts 12th July, 1815, viz: "For this amount allowed him by the Secretary of War, per his letter 3d October, 1814, (it should be 13th October) (being the cost of casks, boxes, &c. in which the parts of rations were deposited by Mr. Byers,) in consideration of his having furnished the provisions, anterior to the commencement of his contract,* and having made a reservation in his proposals to the Secretary of War, and acceded to by the Secretary, calculated to meet extraordinary and peculiar hardship attending the business of this additional sup-

* By reference to the original correspondence, it appears Mr. Byers did not make any deposit "anterior to the commencement of his contract."

and the exigency of the public service in the quarter to which your contract applied.

I am, sir, with great respect,
Your very ob'dt servant,
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True copy.

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ply," \$14,502 49.—See copy of the letter of the Secretary of War, marked A, herewith.

Matthew L. Davis, under his contract, dated 26th April, 1814, commencing 1st June, 1814, and ending 31st May, 1815, received a credit for casks and boxes, amounting to \$2,814 57, under the following circumstances: He placed in deposite at New York and its vicinity, in December, 1814, provisions in bulk, for which he obtained the officers' receipts, including the casks and boxes. On settlement of his account, by the then Accountant, on the 17th Jan. 1815, he received a credit, and the officers were charged with the provisions received on deposite, as well as for the casks, &c. in which they were contained.

Subsequently, say on settlement of 28th March, 1815, by the same accounting officer, the credit was reversed for the casks and boxes, on the ground "that they had been admitted in the previous statement, prior to the ultimate decision of the Secretary of War that no allowance shall be made to contractors for barrels, casks, &c. except in special cases of contract with the War Department."

The account thus remained until the 2d March, 1817, when Mr. George Graham, then acting Secretary of War, made the following decision: "The amount of the charge for casks, barrels, boxes, &c. which had been admitted to the credit of the contractor, previous to the decision of the Secretary of War, and for which a warrant had issued, will be allowed."

(Signed)

GEORGE GRAHAM.

2d March, 1817.

Mr. Davis having received back most of the provisions in the same casks and boxes in which they were deposited for issue, I submitted the following remark: "The same casks and boxes having been again turned over to Mr. Davis, when he received the deposite, (in which the provisions were contained) does the above decision go to exonerate him from any charge for them?"

(Signed)

PETER HAGNER.

26th March, 1817.

The Hon. Secretary of War.

On which the Second Comptroller decided as follows: "The Second Comptroller cannot interfere with the decision of Mr. Graham, acting Secretary of War, sanctioned by the late President of the United States. The amount allowed to the credit of Mr. Davis for casks, barrels, boxes, &c. will remain so, without being recharged to him."

(Signed)

RICHARD CUTTS.

Nov. 24, 1818.

The amount was accordingly admitted to the credit of Mr. Davis, by the Second Comptroller on settlement, 26th November, 1818.

There is not to be found among the papers any written decision of President Madison, nor is it recollected to have been seen in this office.

I have the honor to be, with great respect, Sir,

Your obedient servant,

(Signed)

PETER HAGNER, Auditor.

*To the Hon. James Barbour,
Secretary of War.*

I certify that the above is a true copy of the original received from the War Department.
March 24, 1826.

THOMAS J. HODSON.

From the Secretary of War, enclosing the above.

Department of War, March 23d, 1826.

SIR,

Agreeably to the request made by Mr. Cambreling to cause you to be furnished with a statement of what seems to have been paid for interest and damages on protested bills of exchange under the decision of the Secretary of War of 27th January 1816, and what allowances have been made by the Department for casks, boxes, &c. I transmit herewith a report of the Third Auditor, which furnishes the information required.

(Signed)

JAMES BARBOUR.

Elbert Anderson, Esq.

I certify that the above is a true copy of the original received from the War Department.

THOMAS J. HODSON.

March 24, 1826.

LETTERS SHOWING HOW THE CONTRACTS WERE EXECUTED.

Albany, Dec. 19th, 1812.

SIR,

Mr. Elbert Anderson, Junr. the contractor for this state, informs me that he contemplates making a proposition for the contract for the ensuing year. Mr. Anderson has for a number of years supplied the rations in this State. The very prompt and capable manner in which he has heretofore discharged the duties of Contractor, and the acquaintance which the performance of those duties has given him, with the resources of this part of the country, qualify him in an eminent degree for the fulfilment of that station hereafter, as satis-

factorily as it can be filled by any person; and should his bid entitle him to the contract for the next year, I have no doubt of his capacity and responsibility to perform the contract satisfactorily.

I am Sir, respectfully,

Your ob'dt servt.

(Signed)

DANIEL D. TOMPKINS.

Hon. William Eustis.

The foregoing is a correct copy of the original on file in the War office.

C. VANDE VENTER, C. C. W. D.

Red Hook, August 12, 1823.

DEAR SIR,

I received your letter of the 4th instant a day or two ago; I am, as you well know, no great panegyrist of either dead or living public functionaries; but this fact notwithstanding, it by no means follows, that I should have any hesitation in speaking favorably of them, or of their conduct, when the latter shall have been such as, in my opinion, entitled them to praise. On this general principle, and under the best recollections I have of the manner in which you discharged your duty as an army contractor, I have no scruple in saying, that it was both able and honest, fulfilling as far as was perhaps possible under the circumstances of the times, the injunctions of the law, and the objects and expectations of the Government, and, on some occasions, showing a disposition to promote the success of pending military operations by doing rather more, than less, than was prescribed by the letter of your contract.

It was the joint effect of this disinterestedness and of the opinion entertained of your general capacity for business, that induced me, with the approbation of the President, to sound you on the subject of supplying the Army by a Commissariat, instead of contracts, and virtually to offer to you the direction of a department of that description. This fact is perhaps the best illustration I could give of the consideration in which you were held by the Executive of that day, and which takes a new force from the circumstance, that when the offer was declined by you, it was not made to any other person.

I am, dear sir, respectfully your obedient, humble servant,

JOHN ARMSTRONG.

Elbert Anderson, Esq.

Montpelier, Oct. 22, 1823.

SIR,

The attention of the Executive of the U. States being divided among the several Departments, he cannot be supposed as particularly acquainted with the transactions under each, as the respective heads of them. What I can say with truth and pleasure in

your case is, that every thing I recollect to have known of your agency in supplying the army during the late war was favorable to the ability and zeal with which the trust was executed.

With friendly respects,

JAMES MADISON.

Elbert Anderson, Esq.

Bloomfield, Ontario Co. N. Y. Oct. 27, 1823.

Elbert Anderson, Esq.

SIR,

By your request I have examined and compared the vouchers, orders, &c. which took place and occurred on the Niagara frontier, in the winter of 1813 and 1814, between you as Army Contractor, by your agent Nathaniel Allen, Esq. and myself as Commanding Officer on that station. At the time I assumed the command, the frontier had in part been laid waste by the enemy, viz: from Fort Niagara to the Falls—and all the public provisions, stores, &c. in that quarter, had been destroyed. And on the 30th of December, 1813, the remaining part of the frontier, to wit: Buffalo and Black Rock, together with all the supplies for the army, were likewise destroyed.

Thus situated, I called on your agent, Major Allen, for immediate supplies, which he furnished with promptitude, without availing himself of the thirty days notice, as I understand was allowed by the contract—and no doubt those supplies were furnished, in most instances, at a much greater expense than they would have been, had the usual time been taken to have completed the several requisitions, viz: the 1st bearing date the 24th December, 1813, and directing ten thousand rations to be delivered in deposite near Lewistown.—2d, the 3d of January, 1814, directing thirty thousand meat rations to be furnished at Williamsville.—3d, the 9th of January, 1814, on the Public Storekeeper at Handford's Landing. 4th, the 10th of January, 1814, for one hundred thousand complete rations, to be deposited at Williamsville.—5th, dated 20th of January, 1814, for, viz:

175,000 complete rations at Williamsville.

225,000 do. do. " Batavia.

100,000 do. do. " Warren's, on Ridge Road.

And I am well satisfied that the greater part of the supplies, furnished to fulfil the above requisitions, were taken from the place or places where the purchases were severally made, and transported directly to the several deposite pointed out by my orders. And I may further add, that the places of deposite were, in some instances, entirely out of the direction of the posts to which my orders directed the supplies to be carried, and consequently the transportation of them to the original places of deposite at the time,

would have been attended with serious inconvenience to the United States.

I am, Sir, most respectfully,
Your obedient humble servant,
AMOS HALL,
Late Major-Gen.

Washington, November 30, 1823.

DEAR SIR,

It is but justice to give you credit for the part which you bore in the late war with Great Britian, when you not only exerted yourself to sustain the administration by all the means in your power, but likewise efficiently combatted opinions which were hostile to the interests and liberties of the people. To your exertions in the Commissariat, the army, serving on the northern and southern frontiers of the State of New-York, was peculiarly indebted, and has acknowledged with gratitude your prompt and sufficient supply of those articles of subsistence essential to their well being, at a time it was difficult to supply the troops with necessaries of any description. That the administration was satisfied with your conduct in the important and arduous duties which you had undertaken, is well known, and as far as your operations have come under my observation, I have had every reason to be perfectly satisfied not only with your zeal, activity and system, but with the liberality and perfect fairness of your dealings, to say nothing of the gratuitous supplies of vegetables to the Hospitals for the use of the sick and wounded.

With sentiments of respect and esteem,

I remain, dear sir,

Your most ob't. servant,

ALEX. M'COMB, *Maj. Gen.*

Elbert Anderson, Esq.

OPINIONS.

ON THE CASK AND PACKAGE CLAIM.

We have examined the contracts submitted to us for consideration, and are of opinion that Mr. Anderson is fairly entitled to a reasonable allowance for the barrels, boxes, packages, &c. containing the rations, delivered by him pursuant to his contracts. *Rations* are the thing contracted for, which certainly mean no more than the quantity of the article, without reference to what it may be contained in.—In that way it is always furnished to the soldier, he bringing the machine to contain it. What is a ration to him, when he receives it, from Government, is also a ration to Government, when it is received from the contractor. We know that in the purchase of many of the articles of provision, &c. the things they are contained in are either to be returned or paid for—as to other articles, there may be a diversity according to the usage of business; which usage will there always decide, because the parties must be supposed to have dealt with a knowledge of that usage, and to have included the value of the box or package, &c. in the nominal price of the article. In the contracts with Government, it seems to us that usage is clearly the other way. Those made in time of peace have always been expounded, by receiving the *rations merely*, at the places of issue; and when on a march, great inconvenience or necessity required that the contractor's barrels, &c. should be used, they were always returned or allowed for to him. This was a practice which seems to have settled the construction of the contract; and when in time of war, those which related to the same thing used the same language. We think the terms used can only receive the same interpretation. If Government intended differently, their change of intention should have been expressly stated; for the contractor must be presumed to have made his bargain with a view to the established usage. No satisfactory reason seems assignable why he should be called upon to do more in time of war, under the same bargain, than would be required of him in the event of peace.

WM. PINKNEY.
THOS. ADDIS EMMET.
JOS. OGDEN HOFFMAN.

Washington City, March 10th, 1815.

NOTE.—At the same time the above opinions were given, the written opinion was fully given in favor of this claim by the late Samuel Dexter: this opinion was left in the Third Auditor's office, but is not to be found. It is worthy of remark, that the late S. Dexter was acting Secretary of War, and was the author of the blank forms of the very contracts that the claim of casks were made under.

Mr. Anderson having submitted to me for my consideration, his contracts with the Government of the United States for supplying rations, (one of which contracts bears date the 25th February, 1813, and was made with the Secretary for the Department of War) and his claim under the same for a reasonable allowance for the boxes, packages, barrels, inclosures, &c. containing the meat, flour, liquor, and other component parts of rations furnished in pursuance of his contracts, I am of opinion that in all those cases in which the boxes, &c. were delivered together with the rations, and retained on the part of Government, he is justly entitled to a fair and reasonable allowance for the value of the inclosure. This would appear to be according to the ordinary course of dealing, and there is nothing in the contracts from which we are to infer that the beef, pork, liquor, &c. of which the rations consisted, were to include the vessel or cask or box in which they were contained. He was simply to furnish rations, which does not necessarily, or according to usage, include the material for carrying or containing the same.

JAMES KENT.

Albany, October 21, 1823.

I have considered the question answered in the within opinion of Chancellor Kent's, as well in reference to the contract of the 25th of February 1813, as to the contract of the 7th of November 1811, and fully concur in the same.

A. SPENCER.

Albany, October 24, 1823.

PACKAGES CAPTURED AND DESTROYED.

The claim of Mr. Anderson for the loss of the packages, boxes, barrels, &c. containing provisions, &c. as within claimed, falls under the sixth article of his contract, and there can be no reasonable doubt that if he is entitled to the packages, he is entitled to the loss of them sustained by the depredations of the enemy, or by means of the troops of the U. States. The article says that *all losses* so sustained were to be allowed, and surely the packages, materials, &c. covering the provisions were property subject to loss, and being actually lost to the contractor, the demand falls within the terms and the palpable equity of the 6th article.

JAMES KENT.

Albany, Oct. 22d, 1823.

If the packages, &c. be the property of the contractor, as contradistinguished from the rations, of which I have no doubt, then the loss in question comes within the terms of the contract, in either case it is not imputable to the laches of the contractor, the loss pro-

ceeding from a casualty of war, or the act of the troops of the United States; the Government having assumed both these risks, in my opinion the contractor is entitled, upon the strictest principles, to be paid a fair equivalent for the loss sustained.

A. SPENCER.

Albany, Oct. 24, 1823.

ON RECEIVING A. PORTER'S PROVISION AND CAPTURED FLOUR.

I am of opinion upon the within case that Mr. Anderson is entitled to some equitable allowance for the loss or damage he may have sustained by being obliged to receive an extra proportion of flour as within mentioned, inasmuch as the value of his contract depended materially upon preserving a rateable proportion between the several articles to be furnished within the contemplation of his contract.

JAMES KENT.

Albany, October 22d, 1823.

I have considered claim number seven, and fully concur in the view taken of the subject by Mr. Secretary Crawford, indeed the principle he advances seems so just and obvious, as not to admit of further illustration.*

A. SPENCER.

Oct. 24, 1823.

* "The Accountant in the settling the accounts of Contractors for 1814—'15, will allow all claims, &c.

"Also, all losses sustained upon the issue of rations, not requirable by the contract.

"All claims arising from loss sustained by requisitions, not authorized by the contract."

ON CLAIM FOR TAX ON WHISKY.

The claim founded upon the within statement of facts, does not appear to be admissable at the Treasury Department; and the equity upon which the claim rests must be addressed to the justice of Congress. I should presume the appeal to that justice would not be made in vain, and Mr. Anderson has very equitable and persuasive grounds to ask for a reasonable indemnity for the depreciation of the value of his contract, by the direct interference of Government with the very article on which his contract with them was to operate. He contracts with the Government of the United States to deliver whisky rations at such a price, and government then, while the contract is in operation, lay a tax on whisky, and raise and increase the price. It strikes me that Mr. A. has very strong,

fair and full claims for a compensation by way of indemnity for the injurious operation of the duty upon his contract.

JAMES KENT.

Albany, 22d October, 1823.

I have considered the within claim to an allowance on the article of whisky, in consequence of the act of Congress, of the 24th of July, 1813. It is presumed to be an undeniable proposition, that the same principles which govern and control the contracts of individuals, ought in a moral and equitable view, to be applied between the government and an individual. If an individual had by his own act prevented a party with whom he had contracted, from the performance of his contract; or had artificially and contrary to the just expectations of the other party, enhanced the price of an article contracted to be delivered, it is beyond all doubt, that a court of equity would afford relief to the injured party. The Government undoubtedly for wise purposes, passed the act referred to, but in doing so they unintentionally injured Mr. Anderson, by virtually changing the nature of his contract, and imposing upon him a burden which he never could have contemplated when he entered into his contract, on the 25th of February, 1813. The direct effect of this act of the 24th of July, 1813, was to enhance the price of whisky, and thereby Mr. Anderson was prevented from obtaining it upon the terms contemplated by both the parties to the contract. It is true that Mr. Anderson took upon himself all the risks of the fluctuation in the market; but he did not take upon him the risk of the rise in the price of whisky, produced by the act of the other contracting party. It must have been impliedly understood by him, that the other party should do nothing to enhance artificially, the price of whisky.

I cannot hesitate in saying that after the Government have contracted for the delivery of an article at a stipulated price, then to pass an act having a material influence on the price, and yet to insist on its delivery at the former price, would be an extremely rigorous and apparently an unjust procedure. There would be no safety in contracting with the Government, if it was not bound by the same rules of good faith, which would be exacted of an individual.

Can it be doubted that had the contractor foreseen this event, (the passing of the act, of the 24th of July, 1813) that he would not have guarded against it by his contract? And can it be believed that the Secretary of War would have resisted the insertion of an article, that if the price of whisky should be enhanced by an act of the Government, that the enhanced price should be allowed to the contractor? Considering then this contract as one with the Government through its functionary, and that the Government have by an act of power subsequently to the contract, produced a material burden on one of the articles contracted to be delivered; it seems to

me a plain and obvious principle of equity, that they should compensate Mr. Anderson by making good his losses occasioned by their own act.

Oct. 24, 1823.

A. SPENCER.

It appears to me that it would be very unjust not to make this allowance to Mr. Anderson. He estimated his prices and made his contract under a state of things which he had no right to presume would be changed during its continuance. Government, to supply its own convenience or wants, voluntarily made a change which essentially injured him, as the other contracting party, and probably deprived him of all his profits, the change might as well have been carried to an extent that would make the execution of the contract ruinous or impossible. If the change had been produced by the act of a stranger or foreign power, perhaps he would have no other resource but to throw himself on the generosity of the other party of the contract. But where that party to the contract has voluntarily done an act so essentially varying the situation and destroying the profits of the other party, I think he is bound to make good the consequences of such act.

THOMAS ADDIS EMMET.

New York, Nov. 5th, 1823.

ON INTEREST ON DECLARED BALANCES.

I am of opinion upon the within case that Mr. Anderson is justly and equitably entitled to interest at the rate of six per cent. per annum, during the period of the delay of payment of the balances declared in his favor. The balance due him was by the contract with him to be immediately paid, and he was made chargeable with the like rate of interest for any default of repayment on his part.

JAMES KENT.

Albany, October 21, 1823.

If this were a transaction between two individuals amenable to the law, there would not I think be a moment's hesitation as to the result, and I am not aware of any rule or reason why the United States should be exempted from the general law. The contractor was bound in case of his default to pay 6 per cent interest, (thus fixing the rate between the parties) and the U. States not anticipating any inability on their part, promised immediate payment—they became unable to keep their promise; but they should now compensate the sufferers by their default. Independent of the Secretary of the

Treasury's general order, I think Mr. Anderson is entitled to 6 per cent interest until paid ; and besides (at least under that order, as well as by law) to any damage on protested drafts he may have had a right to draw and have drawn. In answer to the last question on the other side, I can only say that the United States, as well as every other debtor, are bound to make their payments in specie, and if they cannot do that, they should make the paper in which they do pay equivalent to specie.

THOS. ADDIS EMMET.

New-York, Nov. 5th, 1823.

ON INTEREST FOR ADVANCES WITHHELD.

No unreasonable or unnecessary delay on the part of the officers of the United States, was to be given to the settlement of the accounts of Mr. Anderson. This was a condition inserted in his contract, and if it had not been inserted, yet if his accounts were not duly passed upon with reasonable diligence, he ought not to suffer by the delay. His claim for interest upon the balances found due, (and which were strictly due when the accounts were rendered and the vouchers furnished) from the time he was entitled to have them passed upon, appears to me very just and equitable : I am of opinion, therefore, that he is entitled to interest according to the within claim.

JAMES KENT.

Albany Oct. 22, 1823.

I have considered Mr. Anderson's third claim upon the Government, founded on the delay of the accountant to settle and report upon his accounts which he alleges were furnished, supported by vouchers, in the manner and form required, and at regular periods. In the nature of things, as well as by the understanding of the parties, advances were to be made to the Contractor in anticipation, to enable him to comply with his contract ; his right to these advances would necessarily depend upon the fact whether the state of his accounts would justify them. It is provided by the contract that no unreasonable or unnecessary delay, on the part of the officers of the United States, shall be given to the settlement of the accounts of Mr. Anderson. If this delay took place whereby the contractor was deprived of his right to draw, three months previous to the expiration of his contract, it must be manifest that he was not only deprived of funds to which he was entitled, but that he might have been greatly embarrassed. In my opinion he has a just claim on the Government for this infraction of the contract on their part: I know of no rule of compensation so free from objection, as the one which would apply in contracts between individuals that would be,

to compensate the injured party by paying him interest on the balance, from the time the amount ought to have been settled, to the period when it was actually settled.

A. SPENCER.

Oct. 27, 1823.

It seems to me, that the contractor is entitled to interest from the time he had a right to draw, till paid, and also to *damages on all protested bills* he had a right to draw, and did draw.

THOS. ADDIS EMMET.

New York, Nov. 5, 1823.

ON PROTESTED BILLS AND DEPRECIATION OF TREASURY NOTES, &c.

The following questions have been submitted to me for my opinion, by Elbert Anderson, Esq. late Army Contractor.

1. Whether he is justly entitled to the customary damages on two bills drawn by him on the Secretary of War, in Oct. 1814, amounting to 200,000 dollars, and protested for non-payment, inasmuch as his vouchers and account current had been previously furnished to the War Department, and he was entitled to draw?

2. Whether he be entitled to indemnity from Government for loss on depreciated Treasury notes, which, when paid to him, were \$22,114 below par value?

In answer to the first question, I am of opinion that Mr. Anderson is clearly entitled to the customary allowance of damages according to the law merchant, and which are part of the law of the land, upon these bills protested. "The universal practice and laws of nearly the whole civilized world has settled it as a just and equitable principle, that the interest and damages should follow a protested bill." This was the observation contained in the report of the select committee on Mr. Piatt's claims, and it was well founded in justice and in law, and I cannot hesitate to believe that the Government of the United States will at once perceive, acknowledge, and admit the obligation of these rules and usages which are prescribed to individuals in their dealings with each other.

In answer to the second question, I am of opinion that Mr. Anderson is entitled to a fair and just indemnity against the depreciation of the notes in which he was paid. The Government were bound to pay in specie. It is the principle of the Constitution that debts are to be paid in gold and silver, and if paper be substituted, it ought to be of equivalent value—nothing can be clearer or more persuasively just than this principle. If then, Mr. Anderson was paid in depreciated paper, because the government had not, at the time, any thing better to offer, they are bound, in conscience, to make good the difference between the current value of the Treasury

notes, when paid, and the par value. It would not be in my power to avail myself of better authority on this point than the letter of Mr. Monroe, of the date of July 11, 1815, in which the principle I have stated is clearly and forcibly admitted. "It seemed to be just (he observed) that as the Government could not furnish paper which circulated at par, the party ought to be indemnified against the loss arising from the depreciation."

JAMES KENT.

New York, 2d June, 1824.

JUDGE PLATT'S OPINION ON THE CLAIMS OF ELBERT ANDERSON.

Mr. Anderson having submitted for my examination his contracts with the United States, bearing date the 7th day of November, 1811, and the 25th day of February, 1813, with the accompanying documents and correspondence—I have considered the questions which have arisen between him and the accounting officers of the Government; and applying the rules by which justice is administered, in the Courts of Law and Equity, my mind has been led to the following conclusions, viz.

First. The claim of Mr. Anderson, for extra expense of transporting flour and whisky, over land, from Philadelphia, Baltimore, and Alexandria, to New-York, during the blockade of the coast in 1813.

The contractor had an undoubted right to procure his supplies from those places; and he had an election to send them by land, or by sea, at the risque of the United States, as to *capture* by the enemy. Two facts, are certain: 1st. That transportation by *land* was more expensive than by *sea*; and 2d. that the hazard of capture was *imminent at sea*, while that risque was merely *nominal by land*. It is therefore apparent, that the contractor voluntarily submitted to a certain and heavy additional expense; whereby he saved to the United States a sum equal to a premium of insurance against capture by sea, which probably cannot be estimated at less than five times the amount now claimed by the contractor. That he acted prudently, and conferred a certain benefit on the Government, in executing that part of his contract, cannot be doubted: and his claim for indemnity, that is for the difference between the expense of transportation by land, and by sea, appears to me to be within the equity of the stipulation, that the United States should bear the loss by capture.

Second. The claim for a reasonable allowance for casks and boxes, containing the component parts of the rations.

The contract is explicitly for *rations*, by weight and measure; to be "furnished" and "issued" by the Contractor: the *casks* and *boxes* were used for the convenience of the Contractor merely: they were not indispensable to the fulfilment of his contract; and the *rations being issued*, the casks and boxes were the property of the

Contractor. They were mere vehicles of transportation, and belonged to the Contractor as much as the carts and oxen, or boats, used in carrying them. If the contract had been for barrels of flour, beef, or pork, and hogsheads of whisky, and boxes of soap and candles, the usage of trade would require a different construction.

I am therefore of opinion, that, for all such casks, vessels, or boxes, detained or converted by the Government, or its agents, Mr. Anderson has a just and legal claim.

Third. The claim for casks and boxes, containing rations, and which were captured or destroyed, &c.

That this claim is well founded, under the 6th article of the Contract of 25th February, 1813, seems to me so plain as to defy the ingenuity of a casuist to raise a doubt against it. Were those casks and boxes "necessarily used in transporting the articles intended to "compose rations, to be issued under this contract?" If so, the stipulation is express, that they shall be paid for by the Government, at their appraised value.

Fourth. The claim for damages in being compelled to receive provisions of Augustus Porter, &c.

It is very evident, that the terms of the Contract did not require Mr. Anderson to accept those provisions: and that they were imposed on the Contractor against his will, and contrary to his interest. The United States gained by it, at his expense; and I am unable to perceive any valid objection to this claim.

Fifth. The claim for extra compensation for removing provisions, by orders of General Hall and General Dearborn, respectively.

That the expense was greatly enhanced by those special orders, is certain: and, it appears to me, that this claim is well founded, on the equity and spirit of the stipulation contained in the 3d article of the Contract of 25th February, 1813. But, supposing there had been no express convention for such a case; I can perceive no reason to doubt the justice of the claim, on general and acknowledged principles of equity. Having purchased, and being in progress of transportation, under an order to deliver at a certain post, that order was countermanded; and the Contractor was required to deliver at another post. Who could doubt as to the rule of justice, if such a case had occurred between private individuals?

Sixth. The claim for tax imposed on whisky, after date of the Contract.

If this were a contingency depending on *accident*, or the act of a *foreign Government*, it would have been among the hazards incident to the Contract. So, if the Contract for whisky had been between two private individuals, both alike subject to the sovereign power of laying taxes. But, where the contract is with the Government, on whose *volition* it depends, whether such tax shall be imposed or not; good faith requires, either that the Government should abstain from laying such tax, or that it should indemnify the Contractor for all damages sustained by reason of such *ex post facto* imposition. Suppose the contract price, and fair value of whisky to be 25 cents per

gallon : and then suppose the Government, which contracted at that price, should impose a duty of 25 cents per gallon ; and should still insist on the fulfilment of the contract, on the original terms : is it possible to doubt, that such conduct would be an outrageous breach of faith ? The present case differs only in *degree*, and not in *principle*. In this case, a tax of 14 cents per gallon was imposed ; which necessarily enhanced the price of that article to an equal amount. And not only so, but, in effect, that amount was taken from the pocket of Mr. Anderson, and placed in the Treasury of the United States. What he *pays* extra, the other contracting party *receives*. To refuse compensation for the operation of this tax upon the contract, would be as unjust, and as arbitrary, as to pass a law that Mr. Anderson should be bound to receive 14 cents per gallon less than the contract price.

My respect for the Government of my country will not permit me to doubt of the success of this appeal to its justice.

Seventh. The claim for interest on balances due the Contractor, and where payments were deferred, &c. and for damages on protested drafts.

The 9th article of the Contract provides that Mr. Anderson “ shall render his accounts for settlement, *at least once in every three months.*” He had a right to do so, as much oftener as he pleased.

The 10th article expressly stipulates, “ that if any balance shall, on any settlement of the accounts, be found to be due to him, *the same shall immediately be paid.* And that *no unreasonable or unnecessary delay*, on the part of the officers of the United States, “ shall be given to the settlement of the accounts,” &c.

There is no *express* stipulation that the Government should make advances of money, before the settlement of accounts ; but the terms and scope of the 10th article plainly imply, that such prospective advances were contemplated by the parties ; and the usage of the Government justified such an expectation.

The question on which the justice of this claim depends, is, whether the Government was in default ? If the balance in favor of the Contractor was struck and admitted, and payment still refused, it would seem to be an unquestionable dictate of justice, that interest should be allowed from the date of such refusal. So, if there was any “ *unreasonable or unnecessary delay,*” in settling his accounts, the Government would thenceforth be in default, and ought to pay interest. The only use of an *express stipulation* to pay interest, in governmental contracts, is to settle *the rate* of compensation for the use of money, and to designate the time and place of payment. And where the Government acknowledge a debt, and refuse to pay interest, for money withheld from its creditor, it is as absolute a breach of faith, as it would be to refuse interest on the National Funded debt. In regard to the protested bills, where there was an acknowledged right to draw, I can see no reason why the Government should not repair the injury by the same rule, as is prescribed for a like injury between private individuals ; which allows not only

a legal rate of interest, but such sum as will cover all ordinary damages, occasioned by disappointment, loss of credit, and consequent embarrassment.

Eighth. The claim for loss on depreciated Treasury notes.

That the true construction of the Contract is, that Government should pay in specie, or in something equivalent, is too plain to be questioned. Has it done so? No! Public exigencies compelled a departure from the terms of the Contract; and the contractor was under a necessity of receiving Treasury notes, at par; when, in truth, they were available to him at no more than 86 per cent of par value. The public necessity is now removed, by an overflowing Treasury; and the question of morality, justice, and honor, now is, whether the Contractor shall in fact receive his stipulated reward, where he has been in no default, and has faithfully performed his contract? or, shall he lose 14 per cent. of his promised reward, because the Government was unable, at the time, to give him any thing better than Treasury notes? It seems to me, that, to doubt of the success of this claim, would be an affront to the Government of the United States.

Ninth. The claim for hides captured and destroyed on the Niagara frontier, in November, 1813.

These were hides of cattle driven by the Contractor to that frontier, to supply fresh beef rations. The 6th article of the contract stipulates that "all losses sustained by the depredations of an enemy, in articles intended to compose rations, &c. as well as in *other property necessarily used for transporting the same,*" shall be paid for by the United States.

Assuming that it was a reasonable and proper execution of the Contract, to drive the cattle *alive* to the station required; the question presented is, whether the skins were "*necessarily used in transporting the same*?" I see no ground to contend, that the hides were not the property of the Contractor; and, in every view, I am of opinion that this claim is well founded.

JONAS PLATT.

Utica, 24th November, 1824.