

PETITION OF G. C. RUSSELL.

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

The petition and memorial of Gilbert C. Russell, of Alabama,
RESPECTFULLY REPRESENTS:

That, upon the 18th day of May, 1818, a contract was entered into between Benjamin W. Hopkins, of the state of New-York, and Brigadier General Joseph G. Swift, Chief Engineer, on behalf of the United States, for building a fort near Mobile Point, in the state of Alabama. Mr. Hopkins commenced the execution of his contract, and had made a number of expensive preparations for prosecuting the work, when, in August, 1819, he died, leaving the contract uncompleted.

Upon the death of Mr. Hopkins, Roswell Hopkins, his father, administered upon his estate, and regularly transferred the contract, with all its benefits and advantages, and all its liabilities, to the government, for advances or otherwise, to Samuel Hawkins, of the state of New-York, his executors, administrators, and assigns. This transfer was made with the consent of the government; under it, Col. S. Hawkins was received, and recognized, as the successor of Mr. Hopkins, in the contract. The estate and sureties of the latter were discharged from any further responsibility, new security, to the satisfaction of the War Department, being given by Col. Hawkins, for the performance of the contract, and the liquidation and payment of all advances on account of it.

When the contract was transferred to Col. Hawkins, the property of the late contractor was, at the same time, conveyed to him. This property consisted of implements, materials, &c. procured for the purpose of carrying on the works, and of several frame shops, stores, and other buildings, erected on the public grounds, adjacent to the fort, for the accommodation of the Contractor, and the persons whom he employed.

Mr. Hopkins, at the time of his death, was largely indebted to individuals in Alabama, for materials, provisions, &c. furnished to him, and expended in his preparations. His debt to the government, for advances on account of the contract, was also considerable. To secure a preference to the United States, a judgment in favor of the government was obtained, by confession of the administrator of Mr. Hopkins, for 75,000 dollars. An execution on this judgment was

issued and levied upon all the property of the defendant, including the workshops and other buildings standing upon the public grounds adjacent to the fortifications. The property, thus levied upon, was publicly sold. S. Hawkins, to whom it had been previously conveyed, by the administrator, became the purchaser; and it was regularly conveyed to him by the Sheriff of Mobile county. To this sale, which had been made by their procurement, the officers of government assented, and received the purchase money.

Col. Hawkins, having thus become invested with the contract, and the property of the deceased contractor, proceeded in erecting the fortifications. For this purpose, with the knowledge and approbation of the Engineer superintending the work, he erected some additional buildings, on the adjacent public grounds, for the accommodation of the mechanics, laborers, and others in his employment.

The new Contractor, like his predecessor, soon became involved in debt, and, finding his resources inadequate to the work he had undertaken, was apprehensive of a failure in his contract. He, therefore, upon the advice of the friends concerned with him in the contract, (and who had furnished security to the government for its performance,) resolved to dispose of his interest. For this purpose, he made application to your petitioner, who owned a number of negro slaves, without which description of force, experience had shown that the works could not be successfully prosecuted.

Before concluding any arrangement, your petitioner communicated his intentions to the officers of the government. Being encouraged by the answers he received, he finally agreed to take the entire contract, and purchased from the Contractor, for a considerable sum, the buildings and property, of every description, prepared for erecting the fort. This property was regularly conveyed to your petitioner, from Col. Hawkins, by several deeds, dated the 31st of January, 1821; and possession was shortly afterwards delivered to the agent of your petitioner, in the presence, and with the knowledge, of the officer superintending the fortifications.

An assignment of the contract, and a power of attorney from Col. Hawkins to your petitioner, to enable him to execute it and to receive payments, in form, as the agent of Col. Hawkins, though for his own use, were executed on the same day with the deeds conveying the property. Your petitioner, at the same time, gave bonds, in a large sum, to the contractor, as a counter security, for the faithful and effectual prosecution of the work.

Having thus undertaken to complete the contract, your petitioner embarked a large capital, and resources of every description fully adequate to the undertaking; made contracts, to a large amount, for materials, provisions, &c. in anticipation of the work; and had a number of persons, including near fifty white mechanics, overseers, and superintendents, amounting to upwards of two hundred, employed.

Shortly after your petitioner commenced his operations, Col. Hawkins died; and it was required that the letter of attorney from him to your petitioner should be renewed by his administrator. Before

this could be done, Captain Gadsden, the Chief Engineer on the frontier of the Gulf Mexico, was succeeded by Captain De Russy, of the U. S. engineers, who entered upon the duties of the station on the first of May, 1821.

Letters of administration upon the estate of Col. Hawkins having been granted to Dr. J. W. Wing, who had acted as his agent during his life time, the power of attorney was renewed by him, as had been requested. On presenting this document to Captain De Russy, your petitioner was greatly surprised to find him hesitate to recognize your petitioner's authority, without special instructions from the War Department, and still more surprised when, a few days afterwards, he refused to acknowledge the administrator of Col. Hawkins, and to permit him to proceed to complete the work, with the means of your petitioner, which, for that purpose, were placed at his disposal. Supposing that this refusal proceeded from the mistaken timidity or caution of an officer just entering upon the duties of a new station, your petitioner continued his operations, and immediately made application to the War Department to remove the difficulty by which his progress had, so unexpectedly, been obstructed.

To this application no answer was returned; and, although other communications were successively and repeatedly addressed to the Secretary of War, the Chief of Engineers, and other officers connected with the War Department, your petitioner failed, in all his exertions, to elicit a reply, that would intimate to him either the course intended to be pursued, or the cause of the delay.

Your petitioner became uneasy at this state of uncertainty, and, hearing that efforts were secretly making at Washington to deprive him of the contract, he partly suspended his operations, but still continued, at a very great expense, his preparations to go on with the work, until he received, in the month of December following, the first intimation, in a letter from the Chief of Engineers, that his interest in the contract would be disregarded by the Department of War.

The injustice and enormity of this proceeding is exceeded by an injury which had, in the mean time, been inflicted on your petitioner, by Captain De Russy, under alleged orders from the Department of War. On the 13th of October, preceding, this officer, with a detachment of troops, forcibly seized upon all the property of your petitioner at Mobile Point, then in the possession of Samuel Love, a citizen of the United States, and your petitioner's agent. The property thus taken from your petitioner, by military violence, consisted of the buildings, materials, implements, &c. purchased of Col. Hawkins and others, which had been procured for the convenient prosecution of the works, and some buildings which your petitioner had erected for the same purpose. All of this property, that has not been destroyed or converted to public use, in erecting the fortifications, remains in the possession of the officers of the government.

Learning that this flagrant outrage upon the rights of your petitioner and the constitution and laws of the land, had been perpetrated

ed in opposition to the advice of the Attorney of the United States, for the district of Alabama, who had been previously consulted by Captain De Russy, your petitioner did not doubt that redress would be afforded him, on applying to the proper department. But he has solicited for it in vain, and is driven to make this appeal, in the last resort, to the justice of the national Legislature.

He, therefore, prays, that your honorable body will take his case into consideration, and afford him a proper opportunity to establish the facts he has stated, and such others as may be necessary to prove his right to be remunerated for his property, forcibly and illegally taken and converted to the public use: that an act may pass directing the proper officers of the government to pay him the value of the said property; or that he may otherwise receive the relief to which, upon examination, he may appear to be justly entitled.

And he will ever, &c.

GILBERT C. RUSSELL.

Washington, 13th December, 1824.

REPORT

of the Committee of Claims, in the case of Gilbert C. Russell, accompanied by a bill for his relief.

FEBRUARY 7, 1825.

Read, and, with the Bill, committed to a Committee of the whole House to-morrow.

The Committee of Claims, to which was referred the petition of Gilbert C. Russell, present the following

REPORT:

That, on the thirteenth day of May, in the year of our Lord one thousand eight hundred and eighteen, Joseph G. Swift, Chief Engineer on the part of the War Department of the United States, on the one part, and one Benjamin W. Hopkins, on the other part, entered into a contract for the construction of the fortification in the vicinity of Mobile Point, in the state of Alabama; wherein the said Benjamin W. Hopkins covenanted to erect a fortification at the place aforesaid, under the directions of the said Engineer, and to furnish such materials and artizans as the said Engineer might prescribe; and covenanted to commence the work on or before the 1st day of October, 1818; and that he would complete, or cause said work to be completed, by the first day of July, 1821; for which the United States were to make payments, from time to time, as the work progressed, and materials were delivered; all of which will more fully and at large appear by the original contract, to which the committee refer. It incidentally appears, by a contract made on the seventh of June, 1820, by James Gadsden, on behalf of the United States, with Samuel Hawkins, whereby a composition called tapia, was to be substituted for a part of the brick work, that the said Hopkins was prevented from commencing the work as soon as he had covenanted to do, in consequence of there being no person on behalf of the United States, ready to superintend the work. The time he was thus delayed does not appear; but it does appear, that it was deemed of sufficient importance to have Hawkins, the assignee of Hopkins, stipulate, in the last mentioned assignment, to relinquish all his claims on the government arising from such neglect. Hopkins commenced the work, procured materials to a considerable extent, erected the buildings which he deemed necessa-

ry for his convenience in the further prosecution of the work, purchased two tracts of land, the one on Dog river and the other on Fowl River, whereon to make his bricks; built vessels, boats, and carriages; purchased merchandise, slaves, mules, lumber, iron tools, and implements, and other things for the better fulfilling his contract; which he was prevented from doing by his death, sometime in the year 1819. Letters of administration were granted to Roswell Hopkins, on the estate of his late son, the said Benjamin W. Hopkins, in the city of Philadelphia, on the 14th of October, 1819, and in the state of Alabama, on the 3d day of February, 1820. The government, before the death of Hopkins, had advanced to him ninety thousand nine hundred and seven dollars and twenty-nine cents, as appears by the record in the suit of the United States vs. Tillotson and Gouverneur, securities of Samuel Hawkins, determined in the District Court for the Southern District of New York. It appears, from the letters written by Mr. Gadsden to the War Department, that this amount far exceeded the value of the work done, or the materials furnished, and the committee are led to conclude, from the whole testimony, that the expenditures made by Hopkins, though necessary for the prosecution of the work, were not, to any great extent, for materials to be put into the fortification, the foundation of which, was not, at his death, even laid. The government was desirous of having the work prosecuted, and there were two motives which prompted to this course; first, to carry into effect the law of Congress, and second, to secure the money improperly advanced. Samuel Hawkins, of the city of New York, was willing to perform the stipulations of the agreement made by Hopkins, and to take the contract subject to the amount advanced, in case he could be benefitted by the materials purchased by Hopkins, and the labor he had bestowed. The government did not doubt the right of the administrator to assign the contract, or dispose of the property, except, that, as Hopkins was largely indebted to individuals, who might seize upon the property in satisfaction of their debts; and, being also indebted to the government in a large amount, and its lien being paramount to that of the other creditors, it was thought advisable that a judgment should be obtained in favor of the United States, against the administrator of Hopkins, and the prior lien in that way established. For this purpose a suit was instituted against Roswell Hopkins, as the administrator of Benjamin W. Hopkins, before the County Court for the county of Mobile, in the state of Alabama, and a judgment recovered thereon, for the amount of seventy-five thousand dollars, on which an execution was issued on the first Monday in October, 1819, directed to the sheriff of said county, commanding him to make collection of said amount, from the goods and chattels, lands and tenements of the said Benjamin W. Hopkins, in the hands of the said Roswell Hopkins, administrator, &c. By virtue of this execution, the said sheriff levied upon, and took the tract of land near the mouth of Dog River; also the hotel, kitchen, and out-houses; the quarters for carpenters and laborers, carpenter's shop, blacksmith's shop, bake house, cook house, store and fixtures;

four lime houses and two out-houses, situate and being at Mobile Point; which being offered for sale, were sold to Samuel Hawkins for the sum of twelve thousand nine hundred and eighty-two dollars and seventy four cents; which judgment, execution, and sale, will more fully and at large appear, by the deed made and executed by said sheriff, conveying said property to the said Samuel Hawkins, bearing date on the 3d day of March, 1820, to which the Committee refer. The Committee consider, and so report the fact, that the houses and buildings mentioned, were erected on the lands owned by the United States, with the knowledge and by the consent of its officers, and for the purpose and in aid of erecting said fortification. The amount bid by Hawkins, was receipted by Gadsden to the sheriff, and carried to the debit of Hawkins, in his account, for that amount advanced to him by the United States. The administrator of Hopkins was desirous to rid himself of the contract, and exonerate the estate and securities from any further responsibility; and, for this purpose, on the 20th day of November, 1820, for the consideration of 20,000 dollars assigned over to Samuel Hawkins, "his executors, administrators and assigns," the aforesaid contract, so made and entered into, as aforesaid, by and between the United States and Benjamin W. Hopkins, and sold and transferred by the same instrument, all and singular the goods, wares, and merchandise, buildings, work-shops, boats, vessels, slaves, mules, horses, tools and implements, lumber, iron, supplies of provisions, and materials of all kinds; and, in general, all kinds and descriptions of property and estate, real, personal, and mixed, belonging to the said Benjamin in his life-time, in the state and condition it was in on the 27th of October, 1819, except the household furniture; as by said assignment and transfer, on the back of said original agreement, will more fully and at large appear, to which the committee refer; which assignment was pretended to be further confirmed on the 2d of May, 1820. On the 24th of November, 1819, Hawkins deposited, with the Chief of the Corps of Engineers, a copy of the abovementioned assignment made by the administrator of Hopkins, and filed his bond, payable to the United States in the sum of \$150,000, with Robert Tillotson and Nicholas Gouverneur, his sureties, conditioned for the performance of the agreement made by the said Benjamin W. Hopkins, and the same were accepted and approved by the Department, subject to further information, as to the legality of the assignment, which information was furnished by Lieut. Story on the 4th of May, 1820, as appears by the copy of a communication signed by J. L. Smith, and by another one, signed by Lieut. Story. Although Tillotson and Gouverneur were the securities, and no responsibility incurred by Joseph G. Swift, the agent on the part of the government for making the contract, there was an agreement between Hawkins on the one part, and Tillotson and Swift on the other, whereby the former was to account with the latter for one half of the nett profits. Hawkins, by virtue of the said transfer and sale, went into possession of the buildings and all the property abovementioned, and procured some further materials, and made other preparations for

erecting the fortification, in fulfilment of his contract. On the 7th day of June, 1820, the original contract was so altered, by and between James Gadsden of the Engineer corps of the United States, in pursuance of instructions from the Secretary of War, and the said Samuel Hawkins, that a certain composition called tapia, was to have been substituted in the walls to a considerable extent in lieu of brick, a copy of which last mentioned agreement is filed herewith, and to which the committee refer. Hawkins continued to prosecute his object until some time in the fall of the year 1820, when, finding his health was declining, and his means not adequate for a work of that magnitude, on the 30th of November, 1820, he made an agreement with Gilbert C. Russell to assign and transfer to him the said contracts; and on the 31st day of January, 1821, actually assigned to Gilbert C. Russell, for the consideration of thirty thousand dollars, the aforesaid contract of the said Benjamin W. Hopkins, and the contract substituting tapia for brick; and by his deed, bearing date on the same day and year last mentioned, for the consideration of thirty-five thousand five hundred dollars, sold and conveyed to the said Russell, all his interest and claim, among other things, to the hotel, kitchen, and out-houses, quarters for carpenters and laborers, carpenter's shop, blacksmith's shop, bakehouse, cookhouse, store, and fixtures, two out-houses, five limehouses, barrack frames, a large frame called the wind-mill, and the house commonly called the Murry-house; and on the same day and year, by his certain other deed, for the consideration of thirty-eight thousand and four hundred dollars, sold and conveyed to the said Gilbert C. Russell, his personal property consisting of implements for carrying on the said work; also his oxen, and such materials as were procured, a negro man; boats, furniture, &c., all of which, by reference to the abovementioned agreement, and to three deeds, or instruments, signed by said Hawkins, will more fully appear. These houses and buildings were on the public grounds at the Mobile Point, and were in part erected by Hopkins, and in part by Hawkins, which appears by the deposition of George Fisher. Russell immediately entered into possession of the property, with the knowledge and consent of Col. Gadsden, as appears by S. G. Swift's evidence, dated 19th of November, 1824, and commenced taking such measures as he thought meet, for carrying on the erection of the fortification. It appears, by a letter from Mr. Calhoun to Col. Gadsden, dated January 4th, 1821, that Mr. Russell had notified him of the arrangement made with Hawkins, and that he was at a loss whether Russell was a partner or an agent, and if a partner, intimated that the government could not recognize him as such, without the consent of Hawkins' security; but if an agent, that Hawkins might substitute whom he pleased, to carry on the work, and the government could not interfere. Mr. Calhoun, in this communication, distinctly states, that time was not a matter of consideration with the government, in comparison with securing the advances made. He says, "therefore, any extension of time, even for two or three years, if the former will contribute to the accomplishment of the latter, by inducing the contractor to apply additional means

competent to that end, it may be acceded to, and you are hereby authorized to enter into arrangements to carry it into effect." Mr. Russell, in January, 1821, sent a large force of black laborers and white mechanics, to work on the fortifications, who were set to their work by Col. Gadsden, which is proved by the testimony of S. G. Swift, dated 13th February, 1822. On the 7th day of February, 1821, Mr. Russell wrote a letter to Mr. Calhoun, in which he states, among other things, that "he had executed a bond to Col. Hawkins, to complete the works by July, 1823; and to pay his (Hawkins') debt and the debt of Hopkins, to the amount of \$77,000, and that he had given for the materials, &c. on hand \$30,000; that he had agreed to complete the barracks by the 1st of May, and by the 1st of June; to have at least one hundred and fifty hands employed, and that that number should not be diminished; that Hawkins had guarantied that government would not resume or annul the contract." He notified the Secretary of War that he acted as the agent of Hawkins, and remarks, "if it is desirable to the government, I can release his sureties without any trouble." The first part of this letter mentions the receipt of a letter from Mr. Crowell, member of Congress, from Alabama, whom Mr. Russell had requested to have an interview with Mr. Calhoun, and to state the situation he was in; and it appears that Mr. Crowel had notified Mr. Russell, that Mr. Calhoun had given discretionary powers to Col. Gadsden, and that any advance would depend on his (Col. Gadsden's) report, or on that of the superintendent at the Point. Mr. Russell, in a letter to Mr. Calhoun, dated the 12th of March, 1821, mentions the death of Col. Hawkins to have taken place on the 8th; that he had received a transfer of the contract; that he had declined to release Hawkins' security, and must therefore be considered as an agent of Hawkins, although a contractor in fact. He assigns the reason why he had declined to release the security, to have been, that he supposed their names would the better ensure an advance of money; that he wanted thirty thousand dollars instead of fifty thousand dollars, and would give additional security to indemnify the securities of Hawkins, that the money should be faithfully disbursed and applied, or that he was prepared, in case the sum required should be advanced, to release Hawkins' security entirely, and give such himself, as should be satisfactory to the Government. And he requested that Mr. Calhoun would "inform him precisely on what he might rely." Col. Gadsden being removed from superintending the work at Mobile Point, was succeeded by Capt. De Russey, and on the 1st of May, 1820, he gave a detailed statement to De Russey, of the transfer of the contract to Hawkins, and of his proceedings under it; of his inability to carry it on, and remarks, that, "in December of the same year (1820,) an arrangement was made between him (Hawkins) and Gilbert C. Russell, of Alabama, appointing the latter agent of the former, to carry on the work in his name, with an obligation to keep a certain number of Negro laborers constantly employed." In this statement he mentions that a communication from the Engineer Department, of March 21st, had been made known to Gen.

Starke, under whose direction the works on Dauphin Island were erecting; that as he had depended upon monthly amounts received, it was doubtful whether he would be able to progress; but that he was in hopes he should, by an arrangement made for the delivery of brick at Mobile Point. It is to be remarked that Gen. Starke was the acting contractor for the work at Dauphin Island and that Congress had omitted to make an appropriation for carrying on that work. Under these circumstances, Starke had contracted to deliver brick at Mobile Point, in order to raise money to fulfil his contract, and Mr. Gadsden proceeds to state, "that he will be able to complete the barracks on Dauphin Island this summer, depending upon the justice of the government for being ultimately indemnified for the labor and expenses incurred." In order to shew what this eagagement of Gen. Starke was, and under what circumstances it was made, the Committee refer to an original paper, and transcribe it in their report:

"9 $\frac{3}{4}$ inches long,
4 $\frac{7}{8}$ in width,
2 $\frac{1}{2}$ in thickness."

Is the above the dimensions of the moulds given me by Col. Gadsden? If so, he will please to say underneath, the price allowed for brick made in such moulds, and oblige his obedient,

GILBERT C. RUSSELL.

25th April, 1821.

Underneath which, Col. Gadsden wrote,

"If bricks by the above moulds, after being burned, &c. ready for delivery, measure nine inches, four and a half inches, and two and a quarter inches, they will be worth, conformably to the terms of the contract, fourteen dollars per thousand, delivered at Mobile Point, near the site of the work.

JAS. GADSDEN."

After receiving this information, and on the same day last above mentioned, General Starke agreed to deliver at Mobile Point one million of bricks, for which Mr. Russell engaged to give him written authority to the Chief Engineer, to pay him at the rate of fourteen dollars per thousand. That this contract was made at the suggestion of Colonel Gadsden, appears by the twelfth answer to an interrogatory put by Colonel Russell to General Starke; and that the existence of this contract was known by Colonel Gadsden, is proven by the following extract of his letter to the Engineer Department, dated May 2d, 1821, in which he says: "By an arrangement made with Russell, agent of Hawkins, similar to the one suggested by you, for the delivery of one million of bricks at Mobile Point. General Starke is in hopes he will be enabled to progress at his brick yard, and with the barracks at Dauphin Island." &c. On the 12th of May, 1821, De Russey wrote to the Engineer Department, stating his belief that the work would not progress under the then contract, and advised that it should expire on the 1st of July, and proposed himself

as superintendent of the works to be carried on by the Government. On the 21st of May, De Russy wrote to Samuel Love, an agent of Mr. Russell, and, among other things, remarks: "Should Colonel Russell commence with less than six masons, it is probable that the work they put up must come down." On the 16th of May, 1821, Mr. Russell formally stated, in a communication to Captain De Russy, the assignment and transfer from Hawkins, confirmed by his administrator, and requested to be formally recognized as agent; to which Captain De Russy returned an answer on the 18th, in which, among other things, he says: "I am not authorized by the Government of the United States to acknowledge you as the agent of the late Colonel Samuel Hawkins." After this answer was given, Mr. Wing, the administrator of Hawkins, on the 18th of May, requested to be recognized as the successor of Hawkins; stated that the means at the command of Mr. Russell were at his disposal, and requested that he might progress with the work. De Russy declined to recognize him, for the same reason that he had assigned why he could not recognize Russell—the want of authority. Copies of this correspondence were enclosed in a letter addressed by Mr. Russell to Mr. Calhoun, on the 20th of May, 1820, in which he says: "You will perceive that the captain (De Russy) is so obliging as to say that I may progress with the erection of the walls till he hears from you;" and again, "I regret that I ever had any thing to do with the contract; but, as I informed Colonel Armistead, I am anxious to go on, because to stop now would ruin me, and reduce a wife and children to circumstances that would be distressing to me, if not to them." He expresses his fears, in the course of the letter, that De Russy was disposed to induce the Government to resume the contract; but his confidence that it would not.

On the 25th of May, 1821, Mr. Russell addressed a letter to Mr. Calhoun, in which he made the following remarks: "I was assured by the Engineer, before I took the contract from Colonel Hawkins, for building the fort on Mobile Point, that, provided my means employed in the execution of the work were such as to inspire confidence in the Government, that it would be done in a reasonable time, it would not be resumed according to the limitations thereof;" and refers to a letter he saw to that effect, and says that "Colonel Gadsden told him he might, with *his* means, take his *own* time." He says further: "But now I understand that Captain De Russy expects that the Government will resume the contract, and have the work completed by hirelings," &c., and expresses a hope that this will not be done, "because it would ruin me, if not Tillotson and Gouverneur," &c. He mentions that he has one hundred and — hands making bricks, and could exhaust the appropriation, if it was five times what it was for the Point in that year, in building the barracks and delivering brick. He mentions that he had returned a part of his hands to his plantation, on information obtained from Colonel Gadsden, that it was probable that a greater appropriation would be made the next year; but that still his force was ample, and says: "If I am deprived of the con-

tract, it must be done on *other grounds* than a want of confidence in *my* ability to work as fast as the nation can pay me," &c. In this letter he enclosed the certificates of Major Montgomery, then of the United States' army, Richard B. Owen, and J. W. Wing, which show the number of hands Mr. Russell then had employed. Mr. Wing was acquainted with all the hands at different stations, and says there are about two hundred, principally slaves. Mr. Russell, not having received any answers from the Secretary of War, on the 27th of July, 1821, addressed a letter to General M'Comb, of the Engineer Department, in hopes of eliciting an answer from him. He states the communications he had made to Mr. Calhoun, and complains that he is without an answer; that he is fearful that De Russy may have written to his prejudice, and wishes copies of his communications. He states the transfer of the contract, and that he had given to Hawkins a bond, in the sum of three hundred thousand dollars, that the works should be completed in July, 1823.

Mr. Russell being still without any reply, on the 10th of September, 1821, wrote to Colonel Gadsden, then at Washington, in the capacity of Adjutant General, and, referring to the previous communications, complained of the silence of the Secretary of War. He requested that Colonel Gadsden would wait on the President, and inform *him*, that he, Russell, could give the ablest security in that country for the old debt, provided he would remove De Russy, &c. He states that he then had about three millions of brick made, and should have six or eight millions, if the weather continued favorable until December. This letter was referred to the Engineer Department.

On the 5th of October, 1821, Colonel Gadsden writes an answer, (after stating that Mr. Russell's letter of the 10th of September had been referred to the Engineer Department,) as follows: "I believe, however, the subject of the Mobile point contract is now before the Department of War."

Being at this time without any answer, on the 8th of October, 1821, Mr. Russell again writes to Mr. Calhoun, and states that Col. Gadsden received and put his force to work; that he had made one brick-yard that had cost him \$10,000, and that at all of his yards he could make 75,000 brick per day.

On the day last mentioned he also wrote Colonel Gibson, and requested him to obtain, and forward, information respecting the contract which was referred to the Engineer Department.

Not having obtained any information, Mr. Russell wrote to Mr. Calhoun on the 15th of November, 1821, wherein he mentions a part of the substance of the letter written to Colonel Gadsden on the 10th of September, in relation to the security he would give, &c. and made the following proposition: "I will take the contract, if to be let anew, for one hundred thousand dollars less than stipulated by Hopkins; and if the foundation of the fort shall not go more than twelve inches below high water mark, I will do the work for one hundred and twenty-five thousand dollars less than the original contract price, give se-

curity for the completion of the work, and require no money only on the delivery of materials and labor performed." This letter was forwarded before the receipt of General Macomb's letter, of November 5th, 1821, addressed to Mr. Russell, in which he says, "your several communications to this and the War Department have been received, but as you have not been recognized as the successor of the late Col. Hawkins, it was not deemed necessary to make any reply to them." This was the first intimation communicated officially to Mr. Russell, that he would not be recognized either as the assignee or agent of Hawkins, or of his administrators; and thus had the War Department slept on Mr. Russell's communications from the 7th of February to the 5th of November; although frequently apprised of the vast expense he was daily incurring to carry the contract into effect, with the full and just belief that he should be ultimately recognized by the government, and that the temporary obstacles were interposed by De Russy. While, however, these communications were not regarded, punctuality was observed in the correspondence with a certain Lewis S. Corryell. It appears by a letter written by the Hon. S. D. Ingham, for and on behalf of his friend Lewis S. Corryell, dated June 7th, 1821, that Mr. Corryell had been informed by a Mr. Griswold, that he (Griswold) had undertaken the work with Russell, and had made some advances, but finding that Russell was not a man of business sufficient for such an undertaking, and not possessing the *confidence* of the *commandant* at the station, and also without authority to carry on the work, was desirous that Corryell should join him (Griswold) in endeavouring to obtain the contract. Mr. Ingham wished information on three points: 1st. Whether the Department considered the contract with Hawkins was at an end upon his death, inasmuch that no claim from his heirs or assignees would be recognized?

2d. Whether, in case the contract with Hawkins, his heirs, &c. be at end, so far as it respects the government, you (the Secretary of War) would be willing to make a new engagement, or renew the old one, with other satisfactory persons?

3d. And if it is preferred to renew the old contract, what sum has been paid to Hawkins for the work he has performed, to be accounted for by the new contractors? Information on these points was requested. On the 16th June, 1821, Mr. Calhoun writes an answer, in substance, that the contract would expire on the 1st of July; that he had informed the sureties of Hawkins that, if an arrangement could be made, which would satisfy the Department that the works will advance with such vigor as to ensure their completion in a reasonable time, that the Department had no objection, with their assent, to extend the time. That if the sureties did not assent, the contract would be considered at an end. That it was doubtful whether the Government would prosecute the work, or make a new contract; and that there had been advanced on account of the contract about \$116,000. Mr. Ingham was at Washington on the 23d of July, 1821, and there is a letter of that date written by Mr. Calhoun to him, in which he states in substance, that he has no objection to the contract of the

late Colonel Hawkins &c. being transferred to Corryell, provided certain evidence is produced of the solvency of certain securities to the amount of \$150,000, and that the Attorney General should be of opinion, that the transfer could be made legally by the representatives of Colonel Hawkins in the state of New York. On Mr. Ingham's passage home, he wrote to Mr. Calhoun July 23d, making certain inquiries, relating to the quality of materials procured, and work done by Colonel Hawkins, and any other credit which either of them would have been entitled to, such as erecting engineers' quarters, &c. which he understood had been done. This letter was answered on the 27th. On the 31st of July, Mr. Calhoun addressed another letter to Mr. Ingham, enclosing the report of Lieutenant Story, and remarks, "you will see that the picture is a very discouraging one, as it regards its past management, those who are now interested, and its future prospects." These letters were answered by Mr. Ingham on the 3d of August; when he remarks, "it appears to me the entanglement between Russell and Griswold, and Russell's possession of Hawkins's property, not the least embarrassing, unless the United States could possess itself of the property by virtue of their claims upon Hawkins's estate, in the event of a failure to negotiate with him for it:" and he wishes to know what number of cubic feet of earth are computed in the Remblais. This information was given on the 11th. On the 14th of August, 1821, Mr. Ingham again wrote to the Secretary of War, and enclosed various modifications of the terms formerly submitted, as being proposed by Mr. Corryell, and submitted some additional points, one of which was "that Mr. Corryell shall be entitled to all the credits, which Hopkins and Hawkins would have been entitled to, if either of them had completed the contract, and that the United States transfer to him all their claim upon the estates of Hopkins and Hawkins, arising out of their contract to erect the fort at Mobile Point." General Macomb, by direction of the Secretary of War, under date of the 18th of August, informs him; "that the United States have no claim against Hopkins, his bonds having been surrendered, on the consummation of the transfer of the contract to Hawkins, nor have the United States any judgment or mortgage on the property of the latter, there being nothing but his bond with sufficient security to perform the contract. He further states, "that Mr. Corryell had been informed that the contract cannot be forfeited under a late act of Congress, and renewed by him, but that it must pass to him by transfer from the representatives of Hawkins, with the assent of his securities; that, if he obtained possession of Hawkins's property, it must be from his representatives. He says, "it is however probable, that, as his buildings at the point, and it is believed his brick yards, are on public ground, that the United States may legally put him in possession, by ousting those who may be in possession." Mr. Ingham, on the 25th of August requests to know, "whether the Department will stipulate to put Mr. Corryell in possession of such of the buildings and brick yards now built by Colonel Russell, as are constructed on the public grounds." This request is answered by General Ma-

comb, in the absence of Mr. Calhoun, on the 30th August, 1821, in which he states, "we will, therefore, put you in possession of such buildings as may be on the public grounds." This was predicated on the advice of the Attorney General, that it could legally be done.

Various letters passed between the Secretary of War and Mr. Ingham, relating principally to modifications of the terms of the contract, and the difficulty of obtaining a transfer from the securities and Mrs. Hawkins; the latter being the person named Executrix of Samuel Hawkins, in his last will, which was not proved or approved in New York or elsewhere. Messrs. Tillotson and Gouverneur were willing to assign the contract, reserving to themselves all legal rights. Mrs. Hawkins declined, on the ground that Mr. Griswold had "proposed to take the contract upon terms favorable to her, and which would probably afford her the means of discharging the debts of her late husband, and of furnishing some support for herself and family, &c. Mr. Griswold offered to give satisfactory security to the government, and others proposed to take the contract on like terms;" of which the Department was notified, on the 21st November, 1821, by a communication from Mr. Ruggles, which Mr. Calhoun declined to do, on the 30th, on the ground of delay, and the objections raised against Griswold. The opinion of the Attorney General was taken on the question, whether the Secretary of War "could, after forfeiting the contract with Col. Hawkins, make a new contract with Corryell:" which, being decided in the affirmative, Mr. Ingham was informed of it, on the 29th of October, 1821; but, in order to hold the representatives of Hawkins, and their securities, it was proposed that they assume the completion of the work, by contracting with Corryell, who should execute new bonds, &c. New difficulties now arose. The securities of Hawkins supposed, that, on assigning the contract, they were to be exonerated; the Department of War was unwilling to release them, except in the event that Corryell and securities were sufficient to indemnify the government. It is believed, that a definite arrangement was ultimately made, as Mr. Tillotson, on the 31st of December, 1821, notified Gen. McComb, that he had forwarded to Mr. Ingham all the papers necessary on his part to complete the arrangement for the transfer of the contract at Mobile. Whether the contract was signed, does not appear; but, by a letter from Mr. Calhoun to Tillotson, dated 6th April, 1822, the committee is led to conclude it was not. The Committee have adverted to the correspondence between the War Department and Mr. Ingham, as the Agent of Corryell, to show, that it was the wish of the Government, that the fortification at Mobile Point should be erected.

Capt. De Russy, on the 15th of October, 1821, notified Mr Love, the Agent of Mr. Russell, that he was instructed by an order from the Engineer Department, to take possession of all the property left on the Point, by the late Col. Hawkins, and to give it in charge to Capt. Glassel's company, of the 4th Regiment of Infantry, detached by an order from the Hon. the Secretary of War, for the purpose of securing it, till the measures of Government were made known with respect to

the future contract. He states, that he had appointed two officers to take an inventory of the property, and invites Mr. Love to join them, &c. And on the same day, as appears from his communication to Gen. McComb, of the 20th of October, he did take possession of the property, with the assistance of an armed force.

De Russy had, as early as July 12th, 1821, written to Mr. Crawford, District Attorney for the United States Court, in Alabama, to obtain his opinion, whether he could take possession of the property of the late Mr. Hawkins, and was informed on the 20th of the same month, that he could not.

It does not appear that the War Department answered the letter of De Russy, of the 20th of October, or that it disavowed his act, until the 11th of July, 1822, when he was informed, that he had misconstrued the orders of the 14th of August, which "required him to take possession of the buildings, supposed then to be occupied by Col. Russell, as soon as he should abandon the occupancy, and that he was notified that "a company of troops would be sent there to take possession of the public property," &c. The amount of property thus taken, is not known, nor is it necessary for the relief reported, that it should be at this time. Nor is the extent of the work performed by Mr. Russell, within the knowledge of the committee, but they are satisfied that he had commenced the work under favorable auspices: that he had progressed with the walls of the barracks, and only suspended operations at the Point until he could hear from the Secretary of War, and withdrew his force from the Point to other places, for the purpose of making bricks; that his means, with what he might reasonably expect from the Government, were ample, and sufficient for completing the works, had he been permitted so to have done; and that great sacrifice must have attended the high handed measure pursued by De Russy, under the orders he received, as well as great losses from the uncertainty of the pleasure of the Secretary of War, in relation to his recognition as the agent, assignee, or successor of Hawkins; and it is for these losses and sacrifices he claims relief.

Several questions are presented: 1st. Were the conveyances and was the assignment from Hawkins to Russell legal? It is to be noted, in solving this question, that the Government was assenting to the transfer of the original contract by Hopkins, administrator to Hawkins, and that by the terms of the assignment, it was made to *him, his executors, administrators, and assigns*. The securities of Hawkins executed their bond with a knowledge of the terms of the assignment, and they were bound by it. The Committee think the transfer of the contract, and the conveyance of the property, were legal; and that the Government was equally bound to have paid Russell, as Hawkins. 2d. Admitting the assignment did not create a privity of contract with the Government, was Russell entitled by the authority vested in him by Hawkins, to proceed with the works? Hawkins had the right to substitute any person to fulfil the contract on his behalf, and that without the assent of his sureties. They had no control over the execution of the contract. They could neither hasten or retard the works. Their

undertaking was collateral; and, if Hawkins had not performed, and they had been damnified, he would have been responsible. Hawkins assigned the contract, and took bonds from Russell for the completion of the fort, agreeable to the terms of the different contracts. Suppose Russell had half completed the fort before Hawkins' death, will any one pretend that the money expended, and the work and labor performed, were for the benefit of Hawkins' estate, and that the amount due from the Government was subject to have been inventoried, or that Hawkins' death would cancel the contract? Russell and his sureties are liable to Hawkins' representatives for not completing the fort, notwithstanding Hawkins' death, for the validity of the bond is not on that contingency. The case must be a hard one, indeed, if the death of Hawkins had prevented Russell from performing his contract, and the law still subject him for the non performance of it. Again: for the greater security, and to conform to the views of the Government in the case of Hopkins' administration, Wing, as the administrator of Hawkins, confirmed whatever had been done in relation to the assignment of the contract and the transfers of the property. If Hawkins had not parted with all of his interest in the contract, it was cast, by his death, on his legal representative. It was so considered by the Government when it required an assignment of the contract to Hawkins from Hopkins' administrator: nothing was then said of the rights and powers of the sureties. It is objected, however, that Wing was not legally appointed administrator, 1st. Because Hawkins left a will; and 2d, that his domicil was in New York.

In answer to the first objection, it is sufficient to state that the will was not proven. As to the second, the committee hold the law to be, that every sovereignty claims that all estates within its limits, be administered in conformity with its laws; and that all powers are derived from them. If the will had been proven in New York, that probate would not have vested the executrix with any right to have disposed of the property in Alabama. The states have generally provided for the production of an authenticated copy of the probate record of a foreign state, which, when recorded in the state where the property is situate, will authorize the executors to settle an estate; but, without such provision by statute, the will must be proven anew. In this case, Hawkins left property in Alabama; he had no relative there; he had contracted debts; it was due to his heirs and to his creditors, that this property should be secured for their benefit. If, after the granting administration, a will had been proven, this would have revoked the letters of administration; but, notwithstanding, so far as the administrator had proceeded, his acts would have been binding on the estate. The granting of letters of administration, is a judicial act, and if the court has jurisdiction, the person appointed administrator is the legal representative of the deceased; until his letters are revoked, the appointment is voidable, not void.

3d. Had the Government any right to seize upon and take the property of Mr. Russell?

The Committee wish to be distinctly understood to say, that they consider that all the buildings and property contained in the sale of Hawkins, were conveyed to Russell, and became his absolutely.

They wholly discard the idea, that the buildings on the public grounds were not the subjects of transfer and sale. The Government considered when its execution was levied on these buildings, that they were the property of Hopkins, for surely it would not take its own property to satisfy a debt which was due to the Government. If the buildings did not belong to Hopkins, a gross deception was practiced on Hawkins, the purchaser. The Government is estopped by its own act to deny that the buildings were Hopkins's. But, if the circumstances are considered, the committee think there can be no doubt on this point. The Government contract for the building of a fort, which, from the magnitude of the work, must necessarily employ a great many hands; buildings are necessary for their accommodation, it owns all the lands in the vicinity of the site where the fort is to be built: Will any one pretend that there is not a tacit assent given at the time of making the contract, that so much of the public ground may be occupied, as is necessary, whereon to erect buildings for workmen? If this is conceded, how can it be contended that they are fixtures? They are not designed to be permanent, and the contractor has not, in the opinion of the committee, parted with his right to the materials of which the buildings are composed. He has a right to remove them when the work is completed, and a reasonable time is, by the law, given him to do it, or if the Government put an end to the contract, the like reasonable time is allowed after notice.

4th. Had the Government the right to take possession of this property by an armed force?

It was conceded in the letters from the War Department, that so far as it respects all the property other than the buildings, it had not, and it was supposed that they had no right to them until convinced to the contrary, by the opinion of the Attorney General.

5th. Was the act of De Russy unauthorized?

By the order, he was directed to take possession of the public property, generally, at Mobile Point. It is true that he was instructed to take the opinion of the District Attorney; but, if the committee are correct in the view they have taken of this part of the case, it may be asked, what property had the Government then, on which the order could have been executed? It was not intended that the land there should have been secured against depredations. De Russy knew that the Government had, by its own act, considered the buildings at the point, private property. He might very naturally have concluded that he was ordered to seize *all the property*, as there were no definite directions. If the Department did not sanction his outrages, why not disavow the act promptly, and direct him to make restitution? He reported that he had taken all the property formerly belonging to the late contractor, Colonel Hawkins. Of that property he promised an inventory. Of the kind of property taken, the Department was

notified, and it should be borne in mind, that Mr. Ingham had suggested the necessity of taking possession of the whole.

All further negotiation with Corryell was closed, as signified by Mr. Calhoun on the 6th of April, 1822, and the disavowal of the act of De Russy, on the 11th of July following.

The Committee think the petitioner is entitled to relief for all the property taken, and for all the labor performed; and for that purpose report a bill.

DOCUMENTS

Accompanying the Report in the case of Gilbert C. Russell.

This Agreement, or Contract, made and concluded this thirteenth day of May, in the year of our Lord one thousand eight hundred and eighteen, by and between Joseph G. Swift, Chief Engineer, on the part of the War Department of the United States, on the one part, and Benjamin W. Hopkins, of the state of Vermont, of the other part; witnesseth, that the said Benjamin Hopkins will, for the consideration hereinafter stated, well and truly construct, or cause to be constructed, at such place in the vicinity of Mobile Point, Alabama, as the United States by any engineer may direct, a fort, to be constituted of such walls, ditches, embankments, buildings, parts, and dimensions, as the said engineer may from time to time prescribe. And the said Benjamin W. Hopkins will, well and truly furnish all materials, of such quality, and all artizans, laborers, and workmanship, requisite for the construction of the fort aforesaid, as may be prescribed by the said engineer; and the whole workmanship and materials to be executed and found by the said Benjamin W. Hopkins. And the said Benjamin W. Hopkins will grout, or cause to be grouted, all the walls of the said fort; and that the construction of the said fort shall be commenced by the said Benjamin W. Hopkins, on or before the first day of October, eighteen hundred and eighteen; and that the said fort shall be completed, or caused to be completed, by him the said Benjamin W. Hopkins, by the first day of July, eighteen hundred and twenty-one. And the said War Department of the United States, by Joseph G. Swift aforesaid, will well and truly pay, or cause to be paid, unto him the said Benjamin W. Hopkins, for the materials and workmanship aforesaid, as follows: that is to say; for every cubic yard of earth excavated and removed as aforesaid, eighty-three cents and eight tenths of a cent; for every cubic yard of brick masonry, eleven dollars; for all carpentry, where scantling or joists may be used, of dimensions not exceeding in measure ten by ten inches breadth and thickness, sixty-two cents and one half of a cent per yard, running measure; for all carpentry, where joists of dimensions smaller than six inches by eight inches breadth and thickness may be used, forty-four cents per yard, running measure; for all flooring with two inch stuff, two dollars and twenty-five cents per square yard; for all flooring with three-inch stuff, three dollars and fifty cents per square yard; for all

double doors, five dollars and fifty cents per square yard; for all windows, including frames, shutters, sash and glazing, five dollars and fifty cents per square yard; for all bunks and ceilings, one dollar and twenty-five cents per square yard; for all wainscoting, thirty-seven and a half cents per running yard; for all iron-work, twenty-five cents per pound. And the said Joseph G. Swift, on the part of the United States as aforesaid, will pay or cause to be paid unto him the said Benjamin W. Hopkins, the amount of value of every cargo of materials, which the Engineer aforesaid may pronounce to be delivered, of proper quality, at or near the said Mobile Point, for the construction of the fort as aforesaid. The said value and amount to be considered in part payment of the work aforesaid. Provided always, that the said Benjamin W. Hopkins shall and do deliver to the said Engineer, the invoice of the materials so delivered as aforesaid. And the said Joseph G. Swift, on the part of the United States as aforesaid, shall and will pay, or cause to be paid, unto the said Benjamin W. Hopkins, the sum of twelve thousand five hundred dollars, if demanded, at the close of every month after the work shall have been commenced: provided always, that the said work so done at the close of every month, as aforesaid, shall amount to twelve thousand five hundred dollars, exclusive of the materials used in the construction of the said work. It is clearly understood by this agreement or contract, that the work shall be executed agreeably to the orders, and to the satisfaction, of the said Engineer or Engineers, whom the Government may appoint, to direct or superintend the work as aforesaid. Also, it is understood by the parties hereunto, that all walls of masonry shall be estimated in measurement, by their actual length, breadth, and thickness.

This Agreement, or Contract, shall be considered binding on both parties hereunto subscribing, as soon as the Secretary of War shall have signified in writing, hereupon, his approval of the securities given for the faithful execution of this agreement.

It is also understood, that at least thirty thousand cubical yards of masonry will be constructed, and at least one hundred thousand cubical yards of earth will be excavated and removed, in constructing the fort as aforesaid. In witness whereof, the parties have hereunto set their hands and seals, the day and year first above written.

J. G. SWIFT, *Ch. Eng.*

B. W. HOPKINS.

Signed, sealed, and delivered, in presence of

C. VANDEVENTER.

GEO. BLANEY.

This Indenture, made the 20th day of November, 1819, witnesseth: That whereas the within-named Benjamin W. Hopkins, deceased, did, in his life-time, with a view to the execution and fulfilment of the within contract on his part, erect several houses, workshops, and

other buildings, on Mobile Point, in Alabama; and did also purchase a certain large tract of land at or near Dog River, that pours its waters into the Bay of Mobile, in said Alabama; and also a certain other tract of land, situated at or near Fowl River, that also empties its waters into the said Bay; in and upon which two several tracts aforesaid, inexhaustible quantities of good clay, for the manufacture of brick, are found. And *whereas* the said Benjamin W. Hopkins, did also, for the purposes aforesaid, build certain vessels, boats, and carriages; and did, moreover, purchase and collect large quantities of lumber, iron, tools and implements, supplies of provisions, goods, wares, and merchandises, slaves, mules, and other things: And *whereas*, also, the said Benjamin W. Hopkins did, in his life-time, make large advances to divers persons who had contracted with him to perform certain labor, and to furnish brick and other materials, in and about, and constructing the fort within named: And *whereas* further, Roswell Hopkins, the father and one of the sureties of the said Benjamin W. Hopkins, deceased, having taken upon himself the burthen of administering the personal estate and effects, whereof the said Benjamin W. Hopkins died possessed, and hath for that purpose taken out letters of administration: And *whereas*, finally, the said Roswell Hopkins, so being administrator as aforesaid, did, on the 27th day of October, 1819, covenant and agree to and with Samuel Hawkins, of the city of New York, to transfer and assign by an instrument in writing, to him, the said Samuel Hawkins, or to his assigns, the within written contract, together with all the "benefits and advantages secured thereby, to the said Benjamin W. Hopkins in his life-time; and also all and singular the goods and chattels, buildings, materials, supplies, workshops, boats, vessels, slaves, tools, and implements; together with all the vouchers thereunto relating or belonging: and in general all kinds and descriptions of property and estate, real, personal, and mixed, belonging to the said Benjamin W. Hopkins in his life-time, in the condition in which the same was on the said 27th day of October, 1819, (except the household furniture, which was of the said B. W. Hopkins, at the time of his decease;") all which, by referring to the said last-mentioned agreement, more fully and at large appears:—

Now know all men, by these presents: That, for and in consideration of twenty thousand dollars, the payment whereof is secured to my satisfaction, and in fulfilment of my said agreement with the said Samuel Hawkins, dated the 27th day of October, 1819, I, the above-named Roswell Hopkins, administrator as aforesaid, have assigned, transferred, and set over, and by these presents do fully and absolutely assign, transfer, and set over, unto the said Samuel Hawkins, his executors, administrators, and assigns, *the within written contract*, with all the benefits and advantages which have arisen, and which may hereafter arise, under and in virtue of the said last-mentioned contract, or which may thereunto in any wise appertain; together with all and singular the goods, wares, and merchandises, buildings, workshops, boats, vessels, slaves, mules, horses, tools, and imple-

ments, lumber, iron, supplies of provisions, and materials of all kinds; also, all the credits, books, and vouchers, thereunto relating, or in any wise belonging; and in general all kinds and descriptions of property and estate, real, personal, and mixed, belonging to the said Benjamin W. Hopkins in his life-time, in the state and condition in which the same was on the 27th day of October now last past, (the household furniture which belonged to the said Benjamin W. Hopkins at the time of his death, excepted.) And I, the said Roswell Hopkins, do hereby covenant and agree to and with the said Samuel Hawkins, his executors, administrators, and assigns, to procure and cause to be executed and delivered to the said Samuel Hawkins, his executors, administrators, or assigns, good and sufficient deeds of release of dower, from the widow of the said Benjamin W. Hopkins, for the several tracts of land hereinbefore mentioned; and also procure to be executed and delivered to and for the said Samuel Hawkins, good and sufficient titles in the law, to and for the said several tracts of land.

In witness whereof, I have hereunto set my hand and seal, this twentieth day of November, one thousand eight hundred and nineteen.

ROS. HOPKINS.

Signed, sealed, and delivered, in the presence of

HERMAN RUGGLES.

Having legally administered upon the estate of my late son, Benjamin W. Hopkins, in virtue of letters of administration, (a copy whereof is annexed) I do hereby confirm and ratify the foregoing assignment, in and for the consideration therein specified. Witness my hand and seal, the 2d of May, 1820.

ROS. HOPKINS, (I. S.)

Witness present,

DAVID RUST.

This Indenture, made this second day of May, 1820, between Roswell Hopkins, administrator of the goods and chattels, rights and credits, moneys and effects, of Benjamin W. Hopkins, deceased, of the one part, and Samuel Hawkins, of the county of Mobile, in the state of Alabama, of the other part, witnesseth: That whereas letters of administration have been duly issued to the above-named Roswell Hopkins, by the Orphans' Court, holden in and for the county and state aforesaid, in and upon the goods, chattels, credits, and effects, as aforesaid, of the said Benjamin W. Hopkins, deceased, (a certified copy whereof is hereunto annexed,) by reason and in virtue of said letters of administration, I, the above-named Roswell Hopkins, possess full power and authority to assign and set

over the within written contract, made and executed by and between Joseph G. Swift, on behalf of the United States, and the above-named B. W. Hopkins, deceased, to the said Samuel Hawkins, or any other person.

Now, therefore, this Indenture witnesseth, that I, the said Roswell Hopkins, administrator as aforesaid, for and in consideration of the sum of two thousand dollars, to me in hand paid, the receipt whereof is hereby acknowledged, have assigned, transferred, and set over, and by these presents I do absolutely assign, transfer, and set over, unto the above-named Samuel Hawkins, his executors, administrators, and assigns, the within written contract, (above-mentioned) with all and singular the benefits, privileges, and advantages, which have already accrued, or which may hereafter accrue, by and in virtue of the said contract.

In witness whereof, I have hereunto set my hand and seal, this day and year above written.

ROS. HOPKINS.

The words "certified," "I," "me," }
and "I," interlined before execution. }
DAVID RUST.

At a special term of the Orphans' Court, holden at Mobile, in and for the county of Mobile, on the third day of February, A. D. 1820.

Mobile County, ss.

Be it remembered, That, on application to our said Court, holden on the third day of February, in the year of our Lord one thousand eight hundred and twenty, by Roswell Hopkins, for letters of administration on the estate of Benjamin W. Hopkins, deceased, late of the county of Mobile—we have caused these our letters of administration to issue in and upon the goods and chattels, rights and credits, moneys and effects, of the said Benjamin W. Hopkins, deceased, in favor of the said Roswell Hopkins, and in every case in which occasion may require, he, the said Roswell Hopkins, is authorized to sue and be sued, to plead and be impleaded, as the legal and rightful administrator of the estate of the said Benjamin W. Hopkins, deceased.

Witness, Henry V. Chamberlain, Esq. Chief Justice of our said court, the 3d day of February, A. D. 1820.

HUGH. H. ROLSTON, *Reg.*

I, Hugh H. Rolston, Register of the Orphans' Court for said county, certify, that the foregoing is a true copy of the original.—Given under my hand, the third day of May, A. D. 1820.

HUGH H. ROLSTON, *Reg.*

PHILADELPHIA CITY AND COUNTY, ss.

Samuel Bryan, Esquire, Register for the Probate of Wills, and granting Letters of Administration in and for the city [L. s.] and county of Philadelphia, in the Commonwealth of Pennsylvania, to Roswell Hopkins, of St. Lawrence county, in the state of New York, farmer, *Greeting:*

WHEREAS Benjamin W. Hopkins, late of Mobile, Alabama territory, merchant, lately died intestate, as is sworn, having, whilst he lived, and at the time of his decease, divers goods and chattels, rights and credits, within the said county, by means whereof the full disposition and power of granting Letters of Administration thereof is manifestly known to belong to me: I, therefore, desiring that the goods and chattels, rights and credits, which were of the said deceased, may be well and truly administered, converted, and disposed of according to law, do hereby grant unto you, the said Roswell Hopkins, full power, by the tenor of these presents, to administer the goods and chattels, rights and credits, which were of the said deceased, within the said county as also to ask, collect, levy, recover, and receive the credits whatsoever of the said deceased, which, at the time of his death were owing, or did in any way belong to him, and to pay the debts in which the said deceased stood obliged, so far forth as the said goods and chattels, rights and credits, will extend, according to their rate and order of law; especially of well and truly administering the goods and chattels, rights and credits, which were of the said deceased, and making a true and perfect inventory and conscionable appraisement thereof, and exhibiting the same into the Register's Office, at Philadelphia, on or before the fourteenth day of November next, ensuing, and also a true and just account, calculation, and reckoning of your administration, upon your solemn oath, to render at or before the fourteenth day of October, in the year of our Lord one thousand eight hundred and twenty, or when legally thereunto required. And I do by these presents ordain, constitute, and depu'te you, the said Roswell Hopkins, Administrator of all and singular the goods and chattels, rights, and credits, which were of the said deceased, within the limits aforesaid, saving harmless, and forever indemnifying me, and all other officers, against all persons, by reason of your Administration aforesaid, and saving all other their rights, &c.

In testimony whereof, I have caused the seal of the said Office to be hereunto affixed. Dated at Philadelphia, aforesaid, the fourteenth day of October, in the year of our Lord one thousand eight hundred and nineteen.

SAMUEL BRYAN, *Register.*

CITY AND COUNTY OF PHILADELPHIA, ss.

I certify that the within is a true copy of the original Letters of Administration which were granted unto Roswell Hopkins, to the estate of Benjamin W. Hopkins, deceased.

Given under my hand and seal of Office, this twenty-eighth day of December, Anno Domini 1824.

JOS. BARNES, *Register.*

ENGINEER DEPARTMENT,

Washington, Nov. 24th, 1819.

SIR: Col. Samuel Hawkins has deposited in this office a copy of an assignment to him from Judge Roswell Hopkins, as Administrator upon the estate of his son, the late Col. B. W. Hopkins, of the contract of the said B. W. Hopkins with the United States for building a Fort at Mobile Point; together with the copy of the assignment he has deposited a bond, which he offers to substitute for the bond furnished by B. W. Hopkins, deceased, for the due fulfilment of the contract, and now in possession of this Department, provided the assignment above stated be sanctioned by Government.

The bond offered by Col. Hawkins is deemed competent, and the Government is willing to acknowledge him as the successor of Col. Hopkins, whenever a legal assignment of the contract shall be made to him. Before any administration can be legal it must be determined that Col. Hopkins died intestate; that being established, the privilege of administering will devolve upon his widow, or whoever may be his nearest relative. Such individual administering upon the estate, may make a legal assignment, or may legalize the assignment of Judge Hopkins by acknowledging him as the administrator, and specially approving and confirming his assignment to Col. Hawkins. Upon evidence being produced to you of a legal assignment of the contract of the late B. W. Hopkins being made, under the conditions just stated, to Col. S. Hawkins, and upon Col. Hawkins agreeing, in writing, to the construction, as explained in a letter to you from this Department, dated 20th September last, of that part of the agreement of Col. Hopkins relating to the excavation and removal of earth, you are authorized to acknowledge him as the successor to Col. Hopkins, and to release the estate of Hopkins by giving to the person administering thereupon an order upon this Department for the bond of Hopkins and his sureties.

You are also authorized, when Col. Hawkins shall be invested with the contract, to advance him fifteen thousand dollars, "to facilitate the execution of the said contract." A copy of the bond furnished by Col. Hawkins, and of the assignment to him from Judge Hopkins, are forwarded herewith for your information.

I have the honor, &c.

By order,

A true copy,

J. L. SMITH, *Lt. Corps of Eng.*

J. L. SMITH, *Lt. Engineers.*

The above is a true copy of a paper now in my possession, Nov. 30, 1824.

ROSSELL HOPKINS.

MOBILE, 4th May, 1820.

I certify that, from various documents to me exhibited, ample and conclusive evidence is afforded that Roswell Hopkins, duly constitut-

ed administrator to the estate of Benjamin W. Hopkins, deceased, and as such recognized by Harriet, widow of said Benjamin, has made a complete and entire legal assignment of a certain contract, entered into by the said Benjamin, with Joseph G. Swift, then Chief Engineer of the United States, for the construction of a certain Fort at Mobile Point, unto Samuel Hawkins, of the city of New York; that the said Hawkins hath complied with all the requisites prescribed by the Engineer Department to be observed previous to the assignment of said contract, and has been accordingly acknowledged as the lawful successor of Benjamin W. Hopkins in the execution of the contract aforesaid.

HORACE C. STORY,

Lieut. U. S. Corps of Engineers.

The above is a copy of a paper I received of Lieut. Story, and sent on to the Engineer Department, on the receipt of which, the bond of B. W. Hopkins and his sureties was sent to me.

ROSWELL HOPKINS.

To all to whom these presents shall come I, Daniel Duval, Sheriff of Mobile county, in the state of Alabama, send greeting: Whereas, by a writ of executions, issued out of the County Court in and for the County of Mobile, to me directed and delivered, tested the first Monday of October, in the year of our Lord eighteen hundred and nineteen, I was commanded, that of the goods and chattels, lands and tenements of Benjamin W. Hopkins, deceased, in the hands of Roswell Hopkins, administrator, &c. if to be found within my County, to make the sum of seventy-five thousand dollars, which the United States of America, lately in our County Court, in and for the said County, hath recovered against him for debt, also, the sum of twelve dollars, which, to the said United States, in the same Court, were adjudged for costs, as by the said writ of execution, reference being thereto had, more fully appears: And whereas, after the coming of the said writ to me, and before the day of the return thereof, I did, by virtue of the said writ, secure and take the following lands and buildings, hereinafter particularly described, and have, to satisfy the said damages, sold the said lands and buildings, as is hereinafter mentioned, at public auction, according to the statutes in such case made and provided, to Samuel Hawkins, for the sum of twelve thousand nine hundred and eighty-two dollars and seventy-four cents:

Now, know ye, that I, the said Daniel Duval, the Sheriff aforesaid, by virtue of the said writ of execution, and of the statutes in such case made and provided, in consideration of the said sum of twelve thousand nine hundred and eighty-two dollars seventy-four cents, to me in hand paid by the said Samuel Hawkins, the receipt of which is hereby acknowledged, have granted, bargained, and sold, and by these presents do grant, bargain, and sell, unto the said Samuel Haw-

kins, and to his heirs and assigns, forever, all that undivided third of a piece or parcel of land, with the appurtenances thereto annexed, or appertaining, which said piece or parcel of land is buited and bounded as follows, to wit: beginning at the south-east bank of the mouth of Dog river, and then, running up the bank of the said river about three miles, to the south west *beacon*; then, along the said *beacon*, to the head of the said *beacon*, and from thence, down Deer river, to Mobile bay, and from thence, along the shore of Mobile bay, until it strikes the place of beginning.—And also, the hotel, kitchen, and out houses, the quarters of carpenters and laborers, carpenters' shop, blacksmiths' shop, bake house, cook house, store, and fixtures, four lime houses, and two out houses, all situate, lying, and being at Mobile Point, in the county of Mobile, and all the right, title, and interest, which the said Roswell Hopkins, administrator of the estate of Benjamin W. Hopkins, deceased, had in and to the above described estate, either in law or equity, on the seventh day of February, in the year one thousand eight hundred and twenty, or at any time since, had, or now hath, to have and to hold the said land and premises, and all and every of the buildings, as aforesaid, and every part thereof, with the appurtenances, unto the said Samuel Hawkins, his heirs and assigns, forever, as fully and absolutely as I, the said Daniel Duval, as Sheriff aforesaid, and under the authority aforesaid, might, could, or ought, to sell and convey the same. In witness whereof, I have hereunto set my hand and seal, this twenty-third day of March, one thousand eight hundred and twenty.

D. DUVAL, [L. s.]

Sheriff Mobile County, State Alabama.

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

THOS. JNO. MANAGEN.

State of Alabama, }
Mobile, ss.

Personally appeared before me, Hugh H. Rolston, Clerk of the Inferior Courts, in and for the County of Mobile, Daniel Duval, who acknowledged that he signed, sealed, and delivered, the foregoing deed, on the day and year therein mentioned, to the aforesaid Samuel Hawkins.

Given under my hand and seal, this twenty-third day of March, one thousand eight hundred and twenty.

HUGH H. ROLSTON, [L. s.]

Clerk.

Copy of a contract between Col. Hawkins and Capt. James Gadsden,

Memorandum of an agreement entered into, and concluded, this 7th day of June, in the year of our Lord 1820, at Mobile Point, in the state of Alabama, by and between Capt. James Gadsden, of the En-

gineer Corps of the United States, in pursuance of instructions of the Secretary of the War Department of the United States, on the part of the United States, of the first part, and Samuel Hawkins, of the second part, witnesseth: That, whereas the late Benjamin W. Hopkins did, on the 13th day of May, in the year of our Lord 1818, make and enter into an agreement or covenant with Joseph G. Swift, agent, and acting on behalf of the United States, to erect, build, and complete, a fortification for the United States, at Mobile Point, which said fortification was, principally, as to the revetment walls, to be built of brick; and for the erecting, building, and completion of which said fortification, the said Benjamin W. Hopkins was to receive eleven dollars per cubic yard for the mason work aforesaid, as will more fully appear by the aforesaid contract or agreement executed by Joseph G. Swift and Benjamin W. Hopkins as aforesaid, and now on file in the Department of the Secretary at War: And whereas the said Benjamin W. Hopkins died some time in the month of August, 1819; and whereas Roswell Hopkins was duly and legally empowered, authorized, constituted, and appointed, administrator of all and singular the rights and credits, goods and chattels, which were of Benjamin W. Hopkins, deceased, at the time of his decease: And whereas the said Roswell Hopkins did, on the 20th day of November, 1819, and on the 2d day of May, 1820, being thereto as administrator legally authorized, make over, assign, and convey, the said agreement or contract entered into and executed as aforesaid, by Joseph G. Swift and Benjamin W. Hopkins, for a valuable consideration, to Samuel Hawkins, as will more fully appear on reference being had to the said assignments or conveyances, made and executed as aforesaid, by the said Roswell Hopkins, administrator as aforesaid, to the said Samuel Hawkins; and whereas the said Samuel Hawkins, together with Robert Tillotson and Nicholas Gouverneur, executed, on the 2d of November, 1819, a bond to the United States of America, in the sum of \$150,000, for the true and faithful performance, by Samuel Hawkins, of all the covenants, undertakings, and engagements, entered into by Benjamin W. Hopkins, in the contract or agreement made by the said Benjamin W. Hopkins with Joseph G. Swift as aforesaid; and whereas the party of the first part has received authority to substitute, for the building, erecting, and constructing, the revetment walls of the said fortification at Mobile Point, in the place of brick, a certain composition called *tapia*, the said *tapia* to be substituted for brick in such portions of the walls aforesaid as shall be designated by the Superintending Engineer of Fortifications at Mobile Point; which said *tapia* is a species of artificial stone, formed by a proper union, in equal proportions of sharp sand, fresh lime, and oyster shells, with water sufficient to produce adhesion, provided the said Samuel Hawkins would consent to receive ten dollars per cubic yard in lieu of the eleven dollars contracted to be paid to the said Benjamin W. Hopkins for each cubic yard of masonry: Now, therefore, it is agreed, by the said party of the first part and the said party of the second part, that such portions of the revetment, and other walls of the said fortification, to be executed at Mobile Point, as

the engineer may designate, shall be constructed of *tapia*. The oyster shells to be broken up, and the composition, ramming it in the frames, and every necessary operation in making and placing the said *tapia* in the revetment walls, is to be made, done, and executed, to the complete satisfaction of the Superintending Engineer of the Fortification to be erected at Mobile Point.

The said party of the second part hereby relinquishes to the United States of America all claims which he now has, or hereafter may have, in consequence of the assignment aforesaid, by Roswell Hopkins, administrator as aforesaid, of the agreement aforesaid, between Joseph G. Swift and Benjamin W. Hopkins, for any lost time or damages sustained by the said Benjamin W. Hopkins, in consequence of the United States of America neglecting to have an agent at Mobile Point in the Fall of 1818, to designate the site of the fortification to be erected at Mobile Point, or instruct the said Benjamin W. Hopkins what he, the said Benjamin, was to do.

The said party of the second part hereby agrees that the following shall be the construction of that part of the contract entered into by Joseph G. Swift and Benjamin W. Hopkins, which relates to the excavations, viz: the eighty-three and eight-tenths cents allowed for each cubic yard of earth excavated and removed, applies to each cubic yard of earth composing the *remblais** in its finished state, embracing the several stages of excavation, removal, putting up, ramming, sodding, dressing off, and every thing necessary to complete the *remblais*; and that the monthly receipts for labor performed in reference to this part of the contract, will be, by the relays, or for each cubic yard of earth excavated and removed, in proportion to the value the same may bear to its finished state; and it is *further agreed, between the contracting party of the first part and the said party of the second part, with a view of equalizing the advantages and disadvantages arising from inequalities on the earth's surface at the site of the fort to be erected at Mobile Point, that the quantity of earth "composing the remblais in its finished state,"* on which the said party of the second part will be entitled to eighty-three eight-tenths cents per cubic yard, agreeably to the stipulations of the contract aforesaid, will be ascertained by measuring the cubical contents of the earth, dug formed, raised, removed, rammed, and sodded, above the level of the parade, now permanently designated and fixed by the upper surface of a small brick monument, enclosing and supporting a pine stake, marked "Centre Polygon," the said stake being the centre of the fort.

And the said party of the second part hereby agrees to receive ten dollars per cubic yard for every cubic yard which shall be built of *Tapia*, instead of the eleven dollars per cubic yard, agreed to be paid for mason or brick work, as mentioned in the agreement between Joseph G. Swift and B. W. Hopkins.

And it is further agreed, by both the parties aforesaid, that this agreement or contract is to have no effect on any part or construction

**Remblais*: The necessary earth brought on the natural ground for throwing up a rampart, parapet, glacés, and other earth work.

of any part of the contract entered into between Joseph G. Swift, and Benjamin W. Hopkins, as aforesaid, except as in this agreement mentioned.

In witness whereof, we have hereto set our hands and seals.

In presence of

SAMUEL HAWKINS, [L. S.]
JAMES GADSDEN, [L. S.]
Captain of Engineers.

HORACE C. STORY, *Lieut. Eng.*

E. J. LAMBERT, *8th Reg. Inf.*

Certified to be a correct copy from the original.

E. J. LAMBERT,
Lt. 8th Reg. Inf. attached to Eng.

Engineer Department,
12th June, 1824.

A true copy.

A. MACOMB, *Maj. Gen. Chief Eng.*

Memorandum of an agreement entered into between Samuel Hawkins of the one part, and Gilbert C. Russell of the other part,

WITNESSETH:

Namely, That the said Samuel Hawkins doth hereby covenant and agree to transfer the whole of his contract with the United States, to build the fortification, and other public works, at Mobile Point, to the said Gilbert C. Russell, on or before the twenty-seventh day of December next, ensuing; provided the said Russell shall do and perform the covenants and stipulations, by him agreed to be performed, as hereinafter particularly set forth.

The said Hawkins also covenants and agrees to transfer, assign, and set over, to the said Russell, all the real estate at Mobile Point, appertaining to the said fortification, consisting of the following buildings, the value whereof was appraised, under oath, by Captain John Bliss, superintendent of public works at Mobile Point, and Captain Doane, an experienced master carpenter, viz:

Hotel, kitchen, barn, out-houses, &c.	-	-	-	\$7,727 88
Quarters for carpenters and laborers	-	-	-	1,099 62
Carpenters' shop	-	-	-	951 91
Blacksmith do	-	-	-	932 47
Bake house	-	-	-	672 20
Cook house	-	-	-	1,183 19
Store house	-	-	-	1,550 72
Two out houses	-	-	-	100 00
Four lime houses	-	-	-	1,090 00
* Barracks partly finished, say	-	-	-	2,000 00
† Two new houses, say	-	-	-	700 00

NOTE. Below this mark * the buildings were raised and constructed by the said Hawkins, together with a large building commonly called the Wind Mill.

† One a lime house, the other a frame, with a brick chimney.

And the said Hawkins hereby covenants to and with the said Russell, to assign, transfer, and set over, all and singular the personal property belonging, or in any wise appertaining to the said fortification or otherwise; together with all the books, vouchers, credits, receipts of whatever kind or nature the same may be; (subject, nevertheless, to a few liens created by the said Hawkins, on contracts made in furtherance of the said public works, and which are to be destroyed as hereinafter mentioned.) It is hereby understood, by the parties aforesaid, that the preceding covenants, on the part of the said Hawkins, shall embrace and comprehend all the scows, barracks, timber, shell pounders, wood house for overseer, plank, and boards, now remaining at the Bonsecour shell banks.

Said Hawkins also covenants to convey, transfer, and set over, to the said Russell, all his right, title, and interest, to the contract entered into by him with the Government of the United States, to form the principal walls of the said fortifications with Tapia: and, also, the contract of the said Hawkins with Joshua Clements, and Co. for tapia, frames, and other lumber, to be applied at the said public works: also, all the brick now made at Dog river, together with a large scow, and a quantity of square timber: also, all the wood, plank, and timber, and a large sail boat at Fowl river: and, also, all and singular the brick remaining at the said Fowl river, which were appraised to the said Hawkins, by Colonel Judson, and Colonel Clark, at the mutual request of the said Hawkins, and Israel Ketchum.

And it is hereby distinctly understood, that the real estate at Fowl and Dog rivers are reserved, by the said Hawkins, and, also, the debt which remain due from Phillips and Gousley: and it is also understood, that the said Hawkins is not hereby bound to give a general warranty deed for the aforesaid described real estate at Mobile Point, and at Bonsecour shell banks: and the said Hawkins doth hereby further covenant to and with the said Russell, that Benjamin W. Hopkins never received from the Government of the United States, towards the said contract for fortifications, a sum exceeding ninety-three thousand dollars; that, since the said contract has been transferred to the said Hawkins, on or about that period, a credit has been passed on the same for the houses of Captain Gadsden and John Bliss, including the amount due to Jackson and Co. for excavation, of eight thousand eight hundred and eighty-two dollars: that, in the lifetime of said Hopkins, a credit was given to him on said contract at the Engineer Department, at Washington, of eighteen thousand and five hundred dollars, or thereabouts, which was not made by mistake. And the said Hawkins hereby further agrees to covenant, at the time and manner aforesaid, that he hath not received from the Government of the United States, in advance, a sum exceeding fifteen thousand dollars: what else the said Hawkins has received from the acting engineers at Mobile Point, has been for materials furnished, and labor performed, and consequently, a close transaction, until the value of the work shall be estimated at its completion, and then, for the benefit of the said Russell.

And the said Hawkins also agrees to covenant and guaranty, at the time aforesaid, to wit, on the 27th of December next ensuing, to and with the said Russell, that, if he shall employ, during the ensuing winter, as many hands or workers, as may be thought necessary and proper by the acting engineer, to finish the barracks by the first day of April next, and shall employ at least one hundred and fifty hands or workers in and about the works alluded to, at or before the first day of June next, (which number shall not be diminished until the completion of the work, unless, in the opinion of the acting engineer, so great a number could not be advantageously employed in and about the said public works,) that then, and in such case, the Government of the United States will not resume the said contract agreeably to the limitation thereof.

And the said Hawkins further agrees to assign and transfer to the said Russell, a verbal contract made by Gen. Starke, to and with the said Hawkins, for the delivery of five hundred thousand bricks, at Mobile Point, for the same price allowed to him by the engineer at Dauphin island.

The said Russell hereby covenants and agrees, to and with the said Samuel Hawkins, to bind himself, by bond or covenant, to finish the said fort, and other works thereto appertaining, on or before the expiration of two years from the first day of July, one thousand eight hundred and twenty-one, the said Hawkins having performed all the covenants and stipulations now to be performed and executed on his part, on the twenty-seventh day of December next ensuing.

And the said Russell doth further covenant, that, in consideration of a full and ample transfer of the real and personal property (including the lumber at Dauphin island,) the contract before mentioned, as hereinbefore is more particularly described and set forth: the said Russell shall pay to the said Hawkins the sum of \$30,000, to be paid in manner following, to wit, on the 27th day of December, next ensuing, the sum of \$5000; the residue of the said sum to be paid in six successive and equal instalments of ninety days each: for the security and pay ment of the several instalments aforesaid, the said Russell shall duly execute his negotiable promissory notes, and shall, also, at the completion of the contract hereby provided for, give a written authority to the acting engineer employed for the time being, in directing the construction of the public works, to pay to the said Hawkins the said several instalments as they may fall due respectively.

And the said Russell further covenants and agrees, to and with the said Hawkins, to pay the debt due to the United States by Benjamin W. Hopkins, in his lifetime, under the contract to build the fort aforesaid, together with \$15,000 advanced by the United States to the said Hawkins, agreeably to his stipulations aforesaid; also, for the payment whereof the said Russell shall authorize, in writing, the engineer for the time being for public works at Mobile Point, to deduct from all payments made on the delivery of materials, and the performance of labor, 15 per cent. to be applied by him to the extinguishment of

said debts, according to the true intent and meaning of the parties to this agreement.

And the said Russell hereby also covenants with said Hawkins, to let said Hawkins have such household furniture at Mobile Point, as he may think proper to select, together with such other property designated in his memorandum heretofore delivered, and also any thing else he may want on hand there at this time, that shall not impede the public works, at cost; the amount whereof shall be deducted from the second instalment hereinbefore provided for.

And the said Russell doth further covenant, to and with the said Hawkins, and doth hereby authorize him to go on with the foundation of the barracks, now nearly completed, to what is termed the first set off, at the expense of the said Russell, and to receive the payment therefor, and to apply the same to remove liens before mentioned, and pay other debts contracted for and on said works: and, if the said sum, so received, should not amount to five thousand dollars, the residue to be paid to the said Hawkins for the purposes aforesaid, out of the proceeds next accruing from the works aforesaid.

It is hereby further covenanted, by and between the said parties, that, if the said Russell sends down twenty-five hands, on or before the twenty-fifth day of December next ensuing, to be employed on the works aforesaid, then the foregoing articles of agreement are to be obligatory, and to be carried into effect, except that two thousand and five hundred dollars only, are to be paid on the twenty-seventh day of December next ensuing, instead of the five thousand dollars. The other two thousand and five hundred dollars to be paid out of the earliest proceeds of labor, &c.; in which case, the said Russell is to defray all the expense that may accrue in carrying on the works aforesaid, till the time the said negroes or hands arrive at Mobile Point, without any delay.

In testimony whereof, the parties aforesaid have hereunto set their hands and seals. Done in the city of Mobile, this 30th day of November, 1820.

SAMUEL HAWKINS.
GILBERT C. RUSSELL.

In presence of

J. WINGATE WING.

Additional Article, agreed to this 14th day of December, 1820, between the said Gilbert C. Russell and Samuel Hawkins, by his agent, J. Wingate Wing, viz:

That, owing to the difficulty in procuring the requisite number of negroes, the time for the final consummation of the foregoing agreement is extended to the last day of January next; and instead of the said Russell paying the said Hawkins two thousand five hundred dollars, then as above stipulated, it is to be paid out of the first proceeds of labor next after the completion of the barrack foundation. If the said Russell should fail in getting a force sufficient, in his own opinion,

to warrant him to begin the work on the said fortification, he agrees to send down all the hands that he may hire, to the said Hawkins, at the Point of Mobile, on the same terms that he may get them, and the said Hawkins agrees to comply with all the contracts that the said Russell may thus make for negroes, and to pay the expenses of transporting them to the Point.

Signed and sealed, in duplicate, in the county of Monroe, the day and year above written.

SAMUEL HAWKINS, [L.S.]
by his agent J. WINGATE WING.
GILBERT C. RUSSEL, [L.S.]

In presence of
A. V. BAILEY.

Know all men by these presents, that I, Samuel Hawkins, of Baldwin county, in the state of Alabama, contractor for erecting and building a fortification at Mobile Point, being the lawful successor of Benjamin W. Hopkins, deceased, which contract or covenant was made on the 13th day of May, 1818, between Joseph G. Swift, agent on the part of the Government of the United States, and Benjamin W. Hopkins, as (reference to which) will more fully and at large appear, and which was assigned, transferred, and conveyed and confirmed to me, on the 20th November, 1819, and the 2d day of May, 1820, by Roswell Hopkins, administrator on the goods, chattels, rights, &c. of Benjamin W. Hopkins, deceased, as will also more fully appear by reference to the assignments and conveyances of said contract to me by the administrator aforesaid, have nominated, appointed, and constituted, and in my place and stead put, and by these presents do nominate, appoint and constitute, and in my place and stead put Gilbert C. Russell, my true and lawful attorney, for me, and in my name, place, and stead, to ask, demand, sue for, levy, require, recover, and receive, all and all manner of goods, chattels, debts, duties, rent, or rents, sum and sums of money, and demands, whatsoever, due or hereafter may be due, owing or belonging unto me as aforesaid, by any person or persons whomsoever, for any matter, cause, or thing whatsoever, and upon the receipt thereof, or any part or parts thereof, to make and give acquittances or other discharges for the same, in my name or in his own name, and also for me and in my name and stead, to take possession of any goods, chattels, leasehold estate, or other matter or thing, appertaining unto me as aforesaid, except the real estate at Dog and Fowl Rivers, and the Bed Bluffs, and the claims against Philips and Gourley. And also to transact and perform and do all manner of acts, duties, and rights, appertaining unto me as aforesaid, as fully, and completely, and amply, as if I myself were personally present at the performing, doing, and transacting thereof; and also, an attorney or attorneys under him, to set and substitute, and again at pleasure to revoke, and generally to do,

act, and perform, all other things necessary and proper. In testimony whereof, I have hereunto set my hand and seal, this thirty-first day of January, one thousand eight hundred and twenty-one.

S. HAWKINS.

NOTE.—Words “on the” “real,” interlined before signing, and “name” erased.

Signed, sealed, and delivered, in presence of

JAMES PETERS,
EZEKIEL WEBB.

STATE OF ALABAMA, }
Baldwin County, ss. }

I, William Coolidge, a Notary Public, duly commissioned and qualified, and residing in the town of Blakeley, do hereby certify, that Samuel Hawkins personally appeared before me and acknowledged the above letter of attorney to be his free act and deed. Witness, my hand and seal of office, this second day of February, in the year of our Lord one thousand eight hundred and twenty-one.

WILLIAM COOLIDGE,
Notary Public.

Know all men by these presents, that I, Samuel Hawkins, of the county of Baldwin, in the state of Alabama, for and in consideration of the sum of thirty thousand and five hundred dollars, to me in hand paid by Gilbert C. Russell, the receipt whereof I do hereby acknowledge, have remitted, released, and forever quit claim unto him, the said Gilbert C. Russell, his executors, administrators, and assigns, all my right, title, interest, and claim, to all the buildings, of every kind, name, and nature, situated at what is called the “Bonsecour Shell Bank,” on the east side of Bonsecour Bay, near Lime Kiln Creek. Also, the hotel, kitchen, and outhouses, quarters for carpenters and laborers, carpenters’ shop, blacksmiths’ shop, bake house, cook-house, store, and fixtures, two out-houses, five lime-houses, barrack frames, a large frame called the windmill; and the house commonly known by and called by the name of the “Murray House,” to have and to hold the aforesaid described and enumerated buildings, situated, and being on, Mobile Point, with all the privileges and appurtenances in any way belonging or appertaining unto the said Gilbert C. Russell, his executors, administrators and assigns, forever.

In testimony whereof, I have hereunto set my hand and seal, this 31st day of January, 1821.

SAMUEL HAWKINS.

In presence of

JAS. W. PETERS,
EZEKIEL WEBB.

State of Alabama, } ss.
Baldwin County. }

Personally appeared before me, James W. Peters, Chief Justice of the County Court aforesaid, the within named Samuel Hawkins, who acknowledged that he signed, sealed, and delivered, the within quit claim deed, on the day and year therein mentioned, to the aforesaid.

Given under my hand and seal, this 1st day of February, 1821.
 JAMES W. PETERS.

Whereas I, Samuel Hawkins, of the county of Baldwin, in the state of Alabama, for, and in consideration of, the sum of thirty-eight thousand and four hundred dollars, to me in hand paid, by Gilbert C. Russell, I do hereby sell, transfer, set over, and convey unto him, the said Gilbert C. Russell, all the oxen, carts, gears, wheel-barrows, hoes, axes, shovels, iron, brick, coal, lime, and every thing appertaining to the construction of the public works at Mobile Point, of which I am possessed; including all the books, vouchers, credits, receipts, of whatever kind, name, and nature, they may be, relating to the said public works, except the claims against Philips and Gourly. Also, all the timber, bricks, wood, boats, scows, and oars, at Dog and Fowl River, and Bonsecour Shell Banks. Also, the schooners Yankee, Gadsden, and Sea Dog, together with all their tackle and furniture. Also, all the swine at Mobile Point. Also, the negro, called Joe; all the kitchen furniture at Mobile Point, Dog and Fowl River; and all the goods of every kind, name, and nature, at the store on Mobile Point; and, by these presents, have sold, transferred, assigned, and set over, to said Gilbert C. Russell, his executors, administrators and assigns, forever.

In testimony whereof, I have hereunto set my hand and seal, this 31st day of January, 1821.

SAMUEL HAWKINS.

NOTE.—The word “except” interlined before signing.

In presence of

JAMES W. PETERS,
 EZEKIEL WEBB.

State of Alabama, } ss.
Baldwin County. }

Personally appeared before me, James W. Peters, Chief Justice for the county aforesaid, the within named Samuel Hawkins, and acknowledged that he signed, sealed, and delivered, the above quit claim and assignment on the day and year therein mentioned, to the aforesaid,

Given under my hand and seal, this 1st day of February, 1821:

JAMES W. PETERS.

Know all men, by these presents, that I, Samuel Hawkins, for, and in consideration of, the sum of five hundred dollars, to me in hand paid, by Gilbert C. Russell, the receipt whereof I do hereby acknowledge, have granted, bargained, sold, and confirmed, and by these presents doth grant, bargain, sell, and confirm, unto the said Gilbert C. Russell, a certain negro man, named Joe, aged about thirty-five years, and by profession a blacksmith; to have and to hold the said negro Joe, unto the said G. C. Russell, his executors, administrators, and assigns, forever, without any claim or hindrance of any person whatsoever, and without any account to me, or any other person, whatever, hereafter to be rendered.

In witness whereof, I have hereunto set my hand, and affixed my seal, this 31st day of January, in the year one thousand eight hundred and twenty-one.

SAMUEL HAWKINS.

In presence of

JAMES W. PETERS,

EZEKIEL WEBB.

State of Alabama, } ss.
Baldwin County.

Personally appeared before me, James W. Peters, Chief Justice of the County aforesaid, the within named Samuel Hawkins, who acknowledged that he signed, sealed, and delivered, the within quit claim and assignment, and the same is his own free act and deed.

Given under my hand and seal, this 1st day of February, 1821.

JAMES W. PETERS.

To all persons to whom these presents shall come, I, Samuel Hawkins, of the county of Baldwin, in the state of Alabama, send greeting: Whereas the late Benjamin W. Hopkins did, on the thirteenth day of May, in the year of our Lord one thousand eight hundred and eighteen, make and enter into an agreement or covenant, with Joseph G. Swift, agent for, and on behalf of, the United States, to erect, build, and complete, a fortification for the United States, at Mobile Point, as by the said contract, reference thereunto being had, may more fully and at large appear: and, whereas the said Benjamin W. Hopkins died sometime in the month of August, 1819, the fortifications remaining unfinished, agreeably to the stipulations of said covenant or contract, so made as aforesaid, between the said United States or its said engineer, and the said Benjamin W. Hopkins: and, Whereas Roswell Hopkins, who was duly and legally authorized, empowered, constituted, and appointed, administrator of all and singular, the benefits, goods, and chattels, which were of the said Benjamin W. Hopkins, deceased, at the time of his demise: And, whereas the said Roswell Hopkins, so being administrator as aforesaid, did,

on the 20th day of November, 1819, and on the 2d day of May, 1820, make over, assign, transfer, and convey, the said agreement or contract, for a valuable consideration, to me, the said Samuel Hawkins, as will more fully appear, reference being had to the assignments or conveyances made and executed, as aforesaid, by the said Roswell Hopkins, administrator as aforesaid, to me, the said Samuel Hawkins: And, whereas the said Roswell Hopkins, so being administrator aforesaid, did, on the 2d day of May, 1820, make a full and ample transfer and assignment of the contract, so made as aforesaid, with Joseph G. Swift and Benjamin W. Hopkins, to construct fortifications at Mobile Point: by reason whereof, and in obedience to positive instructions from the Engineer Department at the city of Washington, to Captain James Gadsden, then acting engineer in constructing the said fortifications, Horace C. Story, lieutenant of the United States' Corps of Engineers, and local engineer at Mobile Point, did, by his written instrument, bearing date of the 3d of May, 1820, acknowledge and recognize me, the said Samuel Hawkins, as the lawful successor of the said Benjamin W. Hopkins, deceased, for the purpose of constructing and completing the said fortifications: and, whereas I, the said Samuel Hawkins, did, on the seventh day of June, in the year one thousand eight hundred and twenty, enter into a written agreement to and with Captain James Gadsden, of the United States' Corps of Engineers, he being thereunto fully authorized by instructions received from the Secretary of the War Department, to substitute in the place of brick, (of which the walls of the fortifications were to have been built, according to the contract, herein before alluded to, between Joseph G. Swift and Benjamin W. Hopkins aforesaid, as will more fully appear, reference being had thereto,) a certain composition called *tapia*, the said *tapia* to be substituted for brick in such portions of the walls aforesaid, as shall be designated by the superintending engineer of fortifications at Mobile Point; the said *tapia* being a species of artificial stone, formed by a proper union of sharp sand, fresh lime, and oyster shells, with water sufficient to produce adhesion, provided he, the said Samuel Hawkins, would consent to receive ten dollars per cubic yard, in lieu of eleven dollars, contracted to be paid the said Benjamin W. Hopkins for each cubic yard of masonry, as will more fully appear by copy herewith, marked A: Now, know all men by these presents, that I, the said Samuel Hawkins, for, and in consideration of, the sum of thirty thousand dollars, to me in hand paid by Gilbert C. Russell, the receipt whereof is hereby acknowledged, do hereby sell, assign, transfer, set over, and forever quit claim to the said Gilbert C. Russell, his executors, administrators, and assigns, the contracts herein before mentioned and alluded to, and more particularly set forth, with all and singular the rights, benefits, privileges, immunities, and advantages, thereunto in any wise appertaining. And I, the said Samuel Hawkins, doth hereby further covenant and agree, to and with the said Gilbert C. Russell, that Benjamin W. Hopkins, in his lifetime, did not receive from the Government of the United States, more than ninety-three thousand dollars,

towards the contract for the fortifications herein before mentioned. That since the contract has been transferred, or on or about that period, a credit has been passed on the same, for the houses of Capt. James Gadsden and John Bliss, including the amount due to Jackson and Co. for excavation, for eight thousand eight hundred and eighty-two dollars. That in the lifetime of the said Benjamin W. Hopkins, a credit was given to him on said contract, at the Engineer Department at Washington, of eighteen thousand and five hundred dollars, or thereabouts, which was not made by mistake. And I, the said Samuel Hawkins, doth hereby further covenant to and with the said Gilbert C. Russell, that I have not received from the Government of the United States, in advance, a sum exceeding fifteen thousand dollars, and that whatever else has been by me received from the acting engineer at Mobile Point, has been for materials furnished and labor performed, and, consequently, a closed transaction; until the value of the work shall be estimated at its completion, and then for the benefit of Gilbert C. Russell. And I, the said Hawkins, do hereby agree to covenant and guaranty, to and with the said Gilbert C. Russell, that, if he shall employ, during the present winter, as many hands or laborers as may be necessary and proper, in the opinion of the acting engineer, to finish the barracks by the last day of April next ensuing, and shall employ, at least, one hundred and fifty hands or laborers, in and about the works alluded to, on or before the first day of June next, which number shall not be diminished until the completion of the work aforesaid, unless, in the opinion of the acting engineer, so great a number could not be advantageously employed in and about said public works, that then, and in such case, the Government of the United States will not resume the said contract, agreeable to the limitations thereof.

In testimony whereof, I have hereunto set my hand and seal, this 31st day of January, 1821.

SAMUEL HAWKINS.

[SEAL.]

In presence of
JAMES W. PETERS,
EZEKIEL WEBB.

Know all men by these presents, that I, Samuel Hawkins, of Baldwin county, in the state of Alabama, contractor for erecting and building a fortification at Mobile Point, being the lawful successor of Benjamin W. Hopkins, deceased; which contract or covenant was made on the 13th day of May, 1818, between Joseph G. Swift, agent on the part of the government of the United States, and Benjamin W. Hopkins, (as by reference to which) will more fully and at large appear, and which was assigned, transferred, and conveyed, and confirmed to me, on the 20th day of November, 1819, and the 2d day of May, 1820, by Roswell Hopkins, administrator on the

goods and chattels, rights, &c. of Benjamin W. Hopkins, as will also more fully appear by reference to the assignments and conveyances of said contract to me, by the administrator aforesaid, have nominated, constituted, and appointed, and, in my place and stead, put, and, by these presents, do nominate, constitute, and appoint, and, in my place and stead, put, Gilbert C. Russell, my true and lawful attorney, for me, and in my name, place, and stead, to ask, demand, sue for, levy, require, recover, and receive, all, and all manner of goods, chattels, debts, duties, rent or rents, sum and sums of money, and demands whatsoever, due or may hereafter be due, owing or belonging unto me as aforesaid, by any person or persons whomsoever, for any matter, cause, or thing, whatsoever, and, upon the receipt thereof, or any part or parts thereof, to make and give acquittances or other discharges for the same, in my name, or in his own name: and also for me, and in my name and stead, to take possession of any goods, chattels, leasehold estate, or other matter or thing appertaining unto me as aforesaid, except the real estate at Dog and Fowl rivers and the Red Bluffs, and the claim against Phillips and Gourley; and also to transact and perform, and do all manner of acts, duties, and rights, appertaining unto me, as aforesaid, as fully and completely and amply, as if I myself were personally present at the performing, doing, and transacting thereof: and, also, an attorney or attorneys under him, to set and substitute, and again at pleasure to revoke, and, generally, to do, act, and perform, all other things necessary and proper.

In testimony whereof, I have hereunto set my hand and seal, this thirty-first day of January, one thousand eight hundred and twenty-one.

S. HAWKINS, [L. s.]

Signed, sealed, and delivered, in presence of

JAMES W. PETERS,
EZEKIEL WEBB.

State of Alabama, Baldwin County, ss.

I, William Coolidge, a Notary Public, duly commissioned and qualified, and residing in the town of Blakely, do hereby certify that Samuel Hawkins personally appeared before me and acknowledged the above letter of attorney to be his free act and deed.

Witness my hand and seal of office, this second day of February, [L. s.] in the year of our Lord one thousand eight hundred and twenty-one.

WILLIAM COOLIDGE,
Notary Public.

I, Thomas Heald, Clerk of Baldwin County, do certify that the foregoing is a correct copy of a power of attorney deposited in my office, to be recorded, on the 21st day of April, 1821.

THOMAS HEALD,
Clerk Baldwin County.

To all to whom these presents shall come, or may concern:

I, Joshua Wingate Wing, of Baldwin county, in the state of Alabama, send *Greeting*.

Whereas the late Benjamin W. Hopkins, in his lifetime, on the 13th day of May, 1818, made a contract with Joseph G. Swift, acting under the authority, and on behalf, of the Government of the United States, for building and erecting fortifications at Mobile Point: And whereas said contract was assigned, transferred, and set over, by Roswell Hopkins, administrator of the goods, chattels, rights, and credits, which were of said Benjamin W. Hopkins, to Samuel Hawkins, late of said Baldwin county, by deeds bearing date 20th day of November, 1819, and the 2d day of May, 1820: And whereas the said Samuel Hawkins, by deed bearing date the 31st day of January, 1821, assigned, transferred, and set over, and quitclaimed, to Gilbert C. Russell, of said Baldwin county, the said contract, with all the rights, benefits, and privileges, immunities and advantages, thereunto in anywise appertaining: and also, by deed bearing date the said 31st day of January, 1821, assigned and conveyed to said Russell, all the oxen, carts, wheelbarrows, hoes, axes, shovels, iron, brick, coal, lime, and every thing appertaining to the construction of the public works at Mobile Point, of which said Hawkins was possessed; and all the books, vouchers, credits, and receipts, relating to said public works, except the claim against Phillips & Gourley, and all the timber, bricks, wood, boats, scows and oars, at Dog and Fowl Rivers, and Bonsecour Shell Banks; and also the schooners Gadsden, Yankee, and Sea Dog; also the negro called Joe; all the kitchen furniture at Mobile Point, Dog and Fowl Rivers, and all the goods at the store on Mobile Point; and, also, by deed, of the 31st January, 1821, assigned and conveyed, and quitclaimed, to the said Russell, all the right, title, and interest, of the said Hawkins, to all the buildings situated at Bonsecour Shell Banks; and also all the buildings situated at Mobile Point; as, by reference to said several deeds and assignments herein mentioned, will more fully and at large appear: And whereas letters of administration on the estate of the said Samuel Hawkins, have been granted to me by the County Court of the said county of Baldwin: Now KNOW YE, That I, the said Joshua Wingate Wing, administrator as aforesaid, in consideration of the premises, have nominated, constituted, and appointed, and, by these presents, do nominate, constitute and appoint, the said Gilbert C. Russell, my true and lawful attorney, for me, and in my name and stead, but to his own proper use and benefit, to ask and demand, sue for, levy, recover and receive, and take possession of, all, and all manner of the buildings, goods, chattels, debts, duties, rents, sums of money, and demands, whatsoever, sold and assigned to the said Gilbert C. Russell, as before recited, together with all such goods, chattels, debts, duties, rents, sums of money and demands, as do now, or hereafter may, belong to, or are now, or hereafter may be, due and owing to the estate of the said

Samuel Hawkins, or to me, as administrator thereof, by virtue of said contract, so assigned to him as aforesaid, and upon receipt thereof, or any part thereof, to make or give acquittances, or other discharges, for the same, in my name, as administrator as aforesaid, or in his own name; and also, to do all lawful acts and things whatsoever, concerning the premises, as fully, in every respect, as I might do if I were personally present; and also, an attorney or attorneys under him, for the purposes aforesaid, to make, and again, at his pleasure, to revoke; hereby ratifying and confirming whatsoever my said attorney shall, in my name, lawfully do, or cause to be done, in and about the premises, by virtue of these presents: And I, the said Joshua Wingate Wing, administrator as aforesaid, do hereby declare, that the powers herein granted to the said Gilbert C. Russell, are and shall forever remain irrevocable.

In testimony whereof, I have hereunto set my hand and seal, this fifteenth day of May, in the year of our Lord one thousand eight hundred and twenty-one.

J. WINGATE WING.

Sealed and delivered in presence of

G. J. MILLS,
JAMES W. PETERS.

State of Alabama, Baldwin County, ss.

On this fifteenth day of May, A. D. 1821, at Blakely, in said county, before me, James W. Peters, Chief Justice of the County of Baldwin, personally appeared J. W. Wing, and acknowledged that he signed, sealed, and delivered the within or foregoing instrument or letter of attorney, as his proper act and deed, to the said Gilbert C. Russell, on the day therein written, and for the purposes therein expressed and mentioned.

Given under my hand and seal, at Blakeley, on the day and year above written.

JAMES W. PETERS, [L. s.]

Recorded by me this 15th day of May, 1821.

THOMAS HEALD,
Clerk Baldwin County Court.

State of Alabama, Baldwin County, ss.

I hereby certify the above and foregoing to be a true copy from the records—pages 33, 34, and 35, book, 2d.

THOMAS HEALD,
Clerk Baldwin County.

Extract of a letter from the Secretary of War to Captain Gadsden.

“JANUARY 4, 1821.

“I transmit herewith, for your information, a copy of a letter from Colonel Gilbert C. Russell, notifying this Department of an arrange-

ment recently entered into between him and Colonel Hawkins, concerning the building of the fort at Mobile Point.

“It does not distinctly appear by the letter, whether Colonel Russell considers himself a partner, or merely an agent of Colonel Hawkins. If the former, the sanction of the sureties to Colonel Hawkins’s bond, must be formally signified to the Engineer Department, before he can be recognized; with regard to the latter, the Government, of course, cannot interfere, as Colonel Hawkins has a right to appoint whomsoever he may please as his agent. In either case, you will explicitly refuse to grant any assistance in the form of advances, unless the condition of the operations of the contract shall be such as to afford the most satisfactory evidence, that they, as well as the advances previously made, will be liquidated within a reasonable time. Without such evidence, the Government will rather await the period at which the contract will, by its provisions, expire, and rely on the surety bond for the advances already made. But the completion of the contract within the period stipulated, or at an early period thereafter, is not a matter of consideration with the Government, in comparison with securing the advances made.

If, therefore, any extension of time, even for two or three years of the former, will contribute to the accomplishment of the latter, by inducing the contractor to apply additional means competent to that end, it may be acceded to, and you are hereby authorized to enter into arrangements to carry it into effect.”

FORT CLAIBORNE, 7th February, 1821.

SIR. Some time since I requested Mr. Crowell to inform you that I had undertaken to finish the fortification on the Point of Mobile, and to urge the propriety of vesting Col. Gadsden with discretionary power, as well respecting advances that might be asked for, as any thing else relative to the erection of the works; and, yesterday, I received a letter from him, informing me that you had, a few days previous to the date of his letter, given Col. Gadsden “discretionary powers; but that any advance would depend upon the report of the Colonel or superintending Engineer at the Point.” I am, therefore, left to infer, that, although Col. Gadsden may be satisfied of the necessity of the advance asked for, as well as of the ability of the security offered, and that it would be exclusively and judiciously applied to the execution of the works, he has no power nor authority to make it. Permit me, then, if this is the case, to request that you will instruct Col. Gadsden to make me an advance of from thirty to fifty thousand dollars, provided he is satisfied with the ability of the security offered, and that it will be exclusively applied to the execution of the works. My means are equal to the undertaking, and I should require no advance but for the purpose of buying near one hundred African negroes, that will, in all probability, be condemned in this month, and sold

soon after. To secure them in case of sale, soon after our first District Court, an advance is indispensable, and the security that I have to offer are good for five times the amount, independent of any ability that I possess. I presume that the Government would feel no objection to authorize an advance to one whose actual capital employed in the execution of the contract is not less than one hundred thousand dollars, after having made large advances to men worth nothing.

I have executed a bond to Col. Hawkins to complete the work by July 1823, to pay his debt and the debt of Hopkins, to the amount of \$77,000, and for the materials, &c. on hand give him \$30,000. I have also agreed to complete the barracks by the 1st of May, and by the 1st of June, to have at least one hundred and fifty hands employed on the works, which number shall not be diminished; and he has guarantied that the Government will not resume the contract according to the limitation thereof; the first sum is to be extinguished by 15 per cent. detentions on payments made me, and the last is paid down, and in short instalments. At present I act as the agent of Col. Hawkins; but, if it is desirable to the Government, I can release his sureties without any trouble.

Very respectfully, I am, sir,

Your obedient servant,

GILBERT C. RUSSELL.

Hon. J. C. CALHOUN.

BLAKELEY, 12th March, 1821.

SIR: On the 8th instant Col. Hawkins died, who had transferred me all his contracts with the agents of the Government, for building a fortification on the Point of Mobile; but, as I have declined to release his security for the advances made him and Hopkins, I could only be viewed as his agent, acting under a power of attorney, although contractor in fact. In this capacity I now stand, and how the death of Col. Hawkins may affect or impair the intention of that power of attorney, I know not. Col. Hawkins began his work with incompetent means, or, indeed, with scarce any means at all; in August last, he found himself without men, negroes, money, or credit, and could not progress an inch further. His object, then, was to sell the contract, or to pass it into the hands of some man who could build the fort, and thereby save his sureties from ruin.

Although I am strong in negroes and cash, such is the magnitude of the job, that immense means are necessary to carry it on with advantage; and it occurred to me, that, if aid from the Government should be required, that the obligation of Mr. Tillotson and Mr. Gouverneur would rather promote an advance than otherwise, I therefore declined offering them a release.

This is the fourth week since I have made a beginning on the works, and without any assistance from the Government, I can go on with,

and complete them, in this and the next year, and shall do it; but an advance, at this time, would enable me to progress with more ease and more profit than to have none. If, then, the Government are disposed to meet my wishes upon releasing the securities of Colonel Hawkins, or by giving additional security, I am prepared to do so. Instead of fifty thousand dollars being required, thirty thousand is all that I want; and if Mr. Tillotson and Mr. Gouverneur are willing to stand as they are, upon my giving additional security, or rather security for that sum, I presume that the Government can have no objection to making the advance.

I have sent a copy of this letter to Mr. Tillotson and Mr. Gouverneur, with a request that they will signify their wishes upon the subject in triplicate, to this place or the Point, to Augusta, in Georgia, and to the City of Washington.

Col. Gadsden is gone to Orleans, and how far his report to you may warrant an advance I do not know, but I apprehend that it will be favorable. In this event, I request that you will inform me precisely what I may rely on, and that a duplicate of your letter may be sent to Augusta, in Georgia, and the original to this place or to the Point.

Respectfully, I am, sir,

Your most obedient servant,

GILBERT C. RUSSELL.

Hon. J. C. CALHOUN.

BRICK YARD, ON THE BAY OF MOBILE,

20th May, 1821

SIR: Although I am the legal assignee, as well as legal agent of Col. Samuel Hawkins, who was the lawful successor of B. W. Hopkins, contractor for erecting a Fortification on the Point of Mobile, as has been satisfactorily proven to Captain De Russy, he declines to recognize me as such, as will appear from the papers herewith, Nos. 1 and 2. Anticipating the Captain's answer, I had requested the administrator to address him a letter, a copy of which, (No. 3,) is herewith enclosed, who had agreed to remain with me and sign vouchers, if he could be recognized as the administrator of Col. Hawkins. To this application of Doctor Wing, (No. 4) is a copy of the Captain's answer, whereby he refuses to recognize any one but Hawkins himself, without your instructions to do so; and he is in the grave.

You will perceive that the Captain is so obliging as to say that I may progress with the erection of the works till he hears from you. This I could do without his permission; and as I am to be ruined if I do not go on with the works, I believe that I shall continue my present plans of operation, which can make me but little worse than to do nothing, or to quit now.

On the 17th or 18th inst. I wrote a letter to Colonel Armistead, which was mailed at Blakely yesterday, and that no delay may take place in acquainting you of the ignorance or obstinacy of Captain De Russey, this will go by a runner to Claiborne, where it will be mailed on Monday next, and will reach Washington as soon as my letter to Col. Armistead, which I presume will be laid before you. In that letter, I express my opinion of the motives which this Engineer has in view, namely, that the nation may resume the contract and build the Fort under his direction, whereby he could promote his own pecuniary interest. If I am mistaken in my conjectures, I have done the Captain injustice, which I shall acknowledge when I am satisfied of the fact.

The object of this communication is to apprise you of the temper of the superintending Engineer, and to obtain a corrective with the least possible delay. Could I for a moment persuade myself that his course would be countenanced by you, I would quit working now, tear up what I have done, and remove all my property from the Point, and from the Bay, except the brick yards, the whole of which are owned by myself and Gen. Starke, and without them the works on the Point cannot be finished for two millions of dollars, by the United States, or by individuals.

I regret that I ever had any thing to do with the contract; but as I informed Col. Armistead, I am anxious to *go on*: because, to stop now, would ruin me, and reduce a wife and children to circumstances that would be distressing to me, if not to them.

Very respectfully, I am,

Sir, your obedient servant,

GILBERT C. RUSSELL.

Hon. J. C. CALHOUN.

No. 1.

BLAKELEY, 16th May, 1821.

SIR: On the 2d day of May, 1820, Roswell Hopkins, the administrator of Benjamin W. Hopkins, did "assign, transfer, and set over unto Samuel Hawkins, his heirs, executors, administrators, and assigns," the contract made with General Swift, for erecting the fort on the Point of Mobile, and on the next day, viz: the 3d day of May, the Engineer, by his written instrument, recognized the said Samuel Hawkins as the "lawful successor of Benjamin W. Hopkins, deceased."

In the lifetime of Col. Hawkins, he conveyed the contract to me, as will appear by an authenticated power of attorney herewith, executed by his administrator, to which is attached a copy of the letters of administration granted to him on the 20th ultimo, and certified by the Clerk of the Court to be "a correct copy from the Records:" and I request you will acknowledge me as the lawful agent of the late

contractor, or refuse to do so, as your own judgment may dictate. I trust, however, that, upon reflection, you will not hesitate, because, in my humble opinion, a refusal might jeopardise the interest of the United States to a large amount, and may frustrate my plans of operation for the execution of the work.

Very respectfully, I am,

Sir, your obedient servant,

GILBERT C. RUSSELL,

Legal agent of S. Hawkins.

Capt. DE RUSSY, *Chief Engineer, Mobile Point.*

No. 2.

MOBILE POINT, 18th May, 1821.

SIR: I hereby acknowledge the receipt of your communication of the 16th inst. requesting me to acknowledge you as the lawful agent of the late Colonel Hawkins, in the performance of the public fortifications to be erected on this point.

In answer to which, I have the honor to say, that I am not authorized by the government of the United States to acknowledge [you] as the agent of the late Colonel Samuel Hawkins; consequently, will not, until the sanction of the Honorable the Secretary of War has been obtained, recognize you as such.

It is to the War Department, and not to me, your application is to be made; in the mean time, however, should you feel disposed to prosecute the erection of the fortification on this point, you are at liberty to do so.

I will lose no time in laying before Mr. Calhoun a copy of your communication to me. His answer will probably be received in the course of six or seven weeks; I shall then be better prepared to answer the questions your present letter contains.

Very respectfully, I am sir,

Your obedient servant,

R. E. DE RUSSY, *Capt. Engineers.*

Col. GILBERT C. RUSSELL

No. 3.

MOBILE POINT, 18th May, 1821.

SIR: I regret that you refuse to recognize Col. G. C. Russell, as the lawful assignee or agent of the late contractor Col. S. Hawkins, whose sole object in substituting him, was to save his security from ruin.

The same means that Col. Russell has for the prosecution of the work, are at my command, and those are very ample; and, in discharge of my duty as administrator, (evidence of which is herewith submitted to you,) I request that you will recognize me, as the law-

ful successor of Colonel Hawkins in the contract, so that I may progress with the works, with the means now at my command.

Yours, very respectfully,

J. WINGATE WING,

Administrator of Samuel Hawkins, late Contractor for building and erecting a fortification on Mobile Point, for the Government of the United States.

R. E. DE RUSSY, *Capt. Engineers,*
Chief Superintendent of the Public Works
at Mobile Point.

No. 4.

MOBILE POINT, 18th May, 1821.

SIR: I regret that the same cause which compels me to refuse to acknowledge Col. Russell as the lawful agent of Col. S. Hawkins, exists with you. It is absolutely necessary that instructions from the War Department be received before I can acknowledge any individual.

Should you feel disposed, I will enclose the copy of your letter of administration to the Secretary of War, and wait for his decision.

With respect, I am, sir,

Your obedient servant.

R. E. DE RUSSY,

Capt. Engineers.

To J. W. WING, Esq.

I return the letter of administration. Should you agree in the proposition above made, you will be good enough to send it back.

OWENSBURGH, ON THE BAY OF MOBILE,

25th May, 1821.

SIR: I was assured, by the Engineers, before I took the contract from Col. Hawkins for building the Fort on Mobile Point, that, provided my means, employed in the execution of the work, were such as to inspire confidence in the Government that it would be done in a reasonable time, that it would not be resumed according to the limitation thereof. Besides this, I saw the extract of a letter from you, which instructed the engineers to inform the contractors "that, unless they gained the confidence of the Government before the expiration of the contract, that they need not expect any favor to be shewn them," or something to that effect. From this extract, together with the opinions and assurances of the engineers, I inferred that, if my plans of operation seemed judicious, and the means I had to apply to their execution sufficient, that an extension of time would be allowed us. In-

deed, Col. Gadsden told me that, with my means, I might take my own time. But now I understand that Capt. De Russey expects that Government will resume the contract, and have the works completed by hirelings, and by the purchase of brick, lumber, &c. as they can be had. I trust, however, that he will be disappointed, because it would ruin me, if not Mr. Tillotson and Gouverneur, and the state would not profit by it; for I am certain that the Government cannot do the work for the same money that it is now contracted for.

Brick being the main material in constructing the works, I have about one hundred and — hands employed in manufacturing that article; and, if the appropriation was five times what it is for the Point this year, I could exhaust it all in completing the barracks and delivering brick alone.

Col. Gadsden told me that I had more negroes employed than was necessary under the limited appropriation of this year, and that he thought the appropriation of next year would not be much more liberal; I therefore returned ten hands to my plantation, have hired some out, and discharged several white mechanics, but have a very ample force left, so that, if I am deprived of the contract, it must be done on other grounds than a want of confidence in my ability to work as fast as the nation can pay me; and to correct misrepresentations, if any have, or shall be made, I deem it proper to send you the enclosed certificate of an officer of high character, now here, the certificate of Maj. Owen, my manager, at this place, together with the certificate of Dr. Wing, the administrator of Col. Hawkins. If, then, you deem it expedient to deprive me of the contract, and involve me in great embarrassment, if not in ruin, it must be on the ground alone that money will be saved to the United States by doing the work themselves.

Respectfully, I am, sir,

Your obedient servant,

GILBERT C. RUSSELL.

To the Hon. JOHN C. CALHOUN,
Secretary of War.

OWENSBURG BRICK YARD, 25th May, 1821.

I certify upon honor, that Colonel Russell has, at this place, fifty-six negro men, nineteen women, four boys, and six girls, as counted by me this morning.

E. MONTGOMERY,
Major U. S. Army.

I certify upon the honor of a Revolutionary soldier that the above is correct.

RICHARD B. OWEN,
Manager at this place.

I certify upon the honor of an American citizen, that the above is correct, that Colonel Russell has, at Dog River Brick Yard, twenty-

seven negroes and three white men; that he has, at the Point, I believe, about thirty negroes; that he has ten on his plantatton, making corn: one a cook on board the Gadsden, exclusive of those hired out; and that, including the hands employed at the mills in sawing, agents, managers, overseers, sailors, mechanics, and laborers, black and white, he has about two hundred hands employed on and about the works for Mobile Point.

J. WINGATE WING,

Administrator of Samuel Hawkins, deceased.

BAY OF MOBILE, July 27, 1821.

SIR: Agreeably to the request contained in the note herewith from Captain De Russy, I informed him ten days ago, that the instrument by which Col. Hawkins constituted me his agent, was deposited in the Clerk's Office of this county to be recorded; that it had not since been removed, and that he might obtain a copy, by applying to the Clerk, whose office is kept in Blakley. Yesterday I was there; and on learning from the Clerk that no application had been made for it, I obtained a copy of that instrument, and also a copy of a subsequent power of attorney, executed by the administrator of Colonel Hawkins, both of which are herewith enclosed, for the information of the War Department. The one made by Colonel Hawkins was submitted to Colonel Gadsden, who said that it was sufficient; and after the death of Colonel Hawkins, he was of opinion that the power must be renewed by the administrator, therefore the other was executed. However, nothing but the orders of the Secretary of War will make Captain De Russy recognize me as the agent or assignee of Colonel Hawkins, or rather, make him pay me agreeably to the terms of the contract. He refused to recognize me, or the administrator, because he had no orders to do so; and told me, that to the Secretary of War, and not to him, my application must be made. This being the case, I lost no time in acquainting Mr. Calhoun, of what I conceived to be ignorance or obstinacy of Captain De Russy, and desired that he might correct him. About the 25th of May I wrote him again, and enclosed sundry certificates of the means I had employed in the business; and to neither of these communications have I received an answer. I request to be informed if such communications were received or not. I also request copies of all the communications made by Captain De Russy since his arrival in this country; for I strongly suspect that they are not all quite founded in fact.

Notwithstanding the Captain refused to admit that I was the agent of Hawkins, he was willing that I should go on with the works, but would not agree to pay me any thing, till he should hear from the Secretary of War. But, under a conviction that he was straining every nerve to induce the Government to resume the con-

tract, (and in that event to pay me nothing) I stopped the transportation of materials, and the farther erection of the barracks, and applied my whole force to the making of brick, &c. till the case should be determined; and I have been anxiously waiting to hear the result for some time. If Captain De Russy has received any orders on the subject, other than to obtain a copy of the letter of attorney, he takes care to keep them to himself; and he is not very prompt in complying with those instructions relative to that instrument.

I strongly suspect foul play; and what effect it has had, or may have, I do not know, nor do I care; but to be relieved from suspense, I do want to know whether I am to go on [with] the works as the agent or assignee of the late Colonel Hawkins, or not. My yards will soon be so full of brick-kilns, that I shall have to cease making, unless I remove them to the Point, which I am very unwilling to do, unless I am certain of being paid for them. If Colonel Hawkins had lived, I should have met with no obstacles; and although he did die, if Colonel Gadsden had remained in the corps, no impediments would have been thrown in the way, to retard the progress of the work. But, unfortunately for me, Colonel Hawkins dies, and Colonel Gadsden is relieved by an officer, who, before seeing me, as I am informed and believe, imbibed the strongest prejudices against me; and instantly, under the cloak of duty, creates difficulties, for which he ought to be expelled the corps.

It may not be amiss to inform you, that Colonel Hawkins guaranteed that the United States would not resume the contract, according to the limitation thereof; and I gave him a bond for 300,000 dollars, for the completion of the works by July, 1823.

Very respectfully, I am, Sir,

Your most obedient servant,

GILBERT C. RUSSELL.

Maj. Gen. A. MACOMB,

Chief of Engineers.

BLAKELEY, 10th September, 1821.

SIR: I presume that you are in Washington, discharging the duties of your late appointment of Adjutant and Inspector General of the army, and therefore, as I can get no answers to my letters on the subject of the works, I take the liberty of addressing a line to you, and request that you will let me know what is intended by the Executive.

Soon after you went away, I called on your successor for some money — then, and not till then, did I know that he would not recognize me as the agent of Hawkins. The administrator presented himself, and requested to be allowed to proceed with the business, but was refused,

and with myself, referred to the Secretary of War. In May, I wrote to Mr. Calhoun, acquainting him of the ignorance or obstinacy of his agent, and desired to be informed, without delay, whether or not I should progress with the works, as the representative of Col. Hawkins. Soon after, I wrote him again, accompanied by a certificate of the means that I had employed, and repeated my request to be informed whether or not I was to progress with the works. In July, I wrote to Gen. McComb, and again urged the necessity of information on the subject; but to none of these letters have I received an answer, which, to my mind, is inexplicable. If my letters were received, I have good cause of complaint against the Secretary of War, as well as Gen. McComb, for not acknowledging the receipt of them, and letting me know the will of the President on the subject of the works. That intolerable fool, Griswold, has been about Washington all year, from whom I have not heard one word. He was, if required, or if necessary, to give new security for the old debt, which he said he could do. Perhaps this was required, and he has failed. But if that is the only difficulty, I wish you to inform the President that I can give the ablest surety in this country for the old debt, provided he will relieve De Russey by a gentleman, and man of common capacity.

I regret very much, that I engaged in the works; but, as I have made a beginning, and have incurred great expense already, I am desirous to progress with them. I finished the new yard above Starke's, seven hundred and twenty feet by one hundred and forty, and have made about two million of brick in it. At Dog river, Dickerson has made near one million, and if the season continues favorable till December, I shall have six to eight million of brick at the two yards. If the Government have or shall take away the contract, and I could sell my brick, I should not lose any thing; but if the contract is taken from me, and I can get no sale for the brick, I am ruined.

I pray that you will make some inquiry about the business, and let me know what seems to be the intention of the President.

Most respectfully, I am,

Sir, your obedient servant,

GILBERT C. RUSSELL.

Gen. GADSDEN.

BLAKELEY, 8th October, 1821.

SIR: The peculiar hardship of my situation will, I trust, be a sufficient apology for again addressing you. It is now nearly eight months since I began on the works at Mobile Point. Then Col. Gadsden was the Agent of the Government, and superintending Engineer, who received me, and put my force to work. I was then under an impression that but few brick would be required, until Col. Gadsden assured me that at least ten millions would be necessary, if tapia should be substituted for part of the walls; and advised the

formation of brick yards of sufficient magnitude. After working up the few materials I found at the Point, I accordingly commenced a yard, which I completed with the expense of at least ten thousand dollars; upon which, and a small yard at Dog river, I can make seventy-five thousand bricks per day. About the last of April Col. Gadsden went off. In May, I called on his successor for pay for the work I had done at the Point, when he refused it, without your order; and referred me to you on the subject. I lost no time in addressing you, and requested that Captain De Russy might be instructed to pay me. Soon after, I learnt that he was anxious the Government should resume the contract; and I wrote you on the 25th of May, requesting to be informed, without delay, whether I was to progress with the works or not. In July I wrote to the Chief of Engineers, and reiterated my request. To none of these letters have I received a word in reply. It may be possible that all my letters have been intercepted; but, if they were received, I was surely entitled to some sort of answer.

At my request Mr. Crowel called on you, to state to you the necessity of Col. Gadsden being invested with discretionary power, who stated to me, that you informed him, that he already had discretionary authority.

On the 12th of March, four days after Col. Hawkins died, I wrote to you, proposing to give new, or additional, security, as might be required; but got no answer to that letter.

I have heard that great exertions have been made, but by whom I do not know, to induce the Government to resume the contract; and I do suppose that, to effect this object, all that malice could devise, and all that slander could circulate, has been directed against me about the Capital; but, I trust, that it will be reviewed with suspicion, at least.

After having been received by Col. Gadsden, and in part by De Russy, (for he agreed to accept my order for a million of bricks, as Col. Gadsden knows,) and to be allowed to incur the vast expenses that I have, and then deprived of the contract, as some suppose, would not be consistent with either justice or honor.

If my letters have been received by you and the Engineer, I consider myself badly treated; and if you will, for a moment, suppose our situations changed, you will think so too. Be this as it may, I pray you to let me know what is to be done.

Respectfully, I am, sir,

Your obedient servant,

GILBERT C. RUSSELL.

Hon. J. C. CALHOUN.

BLAKELEY, 8th October, 1821.

DEAR SIR: Major Montgomery informed me, that he had written to you in July last, on the subject of the Point contract, which I had

bought from Col. Hawkins, and which I was likely to lose. He states, that he requested you to ascertain, if possible, the intentions of the Executive, and let him know, whatever they might be. To that communication, no answer has been received; and strange as it is, I cannot hear a word from Mr. Calhoun, Mr. Chief Engineer, nor no one else, on the subject. If I am deprived of the contract, without pay for what I have done, I am literally ruined. I began in February, was received by Col. Gadsden, and no difficulty was thought of till after Gadsden went off, and some time in May, his successor refused to pay me without the order of the Secretary of War, *to whom I wrote, and from whom I cannot hear one word.* The Major thinks it strange that you have not answered his letter. May I request you to get, and give me some information on the subject of this unfortunate contract.

The Government want Forts made—to men not worth a cent, hundreds of thousands are given—nothing is done—the contractors blow out—men able to pay their debts, and build the Forts without any advances, begin, and then difficulties arise to their going on. Foul play General, and the ensuing Congress and the Nation shall know it—another sort of inquiry will be instituted then, to any hitherto—the people shall see how much of their money has been misapplied, and by whose authority it was done. Mr. Calhoun has thought proper to treat me with indignity, which shall not pass with impunity.

Do pray let me hear from you.

Respectfully,

GILBERT C. RUSSELL.

Gen. GIBSON.

BRICK YARD, 15th Nov. 1821.

SIR: In September, I wrote to Col. Gadsden, requesting some information respecting the contract which I purchased from Col. Hawkins, and desired him to inform the government that I was prepared to give ample security for the completion of the work, and to make good the debt Hawkins owed: and provided that a man of sense could be sent hither to relieve De Russy. I now repeat the same proposition to you; and, furthermore, I will take the contract, if to be let anew, for one hundred thousand dollars less than stipulated by Hopkins; and, if the foundations shall not go more than twelve inches below high water mark, I will do the work for one hundred and twenty-five thousand dollars less than the original contract price—give security for the completion of the work—and require no money only on the delivery of materials and labor performed.

In addition to this proposition to which I hope to receive an answer, permit me to ask why none of my letters to you have been answered that I wrote on the subject of this contract? You were well aware that I had an immense force at work, preparing materials, and that my expenses must be great; and if a doubt was en-

tertained by yourself on the subject of my going on, as the agent or assignee of Hawkins, justice due to me, as an individual of this community, required that I should have been apprised of it. However, if justice is yet done, I shall be content.

Respectfully, I am, Sir,

Your most obedient servant,

GILBERT C. RUSSELL.

Hon. J. C. CALHOUN,

Secretary of War.

ENGINEER DEPARTMENT,

Washington, Nov. 5th, 1821.

SIR: Your several communications to this and to the War Department have been received, but as you have not been recognized as the successor of the late Col. Hawkins, it was not deemed necessary to make any reply to them.

I have the honor to be,

Very respectfully, Sir,

Your most obedient servant,

ALEX. MACOMB,

Major General.

To Col. GILBERT C. RUSSELL,

Blakeley, State of Alabama.

Extract of orders to Captain De Russy, from the Engineer Department.

“FEBRUARY 5th, 1821.

“SIR: You have been assigned to the superintendence of the fortifications building and to be built on the Gulf of Mexico frontier, and will, with the least possible delay, repair to Mobile Point, and relieve Colonel Gadsden, who now has charge of that superintendence, and who will be directed to deliver over to you the instructions and all other official papers, and to communicate to you any information derived from his experience there, relative to the superintendence that may be in his possession.”

“AUGUST 14th, 1821.

“Nothing as yet has been definitively settled, as to carrying on the works at Mobile Bay, under the contract of the late Colonel Hawkins. The securities are endeavoring to come to some arrangement, and as soon as any plan shall be adopted, you shall be fully informed.

It is the determination of the War Department to send a company of the 4th regiment to Mobile Point, as soon as you will advise the commanding officer at Pensacola that it can be received. The object of this detachment is to take possession of the public property, and to preserve it from depredations; and, also, to prevent improper persons from occupying or possessing that which properly belongs to the United States. Should Colonel Russell have abandoned the buildings, you will immediately take possession of them, and put them in the charge of some person until the troops arrive. Should any difficulty arise of a legal character, you will obtain the opinion of the District Attorney, and act according to his advice. You will avoid, by all means, taking any measures that are not warranted by the laws of the land."

JULY 11, 1822.

"Your construction of the letter of this Department, of the 14th of August, has been incorrect, if you supposed it to require you to commit an act in violation of the laws of Alabama, as, by your letter of the 30th of May, which was received yesterday, it would appear to have been. In the letter of the 14th of August, you are required to take possession of the buildings supposed then to be occupied by Colonel Russell, as soon as he should abandon the occupancy, and you are informed a company of troops would be sent there to take possession of the public property, and preserve it from depredation; and, also, to prevent improper persons from occupying or possessing that which properly belongs to the United States. But, in the same letter, there is a distinct qualification of any authority that may be drawn from the foregoing sentences, by the following sentence: "You will avoid, by all means, taking any measures that are not warranted by the laws of the land," and in the sentence immediately preceding, the mode of avoiding is pointed out, by reference to the District Attorney for advice. It appears that course had been anticipated by you, and the opinion of the District Attorney, dated 20th of July, had been furnished at your desire, and advised you that it would be illegal to take possession of the property. If you have disregarded that opinion through inadvertance or misconstruction, it would be fruitless to attempt to sustain the act palpably in opposition to law. It would be better, if that has been the case, to surrender the property into the hands from which it was taken, taking care to obtain the best terms possible. However, as your letter does not disclose a full statement of the facts, it is impossible for the Department to give any positive directions in the case. Your discretion is therefore relied on for its arrangement to the best advantage.

The opinion of Mr. Wirt, to which Mr. Coryell has alluded, was, that "the Government would be authorized to dislodge all intruders from their grounds, by force, if necessary, and give possession to the new substituted contractors;" but he gave no opinion that would authorize possession to be taken of the property of others."

MARCH 1st, 1824.

"Your letters of the 17th and 24th ultimo, have been duly received. In relation to the questions respecting the works on Mobile Point, propounded in your communication of the 6th of January last, and adverted to in your letter of the 17th of February, I have submitted them to the Secretary of War, who has decided as follows:

Question 1. Is the fort on Mobile Point to be constructed with a dry ditch?

Answer. This point will be referred to the Board of Engineers, and the ultimate decision thereon communicated to you as soon as practicable.

Question 2. Are the buildings formerly belonging to Colonel Hawkins, to be considered as public property?

Answer. With regard to this question, I refer you to my letter of the 14th of August, 1821, and the 11th July, 1822.

In answer to the 3d question, as to the expediency of repairing the principal buildings called the hotel, I have to observe that there is no objection to repairing it to prevent its entire ruin, if it can be done at a small expense, and thereby fitted for the accommodation of the mechanics employed at the fort.

ENGINEER DEPARTMENT, 12th June, 1824.

The foregoing extracts are correct.

ALEX. MACOMB, *Maj. Gen. Chief Eng.*

Extract of a letter from Col. Gadsden to Capt. De Russy, dated Mobile Point, 1st May, 1821, giving him information and advice as directed by the Secretary of War, upon the latter relieving the former in the duties of Superintending Engineer of the works on the Gulf of Mexico.

"Roswell Hopkins administered on the estate of his son, and the assignment made by him in New York, was renewed in this county, and Samuel Hawkins recognized by me as the successor in the contract. Previous to the transfer of the property of Benjamin W. Hopkins to Samuel Hawkins, a private creditor of the former had succeeded, under a plea of an absconding debtor, in having an attachment served on it; and, as the property was connected with the construction of the work on Mobile Point, and had been acquired by public resources placed at the disposal of the contractor, it became necessary to assert the prior claim of the United States as a creditor. The estate of Hopkins was sold under execution, on confession of judgment by the administrator in favor of the United States; Samuel Hawkins became the purchaser, receipts were given by me to the sheriff for the amount of sales, and Hawkins receipted to me. The debt was thus changed, and Hawkins became invested with all the property of Hopkins, and responsible, under bond, for the amount advanced his predecessor.

"Shortly after Hawkins became invested with the contract for Mobile Point, that instrument was so modified as to permit the substituting of tapia in the revetment walls for brick masonry, for a consideration mentioned in the articles of agreement.

"The affairs of Hawkins did not long wear a favorable aspect. The property acquired under the contract, as well as an advance made him, was soon frittered away, and the same want of knowledge of the details of the work to be constructed, of system in the arrangement of operations, and of economy in the expenditure of time and means, controlled his, as they had characterized his predecessors movements; subordinate agents and white mechanics were kept on expenses without employment. Brick yards were neglected, and the means of transporting materials not regarded, while the most anxious solicitude was evinced on matters of trivial import, and the attention engrossed by the inconsiderable carpentry of the barracks, or confined to the objects connected with the superstructure of the fortifications alone. In the early part of the fall of 1820, a total suspension of all operations at Mobile Point, was occasioned by the ill state of health and exhausted resources of Col. Hawkins. In December of the same year, an arrangement was made between him and Gilbert C. Russell, of Alabama, appointing the latter his agent, to carry on the works in his name, with an obligation to keep a certain number of negro laborers constantly employed."

"General Starke has been notified of the contents of the letter of the 21st March, from the Engineer Department. As he has hitherto been dependent upon the monthly amounts received, it is doubtful whether he will be able to progress. He is in hopes, however, under the arrangements made for the delivery of brick at Mobile Point, similar to the one proposed by the Engineer Department, that he will be able to complete the barracks on Dauphin Island this summer, depending upon the justice of Government of being ultimately indemnified for the labor and expenses incurred.

"I have, in this communication, been explicit, and endeavored to afford you information as to every fact and circumstance connected with the duties assigned you.

"Engineer Department, 12th June, 1824."

True extract,

ALEX. MACOMB Maj. Gen.,

Chief Engineer.

MOBILE POINT, October 20th, 1821.

SIR: I have the honor to inform you, that, on the 15th inst. company D, of the 4th Regiment of Infantry, commanded by Lieut. Alexander, arrived at this Post, and was put in immediate possession of the property, formerly belonging to the late contractor, Col. Hawkins.

The company occupies a part of the buildings included in that property.

Col. Russell, had, some time since, evacuated all the buildings, with the exception of a store house, which was occupied at the time I took possession, by an overseer or Agent of his.

I have caused an inventory to be taken of all the property seized. A copy of it shall be forwarded to your Department, in the course of a few days.

With the highest respect,

I have the honor to be, Sir,

Your obedient humble servant,

E. R. DE RUSSY,

Captain Engineers.

To Maj. Gen. A. MACOMB,

Chief Engineer of the United States.

ENGINEER DEPARTMENT,

12th June, 1824.

The within is a true copy.

ALEX. MACOMB,

Chief Engineer.

Extracts of Letters from Col. Gadsden to the Engineer Department.

“MOBILE POINT, 8th February, 1821.

“Your letter of the 4th ult. has just been received, enclosing a copy of a communication from Gilbert C. Russell to the Engineer Department, on the subject of Hawkins’ contract with Government. In an interview with Col. Hawkins, a few days since, at Blakely, he informed me, that the long contemplated connection between himself and Russell, had, at length, been consummated, and that the latter was now industriously occupied in making the necessary arrangements for speedily resuming operations at the Point. Col. Russell I have not seen, and have heard from him but once, a copy of which communication has been transmitted you. Of his views, plans, or resources, I am as yet ignorant. Of the nature of the connection between Col. Hawkins and Russell I am yet unadvised; the latter is aware, however, that he cannot be recognized by me but as an agent. On the subject of extension of time for the completion of the terms of the contract, I have not committed myself. The contractors have been informed, that indulgence will depend upon the confidence which the Executive may have in their future operations, tending to a favorable result.”

“MOBILE POINT, 2d March, 1821.

“An advanced party of seventy or eighty negroes arrived at the Point some days since, preparatory to the resumption of operations under Col. Russell. As yet I am unadvised of the nature of the arrangements concluded between that gentleman and Col. Hawkins. Col. Russell has not yet made his appearance, or been recognized by me. Hawkins is aware that in the capacity only of his agents can Russell, be recognized by me. I hope, by the close of the month, their negotiations will be terminated, and that it may be in my power to make you some definite report as to the prospects of Hawkins' contract, and the future progress of operations at the Point.”

“MOBILE POINT, 2d May, 1821.

“Your communication of the 21st March came too late to arrest the payments at Dauphin Island, for April. Gen. Starke, however, has been notified of the determination of the President of the United States: the information was to him a severe shock, as it threatened immediate ruin. The pecuniary embarrassments entailed on the contract by Harris, and which had long oppressed him, had but just been put in a train for final adjustment, and operations had been systematised for progressing with the work at Dauphin Island, with more rapidity, and more to the satisfaction of the Government than hitherto: but the denial of appropriations will not only eventuate to the serious injury of a worthy man, but jeopardize all that has been done. By an arrangement made with Russell, agent of Hawkins', similar to the one suggested by you, for the delivery of one million of bricks, at Mobile Point, Gen. Starke is in hopes he will be enabled to progress at his brick yard, and with the barracks at Dauphin Island, this summer. Relying on the justice of Congress for being indemnified hereafter for the labor and expense incurred. As his means, however, are limited, and those who have promised him may withdraw their support, there is no divining how long Gen. Starke may be able to progress. He has every disposition to complete the contract, but pecuniary disability may interrupt operations in a few months.”

“MOBILE POINT, 10th May, 1821.

“Accompanied are the monthly reports of the condition and progress of the fortifications at Mobile Point and Dauphin Island, for March, 1821.

“A few days previous to this interview, Col. Russell had despatched a few laborers and mechanics to the Point, who were set to work, and have performed the amount exhibited in the monthly report. Previous to the necessary documents being presented to me

for the recognition of Col. Russell, as agent of Col. Hawkins, the latter yielded to the disease which had long afflicted him. His death necessarily suspended all the powers which he had granted to Russell, and the latter gentleman remains unrecognized, until the powers granted by Hawkins can be renewed, or sanctioned by his executor, heirs, or administrators. Col. Hawkins died intestate, but under a full belief, that the administrator on his estate and effects will sanction the power granted to Russell. The latter is still making preparations for progressing with the work at Mobile Point.

“ I regret the small appropriations for fortifications this year, but should regret still more any orders to suspend operations in this quarter. Such an order would inevitably ruin Gen. Starke, independently of rendering abortive all that has been done on Dauphin Island. The walls of the barracks are already so far advanced, that we must either progress, or sacrifice what has been performed.

“ The amount appropriated, with the balance of cash on hand, will be adequate to the objects proposed, and Gen. Starke has no objections to progress with less rapidity, provided the retardation of his operations proves satisfactory to the Government. Lieut. Story has already had a conversation with him, and he seems much disposed to confine his operations, this year, to the completion of the barracks, and the delivery of bricks at the Island, to his own transports, which will reduce the monthly amounts to about 200,000.

“ Col. Russell, whatever may be his disposition, cannot, under present prospects, progress, I feel assured, more rapidly than to exhaust the amount of \$30,000, appropriated for the Point; but, at all events, there is no difficulty in limiting his operations at the option of the executive. My accounts will exhibit to you a balance on hand, on the 31st March, 1821, of \$67,680 97; the amount appropriated for Mobile Point, \$30,000, added to this sum, would leave \$97,680 97, exclusive of the \$60,000 appropriated for the Rigolets, to be disposed of at Mobile Point and Dauphin Island, and more than adequate to complete the barracks as proposed.”

True extracts from page 1 to 10.

ENGINEER DEPARTMENT, 12th June, 1824.

ALEX. MACOMB, Maj. Gen. C. E.

DAUPHIN ISLAND, 3d April, 1821.

SIR: In the absence of Col. Gadsden, in Louisiana, I forward to you the monthly reports for this place and Mobile Point. From present prospects, I have little doubt, that, by the close of this month, the masonry will be completed to the height of the window sill of the barracks, and all of it by the 30th of June, if not earlier. At Mobile Point, the foundation of the barracks has been completed; main walls, partition walls, gateway walls, and chimney foundations, nearly to the

height of the first offset. The report will shew that all the bricks are exhausted. The principle part of the force brought by Col. Russel, has been removed to the shell banks or Bonsecour Bay, eastern side of Mobile Bay, for the purpose, I presume, of digging and preparing the shells for tapia. I know nothing, however, distinctly from his Agents, on this subject; and as yet, he has not made his appearance at Mobile Point, to expedite, or even attend to the concerns of Col. Hawkins contract. Nothing has as yet been exhibited in his behalf, to warrant any expectation of favorable results, and I have indirectly learnt, that the negroes are employed most preposterously and unprofitably in the manufacture of lime. He has no means of transportation, that I have heard of, in the least adequate to the transporting of shells, and none can be procured, excepting from the north, and that, necessarily, after a lapse of much time. No arrangements appear to have been made for the establishment of brick yards, or supply of bricks or other materials; and the same total absence of organized movements, distraction, fruitless employment of means, expensive hire of white mechanics, who have nothing to do, and of subordinate Agents, sufficient in number to devour all the reasonable profits of any undertaking, seem to prevail with a fatality that has characterized all the operations of the contractors hitherto. Col. Russell has scarcely deigned to request any advice from the Engineers, and his Agents have solicited no information, excepting on matters of trivial import, to which, alone, do they seem to have directed any attention. The pitiful considerations of iron work, and the carpentry of the doors and windows, seem to have engrossed their attention; and they insist, with childish eagerness, on the immediate preparation of them, while nothing is doing to indicate a probability of their ever being wanted. I cannot see, in what manner, the force they at present have, can be employed to immediate emolument, and without the receipt of money from the labor performed, every addition of numbers will but serve, to embarrass and overwhelm them. I shall repair to the Shell Banks, as soon as possible, in order to furnish Col. Gadsden with information, on the state of affairs there, on his return from New Orleans.

Should the barracks at Dauphin Island, progress to the height I have mentioned before, by the end of this month, (and I have little doubt but that they will be considerably further advanced,) more than 5-8ths of the masonry in them will be completed. Should the Executive determine on the suspension of the works at Dauphin Island, (for we learn that no appropriations have been made by Congress for them,) inevitable, unexpected, and, may I be permitted to say, undeserved ruin, will fall upon Gen. Starke, the rightful, though, not recognized contractor. It would, certainly, be in me the height of impropriety, to suggest that such a course might be viewed as a breach of National faith; but, I trust, I may be allowed to say, that, to myself, and, as I firmly believe, to every Engineer officer here, it would be a matter of grief, pain, and mortification, to have it carried into effect. It would grieve me, that a worthy, faithful, and wealthy gentleman, should have his prospects for life blasted—it would pain me, to be even

the organ of communicating such tidings, independent of other considerations; and it would mortify me, to find, that all our efforts and struggles for successful results were rendered unavailing; and overwhelmed at the period when they promised the best. I have been engaged in superintending the works, at Dauphin Island, during the last month; and I shall, if circumstances permit, be employed in the same duty the present.

I am, Sir, with much respect,

Your obedient servant,

HORACE C. STORY,

Lieut. U. S. Corps of Engineers

Col. W. K. ARMISTEAD,

U. S. Corps of Engineers, Chief Engineer, Washington.

ENGINEER DEPARTMENT,

12th June, 1824.

A true copy.

ALEX. MACOMB,

Major General, Chief Engineer.

Extract from Captain De Russy's letter, dated

MOBILE POINT, September 24, 1821.

"In answer to your communication of the 24th of August, I have the honor to state, that Colonel Russell has abandoned the quarters erected on Mobile Point by the former contractors, and has only left an agent in charge of the property. There being no danger to be apprehended during Colonel R.'s absence, I have delayed taking possession of the buildings till the company arrives from Pensacola. I was induced to delay, for two reasons; the first, to give time for an answer from your Department to my communications of the 25th of July, enclosing the United States attorney's opinion on the subject of seizing the property of Colonel Hawkins; the second, to prevent any controversy with Colonel Russell, until it was in my power to effectually guard the property."

To Maj.-Gen. MACOMB.

A true extract.

Engineer Department, June 12, 1824.

A. MACOMB, Maj. Gen.

ADJUTANT-GENERAL'S OFFICE,

Washington, October 5, 1821.

SIR: Your letter has been referred to the Engineer Department. It is wandering from the line of my duties, as Adjutant-General, to interfere in concerns that appertain exclusively to Major-General Macomb. I believe, however, that the subject of the Mobile Point contract is now before the Department of War.

Yours, &c.

J. GADSDEN, *Adj.-Gen.*Col. G. C. RUSSELL, *Blakely, Alabama.**MOBILE POINT, May 18, 1821.*

SIR: I have the honor, through you, to lay before the Honorable the Secretary of War, the enclosed correspondence between Colonel G. C. Russell, Mr. Wing, and myself. I feel it my duty to do so, as representations from them might go directly to him, which perhaps would give him a wrong idea of the transaction. There is an understanding between those two men, which can only be understood by those who know their motives; to me it appears unaccountable. How Mr. Wing, a stranger to the family, can have become the lawful administrator of Colonel Hawkins' property, when Mrs. Hawkins has not been consulted, is a point I cannot conceive. From Mr. Wing's letter, it would appear, that their object is not the prosecution of the works, but to put out of Government's reach Colonel Hawkins' securities. I wait with anxiety yours and the Hon. the Secretary's decisions upon the subject.

Respectfully, I have the honor to be

Your obedient servant,

R. E. DE RUSSY,

Capt. Eng.

To Col. W. K. ARMISTEAD,
Chief Engineer of the United States.

A true copy.

Engineer Department, June 12, 1824.

ALEX. MACOMB,

*Maj.-Gen. Chief Eng.**MOBILE POINT, 18th May, 1821.*

SIR: I regret that you refuse to recognize Col. G. C. Russell, as the lawful assignee or agent of the late contractor, Col. Samuel Hopkins, whose sole object in substituting him was to save his securities

from ruin. The same means that Col. Russell has for the prosecution of the work are at my command, and those are very ample; and, in discharge of my duty as administrator, (evidence of which is herewith submitted to you,) I request that you will recognize me as the lawful successor of Col. Hawkins in the contract, so that I may progress with the works, with the means now at my command.

Yours, very respectfully,

J. WINGATE WING,

*Administrator of Saml. Hawkins, late contractor for
building and erecting a fortification at Mobile Point,
for the Government of the United States.*

R. E. DE RUSSY, Esq.

*Captain of Engineers, and chief Superintendent
of the public works at Mobile Point.*

ENGINEER DEPARTMENT,

12th June, 1824.

A true copy.

ALEX. MACOMB,

Maj. Gen. Chief Engineer.

*Copy of Captain De Russy's letter to Mr. J. W. Wing, in answer to the
foregoing.*

MOBILE POINT, May 18th, 1821.

SIR: I regret that the same cause which compels me to refuse to acknowledge Col. G. C. Russell as the lawful agent of Col. Hawkins, exists with you. It is absolutely necessary that instructions from the Department of War be received before I can acknowledge any individual.

Should you feel disposed, I will enclose the copy of your letter of administration to the hon. the Secretary of War, and wait for his decision.

Respectfully,

R. E. DE RUSSY,

Captain U. S. Engineers.

To J. WINGATE WING, Esq.

Mobile Point.

The above proposition, on my part, has not been complied with on the part of Mr. Wing.

R. E. DE RUSSY.

ENGINEER DEPARTMENT,

12th June, 1824.

A true copy.

ALEX. MACOMB,

Maj. Gen. Chief Engineer.

BLAKELY, 16th May, 1821.

SIR: On the 2d day of May, 1820, Roswell Hopkins, the administrator of B. W. Hopkins, did assign, transfer, and set over, unto Samuel Hawkins, his heirs, executors, administrators and assigns, the contract made with General Swift, for erecting the fort on the Point of Mobile; and, on the next day, viz. the 3d day of May, the Engineer, by his written instrument, recognized the said Samuel Hawkins as the lawful successor of the said B. W. Hopkins, deceased. In the life time of Col. Hawkins, he conveyed the contract to me, as will appear by an authenticated power of attorney, herewith executed by his administrator, to which is attached a copy of the letters of administration granted to him on the 20th ultimo, and certified by the clerk of the court to be "a correct copy from the records," and I request that you will acknowledge me as the lawful agent of the late contractor, or refuse to do so, as your own judgment may dictate. I trust, however, that, upon reflection, you will not hesitate, because, in my humble opinion, a refusal might jeopardise the interest of the United States, to a large amount, and may frustrate my plans of operation for the execution of the work.

Very respectfully, I am, Sir,

Your obedient servant,

GILBERT C. RUSSELL,

Legal Agent of S. Hawkins.

Capt. DE RUSSY,

Chief Engineer, Mobile Point.

ENGINEER DEPARTMENT,

12th June, 1824,

A true copy.

ALEX. MACOMB,

Maj. Gen. Chief Engineer.

Copy of a letter from Capt. De Russy to Col. G. C. Russell, in answer to the foregoing.

MOBILE POINT, 18th May, 1821.

SIR: I hereby acknowledge the receipt of your communication of the 16th instant, requesting me to acknowledge you as the lawful agent of the late Col. Hawkins, in the performance of the public fortifications to be erected on this Point. In answer to which I have the honor to say that I am not authorized by the government of the United States to acknowledge you as the agent of the late Col. Hawkins; consequently, will not, until the sanction of the honorable the Secretary of War has been obtained, recognize you as such.

It is to the War Department, and not to me, that your application is to be made; in the mean time, however, should you feel disposed to prosecute the erection of the fortification on the Point, until the will of the Executive shall be known, you are at liberty to do so.

I will lose no time in laying before Mr. Calhoun a copy of your communication to me. His answer will, probably be received in the course of six or seven weeks. I shall then be able to answer the questions your present letter contains.

Very respectfully, I am, Sir,
Your obedient servant,

R. E. DE RUSSY,
Captain U. S. Engineers.

ENGINEER DEPARTMENT,

12th June, 1824.

A true copy.

ALEX. MACOMB,
Maj. Gen. Chief Engineer.

MOBILE POINT, July 25th, 1821.

SIR: In my letter, of the 18th instant, I had the honor to inform you that the necessary steps had been taken to obtain the information which your instructions, of the 16th of June, required. The enclosed copy of a letter from Wm. Crawford, Esq. District Attorney of the United States, not only contains answers to those questions, but to others which it became my duty to obtain.

It is here proper to state, that, finding a disposition on the part of Col. Russell to remove from this point, materials which had been paid for by the late Agent of Fortifications, Col. Gadsden, without giving me notice of it, I took upon myself to inform his agent, or store keeper here, that, hereafter, no materials or utensils, of any kind, belonging to Col. Hawkins's contract, would be permitted to be removed, until the decision of the Hon. the Secretary of War was received; and, in order to check, more effectually, this imposition, it was my intention, could I have done it with propriety, to seize the property which originally belonged to Col. Hawkins's contract, on the plea that the contract had not been fulfilled. It was with that view that the information, which drew the first answer from Mr. Crawford, was requested of him.

The second question, which Mr. Crawford also answers in the negative, was, "whether I could take upon myself, as Agent of the Government, to seize, without exposing the interest of the United States, the property of the late Col. Hawkins, on Mobile Bay, now in the possession of Col. Russell." My motive for endeavoring to make sure of that property has, no doubt, been explained to the Department by Lieut. Story. It was to secure to us, in case the Go-

vernment resumed the Contract, an extensive brick kiln, a quarry of stone, and the shell banks.

The question in the case of Mr. N. Cox was of consequence, as it concerned a mortgage upon eighty-one negroes given by Harris and Farrow, the former contractors for the work, on Dauphin Island, to then Capt. Gadsden, Agent for Government, as security for advances made. It appears that these two men, previous to the arrangement made with Col. Gadsden, had mortgaged a part of the same negroes to individuals in New Orleans. It further appears that Mr. Cox has lately purchased the mortgage in New Orleans, in hopes of obtaining possession of those blacks. With this expectation he has demanded them of Gen. Starke, who is the acknowledged agent of Harris and Farrow, and who, of course, has charge of them. They have been refused, *by my directions*, and I am pleased to find, by the answers received from Mr. Crawford, that Mr. Cox's success is, by him, considered very doubtful.

The last part of Mr. Crawford's letter contains the answer to your communication upon the legality of Mr. Wing's administration on Col. Hawkins's property. It coincides with my opinion, so far as it relates to the right of the widow; and it is well known that at the time he was appointed administrator of that property, by the court, that Mrs. Hawkins could not have been apprised of the loss she had met with.

The copy of the instrument by which Col. Russell was appointed the agent, or attorney, of Col. Hawkins, has not yet been received. Col. Russell, in his answer to me on the subject, refers me to the County Clerk's Office, where, he says, the original was deposited. By the return of the boat I will, no doubt, obtain it, and will lose no time in forwarding it to your Department.

With the highest respect,

I have the honor to be your obedient servant,

R. E. DE RUSSY,

Capt. Eng'rs

ALEXANDER MACOMB,

Major Gen. Chief Engineer.

ENGINEER DEPARTMENT, 12th June, 1824.

A true copy,

ALEX. MACOMB,

Maj. Gen. Ch. Engr.

Extracts of letters from Capt. R. E. De Russy to the Engineers Department.

MAY 12, 1821.

SIR: I have the honor to inform you that Col. Gadsden has, on the 1st of this month, transferred the superintendence of the fortifications

on this frontier to me, and has delivered over to my charge the papers relative thereto. In relation to the work proposed for this Point, I am sensible that it will not be performed under the present contract, even was it extended. As that contract expires on the 1st of July next, it will be necessary to try other means. Having had some experience, these four years past, in collecting materials for fortifications, I believe myself, in some respects, capable of devising the most efficient means for the future progress of this work. Should the means, however, appear imperfect in the eyes of Government, it is hoped that the desire of promoting the public interest, will be a sufficient apology for the presumption I am guilty of in proposing them.

My plan would be, not to renew the contracts; but, to allow the superintending Engineer to obtain materials from all quarters, (should it prove necessary,) and to immediately accumulate a sufficient quantity to commence the foundation of the works. A measure of that kind would enliven the expectations of those capable of furnishing them, competition would be the natural consequence, and the daily increase of population, and means in this neighborhood, would render the progress of the work more certain, would gradually reduce the price of materials, and would ensure the completion of fortifications of a better construction, in a shorter time, and at less expense.

The principal difficulty, in this section of the country, appears to be the want of brick and stone. They are both, however, to be found. Encouragement is all that is necessary to obtain them. Brick can be obtained in this vicinity at eight dollars per thousand, of a good quality, receivable at the kiln.

The want of vessels, as transports, in this Bay, is sensibly felt: for that reason an exorbitant price is expected for the transportation of materials. Five or six dollars per thousand bricks is what is now paid for a distance not exceeding twenty miles.

The price of lumber has so much diminished in this market since the contracts were made, that, at least one-third on that article can be saved.

The iron work can be performed for one quarter less than the contract price, by procuring the iron from the North, and having it manufactured on the spot. I hope that it will not be long before I am made acquainted with the disposition and wishes of the Department relative to the command you have been pleased to assign to me; and that the exertions on my part to put into execution, will be considered as an acknowledgment of the confidence reposed in me."

July 1, 1821.

"I have the honor to report myself on command on the Gulf of Mexico Frontier, superintending the erection of the fortifications commenced at the entrance of Mobile Bay, and the pass Rigolets.

During the last month I visited the works at the Rigolets, and proceeded to New Orleans, where I had to go to make the deposit of the funds left me by Colonel Gadsden. I intend on my return here, to put in execution the plan of reconnoitering the Perdido and Bay of Pensacola, in pursuit of stone; but, owing to circumstances, which took place during my absence, I thought it more to the public interest to remain at the Point, until I can take decisive measures to prevent the embezzlement of property, which ultimately must belong to Government. My situation in relation to the steps to be taken towards the property of the late contractor, Colonel Hawkins, is rendered very unpleasant for want of advice from the Department. I can for the moment only exercise a partial authority. I hope, however, before any unpleasant circumstances take place, to receive the information which has so long been expected, and which is so useful at this particular moment. The laws of this State give to the greatest creditor the right of obtaining letters of administration upon the property of an individual, who dies insolvent. This has been permitted in the case of the late contractor, and an agent of his by the name of W. Wing, has not only been appointed, but has disposed of the property to a Colonel Russell, who now claims the right of disposing of it with impunity. So long as the little force which is left here, remains, I can oppose his views; but, should the authority of the State interfere before I can be advised of your determination, I shall have to leave the case with the United States' attorney, with whom I intend immediately to consult.

If, during this month, I can with propriety leave this station, I will make myself acquainted with the resources of the country east of this Point. It, however, depends upon the measures which will be taken by Colonel Russell, or Mr. Wing. They both with eagerness watch my motions, with a view to take advantage of my absence, and to remove from this place any material, tool, or stock, which belonged to the late Colonel Hawkins."

JUNE 8th, 1821.

"The total ignorance in which I am left in relation to the views of Government respecting the fortifications to be erected at the entrance of Mobile Bay, together with the stagnation which prevails on the part of these who pretend to the right of continuing the work on Mobile Point, have induced me to despatch Lieut. Story, of our corps, to the city of Washington to consult you, and with you, the honorable the Secretary of War, upon the best mode of constructing the works contemplated on Mobile Point and Dauphin Island. The letter which I had the honor to transmit to your Department, dated 12th May, will, perhaps, have been answered previous to Lieut. Story's arrival in Washington. Should that letter have had the desired effect, (that is, a discontinuation of the contracts at the time of their expiration, by

the Executive) his visit to the north will considerably advance the object of the Government, by saving at least two months in the necessary preparations; but if, for want of further information, the Executive had not yet determined upon the subject, he is in possession of every information which can be given; his devotion to the service, and the activity and zeal with which he has performed his duties whilst attached to this command, has rendered him perfectly acquainted with every particular relative to the works, to the resources of this neighborhood, and to the character of individuals in the least connected with the contracts. I, therefore, request you will hear him, and give him your assistance in obtaining the information which is indispensably necessary for the future progress of the works under my command. Should the object of Lieut. Story's mission meet with the sanction of the Hon. Secretary of War, it will become necessary to place him in a situation to repair from Washington to New York, for the purchase of the articles mentioned in his instructions. As I have not yet received the amount appropriated for this post, a part of it could, perhaps, be made receivable by Lieut. Story in that city, or the agent of fortifications in New York might be instructed to pay to his order the amount he will require for the execution of his orders. I presume that six or seven thousand dollars will be sufficient to accomplish the object. I am in hopes that the measures I have taken to place the Department in possession of all possible information respecting this command, and to save the time which otherwise would be lost in preparing for the progress of the works above mentioned, will meet with its approbation."

The above extracts from page 1 to 8 are correct.

ALEX. MACOMB,

Maj. Gen. Chief Engineer.

ENGINEER DEPARTMENT, 12th June, 1824.

ST. STEPHENS, *February 25th, 1822.*

General Starke will oblige the undersigned by answering the following interrogatories, and sending them back to-day, so that they may be mailed to-morrow.

1st. Did you not purchase the contract from Harris & Farrow for constructing a fortification on Dauphin Island, in April, 1820; if so, in what manner were you viewed?

2d. What induced them to sell the contract and property connected with it, but their inability to progress in the work?

3d. Was the Secretary of War consulted when you made the purchase and became the agent of Harris & Farrow, or did he know any thing about it, till after you commenced operations?

4th. How long did you progress in delivering materials and erecting the works before you stopped?

5th. What induced you to stop?

6th. Do you believe, that if Farrow & Harris had have died, that any objections would have been made to payments being made you?

7th. Have you any knowledge of a bargain I made with Col. Hawkins for his contract, which he bought of the administrator of B. W. Hopkins? if so, please to state what you understood the conditions were upon which it was concluded, and the reasons that induced him to sell to me?

8th. At what time did I commence operations, as the agent or assignee of Hawkins?

9th. Did not you understand from Col. Gadsden, that he considered me as the legal agent of Col. Hawkins, from the time I commenced operations, till about the last of April. when you made a contract with me to deliver one million of brick at the Point?

10th. At what time did Col. Hawkins die?

11th. Did you understand from Col. Gadsden that the death of Col. Hawkins was to constitute an objection to my prosecuting the works, and receiving pay therefor?

12th. Did not Capt. De Russy, the officer about to relieve Col. Gadsden, agree to accept my order to pay you for the brick, when delivered?

13th. Did not Col. Gadsden suggest the plan of your making and delivering brick for me? What were his motives for doing so, and what induced you to make the contract?

14th. When you presented Capt. DeRussy my order, what objections did he make to accepting it, agreeably to the understanding between him, Col. Gadsden, and yourself?

15th. Did not Capt. De Russy boast of the great expedition with which he had and would build Forts; and did he not express opinions of the utter impracticability of an individual building a Fort at the Point?

16th. Did not Capt. De Russy expect that the Government would resume the Point contract, and build the Fort under his guidance; and did he not make conditional contracts with you about the brick, labor, &c.?

17th. Do you think that if Col. Gadsden had remained, that he would have refused to pay me, as Capt. De Russy did?

18th. Did you not distinctly understand, that, so soon as Doctor Wing obtained letters of administration upon the estate of Col. Hawkins, and renewed the power of attorney, that I was to receive pay for the work completed on the barracks?

19th. Were you not intimate with Col. Gadsden; and did he not communicate to you, without reserve, his views relating to the fortifications?

20th. If Col. Gadsden had remained, do you not believe that he would have paid me the moment that the administrator of Hawkins made a new power of attorney?

21st. Do you know any thing of the love or hatred that Capt. De Russey had for me?

22d. Did you not think that he manifested a disposition to create difficulties to my progress, and was it not his anxious wish that I should quit?

23d. Do you believe that Harris & Farrow would have sold their contract to you, or that Hawkins would have sold his to me, if they had possessed the means to progress with the works?

24th. How long have you known me?

25th. From your knowledge of me, do you think that I would have begun operations as I did, without the consent of Col. Gadsden; and do you believe that if he had have refused to recognize me as the agent of the contractor, at any time before he resigned, that I would have continued on the Bay a moment with my force?

26th. Do you think that I have been treated fairly by the officers and agents of the Government?

GILBERT C. RUSSELL.

FEBRUARY 25, 1822.

SIR: Your favor enclosing interrogatories has been received. I will be in St. Stephens on Friday next, when your request shall be complied with so far as I consistently can.

Very respectfully, your obedient servant,

TURNER STARKE.

Col. RUSSELL.

The answers might have been made on the 25th; but Gen. Starke thought that I was on the way to Washington, and would not wait till Friday. On Friday, he came to town, and could not frame his answers to please himself till this morning. He is very fearful of committing his friend De Russey.

3d of March, 1822.

G. C. RUSSELL.

Answers to interrogatories proposed by G. C. Russell.

ST. STEPHENS, March 3d, 1822.

1st. I purchased from Richard Harris, April the 10th, 1820, half his interest in a contract for constructing a fortification on Dauphin Island, and was recognized by the superintending engineer as the agent of Harris.

2d. Harris's inducement to sell, as I understood, was inability to carry on the work.

3d. I am unable to say whether the Secretary of War was consulted previous to my purchase or not.

4th. I continued to deliver materials, construct works, and make brick, until the 23d of November, 1821.

5th. No appropriation being made by Congress, for carrying on the works at Dauphin Island last year, and not having funds of my own to do so, was compelled to stop.

6th. From the agreement or bargain entered into between Harris and Farrow and myself, their death could not affect my interest, as agent or owner of the contract.

7th. I have no knowledge of a bargain between you and Col. Hawkins, only from hearsay, and that from neither of the parties immediately concerned. His inducement to sell, I presume, was want of means to prosecute the work.

8th. Do not recollect at what time you commenced operations at the Point—think in February or March, 1821.

9th. I did not understand from Colonel Gadsden, in what light he viewed you, when I made with you a contract for 1,000,000 of brick, deliverable at Mobile Point.

10th. Do not recollect when Colonel Hawkins died.

11th. Colonel Gadsden never remarked to me that the death of Colonel Hawkins was, or was not, to constitute an objection to your prosecuting the works, or receiving pay therefor.

12th. Colonel Gadsden did suggest to me my making and delivering you brick; the reasons he assigned were, a wish the brickery at the Bluff should be kept up, that the work on the Point might progress, and not stop for want of brick. The money for the brick was my object in making the contract with you.

13th. Captain De Russey did agree to accept an order from you, for the payment of the brick when delivered.

14th. Captain De Russey's objection to accepting your order for the payment of the brick, was, that for materials delivered he would require vouchers before he paid the money.

15th. * * * * *

16th. I do not know what Captain De Russey's expectations were, relative to the Government's resuming the contract. He made no conditional contract with me for brick or labor.

17th. Know not what Colonel Gadsden would have done had he remained.

18th. I never understood you were, or were not, to be paid for the work done on the barracks.

19th. Colonel Gadsden ever expressed the utmost solicitude for the works to progress; but never communicated to me his views relative to the fortifications.

20th. I know not what Colonel Gadsden would have done had he remained.

21st. * * * * *

22d. * * * * *

23d. I believe, neither Harris or Colonel Hawkins would have sold their contracts, had they possessed the means of carrying on the works.

24th. I first saw you in St. Stephens in July, 1818.

25th. It is impossible for me to say whether you would, or would not have commenced operations without the consent of Colonel Gadsden, or whether you would have continued your force on the bay.

26th. Being altogether unacquainted with the motives that influenced the officers and agents of the Government, cannot appreciate their conduct towards you.

SIR: You herewith have answers to your interrogatories.

TURNER STARKE.

Col. G. C. RUSSELL.

MOBILE, 25th April, 1821.

The undersigned, Turner Starke, hereby agrees, and binds himself, to deliver for Gilbert C. Russell, on the point of Mobile, "near the site of the public works" to be erected there, one million of brick, to be made in moulds measuring precisely nine and three quarter inches in length, four and seven eighths in width, and two and one half in thickness, of such quality as shall be received by the superintendent of the said works; to commence forthwith in making; to employ the steamboat Henderson, and three sloops, or schooners, in the transportation of said bricks, and to begin to deliver with said vessels, or at least two of them, within thirty-five days from the date hereof, and to complete the delivery by the first day of November next, or sooner if practicable. In consideration of which the said Gilbert C. Russell agrees to give the said Turner Starke written authority to the chief engineer to pay him at the rate of fourteen dollars a thousand for the brick delivered as aforesaid, provided each brick contains ninety-one cubic inches in measurement. Should they shrink in baking below that size, the engineer is to make a deduction therefor in proportion to ninety-one inch brick. Should the brick above described measure when delivered more than ninety-one inches, they are to be paid for at their value in proportion to brick of ninety-one inches, estimated at fourteen dollars the thousand.

TURNER STARKE,

GILBERT C. RUSSELL.

Nine and three-fourth inches long; four and seven-eighths in width; two and a half inches in thickness.

Is the above the dimensions of the moulds given me by Colonel Gadsden? If so, he will please to say, underneath, the price allowed for brick made in such moulds, and oblige his obedient servant,

GILBERT C. RUSSELL.

April 25, 1821.

If bricks, by the above moulds, after being burnt, &c. ready for delivery, measure nine inches, four and a half inches, and two and a

quarter inches, or cubic 91.12 inches, they will be worth, conformable to the terms of the contract, fourteen dollars per thousand, delivered at Mobile Point near the site of the works.

JAMES GADSDEN.

DISTRICT OF COLUMBIA, }
County of Washington, ss. }

George Fisher, of the state of Alabama, came before me, C. H. W. Wharton, one of the Justices of Peace, in and for the county aforesaid; and, on oath, declares, in due form of law, that Col. Samuel Hawkins, the successor of Benjamin W. Hopkins, Contractor for building a Fort on Mobile Point, in the State of Alabama, arrived there on or about the 25th of December, 1819, (he thinks a few days before,) that he immediately took possession of the property on the Point of Mobile, and exercised rights of ownership over it: that he subsequently purchased it (or the most of it) at a sale by the Sheriff, under an execution issued upon a judgment of the United States against Hopkins or his administrator: that he, Hawkins, soon after his arrival, began to make preparations to carry on the work that he had undertaken; and that Captain James Gadsden, the Agent of the Government and Superintendent Engineer, was there at the time.

[Here, in the original, is a representation of the Buildings, &c.]

a represents the wharf; *b* the wind-mill; *c* the barrack frame; *d* the store-house; *e* the cook and mess house; *f* the blacksmith shop, with three fire-places; *g* the quarters for mechanics and laborers; *h* the carpenters' shop; *i* the bake-house; *j* a house with a brick chimney to it; *k* the house called the hotel, kitchen, stable, and out houses; *l* the Murray house, being a large one-story frame building; *m* a house called Bliss' house; *n* a house called Gadsden's; *o* the site of the Fort, on which stood four or five lime houses, to hold and preserve lime; *p* an out-house.

GEORGE FISHER.

Subscribed and sworn to this 29th day of January, 1825, before me,

C. H. W. WHARTON.

Col. George Fisher, of the state of Alabama, is requested to answer the following interrogatories:

1st. Were you acquainted with the terms of Hawkins' contract for erecting a fort on Mobile Point—and did you know any thing of the terms upon which I undertook to execute it in January 1821?

2d. Was it not thought generally, and did you not know it was a contract of great value, whereby, with ample means and judicious

management, a large sum of money was to be made in completing it, after paying, in the progress of the work, the debt it then owed the United States?

3d. Had you any knowledge of the means and resources I had and did apply to the execution of that contract in 1821?

4th. Were those means thought sufficient?

5th. If those means had been deemed inadequate to the undertaking, do you not think, from the knowledge you had of me, of my connexions and personal friends in Alabama, that I could have commanded such means as would have been considered sufficient?

6th. Did you know General Everett, Major R. B. Owen, Cyrus Sibley, W. Blue, Efford Jones, Benj. S. Smoot, and all the Hollingers? and if yea, be pleased to say what was their general character, resources, and credit?

7th. From the wealth and character of these people, would you have considered them good security for the fulfilment or execution of the Point contract in three or four years, and for the repayment in the progress of the work, of 80 or \$100,000 which had been advanced to Hopkins and Hawkins?

8th. From your knowledge of the relation in which I stood to these people, do you not believe that they would all have become my security for the fulfilment of that contract and for the repayment of said advances?

9th. How were the advances made to Hopkins and Hawkins to be liquidated by me?

GILBERT C. RUSSELL.

Answer to the 1st interrogation: I heard Col. Hawkins say, in November or December 1820, that he had let you have the contract and had sold you all his property. I was acquainted with the terms of said contract.

2d. It was believed by all who knew any thing of the prices allowed by the contract, that a very great profit could be made on it. It was always my opinion that the work could be completed with good management and attention for one half the prices stipulated in the contract. I did believe it a great bargain in your favor, after paying the debt chargeable upon it as the work progressed.

3d. I do not know the precise number of negroes and white men you had—but think there were as many as could have been employed to advantage at any one time. I recollect of seeing great preparations for making brick, and a large quantity made, transported, &c. and, in my opinion, as well as many other gentlemen, the work went on as promising as any on so great a scale could have done. I am certain that your means, that I saw and know of, were quite adequate.

4th. I believe the means you had were sufficient.

5th. I believe if those means you had in actual operation had been found to be insufficient, from the knowledge I had of you, your friends and connexions in Alabama, you could have brought into actual ser-

vice three hundred hands and any other necessary means or moneys that might have been required to complete the works.

6th. I was acquainted with Gen. Everett, Major Owen, Mr. Sibbey, W. Blue, E. Jones, Benjamin J. Smoot, and all the Hollingers. I always thought them gentlemen, and men of property.

7th. At the time you began operations on the bay of Mobile, I do not hesitate in saying they would have been good security—none better could have been required; and it is my sincere opinion that you could have finished the works in three or four years, if not less; and, after liquidating the debt due by Hopkins and Hawkins, made a clear profit to yourself of two hundred thousand dollars at least. I speak from personal and experimental knowledge of the profits arising from a similar contract with such management as I know you to possess, and the active means you had employed at your command.

8th. I believe all these gentlemen would have been your security for completing the works, and also for repaying the advances which had been made.

9th. I believe the advances were to have been liquidated in the progress of the work by 15 per cent. detention on all materials delivered and labor performed.

GEO. FISHER.

Col. Nimrod Farrow will be pleased to answer the following question.

When you made a contract with Turner Starke in 1820, in the state of Alabama, whereby he was to have given you bond and security in the sum of \$100,000, did you require any other security than the undersigned, when he alone offered?

GILBERT C. RUSSELL.

SIR: In answer to the above question I can say, on oath, at the time Harris and Farrow entered into an agreement with Gen. Turner Starke, of the state of Alabama, to assist in the prosecution of Harris & Farrow's contract with the Government, for the erection of fortifications on Dauphin Island, it was specially agreed on by the parties, that Gen. Turner Starke would give his bond, with ample security, to Harris & Farrow, to the amount of one hundred thousand dollars; that the contract existing between Harris & Farrow with the Government should be strictly complied with after the articles were drawn up by a Mr. Overton, an attorney at law, signed and witnessed. The bond was wrote by the same gentleman, for one hundred thousand dollars. Gen. Starke proposed several gentlemen in the state of Alabama. On my making the necessary inquiry, it was stated to me, by the officers stationed at the public works, as

well as other gentlemen, that Col. G. Russell was amply sufficient; in consequence of this statement, I asked no further security to the bond. On my visiting the city of Mobile, the statement I got there confirmed what had been told me relative to Col. Russell's situation.

N. FARROW.

Maj. Henry will be pleased to answer the following interrogatories:

1st. Have you any knowledge of the undersigned Gilbert C. Russell in 1820 and 1821, and of his resources, and his credit, as well as of his friends and connexions in Alabama, and their character, circumstances and credit? If so, state them.

2d. Do you think he could have given security for 100 or \$150,000, for the fulfilment of any rational engagement he might have wished to come under from among his friends and relations in the southern part of Alabama?

3d. Be pleased to mention the names of some of his friends.

GILBERT C. RUSSELL.

In answer to Colonel Gilbert C. Russell's first question: I was acquainted with him (Colonel Russell) both before and since the time mentioned in his question; that he was at that time considered to be wealthy, and stood high in society. His connexions, Col. Owen, Messrs. Alexander and Adam Hollinger, and the widow Hollinger—all of whom were, at the time mentioned, rich, and are still so. The Colonel had, at the time, many very respectable and wealthy friends who would have joined him in bonds to any amount to secure the performance of any judicious contract which he might have entered into. Among which Colonels Tiles, Smoot, Walton, and Fisher, were all considered wealthy at that time, as also Mr. George S. Gains, and many others of first respectability.

WILLIAM HENRY.

The Hon. G. W. Owen is requested to answer the following interrogatories:

1st. Were you acquainted with the terms and conditions of the contract for building the works on the Point of Mobile?

2d. Was it not considered vastly profitable, and, with the means that I had, and could apply to its execution, could I not have completed it in three or four years, or as soon as any other man?

3d. Were you acquainted with Gen. Everett, Richard B. Owen, Esq. Maj. Montgomery, Benjamin Smoot, Efford Jones, Webster and Griswold, John M. Flinn, W. Blue, Cyrus Sibley, and all the Hol-

lingers, in 1820 and 1821; and with their resources, character, and credit, and what were they in 1820 and 1821?

4th. Were they not all my friends or relatives, and would they not have been my security for the performance of that contract, or for the fulfilment of any rational engagement under which I might wish to come, or it might become necessary to place myself, in 1820 or 1821?

5th. How much cotton did I make in 1820, in Alabama?

6th. Did any planter in the southern part of Alabama make as much cotton as I did that year, within your knowledge?

7th. Had I not large sums of money due me, at that time, in Alabama, Mississippi, Louisiana, and the Creek nation?

December 14, 1824.

I consider it entirely useless to answer the interrogatories, separately, as set down. I can state, however, that, from my own knowledge, I believed your means were ample, and your friends numerous, possessing character and abundant capital. The individuals mentioned in the 3d interrogatory, were men of character, and worth more than ten times the amount of any bond that could have been required; and, had the contract have been yours, they, and many others, would, in my opinion, have adventured with you; and I never entertained the least doubt but that you would have succeeded, and made much more than the same labor could have produced, employed in any other way, in Alabama. I am now engaged; but, if this is deemed insufficient, I will give the committee any information I may possess, *in extenso*.

Yours, &c.

G. W. OWEN.

Col. RUSSELL.

STATE OF VIRGINIA, }
County of Spottsylvania. } ss.

Mr. Samuel G. Swift, Merchant, of the city of Mobile, State of Alabama, came before me, John S. Willford, a Justice of the peace, in and for the county of Spottsylvania, who, on oath, declares that, in February, in the year 1821, he, as the agent of Col. Samuel Hawkins, and by his order delivered to R. B. Owen, the agent of Col. G. C. Russell, all the property at and on Mobile point, including all the buildings there at that time, in the occupancy of the contractor. That Col. James Gadsden, the superintending engineer and agent of the Government, was personally acquainted with the nature of the transfer, and, to the best of this deponent's recollection, made no objection to the delivery of said property which had been sold by Col. Hawkins to Col. Russell. This deponent, at the request

of Col. Russell, remained some time in his employ, to aid Maj. Owen and put business in complete operation, for which he paid him in part of the salary agreed on for the time he acted. This deponent was well acquainted with the means employed by Col. Russell in the execution of the works on the point of Mobile, which were very extensive, and his opinion, had he been permitted to progress with the work, and, to have received payment agreeably to the terms of the contract, his means would have been sufficient to the execution of the work.

SAMUEL G. SWIFT.

Subscribed and sworn to this 11th November, 1824.

JOHN S. WILLFORD, J. P.

MOBILE, 13th February, 1822.

SIR : I have to request that you will state to me, as well as your recollection serves you, the time you went to Mobile Point in company with Captain De Russy, whether any conversation was had about the erection of the Fort at that place or not; and if so, what impression the remarks and manner of Captain De Russy made upon your mind as regarded my carrying on the works. Did the Captain at that time know me, or had he ever seen me? Where did he stop on his first visit to this place, and what is the character of the man at whose house he was entertained? Is not that man, or was he not, particularly prejudiced against me? and did not those prejudices spring from my refusal to give him four mules that he claimed to have purchased from Col. Hawkins in his life time, and which he has since stolen or taken by force?

Your answers underneath, returned without reserve or delay, will oblige me and serve the cause of justice and truth. It may not be improper to remark that I design sending this paper with your answer to Washington, with sundry documents, affidavits, &c. &c.

Respectfully,

GILBERT C. RUSSELL.

Major LIVINGSTON,

Marshal of Alabama Destrict.

Colonel RUSSELL:

In answer to the foregoing, I have to state, that, some time in the month of April last I sailed in company with Capt. De Russy from this place to Mobile Point; that, on the passage, I several times made inquiries of him respecting the works at that place, and, from his observations in reply, was fully impressed with the belief, that he did not at that time know you personally, and had no confidence in your ability to carry on the works; in short, my impression was, that he had suffered his

mind to be very much prejudiced against you in every respect; and so well was I convinced of this fact, that, on my return to this place, I risked the opinion that his views and impressions were so hostile towards you as to produce a stoppage, or suspension of the works at Mobile Point.

I do not feel at liberty to reply to the interrogatory respecting the character of the man at whose house he was entertained, and cannot reply from any personal knowledge to the latter inquiries.

Yours respectfully,

T. LIVINGSTON.

At the request of Col. Gilbert C. Russell, the following statement is made and sworn to:

In April, 1821, I visited the Point of Mobile and Dauphin Island, and I saw Col. Gadsden and the officers of the corps of Engineers at both places, from whom I then understood, that Col. Russell was the legal agent of the late Col. Hawkins, and was recognized as such. In a conversation with Col. Gadsden, he stated, that, so soon as some one should administer upon the estate of Col. Hawkins, and renew the power of attorney under which Col. R. was acting, that he would pay him for the work then finished in a building called the barracks.

When Col. Gadsden left this country, late in April or early in May, I understood that Captain De Russy, his successor, would neither recognize Col. Russell as the agent or assignee of Hawkins, or pay him as Col. Gadsden stated to me that he would be paid.

JOSHUA ARMSTRONG.

STATE OF ALABAMA, }
City and County of Mobile. }

Joshua Armstrong, a resident merchant in the city aforesaid, is personally known to the undersigned, before whom he signed the foregoing statement, and has sworn that it is true. Given under my hand, this thirteenth day of February, 1822.

Sworn before me,

THOMAS MURRAY, J. C. C. M. C.

At the request of Col. Gilbert C. Russell, the following statement of facts are made and sworn to by J. Wingate Wing, of the town of Blakely, in the state of Alabama, confidential and authorized agent of the late Samuel Hawkins, late contractor for erecting fortifications for the United States, on Mobile Point, and present administrator of his estate.

On the 30th November, 1820, Col. Samuel Hawkins made a conditional contract with Col. Gilbert C. Russell, to transfer to him all his

right, title, and interest, that he had in a contract made with the United States, to build a fort on Mobile Point; the conditions of which were, that Col. Russell should furnish, within a limited time, a certain amount of money and number of hands to work in, on and about the fortifications till finished. On the 14th of December, following Col. Russell wished to have the time extended till the last day of January, before he should be compelled to furnish one hundred and fifty black laborers; but was to notify Col. Hawkins, by the 10th January, whether he took the contract agreeably to the covenant made on the 30th November and 14th December. Within the time limited, Col. Russell did notify Col. Hawkins that he had concluded to take the contract, and that a "van of eighty or ninety of his force were on their way down." On or about the first of January, Col. James Gadsden had called on Col. Hawkins, but, owing to his sickness, he said he had but little conversation with him, and Col. Hawkins referred him to me for the information wanted by Col. Gadsden, whether Colonel Russell was going to take the contract, as was contemplated. I answered him that "Col. Russell had concluded to take the contract from Col. Hawkins, and that part of his force was descending the river Tombigbe." To which he replied, that he was glad to hear it.

About the first of February, 1821, all the papers relating to the contract were transferred by Col. Hawkins to Col. Russell, agreeably to the law and usages of this state; also, he gave Col. Russell a power of attorney to act for him in as full, ample, and complete a manner, as he could or would do were he personally present, (but for the benefit and use of Col. Russell.) Also, an order to Maj. Samuel G. Swift, then agent of Col. Hawkins, at Mobile Point, to deliver all the property connected with the contract, of every kind, name, and nature, to Col. Russell, or his authorized agent. This order was complied with, and Col. Russell had upwards of one hundred laborers employed in, on, and about the fortifications, (agreeably to the stipulations made with Col. Hawkins.)

In the month of February, 1821, Col. Russell, the better to enable him to prosecute the erection of the fort at the point, consented to take into connection with him Messrs. Webster and Griswold, on condition that they put in \$ 30,000 by the first day of July following, to be applied exclusively for the more successful prosecution of the works, without being under the necessity of calling upon the engineers for money so often as once in each month for the labor performed and materials delivered.

The hands of Col. Russell were for some time employed at the Point, and I was informed, under the direction of Capt. Gadsden. After the death of Col. Hawkins, I, as administrator of his estate, renewed the power of attorney to Col. Russell, which Capt. De Russy refused to recognize.

After his refusal to recognize him as the agent or assignee of Col. Hawkins, for the benefit of the estate, I wished to carry on the work myself, having those means at my command which were very suffi-

cient and ample. But I was not recognized by Capt. De Russy, as administrator of Col. Hawkins, although I produced the letter of administration.

When Col. Russell took the contract from Col. Hawkins, he was not aware that any considerable quantity of brick would be required, inasmuch as tapia was substituted for the walls of the fort. But, afterwards finding that a very large quantity of brick would be wanted, at the suggestion of Capt. Gadsden, he commenced building a large and spacious brick yard, capable of holding 100,000 M at a time; for which purpose he withdrew a part of his hands from the Point, and employed about 100 hands nearly four months in finishing it—also, he had others employed in his brickery at Dog River.

Yet, I never heard it suggested, neither did I anticipate, that Col. Russell would not be recognized as agent or assignee of Col. Hawkins, by Capt. De Russy. And he virtually recognized him previous to the death of Col. Hawkins, by consenting to accept his order for the payment of materials, contemplated to be contracted for by Col. Russell.

All of the transfers, as well as powers of attorney, from Col. Hawkins to Col. Russell, above alluded to, are now recorded in the county of Baldwin.

J. WINGATE WING.

STATE OF ALABAMA, }
City and county of Mobile, } ss.

The above named J. Wingate Wing, personally known to the undersigned Thomas Murray, Esq. Judge of the County Court aforesaid, has made oath that the facts stated in the foregoing narrative are true.

Feb. 13, 1822.

THOMAS MURRAY,

Judge County Court Mobile County.

At the request of Colonel Gilbert C. Russell, the following statement of facts is made and sworn to by the undersigned S. G. Swift, now residing in the city of Mobile:

In the year 1818, I was a sub-contractor under B. W. Hopkins, for constructing the Fort on Mobile Point. In 1819 Hopkins died, and the contract was passed into the hands of Colonel Samuel Hawkins, who discarded all sub-contractors, and I then became one of his agents. In 1820, Colonel Hawkins being without funds, without hands, and confined to a sick bed, from which he never recovered, sent for Colonel Russell in November.

Colonel Russell was at the Point of Mobile, and I was informed by Colonel Hawkins, that he had concluded a bargain with him for completing the work, and that, until he should arrive, he considered himself nothing more than his agent.

In order to receive medical aid, and better accommodations than the Point afforded, Colonel Hawkins went to Blakeley; and in January 1821, Major Owen (as the agent of Colonel Russell,) arrived at the Point with a large negro force and white mechanics; and, by the order of Colonel Hawkins, I turned over to him all the property then connected with the contract at that place, and for a short time I remained in the employ of Colonel Russell, agreeably to a request contained in a letter from him.

Colonel Gadsden was the principal engineer who received Major Owen, and gave directions to the force under his orders, agreeably to the request of Colonel Russell, till he should himself arrive. During the time I was in the employ of Colonel Russell, as well as afterwards, it was always understood that he was the legal agent of Colonel Hawkins; nor was a difficulty ever suspected to have arisen, to obstruct the prosecution of the work, till after Colonel Gadsden was relieved by Captain De Russy. Soon after the arrival of Captain De Russy, I was informed that he had refused to recognize Colonel Russell as the agent, or Dr. Wing, as the administrator of Colonel Hawkins, or to pay him for the work then done.

The refusal of Captain De Russy to recognize Colonel Russell, or pay him for work agreeably to the terms of the contract, after he had been received by an officer of Colonel Gadsden's distinction, and allowed to work near three months on the fortifications, and in preparatory arrangements, and incurring vast expenses, was inexplicable to my mind, and was contrary to my sense of justice or propriety.

S. G. SWIFT.

State of Alabama,
City and County of Mobile. }

S. G. Swift, a merchant residing in the city aforesaid, made oath before the undersigned Thomas Murray, Esq. Judge of the Court of the county aforesaid, that the foregoing narrative is true. February 13, 1822.

S. G. SWIFT.

Sworn to before me, this 13th February, 1822.

THOMAS MURRAY,
J. C. C. M. C.

March 20th, 1824.

DEAR SIR: Mr. S. G. Swift was employed as deputy paymaster of the militia of New York, was an intelligent and capable man, whose family I have known for many years. They are respectable, and he acquitted himself, in all respects, to my entire satisfaction.

On his departure for Florida or Alabama, I gave to him a sincere and cordial introduction and recommendation.

Your friend and servant,

DANIEL D. TOMPKINS.

Col. RUSSELL.

DEPARTMENT OF WAR,

July 23, 1821.

SIR: The sureties to the contract of the late Col. Hawkins are desirous that a transfer thereof, should be made to Mr. Corryell of Pennsylvania, and I am disposed to accede to their proposition if it can be done legally. I have to request your opinion in relation to it.

The material point on which your opinion is requested, is, whether if Mrs. Hawkins should become the administratrix of Col. Hawkins in New York, she can with the assent of this department, and the sureties of Hawkins, legally make the transfer.

To understand the difficulties, it is proper to premise that a certain Dr. Wing, without consulting, as it is believed, Mrs. Hawkins, the widow of Col. Hawkins, or any of his heirs, took out letters of administration in the state of Alabama, and gave, under that authority, a power of attorney to Gilbert C. Russell, to proceed with the contract without the consent of the sureties of Col. Hawkins, or of this department.

The correspondence of Capt. De Russy, the superintending engineer, with Dr. Wing and Mr. Russell, together with the letter of administration, and the power of attorney, are herewith transmitted.

I have not the laws of Alabama, and I believe they cannot be obtained in this place, but as a substitute, I inclose the opinion of Mr. Crawford, the district attorney for that state, on the legality of the administration in the case of Hopkins, which, I hope, may enable you to form an opinion in the case.

As the time to fulfil the contract has elapsed, it would seem a more simple course to forfeit the contract and renew it with Mr. Corryell, but I apprehend that the act of the 1st of May, 1820, which forbids the department from entering into any new contract except where there is an express authority, and adequate appropriation; neither of which exists in this case, and the only remedy seems to be, to give continuity to the old contract by making a transfer. As it may have some bearing, I inclose an extract from the act which contains the prohibition alluded to.

Should you be of the opinion that the transfer can be made, I must request your opinion on the instrument by which it may be proposed to make the transfer.

I have, &c. &c.

J. C. CALHOUN.

To WM. WIRT, Esq.

Attorney General.

OFFICE OF THE ATTORNEY GENERAL OF THE U. S.

September 20, 1821.

SIR: There can be no doubt that the parties to a contract may release or modify it at pleasure. The contract with Benjamin W. Hopkins was, on this principle, transferred to Samuel Hawkins: and Hawkins being dead, the contract uncompleted, his representatives and the United States may, by joint consent, substitute another contractor in his place, to finish what he has left unfinished. This will not be considered as the origination of a new contract on the part of the Government, in violation of the act of the 1st May, 1820. The Government stood pledged to the amount of that contract, long prior to the act. The substitution of Hawkins, and now of Corryell, in execution of that contract, is not a new pledge of the funds or credit of the Government; but an arrangement to save past expenditures by the consummation of an old and continuing contract.

This contract was not transferrable at the pleasure of Hawkins alone, without the consent of the Government. The alleged transfer of the contract by Hawkins to Russell, is a nullity; the Government is not bound to recognize the act, but is authorized to consider it as a nullity, and to treat it as such. The persons authorized to concur, on the part of Hawkins, with the Government are his legal representatives; that is to say, his executors or administrators—to find these, we must look to the place of his domicile. His domicile was, I understand, in the state of New York: there his property lay, and there his family, his wife and children, resided during his life, and at the time of his death. He is understood to have left a will in New York, by which he appointed executors. These executors, when they shall have qualified, are the persons authorized to enter into the negotiations which the Government is disposed to make.

The administration granted on Hawkins' estate, in Alabama, seems to have been irregular, according to the extracts from the laws of that state, which have been furnished to me. But I presume there would be no difficulty in effecting a revocation of these letters, on presenting the will to the Court which granted them, and an offer to qualify under it, on the part of the executors, or any one authorized by them to administer there, with the will annexed. Perhaps the Court would revoke these letters, on the presentation of the will simply. They ought, I think, to do so. I think the Government would be authorized to dislodge all intruders from their grounds, by force, if necessary, and give possession to the new substituted contractor.

I understand the Government to be aware, that this new substitute will discharge Hawkins' surety, unless there be some arrangement to prevent it.

I have the honor to remain, Sir,

With respect, your obedient servant.

WM. WIRT.

JOHN C. CALHOUN,
Department of War.

DEPARTMENT OF WAR,

May 8, 1824.

SIR: The contract for building a fort at Mobile Point, which was entered into on the 18th of May, 1818, by General J. G. Swift, on behalf of the Government, and Benjamin W. Hopkins, was, on the demise of the latter, with the consent of the Government, legally transferred by his administrator to Colonel Samuel Hawkins. Colonel Gilbert C. Russell, of Alabama, states, that this contract was transferred to him, by Colonel Hawkins, on the 31st of January, 1821, and produces an agreement to that effect, signed by Colonel Hawkins and himself, referring to the several deeds which embrace the property appertaining to the contract, and constitute the transfer; and which, if required, will be produced. He also produces an authenticated copy of a power of attorney, from Col. Hawkins to him, of the same date, fully empowering him to act for him in relation to the contract; and an irrevocable power of attorney from Dr. J. Wingate Wing, as administrator of the estate of Col. Hawkins, dated the 15th of May, 1821, in which are recited the above stated deeds from Col. Hawkins to him.

The deeds above stated are represented to be separate and distinct; a part conveying the contracts, and the others the buildings, and other means of carrying it on, which *belonged to Col. Hawkins*. The transfer to which they relate, has never been assented to on the part of the Government; but, on the contrary, has been in opposition to its wishes.

Having already had your opinion, that the transfer of the contract, without the consent of the Government, was not legal, I now desire your opinion on the point, whether the papers above referred to, admitting them to be authentic, and to possess the formalities required by the laws of Alabama, are sufficient to transfer to Colonel Russell the buildings and other property, real or personal, belonging to the late Colonel Hawkins, referred to in them, and which were intended to carry on the contract.

It may be proper to remark, that a suit, instituted against the sureties of Col. Hawkins, for the recovery of the amount of the advances, made on the contract, by the Government, is now pending.

I have the honor to be, &c.

J. C. CALHOUN,

The Hon. WM. WIRT,

Attorney Gen. of the U. S.

SIR: On examining the case submitted to Mr. Wirt, I would suggest the propriety of transmitting to him the depositions of Swift, Wing, and Armstrong, to show that the conveyance was made with the consent of Col. Gadsden; the letter of John Crowell, to show that

Col. Gadsden was vested with discretionary powers by the Department, the letter of Col. Gadsden, stating that he would recognize Russell as agent for carrying on the works, so soon as the papers were authenticated; and the letter of Story to Hawkins, asking for the transfer of this property as additional security for the advances made him by the Government. I wish you, likewise, to state the fact, that this property, or a considerable portion of it, was sold at public sale, under an execution obtained by the Government against the administrator of Hopkins, that Hawkins became the purchaser, and obtained the sheriff's deed, which you will also have the goodness to transmit with the other papers. I am anxious that Mr. Wirt should have before him all the evidence necessary to a correct opinion.

With the highest respect,

Your obedient servant,

WILLIAM R. KING.

Hon. J. C. CALHOUN.

DEPARTMENT OF WAR,

May 14, 1824.

SIR: I transmit, herewith, a copy of a letter from the Hon. William R. King, of the Senate, and the papers to which it relates. Although I do not perceive that they are calculated to fulfil the objects which induced him to desire that they should be put into your possession before your opinion upon the case of Col. Russell should be made up.

The sheriff's deed to Col. Hawkins, transmitted herewith, contains the evidence of the fact which Mr. King, in his letter, has desired that I should state, that a portion of the property appertaining to the contract had been sold to satisfy a judgment obtained by the United States against the administrator of the estate of Benjamin W. Hopkins.

I have the honor to be, Sir,

Very respectfully,

Your obdt. servt.

J. C. CALHOUN.

Hon. WM. WIRT,

Attorney Gen. U. States.

Extracts from a letter from the Hon. Wm. Wirt, Attorney General, of the United States, to the Secretary of War, dated the 20th of September, 1821.

“This contract was not transferrable at the pleasure of Hawkins alone, without the consent of the Government. The alleged transfer of the contract by Hawkins to Russell is a nullity; the Government is not bound to recognize the act, but is authorized to consider it as a nullity, and to treat it as such.

“The persons authorized to concur on the part of Hawkins, with the Government, are his legal representatives, that is to say, his executors or administrators. To find these we must look to the place of his domicile. His domicile was, I understand, in the state of New York; there his property lay, and there his family, his wife and children resided during his life, and at the time of his death. He is understood to have left a will in New York, by which he appointed executors.”

“The administration granted on Hawkins’ estate in Alabama, seems to have been irregular according to the extracts from the laws of the state which have been furnished to me. But I presume there would be no difficulty in effecting a revocation of these letters, on presenting the will to the court which granted them, and an offer to qualify under it on the part of the executors, or any one authorized by them to administer there with the will annexed. Perhaps the court would revoke those letters on the presentation of the will simply; they ought, I think, to do so.”

WM. WIRT.

ENGINEER DEPARTMENT, *May 4th, 1824.*

The foregoing are true extracts.

ALEX. MACOMB.

Maj. Gen. Chief Engineer.

OFFICE OF THE ATTORNEY GENERAL OF THE U. S.

May 22, 1824.

SIR: The question which you proposed for my opinion, is, whether certain deeds, made by the late Colonel Samuel Hawkins to Colonel Gilbert C. Russell, purporting to convey to him property, real and personal, in Alabama; admitting the deeds to be authentic, and to possess the formalities required by the laws of Alabama, are sufficient to convey to Colonel Russell the property therein mentioned.

Colonel Hawkins, it is stated, had a contract with the Government for the building of a Fort on Mobile Point. The property in question is represented to consist of houses, and other buildings of a permanent character, *on the lands of the United States*, and elsewhere; also, slaves and other personal property, which had been provided by Colonel Hawkins as the means of enabling him to comply with

his contract to build the Fort. Colonel Hawkins, it is further stated, transferred the contract itself to Colonel Russell, and the conveyance of this property was made to *enable Colonel Russell to fulfil the contract*. It is added that the Government has not sanctioned this transfer of the contract to Colonel Russell, but that it was made in *opposition* to their wishes; and, it is further added, that a suit is now depending against the *representatives* of Colonel Hawkins, for an *alleged breach of his contract*.

I have to remark, in the first place, that, if the contract with Col. Hawkins is *expressed in the same terms* with the contract which existed between the Government and his predecessor, Mr. Hopkins, then the assignment of this contract by Hawkins to Russell, without the sanction of the Government, is a nullity; and if the conveyance of the property by Hawkins to Russell was *founded upon this assignment*, and the supposition of its validity, then the conveyance is of no avail, because it rests upon a void foundation. This, however, is a question between Russell and the representatives of Hawkins, for the effect of this opinion would be to avoid the conveyance from Hawkins to Russell, and to leave the title still in Hawkins' representatives. Suppose the title still in Hawkins, would the Government have a right to lay its hands upon the property? I think not. Hawkins being a defaulter, and a debtor to the Government, would subject him to their action, and they might after judgment take this property under execution; but the Government has no power to seize on the property of this debtor, in advance, any more than to seize on the property of any other debtor in advance. With regard to the personal property, and all the real property *not fixed to the lands of the United States*, it belongs to the representatives of Colonel Hawkins; and if the deeds already made to Colonel Russell, do not convey it, they have a right still to convey it. The United States can have no right to seize, or to retain it. With regard to the houses, and other erections fixed to the soil of the United States, they constitute a part of the realty, and can neither be removed nor conveyed *without the authority of the United States*. If there be any doubt whether there will be funds of Hawkins sufficient to satisfy the judgment, which I presume the Government expects to recover against his representatives, and if the conveyance of Russell is really bottomed, as I suppose it to be, on the assumed validity of the assignment of the contract to him, I then would recommend that a bill in equity would be filed on the chancery side of the court of Alabama, for the purpose of attaching this property, *as the property of Hawkins*, and holding it subject to the debt alleged to be due to the United States. If this course should be adopted, the papers can be forwarded to the district attorney of the United States for Alabama, with instructions to examine the deeds from Hawkins to Russell, and to proceed, or not, as their basis may be found to accord, or not, with this conjecture. And if this property has been acquired by Hawkins, with the funds advanced to him by the United States, that fact should be inscribed in the bill in equity.

If I have misconceived the purpose of your inquiry, you will, of course, state the question anew.

All the papers which you gave me, including those handed to me on Saturday last, are herewith returned.

I remain, sir, most respectfully,
Your obedient servant,

WM. WIRT.

The Hon. JOHN C. CALHOUN,
Department of War.

[EXTRACT.]

BALTIMORE, *May 22, 1824.*

DEAR SIR: You will receive, herewith, my opinion in the case of Colonel Russell. If you conclude to attach the property, to make good Hawkins's delinquency, it might be as well to hold on till the attachment can be applied for; and you might let the question of validity of Colonel Russell's title depend on the success of the application to the court of chancery.

WM. WIRT.

A true extract.

ENGINEER DEPARTMENT, *June 12, 1824.*

ALEX. MACOMB,
Major General, Chief Engineer.

Extract of a letter from William Crawford, Esq. United States' Attorney for the District of Alabama, to Captain R. E. De Russy, of the Corps of Engineers, dated

ST. STEPHENS, *July 20th, 1821.*

"By the law of this state, the widow is entitled to administration on the estate of her deceased husband; if she refuses, then the greatest creditor; if they all refuse, it may be granted to any other person. The administration by Mr. Wing is, however, legal until his authority be revoked by a higher court than that which granted it.

" WILLIAM CRAWFORD."

ENGINEER DEPARTMENT, *May 4th, 1824.*

The above is a true extract.

ALEXANDER MACOMB,
Maj. Gen. Chief Engineers.

CHARLESTON, S. C. Sept. 2d, 1824.

SIR: The decision of the Attorney General on certain points of controversy between the Department of War and Colonel Gilbert C. Russell, with the comments of the latter gentleman on the same, have been received. In your letter accompanying the above documents, you state, "It is important to the Department to obtain from you a full statement of the facts connected with the points of controversy, and, particularly, whether Colonel Russell was recognized by you at all, and if so, in what capacity, whether simply as agent of Colonel Hawkins, or as the assignee or purchaser of his contract, and whether such assignment or purchase, together with the purchase of the buildings and property in question, was made with your knowledge and assent, and, if not, whether by any subsequent act you gave your sanction."

In answer to the above, I have only to subjoin the following narrative in detail of events and facts.

In the month of July, 1820, I left the Gulf of Mexico frontier, under orders for Washington City, and did not return until in December of the same year. Some time previous to my departure, Colonel Hawkins intimated to me a wish to associate some one with him in the execution of the contract for Mobile Point, and I distinctly stated, what was subsequently repeated in conversations with him, that I had no powers to recognize any individual having any connection with his contract, so as to remove his direct responsibility, or acting in any other capacity than *simply as his agent*.

During my absence from the southern command, it appears that a correspondence on the subject, between Colonel Russell and the Department of War, had been commenced, and copies of Russell's letters, of the 22d of October and 15th of December, were referred to me: the latter was accompanied with instructions, as follows: "It does not distinctly appear by the letter, whether Colonel Russell considers himself a partner, or merely an agent of Colonel Hawkins; if the former, the sanction of the sureties to Colonel Hawkins' bond must be formally signified before he can be recognized: with regard to the latter, the Government, of course, cannot interfere, as Colonel Hawkins has a right to appoint whomsoever he may please as agent."

A few days after the receipt of the above, I had an interview with Colonel Hawkins, at Blakely, who informed me that he had made an arrangement with Colonel Russell, when I took an opportunity of again adverting to my power, as limited solely to the recognition of an agent on his part, and in no other capacity could I permit any individual to have any connection with his contract for Mobile Point. Shortly after this interview, Mr. Owen arrived with some laborers, &c. at Mobile Point, bearing a letter from Colonel Hawkins, of which the following is a copy.

BLAKELY, *February 18th, 1821.*

DEAR COLONEL: The bearer of this is Mr. Owen, who is connected with Colonel Russell in his Fort arrangements with me. He carries with him seventy odd negroes; another load, consisting of about one hundred more, will be conveyed to the Point by the return of the Gadsden; large quantities of provisions are already purchased—more contracted for. Inasmuch as Russell is now backed by the opulent house of Webster and Griswold, there can be very little doubt but the work will progress with all practicable dispatch. Mr. Griswold has paid me a visit, and gave me a positive assurance that no funds hereafter should be wanting. You will see by these negroes a fair specimen of the residue, which are called in this country first rate.

As Colonel Owen is utterly unacquainted with this business, I have taken the liberty to ask the favor of giving him your advice, as to the disposal of his force; it will be thankfully received and rigidly followed. An immediate arrangement should be made for cutting wood, burning lime, furnishing the scows, and transportation of shells. What think you of Albany sloops, as a means of transportation? and I think the shortening the masts alone would fit them for this service. It might be well, perhaps, to give them a thin coat of copper to resist the worms.

I hope it will not comport with your views or sense of duty, to make any more deductions on account of old advances of ninety thousand dollars to Hopkins from me, as all that is over fifteen per cent. at the *present* moment is to me a dead loss, according to the original arrangement made between Mr. Russell and myself. Business having assumed a very favorable aspect, I find that it has essentially affected my health for the better. I hope soon to be able to lend my personal aid in prosecuting the enterprize. I have a very great regard and esteem for the character of Col. Russell's associates—they are men of wealth and business, and are determined to accomplish the work with the least possible delay.

SAMUEL HAWKINS.

Col. GADSDEN.

At the request, therefore, of Col. Hawkins, I permitted Major Swift, then in the employment, and the representative of Col. Hawkins, at Mobile Point, to direct the labor of the negroes, &c. under the charge of Mr. Owen, to some inconsiderable work at the foundations of the barracks; expressing my dissatisfaction at the same time, as to the prematurity of the movement, and the uselessness of such a force at the Point;—that if Col. Hawkins or his agents were disposed to conduct the work successfully, all their efforts must be directed to the preparing and manufacturing of materials, which had been much neglected.

About the same time, I received a letter from Col. Russell, of which the following is a copy:—

MOBILE, 24th February, 1821.

SIR: The moment the Gadsden returns to Blakely, I shall embark with Mrs. Russell for the Point, and hope to be down next week.—Till then, I pray that you will be so obliging as to advise my old friend, Mr. Owen, what is best to be done with all the mechanics and laborers under his orders. By the 10th or 15th proximo, I expect to have brick enough on the point to complete the barracks, with several reinforcements of negroes and mechanics, and every thing necessary to prosecute my undertaking with more rapidity than has been supposed.

I have been informed that you design leaving the point; if so, I beg you will remain till I get down, if doing so does not subject you to much inconvenience.

G. C. RUSSELL.

Col. GADSDEN.

I replied thus:

MOBILE POINT, Saturday, 3d March, 1821.

SIR: Agreeably to the request contained in your communication to me of the 24th ultimo, I delayed my departure from the Point, until this evening. Public duties demanding my presence at the Rigolets, prohibit a further detention in this quarter. Lieut. Story, who has charge of the public work at Mobile Point, will recognize you as the agent of Col. Hawkins, whenever the proper documents on the subject are produced, and will give you every information relative to the construction of the work, which may be required.

J. GADSDEN.

Col. RUSSELL.

On my route to the Rigolets, I had to go to Mobile in quest of a passage, where I accidentally met with Col. Russell, and who then produced to me some written documents, purporting to be an assignment of the contract for Mobile Point, with some deeds as to the property connected with the same, accompanied with a power of attorney to act as the agent of Hawkins in the execution of the contract. I returned immediately to Col. Russell the documents relating to the transfer of property and contract, with the remark, that I had no power, and could not, and would not, recognize such an arrangement between Col. Hawkins and himself; but, that simply in the capacity of agent for the former, I was prepared to recognize him, whenever a written instrument, in proper form, was regularly executed by the parties. I detained, therefore, the power in my possession for a short time, with a view of obtaining legal advice as to the form and correctness of the instrument, delegating to Col. Russell the powers simply

of an agent. After a consultation with a professional gentleman, I returned the power to Col. Russell, requiring that it should be drawn up in proper form, and signed in duplicates, by Col. Hawkins, (one copy to be left in possession of the Chief Engineer) and the agency to him to be made revocable, only on reasonable notice being given to the agent of Government. Lieut. Story was present at this interview, and his impressions, as to the substance of our conversation, and the general understanding on the subject among the officers, contractors, agents, &c. is distinctly stated in the deposition herewith inclosed.

Very shortly after this interview, I sailed for the Rigolets, leaving Lieut. Story in command at Mobile Point. During my absence, the negroes, under the charge of Mr. Owen, *without any directions from me*, were withdrawn from the Point, as detailed in Lieut. Story's report, commented on by Col. Russell. On my return, the death of Col. Hawkins was mentioned by me to Col. Russell, as an insuperable impediment to his recognition as agent, provided he had obtained the written instrument required by me, without the powers delegated therein by Col. Hawkins were renewed, in legal form, by the unquestionable administrators or legal representatives of that gentleman; but that, as I was to be relieved, as Engineer, on that station, in a few weeks, by Capt. De Russy, I referred to that officer for the future.

No public act of mine can, with any justice or propriety, be distorted into an assent, on my part, to the assignment of the Mobile Point contract, and property connected therewith, from Col. Hawkins to Col. Russell: I unequivocally objected to it, but always expressed my willingness to recognize Col. Russell as Col. Hawkins's agent, to carry on the work in the *latter's name*, whenever the power or instrument, in legal form, delegating such powers, were executed. I am candid to confess, that such a recognition, on my part, would, I believe, have been made, but for the death of Col. Hawkins. The subsequent impediments to the accomplishment of such an arrangement, were not invited by, nor were they the results of any acts on my part, as the agent of the government. To Col. Russell, or to no other individual, did I hold out any inducements to embark in an enterprise, all the hazard of which he was as capable of calculating as the public agents—it was not the duty of the latter to caution him against the possible fate of private agencies. I do not conceive it necessary to comment upon the statements, in detail, contained in Col. Russell's letter to you, or on the construction he has placed on them. The evidence of Wing, Armstrong, Swift, &c. does not conflict with the facts as to my disposition to recognize Col. Russell in the capacity simply of Hawkins's agent, to carry on the work; and the causes which suspended that recognition, (provided he had obtained Hawkins's signature to the duplicate power, as required by me,) have been acknowledged by Col. Russell himself. The error he labors under, is in the extending that *disposition to recognize him simply as agent*, to the transfer of contract and deeds for property, &c.

which I refused, most positively, as beyond my powers, of the extent of which Col. Hawkins had been frequently advised.

General Starke was recognized by me only as the agent of Harris & Farrow, and, at the time, all the property belonging to them, having any connection with the contract, was made over and conveyed by a deed to the government of the United States, as security for previous advances made the contractors. If this instrument, however, could be construed into a transfer of the contract to Starke, it should have been recollected that the assent of the surety of Harris, which was Farrow, was obtained to the arrangement; a preliminary deemed necessary by the government of the United States to a *recognition of an assignee or partner, and which was never complied with by Russell or Hawkins.

Your obedient servant,

JAMES GADSDEN.

The Hon. J. C. CALHOUN,

Secretary of War.

*The letters of Gen. Swift, (a secret partner and adviser of H. and letters of R. Tillotson, the leading surety and secret partner also of H.) to Hawkins, which fell into my hands after his death, gave their assent,—not only assent, but advice, to sell the contract and be off. These letters I sent to General Smyth; he sent them to the Secretary of War, and they were sent off to Wing. Smyth desired that they might be sent to Wing or myself. They ought to have been sent to me, but they were sent to Wing.

G. C. RUSSELL.

Farrow was the original security of Harris, and became a partner, and was on the ground when the arrangement was made with Starke. The securities and partners of Hawkins, gave their assent and advice to him "to sell and be off." I never wanted to change the responsibility of Hawkins and his sureties; therefore it was that I acted under a power of attorney, which was in legal and due form; though I offered, after his death, to release his securities, by giving new bonds, with the best men in the state, in order to remove all difficulty.

If De Russey had have recognized me as the agent of Hawkins, that was all I wanted, and to be paid for the work as I done it: this he refused. He also refused the administrator of Hawkins, who offered to take my means and go on. This was on the 17th or 18th of May, whereby the contract was violated and the securities of Hawkins released from all responsibility. However, they did not take this ground to defend themselves vs. the suit of the United States, but assumed, as a ground of defence, the change of the contract, without their consent, for the substitution of Tapia for brick masonry. This ground, they well knew, was sufficient, or they would, probably, have taken the other.

Five or six days before De Russey refused to recognize either me as the agent or Wing as the administrator of H. he wrote a letter to the Secretary of War, advising him to dismiss all contractors, and let him build the fort; at the same time stating, that, with all the immense means he saw I had employed in making brick-yards and making brick, that I could not succeed. He meant, I presume, that I could not succeed, because he was resolved not to let me. Soon after this, he sends Lieut. Story off, secretly, to back his representations. They did not succeed only against me.

¶ I understand you say that you will account to Hawkins's representatives for this property. They have no claim upon it. You mean to give credit for it. Was not this property to have been given to Ingham? You have sued for \$107,220. If you lose, how can you take my property to pay the debts of H. and his sureties? If I had been allowed to go on, the debt would, long ago, have been paid.

I, Horace C. Story, a Lieutenant in the U. S. corps of Engineers, do depose and declare, that I was the local Engineer immediately superintending the construction of the works in Mobile Bay, at the time of the transfer of the Mobile Point contract, understood to have been made by Samuel Hawkins to Gilbert C. Russell, and that I frequently saw both parties while the negotiation was pending between them, and that at all times I heard Colonel Gadsden, the Superintending Engineer on the Gulf of Mexico, express uniform and decided disapprobation of every suggestion to change or remove the direct responsibility of S. Hawkins and his securities for the completion of that contract, or to recognize G. C. Russell, or any other person, in any other capacity than as agent for S. Hawkins; that Col. Gadsden always declared this as a matter of settled and irreversible policy, and that it was so received by the officers of government there, and Hawkins and Russell, and that I believe the fact to have been notorious to the agents of all the parties; and further, I do depose and declare, that I was present at an interview between Colonel Gadsden and G. C. Russell, at the house of Mr. Brown, in the city of Mobile, a few days previous to the death of S. Hawkins, when G. C. Russell presented to Colonel Gadsden a paper purporting to be a letter of attorney, constituting him agent to said Hawkins, which instrument was refused to be recognized by Colonel Gadsden, because it was unsatisfactory, and for the reason, as this deponent understood and believed, that it was not irrevocable before a certain notice, deemed reasonable and proper, should be given of its revocation. And that this deponent was shortly afterwards sent, by Colonel Gadsden, from Mobile to Blakely, with a letter in relation to the same, but that, on his arrival, the said Hawkins had deceased.

HORACE C. STORY.

DISTRICT OF COLUMBIA, }
Georgetown. } ss.

On this day, personally appeared before me, John Peter, Mayor of Georgetown, aforesaid Horace C. Story, and made oath on the Holy Evangel of Almighty God, that the facts, as stated in the above instrument, are just and true.

In testimony whereof, I hereunto set my hand and affix the seal of office this 10th day of May, 1822.

JOHN PETER, Mayor.

DEPARTMENT OF WAR,

September 17th, 1824.

SIR: Colonel Gilbert C. Russell has requested that you should review the opinion which you gave in his case, on a statement of facts

made by this Department, under a belief, on his part, that the statement was not sufficiently full to arrive at a correct opinion.

Feeling solicitous, not only that there should be a correct decision, but, if possible, one that should be satisfactory to the party interested, I enclose a copy of the original statement on which your opinion was founded, with a statement and view of his case, as presented to this Department by Colonel Russell, and a copy of a letter from Col. Gadsden, the Superintending Engineer, to whose statement Colonel Russell referred, in confirmation of his own; with a letter from Col. Gadsden, accompanied by an affidavit of the late Lieutenant Story, who was the local Engineer during a certain period of the transaction; with the request that you will review the case, under the advantages of any additional lights which they may afford. Should any of the documents in the Department, referred to by Colonel Russell, be necessary to a just understanding of the case, they will be furnished, if desired.

I have the honor to be, &c.

J. C. CALHOUN.

The Hon. WILLIAM WIRT,
Attorney General of the United States,

DEPARTMENT OF WAR,

September 25, 1824.

SIR: Colonel Russell being under the impression that *the facts contained in the enclosed statement* are material to a just decision of his case, has requested that they be laid before you, in addition to those already submitted by this Department; and they are accordingly transmitted herewith, to be considered as a part of the statement of the case.

It may be proper to remark, that, in the offer to recognize Colonel Russell as the agent of Col. Hawkins, it was in no degree intended to give the assent or sanction of this Department to the sales from Col. Hawkins to Col. Russell; and that the sheriff's sale, to which Col. Russell alluded, of the property of Hopkins's estate to Hawkins, was made with the sanction, and under the direction, of the Government, with the sole purpose of placing the latter, in relation to the property, in the same situation in which Hopkins, the former contractor, was placed.

I, also, enclose, at the request of Col. Russell, the original contract, with the assignment from the administrator of Hopkins to Hawkins; the deed from sheriff Duval, to Hawkins; Hawkins's deed to Col. Russell, and the letter from Lieut. Story to Col. Hawkins, requiring him, at the instance of Capt. Gadsden, to assign to the Government the property purchased at the sheriff's sale.

The statement now submitted, on which your opinion is requested, consists of the original statement, of the 8th of May, last, the letter

of Col. Gadsden, with the affidavit of Lieut. Story, which accompanied my communication to you, of the 17th instant; and the statement now furnished at the request of Col. Russell.

I have the honor, &c.

J. C. CALHOUN.

Hon. WM. WIRT,

Attorney General of the U. S.

A true copy.

ALEX. MACOMB,

Maj. Gen. Ch. Engr.

Case submitted by Col. G. C. Russell, on his claim for compensation for property, taken from his agent by Capt. De Russy, of Engineers, in October, 1821.

1. On the 13th of May, 1818, Gen. J. G. Swift, on behalf of the United States, contracted, with B. W. Hopkins, for building a Fort at Mobile Point.

2. Hopkins died in 1819. His administrator assigned the contract, which was uncompleted, to "Samuel Hawkins, his executors, administrators, or assigns;" as appears by the assignment on the contract, herewith.

3. This assignment was made with the consent of Government. Under it, Hawkins was received and recognized as Hopkins's successor in the contract; for the execution of which, and the repayment of advances made, or to be made, upon it, he gave bond, with sureties, to the United States.

4. The Government having obtained a judgment against Hopkins' estate, issued an execution, which was levied on all his property at Mobile Point, including several frame houses, shops, &c., he had built, on the adjacent public grounds, for the accommodation of laborers, mechanics, &c. engaged in erecting the fortifications. S. Hawkins purchased the property, and it was conveyed to him by the sheriff of Mobile county. [See deed, D. Duval to S. Hawkins.] To this sale the Government assented, and received the purchase money.

5. Col. Gadsden, soon after, urged Hawkins to assign this property to the Government, as additional security for advances made on the contract, which Hawkins refused to do.

6. On the 31st of January, 1821, S. Hawkins, by the deeds herewith, conveyed this, and other property, at, and near, Mobile Point, to Col. G. C. Russell, and gave him possession.

7. Col. Russell remained in possession of the property until it was, in October, 1821, forcibly taken from his agent, by Capt. De Russy, of the United States' Engineers, who was superintending the fortifications on the frontier of the Gulf of Mexico.

25th September, 1824.

District of Columbia, } ss.
Washington County }

Gilbert C. Russell came before the undersigned R. C. Weightman, one of the Justices of the Peace in and for the county aforesaid, who, being duly sworn according to law, doth depose and say, that, the foregoing facts, numbered, in pencil, 1, 2, 3, 4, 5, 6, and 7, to which the letter, dated "War Department, September 25th, 1824," (a copy of which covers this) refers, and *admits* are the *identical* facts, agreed on to be submitted to Mr. Wirt, and which were returned as the facts that had been before him, upon which his opinion, or argument, dated 29th Sept. 1824, *professes* to have been, in part, founded.

GILBERT C. RUSSELL.

Sworn to, before me, this 17th day of January, 1825.

R. C. WEIGHTMAN, J. P.

District of Columbia, } ss.
Washington County }

J. W. Murray, being duly sworn, says, that the foregoing statement, in his hand writing, was handed, by him, to the Secretary of War, in September last, and he believes it to be the paper, referred to in the letter from the Secretary of War to the Attorney General, of Sept. 25th, 1825, of which a certified copy is annexed, (marked J. W. M. Jan. 17, 1825,) and that it was received among the papers from the War Department, relating to Col. Russell's claim, as this deponent understands and believes, as the same that was submitted to the Attorney General in that letter.

J. W. MURRAY.

Sworn to, before me, this 17th of January, 1825.

R. C. WEIGHTMAN, J. P.

ENGINEER DEPARTMENT,

September 29th, 1824.

SIR: In answer to your inquiry, whether the original contractor for building the fort at Mobile Point, would have been entitled, on the completion of the contract, supposing it to have been completed by him, to have removed the buildings which he had erected with the assent of the Government on the public grounds adjacent to the fort, to facilitate the operations of the contract, I have the honor to state, that although there was no express stipulation on the subject, the Government would have allowed him to have removed the buildings alluded to, or to have made any other disposition of them, that would not have been detrimental to its interests; provided, he had faithfully completed his

contract, and liquidated the advances he had received from the Government to aid him in carrying it on.

I have the honor, &c.

ALEXANDER MACOMB,

Maj. Gen. Chief Engineer.

WM. WIRT, Esq.

DEPARTMENT OF WAR,

September 28th, 1824.

SIR: At the request of Gibert E. Russell, I send you, herewith, a paper containing his views on certain points in his case.

In transmitting the paper to you, it is not my intention to vary the statement already submitted by this Department for your opinion thereon. The reflection of Colonel Russell on the officers attached to the Engineer Office, is not considered as deserving of notice.*

I have the honor, &c.

JOHN C. CALHOUN.

Hon. W. WIRT.

Attorney General U. S. Washington.

A true Copy,

ALEXANDER MACOMB,

Maj. Gen. Chief Engineer.

WASHINGTON, 27th September, 1824.

SIR: Already on several occasions, an extract of the opinion of the Attorney General of September 1821, has been advanced and relied on as being adverse to my claim. The object you had in view in calling for that opinion, is not exactly known to me; but when the extract was sent him in May last, it ought to have been sent entire, instead of having one sentence of a paragraph, and the last part of a sentence of another, carefully detached from it. By comparing the one sent him as a copy of his opinion, with the original opinion, this omission will be perceived, which I presume was practised by some of your subordinates.

In his opinion of May last, the Attorney General has said, that you had no right to seize the property of Hawkins any more than

* Whether a blunder whereby the United States have lost \$107,220 34 cents, is unworthy of notice or not, such is the fact, as will appear from the bundle (S) which might have been saved but for the wish of the Department to oblige Mr. Ingham.

you had that of any other debtor. He has said that if the contract between Hawkins and the Government, is in the same terms as the contract between Hopkins, his predecessor, and the Government, the assignment of it to Russell is a nullity; and that if the sale by Hawkins to Russell of the property, was bottomed on the assignment of the contract, and a supposition of its validity, it is void, because it rests on a void foundation. In reply to this I have already shewn that the contract between Hawkins and the Government, was not in the same terms, as between Hopkins and the Government. The *contract* between Hopkins and the Government was limited to them alone. The *assignment*, as recognized by the Government, extends to S. Hawkins, his heirs, executors, administrators, or assigns, whereby the instrument became assignable by the very terms of the construction, to which you assented when you recognized it by your agent. But admitting the subsequent assignment, without the assent of the Government, is void, to render the sale of the property void, the Attorney General says that it must have been bottomed on the subsequent assignment of the contract, "and a supposition of its validity." Now I say, that the sale of the property to me was separate and distinct from the assignment of the contract to me. For one, I gave nothing, and for the other, I gave a fair and full consideration.

The Attorney General has also said, in the same opinion of May last, "that the buildings affixed to the public grounds constitute a part of the realty, and can neither be removed or disposed of without the consent of the Government." This is not denied. But when the Government not only *consented* to the sale, but actually sold them as the property of B. W. Hopkins under an execution, and received the purchase money, have the Government or their agents the right to control the buyer in making any disposition of them that he may see fit? Surely they have not.

Col. Gadsden who had this property sold, understood that Hawkins had the right to do with it as he pleased, and, therefore, to bind it for the United States, solicited an assignment and could not have solicited what would be null and void. The written application to this effect, now in your possession, which you admit, I saw before I made the purchase. Independently of this, Hawkins had the deed of the Sheriff drawn with great accuracy, and regularly recorded. How then could I entertain a doubt of Hawkins's having the entire right, without the advice or consent of any one, to sell me that which the United States had caused to be sold and of which he became the buyer?

If you had a lien of any sort upon this property, why not enforce it without the trouble and expense of judgment, execution, and sale? Or if you had any lien on it afterwards, why ask Hawkins to mortgage it?

I presume you had as good a hold on the property of Harris and Farrow, to whom you advanced \$128,000, or thereabouts, as you had upon the property of Hopkins or Hawkins; if so, where was the necessity of taking the mortgage that Colonel Gadsden speaks of in

his letter of the 2d instant? In that case, with the mortgage to support you, no seizure was made of their property which they sold to General Starke, and which he has been in possession of from April, 1820, till this time, and which you cannot get except by the same process you got mine. This process you disavow,* but are willing to sustain the officer who executed it (as Capt. S. has said) by mistake.

It would therefore seem, that a right in one case would be a wrong in a similar one—that a remedy against me would be an injury to Starke, and that an usurpation under the administration of Gadsden, becomes a legal power under that of De Russy.

The *intentions* of Government in having the property of Hopkins sold by the sheriff, are urged as an objection to my claim, as though I could know any thing about them. My purchase from Hawkins was bottomed on legal facts of record, by which I was guided; and it was not incumbent upon me to inquire into, or guess at the *intention* of the agents before, then, or such as may be expressed at this time, to answer purposes hostile to every principle of justice and law. Facts are distorted and inferences attempted to be drawn, to answer the apparent interest of the Government, such as “that the *intentions* of the Government, or of its agents, were different from what the records of the Court and official papers prove, and therefore *my rights*, fairly acquired from Hawkins, are to be considered null and void!!!”

If a citizen cannot be held answerable for *unpublished laws*, how can *secret intentions* affect or impair his rights, when they are opposed, too, to law, equity, justice, and good conscience?

I was anxious to get you to put the following questions to the Attorney General (to precede the simple inquiry of the right of property) underneath the last statement agreed on and transmitted to him, to be made a part of your own statement.

1st. If the United States, by their agents, did a wrong, or useless act in proceeding to judgment, execution, and sale of Hopkins' property, can they take advantage of their own wrong to the injury of an innocent purchaser, or a third party?

2d. After having had this property executed and sold as aforesaid, was the consent of the Government or its agent necessary to perfect or warrant a sale of it by the purchaser to a third party?

I considered, and still do, both these inquiries pertinent, because you disavow the act of seizure which Capt. Smith calls a mistake; and because you had the property sold at your suit, which was an acknowledgment that you had no previous right to it. If you had such a right, you did wrong in having it sold as well as in making a written application for a mortgage, and you cannot take advantage of your own wrong to my injury; neither was it necessary for Hawkins to ask your leave to sell this property to me. He had given security for the money he owed you, and had refused to assign to you the property bought, probably, with that money which you are now

* See your letter to De Russy of July or August 1822, and March 1824.

trying to recover from the securities; but whether you will or will not is unknown to me. Perhaps this may be the reason that such novel doctrines are advanced to change the right of my property, illegally taken, and to warrant you in "holding on" to it without paying for it. If the blunders of the agents of the Government have been unfortunate for its interests, I trust that I am not to be sacrificed as an atonement for their sins or errors.

The rules of justice are immutable, and apply to all with the same force and the same accuracy when they are not strained and twisted out of their natural channel. In this case, I expect that they will be applied upon the facts admitted, and not upon strained suppositions, *secret intentions*, and erroneous inferences.

I request this communication may be transmitted to Mr. Wirt, and made a part of the case now before him.

I have the honor to be,

Sir, most respectfully,

Your obedient servant,

GILBERT C. RUSSELL.

Hon. JOHN C. CALHOUN,

Secretary of War.

OFFICE OF THE ATTORNEY GENERAL OF THE U. S.

September 29th, 1824.

SIR: I have, according to your request, reconsidered my opinion in Col. Russell's case, on the new statement of facts now furnished, and the arguments offered by Col. Russell, and proceed to give the result of this reconsideration.

There are three stages in the progress of the transactions, out of which this claim has grown, on each of which, it will be proper to pause for a moment; to settle the relative title of the property in dispute, at each period, as we go along. 1st, The contract with B. W. Hopkins: 2d, The transfer of that contract to Samuel Hawkins: 3d, The attempted transfer to G. C. Russell.

1. On the 13th of May, 1818, Gen. J. G. Swift, on behalf of the United States, contracted with B. W. Hopkins, for building a fort at Mobile Point. B. W. Hopkins, for the accommodation of himself and his workmen, and with moneys advanced on the contract by the United States, built sundry houses on the lands of the United States, at that point, with a perfect understanding, on both sides, that the buildings, thus erected, were erected for no other purpose than as part of the means necessary to enable the contractor to fulfil his contract, and that they were to be used for no other purpose than this. It is also stated, that, although there was no specific stipulation to this effect, yet, that after Hopkins should have completely fulfilled his contract, and liquidated all the advances that might have been made to

him on that account, and not before, he would have been at liberty to have removed the buildings off the lands of the United States, and to have treated them as his own sole property. There seems to me to be no material variance between the statement on the part of the United States, and that on the part of Col. Russell, so far as we have yet gone. These buildings then being on the lands of the United States, and *prima facie* the property of the United States, every person disposed to purchase them, must have taken notice of that fact; and with the knowledge of that fact, it became his duty to inquire of those who owned the soil, whether they claimed any interest in these buildings, and what was the nature and extent of the interest so claimed. Such inquiry would have informed him that these buildings were permitted to be erected on the lands of the United States *with the moneys of the United States*, for one special purpose, and no other; that is, to be used by the contractor as facilities to the erection of the fort at Mobile Point, from which purpose and use, the builder had no right to separate them until the contract should be completely fulfilled, and all advances liquidated, and until which event, he had no such interest in them as would enable him to dispose of them without the consent and concurrence of the United States. A court of equity would not relieve any purchaser under Hopkins, who, with that notice with which the law would affect him, from the mere fact of the buildings standing on the lands of the United States, *should have failed to make these inquiries of the owner of the soil*; and it is presumed that it is not expected that the United States will go further in the relief of a purchaser, than a court of equity would go, were the United States suable. It is manifest, from the statement, that the United States and Hopkins had, each, an interest in the buildings. The interest of Hopkins consisted in a right to the uninterrupted use of these buildings, for the purpose of enabling him to comply with his contract, and after such compliance, to treat them as his own absolute property. The interest of the United States consisted in their right to prohibit these buildings from being removed or used for any other purpose than that for which they had been permitted to be erected, to wit: as means of fulfilling the contract, or by any other person than the contractor, until the contract should be completely fulfilled.

Not long after the erection of the buildings, and before much progress had been made towards building the fort, B. W. Hopkins, the contractor, died; which closes the first stage of the transaction.

2. In this posture of things, a bond, in the penalty of one hundred and fifty thousand dollars, was tendered to the Government, dated on the 2d day of November, 1819, signed by Samuel Hawkins, Robert Tillotson, and Nicholas Gouverneur, which recites the contract between the Government and B. W. Hopkins, the death of Hopkins, and that Roswell Hopkins, (there alleged to have qualified as the administrator of B. W. Hopkins,) had, by a written instrument, "under his hand and seal, bearing date the 27th of October, 1819, obligated himself legally and fully to assign, transfer, and set over

to Samuel Hawkins, of the city of New York, the said contract, together with all its conditions, stipulations, and advantages, thereunto in any wise appertaining, and also all the benefits arising and to arise from the contracts entered into, and made by the said B. W. Hopkins, in his life time with several individuals, &c. together with all and singular the brick-yards, workshop, sheds, lumber, and buildings of every description, tools and implements, provisions, mules, slaves, store-houses, horses, &c. &c. and all other things provided by the said B. W. Hopkins, for the fulfilment of the contract so made by him, as aforesaid," and then annexes the condition, "that if the said Samuel Hawkins shall well and truly perform, or cause to be performed, all the covenants, undertakings, and engagements, contained in the said contract, so made as aforesaid, by the said B. W. Hopkins, in his life time, for the construction of the said fort, which remain to be fulfilled, &c. &c. then the obligation to be void, &c."

The contract with Hopkins not having been of an assignable nature, the stipulated transfer of the contract to Samuel Hawkins, by Roswell Hopkins, would have been a mere nullity without the sanction of the Government. The Government considered this bond in the light of a tender on the part of B. W. Hopkins' representative, of Samuel Hawkins to be substituted as the contractor, in lieu of the deceased B. W. Hopkins, and to take and hold the contract "under all its conditions, stipulations, and advantages," as Hopkins had held it. The Government accepted the substitute thus presented by the bond, and thereby Samuel Hawkins took the same relation towards the Government which B. W. Hopkins had held, and no other. The contract which had been personal with Hopkins, became now personal with Hawkins, and was no more transferable in the hands of Hawkins, than it had been in the hands of Hopkins. The acceptance of the bond which has been described, was the evidence which the Government gave of its consent to substitute Hawkins for Hopkins; and that bond, the only ligament between the Government and Hawkins, does not profess to change the character of the contract in any one feature; but, on the contrary, expressly to leave the contract, in all particulars, as it had been before, making no change whatever, except as to the contractor, Samuel Hawkins, being now the contractor instead of B. W. Hopkins; and, therefore, as the contract had been unassignable in the hands of B. W. Hopkins, so it remained unassignable in those of Hawkins. Evidence is now offered, which shews that, at the date of the bond aforesaid, Roswell Hopkins was not the administrator of B. W. Hopkins. It appears that he qualified as administrator in Feb. 1820, and that, in the May following, he assigned the contract, and all the preparations which had been made for its execution, to Samuel Hawkins, his heirs, executors, administrators, and assigns; but these assignments may be fairly and properly thrown out of the consideration of this case, because they were all subsequent to the date of the bond, which was, at once, the inception and consummation of the connection between the Government and Samuel Hawkins; and, being subsequent transactions between

others with which the Government had no concern, they could not alter the nature of the contract between the Government and Samuel Hawkins, nor, therefore, make that assignable which was, in its nature, unassignable. Even if these assignments had been anterior to the bond, and had been expressly referred to in the bond, (which they are not) yet, inasmuch as such assignments would have been merely nugatory, except so far as the Government might recognize and sanction them; and as the condition of the bond, which makes the contract between Samuel Hawkins and the Government, and contains the only sanction or recognition given by the Government, to the transfer, does not even profess to introduce any new and assignable character into the contract, but to place it precisely on the same footing in the hands of Hawkins, in which it had rested in the hands of Hopkins, I should still have held that it retained in the hands of Hawkins, the same unassignable character which it originally had in the hands of Hopkins.

The bond of Samuel Hawkins, and his sureties, having been thus accepted by the Government, and Hawkins thereby substituted as contractor in lieu of Hopkins. it was thought advisable to invest Hawkins with all the title in the preparatory works, &c. made by Hopkins, which Hopkins himself had held, so far as the assent of the Government was necessary to such investiture. With this view, and for this purpose, alone, it is stated that the United States took out an execution upon a judgment obtained against Hopkins' representatives, which was levied on all those preparatory works, &c. and *the interest of those representatives* therein was sold by the marshal, to Hawkins; and among other property, thus sold, were the buildings which had been erected on the lands of the United States, and which were manifestly and indispensably necessary, to *enable the contractor*, (whoever he might be,) to carry on his operations, in fulfilment of the contract. The property being thus taken under execution, and *sold to Hawkins for the purpose aforesaid*, the marshal made a deed to Hawkins for that property, a copy of which has been furnished to me, and which very properly professes to convey no more than "*the right, title, and interest, which Roswell Hopkins had to the property, either at law or in equity.*" What title had Roswell Hopkins to the buildings erected on the lands of the United States? Surely, at best, no other title than that of B. W. Hopkins, whom he represented. And what was the title of B. W. Hopkins? A title, as we have seen, to use those buildings as part of the means of executing his contract with the Government, and *after the complete and satisfactory execution of the contract*, to remove the buildings from the lands of the United States, and to use them as his own. This, then, was the extent of the title which Samuel Hawkins acquired by his purchase from the marshal. It was all sufficient to his purpose, and to the express purpose for which the execution had been taken out; that is, to clothe Samuel Hawkins with the right to hold and use those buildings as appendages to the contract, and facilities to its execution. *It is stated on the part of the Government, that no other person than Hawkins, the*

substituted contractor, could have been permitted to buy those buildings at that sale: indeed, no other person could have bought, because the title to be sold was of a nature which was wholly inapplicable to every person except the contractor to build the fort at Mobile Point, being, as I have said, mere appurtenances to the contract.

When it is asked how any purchaser at the Marshal's sale could have known the object of the sale, or the kind of title which was to be sold, the answer is by making the inquiry, which every purchaser is bound to make, or to abide the consequences; that is, to ask what title was to be made to the purchaser? The answer would have been the title of Roswell Hopkins, which was the title of B. W. Hopkins! The next question must have been, what title would B. W. Hopkins have to houses standing on the lands of the United States? And the proper source of this inquiry would have been the United States, or *those officers* who represented them. This would have led at once to a disclosure of all the facts essential to the protection of a purchaser. So a purchaser, under Samuel Hawkins, seeing on the face of the deed made to him by the marshal, that the title which had been sold, was that only of Roswell Hopkins, had information enough to put him on the inquiry into the title, by pursuing which inquiry, he would have learned all that has been stated; and, if any one has purchased, without making such inquiry, the maxim of *caveat emptor* applies to him, and he must take the consequences.

3. On the 31st day of January, 1821, Samuel Hawkins executed the following several instruments of writing.

1. An instrument, whereby, for the alleged consideration of \$30,000, Samuel Hawkins professes to transfer the contract for building the fort at Mobile Point, to Gilbert C. Russell.

2. Another instrument, whereby, for the alleged consideration of \$38,000, Samuel Hawkins professes to sell, transfer, and convey, to Gilbert C. Russell, all the personal property appertaining to the construction of the works at Mobile Point, of which he was possessed, &c.

3. Another instrument, by which, for the alleged consideration of \$30,000, the said Hawkins proposes to remise, release, and for ever quit claim, to Gilbert C. Russell, his heirs, &c. *all his right, title, interest, and claim*, to all buildings of every kind, name, and nature, situated at what is called Bonsecours Shell Banks, &c. also, the hotel, kitchen, out-houses, quarters for carpenters and laborers, &c. situated, and being on Mobile Point, &c.

4. A power of attorney, whereby, after reciting the contract for building the fort, the said Hawkins authorizes Gilbert C. Russell, 1st, To ask, demand, &c. all manner of goods and chattels, debts, duties, rents, sums of money, &c. due, or which may hereafter be due, &c. 2d, To take possession, in the name of the said Hawkins, of any goods, chattels, household estate, or other matter or thing appertaining to said Hawkins, with a few unimportant exceptions. 3d, To transact and perform all manner of acts, duties, and rights, appertaining to said Hawkins, &c.

Armed with these papers, Mr. Russell presented himself to the

officers of the Government at Mobile Point, and *proposed* to be received as contractor in lieu of Hawkins, as Hawkins himself had in lieu of Hopkins: but the Government and its officers refused to receive Mr. Russell as the contractor in lieu of Hawkins, or to recognize him in any other light than as the attorney, in fact, for Hawkins. Col. Gadsden, agent of the United States, expressed his willingness to acknowledge him as the agent of Hawkins, on his producing a proper power, and the form of such an one as would be acceptable was furnished to him; but before it could be executed, Hawkins died, leaving the contract unfulfilled. And Mr. Russell demands that these buildings shall be surrendered to him as being his property, by virtue of the assignment to him from Hawkins, or that the Government shall make him compensation for them.

The question is, Whether his claim is well founded? and this depends on the legal effect of this assignment—that passed to Russell all Hawkins's "right, title, interest, and claim," to those buildings. What was Hawkins's right? That of Roswell Hopkins, as the marshal's deed to him proves. What was the right of Roswell Hopkins? That of the deceased B. W. Hopkins, whom he represented. And what was the right of B. W. Hopkins? A right to consider and treat those buildings as his own, after he should have completely executed the contract, and liquidated all the advances made on account of it. As then Hawkins occupied, in regard to these buildings, precisely the ground which B. W. Hopkins did, the question is—whether Hawkins had completely executed the contract, and liquidated the advances made on account of it at the time of this assignment. If he had done so, then he had a right to detach those buildings from the land, and to treat them as his own. If he had not, then he had no such right, and his assignment is wholly inoperative. But it is stated that Hawkins left the contract incomplete, having violated it in sundry instances, for which an action is depending against his sureties. In my opinion, therefore, Col. Russell acquired no right to those buildings by virtue of Hawkins's assignment.

Upon the whole, I see no reason to change the opinion which I had the honor to express to you on the 22d May last.

I am, very respectfully, sir,

Your obedient servant,

WM. WIRT.

The documents are returned.

The Hon. JOHN C. CALHOUN,

Department of War.

ENGINEER DEPARTMENT,

Washington, July 10, 1820.

GENTLEMEN: As sureties for the faithful performance by Colonel Hawkins, of the contract of B. W. Hopkins, with the United States,

recently transferred to him, the inclosed copy of an agreement, having reference thereto, is submitted to you.

Should you sanction it, you are requested to send to this Department a joint or separate certificate, expressive thereof, upon the receipt of which, the War Department will signify its approval, and authorize it to be carried into effect. Should you object, the contract will be carried on as before. I have, &c.

By order,

J. L. SMITH,

Lieut. Corps of Engineers.

MESSRS. R. TILLOTSON & N. GOUVERNEUR,
New York.

NEW HOPE, *June 7, 1821.*

DEAR SIR: I have been requested by a particular friend of mine, Mr. Lewis S. Coryell, to make some inquiries at the War Department, respecting a contract for erecting a fort at Mobile Point. I understand from him, that the late Col. Hawkins had the contract, and that Col. Russell, the agent or assignee of Hawkins, induced a Mr. Griswold to join him in an attempt to carry on the work; that Griswold has expended some money; but finding Russell not to be a man of business sufficient for such an undertaking, and not possessing the confidence of the commandant at the station; and, also, without any actual authority to proceed with the work, is desirous that Mr. Coryell should join him in endeavoring to obtain the contract. The affair being thus represented by Mr. Griswold, Mr. Coryell wishes, before he gives an answer, to learn from your Department, 1st, Whether the contract with Hawkins and those concerned with him is considered by you as at an end upon his death, insomuch, that no claim from his heirs or assignees will be recognized.

2d, Whether, in case the contract with Hawkins' heirs, &c. be at an end, so far as respects the Government, you would be willing to make a new engagement, or renew the old one with other satisfactory persons.

3d, And if it is preferred to renew the old contract, what sum has been paid to Hawkins for the work he has performed, *to be accounted for by the new contractors."*

Some information on these points, and such other as you can give, will, no doubt, be very useful in aiding Mr. Coryell to determine what to do in the premises. I take the occasion to remark, that, if Mr. Coryell undertakes this business, there is no man within my knowledge, that will execute whatever he undertakes with more punctuality, integrity, and good faith, than he will. He is altogether a *practical* man, and much accustomed to the management of a large body of hands. I would also add, that nothing is further from his views than to engage in the work for the purpose of speculation, by selling

out, and he would be very willing to have the contract so conditioned that it should not be transferable.

Any information you can consistently give him, will, I know, be very gratefully received by him, and the favor will be especially remembered by

Your sincere friend,
And obedient servant,

S. D. INGHAM.

Hon. J. C. CALHOUN.

P. S. If you will have the goodness to write, please to direct to me at New Hope.

DEPARTMENT OF WAR,

June 15, 1821.

GENTLEMEN: The contract for the erection of the fortification at Mobile Point stipulates that the works should be completed by the 1st of July, 1821, and, as there is no prospect that they will be then completed, I deem it to be my duty to apprise you, as the securities to the bond for the faithful performance of the contract, of the fact. It is proper to observe, for your information, that the Department has no objection to a reasonable extension of the time, on being satisfied that the work will be prosecuted with vigor and success; but that such extension can only be given with your assent, as it will be necessary to give instruction to the Superintending Engineer on that frontier, which must have for its basis the continuance of the contract, or its termination, and the consequent prosecution of the work by the Government. I must request your answer to this communication at an early period.

I have the honor, &c.

J. C. CALHOUN.

ROBERT TILLOTSON, Esq.
N. GOUVERNEUR, Esq.

DEPARTMENT OF WAR,

16th June, 1821.

DEAR SIR: I have received your letter of the 7th instant, in which you make, at the request of Mr. Coryell, certain inquiries in relation to the contract to erect the fortifications on Mobile Point:

The contract stipulates that the works should be completed by the 1st of July next; but I have informed the sureties of Hawkins, that, if arrangement can be made, which will satisfy the Department that

the works will advance with such vigor as to assure their completion in a reasonable time, that the Department has no objection, with their assent, to extend the time. Should the sureties not give their assent, the contract will be considered at an end; but whether the government will in that event undertake to complete the works under its own immediate management, or will again form a new contract, must be decided on a full view of all circumstances, in which every offer it may receive will be compared with the probable cost under the immediate management of the Department. There has been paid and advanced on account of the contract \$116,000.

I have, &c. &c.

JOHN C. CALHOUN.

Hon. S. D. INGHAM,
New Hope, Pennsylvania.

New York, June 29th, 1821.

SIR: Yesterday morning I returned extremely unwell from the country, where I have been for the last fortnight, during which period your letter of the 15th inst. was received, but not opened until after my return to the city. May I beg the favor, that you will suspend your decision until I can have the opportunity of repairing to Washington, which will be on or before the 15th or 20th of July, by which time I shall be relieved from the pressure of some professional business in the United States' Courts, which now detains me.

Your obedient servant,

ROBERT TILLOTSON.

May I ask the favor of being apprised of your views as to this postponement of your decision.

Hon. J. C. CALHOUN,
Secretary of War, Washington.

DEPARTMENT OF WAR,

July 23d, 1821.

SIR: I have no objection to the transfer of the contract of the late Col. Hawkins, for erecting a Fort on Mobile Point, to Mr. Lewis F. Coryell, provided it shall appear, on the certificate of the President of the Bank of the United States, as to the value of Mr. Mare's property and that of Doctor Moore, member of Congress, from your District, as to your own and that of Mr. Coryell, that they, jointly, and unincumbered, amount to at least one hundred and fifty thousand dollars, the sum for which the present securities are bound; and provided that the Attorney General shall be of opinion that the transfer can be legally made by the Representatives of Col. Hawkins, in the

state of New York. Copies of my letters to Mr. Tillotson and the Attorney General, herewith enclosed, will show more precisely the views of the Department in relation to the transfer.

As to the propositions, which have been submitted by you, it is proper here to remark, that, although they cannot be incorporated in making the transfer, which of course can only be made of the existing contract simply, the Department has no objections, in the event of its being made so to modify the contract as to make it conform to the within terms.

I have, &c. &c.

J. C. CALHOUN.

SAMUEL D. INGHAM, Esq.

New Hope, Pennsylvania.

DEPARTMENT OF WAR,

July 23, 1821.

SIR: I have to acknowledge the receipt of your letter, of the 21st instant. The Department has no objection to the transfer of the contract of Col. Hawkins to Mr. Lewis T. Coryell, on his giving adequate security for the faithful performance of the articles therein stipulated; provided, it can be legally done. To ascertain this point, I have written to the Attorney General, who is now in the state of New York, and will probably return by the way of the City of New York, in time to give his opinion thereon. The letter to the Attorney General, is herewith transmitted, open, in order that you may see its contents, and deliver it to him; but, should you not meet him, you may, if you think proper, to avoid delay, for your own satisfaction, submit the case to Mr. Emmett, or to Mr. Wells, or any other eminent counsellor in New York; and should their opinions be favorable to the transfer, you may execute a deed of transfer, and transmit it to this Department, for its assent, which will be given, subject, however, to the ultimate opinion of the Attorney General.

I have, &c. &c. &c.

J. C. CALHOUN.

ROBERT TILLOTSON, Esq. &c. &c.

STEAM BOAT,

Delaware River, July 23, 1821.

SIR: I omitted to make a material inquiry while at Washington, which I must beg the favor of you to supply. Owing to a mixture of confidential matter in the communications of the Engineer at Mobile Point, I had not an opportunity of seeing them, but had intended to

have asked for some extracts relating to the quantity of material procured, and work done by Hopkins and Hawkins, and any other credit which either of them would have been entitled to, such as erecting Engineer's quarters, &c. which I understand has been done. If there be any information on these points in the correspondence, you will confer a favor by directing it to be communicated to me.

I am, with great esteem and respect,

Your humble servant,

S. D. INGHAM.

Hon. J. C. CALHOUN.

I shall be at home in thirty-two hours from Washington, one hundred and ninety-six miles.

DEPARTMENT OF WAR,

July 27, 1821.

SIR: The enclosed report of the Engineer Department gives all of the information required by your letter of the 23d inst. In the course of a day or two I will make you a further communication of such information as may be received from the report of Lieut. Story, who is now here.

It will, perhaps, be proper for your friend to delay a decision, till he has all the information which can be derived from Lieut. Story.

I have honor to be,

J. C. CALHOUN.

Hon. SAMUEL D. INGHAM,
New Hope, Pennsylvania.

DEPARTMENT OF WAR,

July 31st, 1821.

DEAR SIR: The arrival of Lieut. Story, of which I informed you in my last, has furnished the Department with much fuller and more accurate information of the works on the Gulf of Mexico frontier, than that which was in its possession while you were here. I enclose an extract from his report, which comprehends that part of it which relates to Hawkins' contract. You will see that the picture is a very discouraging one, as it regards its past management, those who are now interested, and its future prospect. I deem it due to candor to possess you of the information, and to state that the Department puts entire reliance on the judgment of Lieut. Story.

I would be glad to have the final decision of Mr. Coryell as soon as it can be conveniently formed.

I have, &c.

J. C. CALHOUN.

Hon. SAMUEL D. INGHAM, *New Hope.*

NEW HOPE, 3d August, 1821.

DEAR SIR: I had the honor to receive duly, your favors of the 27th and 31st ult. and also your communication of the 23d, with their respective enclosures, and have to return you the thanks of those concerned for the very frank manner in which you have made known the difficulties attending the undertaking at Mobile Point. Mr. Coryell left this to-day, before the arrival of your last, on a trip to the head waters of Delaware, and is not expected to return before the 10th or 11th inst.; until his return, it will not be practicable to give you a definitive answer. I would only remark, that the difficulties mentioned by Lieut. Story appear to have arisen chiefly from want of judgment and care on the part of the contractors, rather than from obstacles essentially belonging to the nature of the work. I can say further, that should Mr. Coryell undertake, he will labor under no disadvantage for want of funds, provided the prospect shall be such as to justify his embarking private funds; I did not feel authorized to speak so freely on this point when last with you. Among all the discouragements presented, it appears to me the entanglement between Russell and Griswold, and Russell's possession of Hawkins' property, appears to be not the least embarrassing unless the United States could possess itself of the property by virtue of their claim upon Hawkins' estate, in the event of a failure to negotiate with him for it. Hawkins' contract with Russell, I should suppose, would be nugatory in all its parts; but a suit at law would illy *suit* a contractor who had 150 hands and no house to live in until it was decided. As it is probable that Russell's operations have ceased, and his hands all dispersed before this time, it appears to me that it would be prudent for Mr. Coryell to see the place before he decided affirmatively, if time could be given for such a journey. If Mr. Griswold has rendered himself obnoxious to the Engineer, it is a serious objection to his having any control in the general superintendence, or, perhaps, any interest in the business; I have no fear that the Engineer would find any difficulty of this kind with Mr. Coryell. It will be his disposition no less than his interest to execute the work in a manner that shall do credit to them both, and recommend him to further undertaking of a public nature. In every case in which I have known him to be employed, he has done more than in strictness could have been required of him. As soon as Mr. C. returns, you will hear again from me. In the mean time, I have the honor to be, with great respect,

Your very obedient servant,

S. D. INGHAM.

Hon. J. C. CALHOUN,

Secretary of War.

P. S. There is one further inquiry which, I suppose, might be answered by Lieut. Story, that would be useful if Mr. C. should still think of undertaking, viz: what number of cubic yards of masonry are computed to be contained in the entire work? And what number of cubic yards of earth are computed in the *Remblais*? S. D. I.

DEPARTMENT OF WAR,

August 11th, 1821.

SIR: I enclose you, herewith, a statement of the number of cubic yards of masonry of the fortification at Mobile Point, and also the estimated number of cubic yards of earth contained in the remblais—the information asked in your letter of the 3d instant.

I have the honor, &c.

J. C. CALHOUN.

Hon. SAMUEL D. INGHAM,
New Hope, Pennsylvania.

NEW YORK, *August 13th, 1821.*

SIR: I have this moment received your letter of the 8th August, and in compliance with your wish, forward the papers that were to be submitted to Mr. Wirt. The reason why they were not submitted to him is, that he remained in town only a few hours, a fact which did not come to my knowledge until some time after he left New York. Since I saw you, I understand Colonel Hawkins has left a will, appointing certain persons executors, who, of course, will qualify and supersede the necessity of taking out letters of administration. I shall, therefore, have the will proved, according to the laws of this state.

Your obedient servant,

ROBERT TILLOTSON,

Hon. JOHN C. CALHOUN,
Secretary of War, Washington.

ENGINEER DEPARTMENT,

August 14th, 1821.

SIR: On consulting with Colonel Gadsden and Lieutenant Story, on the subject of the works at Mobile Point, it is ascertained that it will not be necessary to go further into the earth than the point at which the water begins to spring. This information I am directed by the War Department to communicate to you, as having a very material bearing on the subject of your inquiries.

With respect, &c.

ALEX. MACOMB, *Maj. Gen.*

Hon. S. D. INGHAM,
New Hope, Pennsylvania.

NEW HOPE, 14th August, 1821.

SIR: Mr. Coryell returned on the 11th instant, and I avail myself of the first mail to advise you of the result of his consultations on the subject of the proposed undertaking at Mobile Point. Notwithstanding the discouragements that appear to attend it, he is strongly impressed with the belief, that the misfortunes heretofore have been the result of defective skill, want of attention to business, misapplication of funds; and in short, of a failure to *adopt the means to the end*, rather than from intrinsic difficulties in the progress of the work. Mr. Coryell does not, therefore, abandon the project of undertaking it, but the information derived from the communications in answer to my letter of the 23d July, and Lieut. Story's report, suggest the necessity of some further modifications of the points heretofore proposed, and some additional explanations of the original contract.

The total failure of Russell, and the dispersion of his force, (and that of Griswold,) together with the probability of his (Russell's) refusing permission to occupy the buildings that have been put up for the accommodation of workmen, &c. seem, in the first place, to make a further advance of money indispensable, whatever reasonable amount of private funds may be employed; and in the second place, to require some relaxation as to the condition of completing one-fifth of the work in value, so far as it respects the first year, even though the stock, boats, &c. and indeed, all the expense incurred shall be included in the estimate. It is not apprehended that the Department would, if they saw the work progressing well, insist upon a rigid execution of this condition; but it is not desirable, in any case, to stipulate to perform what appears to be of doubtful practicability; besides, to complete one-fifth of the work in value within the first year, would require, under present circumstances, a much larger application of force and disbursement of money in the onset, than would be desirable.

It is believed that a less advance than \$50,000 would be inadequate to put the work in such progress as to complete one-eighth in value within the first year, but this may be made at such stated periods within the early part of the year, as a proper caution in the Department, and appropriations, may justify. In justification of this proposition, it may be remarked, that the whole preparation is now probably to be commenced anew, and a large sum must be invested for labor and transportation before any payment can be expected on account of materials or work done. These remarks relate to the 4th and 7th points heretofore submitted, which I have remarked upon together, because of their natural connection.

The decision of the Department upon the 5th point, relating to the wharf, is liable to some difficulty, and it is believed, will admit of a modification which would expose the contractor to less risk, and be equally advantageous to the government. It is proposed by the Department, that the wharf shall be built by the contractor, under the direction of the local engineer; the wharf to be appraised at the close

of the contract, and paid for. If a permanent wharf be built, for which the United States are to pay, in any event, it is very proper the engineer should direct the work, but it would seem a fair and necessary consequence of his directing the work, that it should be at the risk of the United States, and not at the risk of the contractor. It is known that wharves are liable to be destroyed or swept away by high tides and tempests; the contractor would, therefore, be exposed to an increased risk in consequence of the increased expense of the permanent wharf, besides laying out of his money until the work was finished; as it is agreed, on all hands, that the United States must have a wharf for their own purposes, and that it will be wanted by them even during the progress of the work, it would seem but reasonable for the government to build it now, and if the contractor paid for its use something equivalent to the interest of the money expended, it would be as much as could be expected of him.

There is another point which, being incorporated with the proposed covenants, on the part of the contractor, instead of its proper place among the covenants proposed for the government, was, no doubt, overlooked when your remarks were made.

It will be found in the 4th item, and proposes to give the contractor whatever credits Hopkins and Hawkins would have been entitled to if either of them had completed the work, and in connection with this object, the claim of the United States upon the estates of Hopkins and Hawkins should be transferred to the present contractor, in order to enable him to negotiate with Russell, or, if necessary, to obtain a legal possession of their property in the vicinity of Mobile. It would be proper to except the sureties of Hawkins from this claim, as this is doubtless their understanding in assenting to the transfer of the contract to Mr. Coryell.

It appears, from the communications before mentioned, that the Remblais is exposed to damage from the wind and rain, but as there is no provision or allowance for defending it, the *point of time* ought to be fixed when the contractor's risk ceases; the most simple and equitable arrangement in this case would be to provide, that, whenever any part of the Remblais shall be raised to its proper height, and have received its proper slope, the risk of the contractor shall cease, as to such part, unless an agreement can be made for protecting it by a covering that will avoid the danger.

I believe these propositions all come within the rule prescribed in your first remark upon the former points submitted, and that you may have a distinct view of them, they are put into a more explicit form in the enclosed paper, to which I add, for your satisfaction, an outline of the general plan Mr. Coryell proposes to pursue in the commencement and progress of the work.

If these propositions and views shall meet your approbation, and the other matters in relation to this business can be satisfactorily arranged, we shall be ready at any time to execute the necessary writings, and Mr. Coryell will immediately prepare for entering upon the work. Whether Mr. Griswold will have any concern with him,

will depend upon his ability to contribute materially to its advancement, and other considerations thereafter to be determined on.

I have the honor to be,

With great respect, yours,

S. D. INGHAM.

Hon. JOHN C. CALHOUN,
Secretary of War.

Additional points submitted for the consideration and the determination of the Secretary of War.

That Mr. Coryell shall be entitled to all the credits which Hopkins and Hawkins would have been entitled to if either of them had completed the contract, and that the United States transfer to him all their claims upon the estates of Hopkins and Hawkins, arising out of their contract to erect the fort at Mobile Point. The object of this being to enable the contractor to obtain possession of the property accumulated for the purpose of carrying on the work, and which has been paid forth with United States' money that is now to be accounted for by Mr. Coryell. Any form of words that shall put him into the place of his predecessors, as to their claims upon the United States for work done, and in the place of the United States, as to their claims upon Hopkins and Hawkins, for money advanced (sureties excepted) will be acceptable.

2. That, when any part of the remblais shall be raised to its proper height, and received its proper slope, it shall be at the risk of the United States. (Secured by sodding or otherwise.)

LEWIS S. CORYELL.

Proposed modifications of the 4th, 5th, and 7th propositions made to the Secretary of War, 20th July.

4. That two fifths of the work in value to be executed within 2 years, including the expenses of procuring stock, boats, and whatever may be necessary in the way of preparation, the whole to be completed in four years from the 1st of January, 1822.

5. That a permanent wharf be built, either by the engineer, or by the contractor, under the direction of the engineer, at the expense of the United States; and the contractor shall pay to the United States, for the use of the same, the interest of the money which it cost during the time he may occupy it.

6. That, in addition to the \$20,000 to be advanced at the time proposed by the Department, there be a further sum of \$10,000 on the 1st of January next, and \$10,000 on the 1st of April, and \$10,000 on the 1st of June, each sum to be applied to the undertaking, and ac-

counted for within — months after it is paid to the contractor, to be left to the discretion of Government.

All the remaining points are assented to by Mr. Coryell.

Sketch of the General plan of operations to be pursued by Mr. Coryell in the commencement of the undertaking.

1. To negotiate, if possible, with Russell, for possession of the buildings and other property designed for the use of the work. If this fails, to employ such force as can be most readily procured to construct quarters for the men at the respective points of operation.

2. To rely entirely upon procuring a sufficient force of the black population of the South, for the common and a principal part of the mechanical labor, under the direction of persons skilled in the respective branches of the brick and other materials, to be procured under his own general direction.

3. To employ a skillful bricklayer, accustomed to work blacks, to lay the brick by the 1000.

4. To provide one steam boat, copper bottom and copper boiler, and six tow-boats of shallow draft, and decked to carry brick, &c.

5. As soon as the bricklayers get well under way, to provide a reserve steam boat, and two or three tow boats, to be ready in case of accident to the boats in use.

6. For land transportation, a considerable number of mules will be necessary.

He would propose to commence with about 50 hands, to be employed in and about the brick yards, getting wood and burning lime, &c. and in the mean time to prepare for the transportation, by procuring the necessary boats, making roads, landings, &c.

The first set of boats to be put in motion as soon as possible, the reserve boats to be ready soon after. Afterwards, to increase the force as experience may direct, but not to exceed about 100 hands in the first year.

He would prefer, in the first place, to hire blacks of their masters, if it can be done at a reasonable rate, in which case, a less sum than the proposed advance, would be sufficient.

If immediate possession of the boats, buildings, &c. can be obtained, a less advance than proposed, will be sufficient.

After the first advance of \$20,000, no further sum will be asked for, without giving to the Department full information of the necessity for it, and the uses to which it is designed to be applied.

It is expected, under present circumstances of total prostration of contractor's credit, and the probable necessity for an entire new preparation, that at least \$30,000 of private funds will be necessary, in addition to the proposed advances, and probably a much larger amount.

LEWIS S. CORYELL.

ENGINEER DEPARTMENT,

Washington, 15th August, 1821.

SIR: Wishing to give you every information on the subject of the contract of Col. Hawkins, I have to state to you that Mr. Tillotson writes that Col. Hawkins left a will, appointing certain persons his executors, who, of course, will qualify, and supersede the necessity of taking out letters of administration. Mr. Tillotson further states, that he will have the will proved according to the laws of the state of New York.

I have, &c.

ALEX. MACOMB, *Maj. Gen.*

Hon. S. D. INGHAM,

New Hope, Penn.

ENGINEER DEPARTMENT,

Washington, August 18, 1821.

SIR: Your letter of the 14th instant together with its enclosures, addressed to the Secretary of War, has been received by him; and after duly examining the propositions therein contained, he has directed me to answer them as follows:

To the modification of the 4th proposition, it is agreed the $\frac{2}{3}$ ths of the work in value may be executed in two years, including the expenses of procuring boats, mules, and whatever may be necessary in the prosecution of the work, and directly to be applied thereto. The works to be completed in four years from the 1st of Jan'y, 1822.

To the modification of the 5th proposition, it is agreed that the contractor shall build the wharf upon a plan approved by the superintending Engineer of the United States, the actual cost of which, the United States will pay, the bills being approved by the said Engineer; the contractor to pay for the use of the wharf, as proposed, for the time it shall be used by him, that is, until the completion of the contract.

To the modification of the 7th proposition, the War Department is not prepared to make any alteration to the answer already given on that head.

With regard to the additional points, submitted for the consideration of the Secretary of War by Mr. Coryell, I am further instructed to reply, that the United States have no claims against Hopkins, his bonds having been surrendered on the consummation of the transfer of the contract to Hawkins, nor have the United States any judgment or mortgage on the property of the latter, there being nothing but his bond with sufficient security to perform the contract.

Mr. Coryell has already been informed, that the contract cannot, under a late act of Congress, be forfeited, and renewed with him, but

that it must pass to him by transfer from the representatives of Hawkins, with the assent of his securities.

Under this statement, it is obvious that the United States cannot execute any instrument which would be calculated to put him in possession of the property of Hawkins, but that he must derive his right in that respect from his representative.

It is, however, probable that, as his buildings at the Point, and, it is believed, his brick yard are on public ground, that the United States may legally put him in possession, by ousting those who may be in possession. Should such prove to be the fact, on investigation, the Department of War will do what it can legally to effect the object.

It is also agreed, that when any part of the remblais shall be raised to its proper height, and receive its proper slope, it shall be at the risk of the United States, provided, it be secured to the satisfaction of the superintending Engineer.

I have, &c.

ALEX. MACOMB, *Maj. Gen. Chief Engineer.*

Hon. S. D. INGHAM,
New Hope, Penn.

New Hope, 25th August, 1821.

SIR: I have the honor to acknowledge the receipt of your favour of the 14th and 15th, inst. and also that of the 18th with its duplicate.

As the Department is not prepared to make any alteration in the answer already given on the subject of an advance, it behoves Mr. Coryell to ascertain what amount of funds he will be able to command for the undertaking. He is fully impressed with a belief that a much larger sum than he has at any time contemplated to bring into operation from private sources, will be indispensable to protect him from probable danger and possible ruin; as soon as he can satisfy himself on this particular, you will hear further from me; but, in the mean time, permit me to solicit a word of explanation as to the understanding of the Department in the provision to the propositions made in my last communication respecting the *Remblais*; the provision is in these words, "Provided it (the *Remblais*,) be secured to the satisfaction of the superintending Engineer." The words as they stand, might imply an authority to the local Engineer to require an artificial covering, to which Mr. Coryell would have a serious objection; but I do not suppose it was the intention of the Department to be so understood.

I would further beg the favor of you to state whether we are to understand, that the Department will stipulate to put Mr. Coryell in possession of such of the buildings and brick yards now held by Col. Russell, as are constructed on the public land; this will be a very material consideration, and I believe I may add, an indispensable pre-re-

quisite to Mr. Coryell's undertaking the work, *with the proposed advance of money*. The importance of this matter, and the expression of some doubt in yours of the 18th, as to the extent of the legal power of the Department over those buildings, will be my apology for appearing to be particular on this point. I have availed of the intimation in your letter, and have written to Mr. Tillotson respecting a transfer of Hawkins' right to those buildings, with a view to be prepared for the judicial questions, which Mr. Coryell will take the risk of, if the Department will put him in possession.

I have the honor to be, with very great respect, your obedient servant,

S. D. INGHAM.

Major General MACOMB,
Chief Engineer.

ENGINEER DEPARTMENT,

Washington, August 30, 1821.

SIR: I have before me your letter of the 25th inst. and reply to it without delay.

The Secretary of War is at present absent, and will, probably, not return until towards the end of next month. The advance which he was willing to make, depended entirely on the state of the funds applicable to the works at Mobile Point; and, although \$20,000 was the sum mentioned, it is believed the advance may be increased to \$25,000 without difficulty, but that is the greatest extent of the means at present at the disposal of the Department.

With regard to the *Remblais*, it is expected that the contractor will finish it to the satisfaction of the superintending engineer, and to cover it with sodding, or some other material, to secure it when placed in the proper position.

I have taken the advice of the attorney general on the right of the Government to put you in possession of the building, and brick yards, which Colonel Hawkins may have erected on the public lands. He is decidedly of opinion that it can be legally done; we will, therefore, put you in possession of such buildings as may be on the public grounds.

The measures which you propose to take with regard to obtaining the transfer of Hawkins's right to these buildings, will be very proper in the event of Mr. Coryell's arranging the transfer to the satisfaction of all concerned.

I have consulted with Colonel Gadsden on the state of the brick yards which Hawkins and Hopkins erected, and he informs me that the two first erected were on private property, and the bricks manufactured at these establishments were so indifferent that he was obliged to reject them; that, afterwards, Colonel Hawkins commenced another yard on the public lands, where he would have succeeded in making

good bricks had he lived, but he unfortunately died before the yard was completed and put into operation.

The materials are said to be very convenient and good near this last establishment.

I have, &c.

ALEX. MACOMB, *Maj. Gen.*

Hon. S. D. INGHAM,

New Hope, Pennsylvania.

NEW HOPE, *September 8, 1821.*

SIR: Your favor of the 30th ult. is received, and would have been replied to sooner, but for my absence at New York for some days past.

The increased advance proposed in your last, together with some inconsiderable modification of the payments in the early part of the work, will remove all further difficulty on this point, as Mr. Coryell has made arrangements for an amount of private funds, nearly equal to what he supposes may be necessary for the safe and successful progress of the work.

As to the securing of the *Remblais*, there does not appear to be any provision made for it in the original contract; and, whatever provision may now be made, will make the present proposed contract so much worse, for the contractor, than the old one, which, under existing discouragements, I think the Department will not expect, especially as it has so carefully guarded against making it *better* for the contractor in any other part. If the light sand of the point have sufficient fertility to produce and nourish grass for sodding, I do not suppose the expense of sodding would be so great as to make it an obstacle to the conclusion of the contract; but, as the Department has now the advantage of Colonel Gadsden's local knowledge of every thing that can throw light upon the subject, you will be able, no doubt, to suggest some measure that would obviate the heavy expense which Mr. Coryell might be liable to, without an explicit understanding on this point. These matters can, I think, be satisfactorily arranged, when we shall have another interview; and, as I do not apprehend any further difficulties in the negotiation, I have consented to make another visit to Washington, in behalf of Mr. Coryell, as soon as you will be pleased to inform me that the Department is prepared, in other respects, to conclude the contract. I have seen Mr. Tillotson. He informs me there will be no difficulty as to the transfer of the contract, and Hawkins's property at Mobile Point, &c. &c.

I have the honor to be,

With great respect,

Your obedient servant,

S. D. INGHAM.

Maj. Gen. MACOMB.

ENGINEER DEPARTMENT,

Washington, September 17, 1821.

SIR: Your letter of the 8th inst. was duly received. The Secretary of War will be here about the last of this month, when it will, probably, be convenient to you to come on. As Colonel Gadsden is permanently established here, we can get from him immediately any explanations necessary to a full understanding of all the points. The modifications which have been proposed, certainly diminish, in a great degree, the original difficulties, particularly in the foundations, which were to have gone much farther into the earth than now contemplated. From the tenor of your letter, I am inclined to think that the business of the transfer will be satisfactorily arranged, on your coming to this place on the return of the Secretary of War.

I avail myself, &c.

ALEX. MACOMB, *Maj. Gen.*

Hon. S. D. INGHAM,

New Hope, Pennsylvania.

NEW HOPE, 24th Sept. 1821.

SIR: I had the honor to receive your favor of the 20th instant, duly acquainting me with the arrival of the Secretary of War at Washington. Not expecting his return so soon, I have an indispensable engagement on hand, that will prevent me from leaving home before Monday next, 1st October: but on Tuesday following I shall endeavor to be in Washington; in the mean time,

I have the honor to be,

With very great respect, your's

S. D. INGHAM.

Maj. Gen. MACOMB.

NEW HOPE, 1st October, 1821.

SIR: The unexpected death of my mother has prevented me from setting out for Washington, according to appointment. I cannot, now, name a day for my departure, with certainty, before Wednesday, the 10th instant, when, (if I should not get away before) nothing but sickness or death will prevent. I regret this delay, on Mr. Coryell's account, who ought, now, to be in motion.

You may certainly depend upon my being in Washington on Thursday, the 11th.

I have the honor to be,

With great respect, your's,

S. D. INGHAM.

Hon. J. C. CALHOUN.

Memorandum of the several points in the Contract.


1. The time for completing the contract, four years from the first of January, and two-fifths of the work, in value, to be completed within the first two years: including the value of all materials, boats, mules, and other matters belonging to the work.

2. A permanent wharf to be built, by the contractor, under the direction of the engineer, paid for by the Government, and the contractor to pay interest for it, during his occupancy of the same.

3. All the property belonging to the United States, which has been collected, or accumulated, by the former contractors, Hopkins and Hawkins, for the purpose of constructing and completing, and aiding to construct and complete the Fort, shall be transferred to the present contractors, for their use in fulfilling the contract. Also, the contractors to be put in possession of all brick yards, houses, out-houses, and stabling, erected on the United States' property for the purpose of aiding to construct the said Fort.

4. The United States to advance \$25,000, to be paid in hand, at the closing of this transfer; vouchers for the expenditure thereof to be exhibited to the superintending engineer within six months after the receipt.

5. Payments to be made for all brick and material, as they shall be delivered at Mobile Point, at the rate of 40 per cent. of the amount at which such brick and materials is estimated, agreeably to contract, when combined in the work; and whenever part of said work, amounting in value to \$5,000, shall be so far advanced as to be capable of being measured, the United States shall pay to the contractor 30 per cent. of the value thereof, till all the advances, made under the contract, are liquidated, and then the payments will be made, in lieu of the terms of this contract, 50 per cent. for the materials, as delivered, and 50 per cent. for the work as erected.

 *Proposed modification*—50 per cent. to be paid on all materials delivered, and 50 per. cent. on all work, finished, *within the first year; afterwards, as above.*

6. The contractor to have permission of ingress and egress over any part of the public lands, for the purpose of digging sand, oyster shells, clay for brick, and procuring wood, timber, &c. for the use of said works, except it be on the reserve, about the Fort, when the permission of the said engineer must be had for the purpose of obtaining of either of the materials enumerated.

7. In the event of any difficulty arising between the contractor and local engineer, the matter in dispute shall be referred to the Secretary of War, who will cause the facts to be enquired into, and justice to be done in the premises.

8. In the event of any alteration in any part of the work, after the directions given by the Engineer, the additional cost shall be paid for by the United States, according to the circumstances of the case.

9. Whenever the remblais shall be raised to its height and have received its proper slope, it is to be at the risk of the United States. The

Department insists upon a covering; but the contractor objects—*this matter to be adjusted.*

It has been proposed, that payments for materials, &c. as they shall be delivered at Mobile Point, may be made at the rate of 40 per cent. of the amount of their value when combined in the work, and 30 per cent. of the value of the work, when completed, so as to admit of measurement, until all the advances made under the contract shall be liquidated; then the payments to be made, 50 per cent. on the materials, and 50 per cent. on the works. I would propose a modification of this point, as a substitute for the advance of money, which has been asked for, viz. : that, during the first year of Mr. Coryell's operations, commencing on the 1st of January next, that payments shall be made of 50 per cent. on the material, and 50 per cent. on the work admeasured, on all the materials delivered on Mobile Point; and all work capable of being admeasured within that time; afterwards, payments to be made as previously proposed.

S. D. INGHAM,

Agent for Lewis S. Coryell.

Washington, Oct. 8, 1821.

INDIAN QUEEN, WASHINGTON,

October 11, 1821.

SIR: I omitted to mention to you, as I intended, that, when you write for information respecting the sufficiency of the sureties of Mr. Coryell, it would be well to inquire of Doctor Moore also, as to Mr. Maris; as Mr. Maris' property is now chiefly in the country, Mr. Cheves may not have so good an opportunity of knowing its value.

As to the point which made some difficulty yesterday, I should be satisfied with your propositions, viz. to insert in the modifications, that "it is understood that Mr. Coryell shall have the option of accepting the arrangement for building the works with tapia," *with the addition*, that the covering of the *remblais* shall be hereafter agreed upon, and completed at the expense of the Government or contractor, as usage and equity, under all the circumstances of the case, may direct.

This latter provision may seem vague; but, as the Department has not experience enough to determine what kind of covering they will prefer, it becomes necessary, for the safety of both sides, to leave it open for future adjustment.

Be so good as to let me know by letter, as soon as convenient, whether this will be acceptable.

I have the honor to be,

Yours, &c.

S. D. INGHAM.

Hon. Secretary of War.

DEPARTMENT OF WAR,

October 11, 1821.

SIR: In answer to your letter of this date, I have to say, that there will be no objection to Mr. Coryell's having the option of accepting the arrangement entered into between Colonel Hawkins and Colonel Gadsden, dated 7th June, 1820, substituting tapia for brick work; but the Department would prefer at once to substitute brick for tapia; the latter, as you suggested in your conversation, is in some degree an experiment.

As there exists some difference of opinion as to the material most proper for securing the remblais when brought to its proper shape, the Department is willing that this point shall hereafter be settled by usage and equity, regard being had to the intention of the original contract.

I have the honor, &c.

J. C. CALHOUN.

HON. SAMUEL D. INGHAM,
New Hope, Pennsylvania.

ENGINEER DEPARTMENT,

October 15, 1821.

SIR: The Secretary of War has this day received a letter from Mr. Giles Griswold, of which the enclosed is a copy.

As I had promised to furnish you every information on the subject of the works at Mobile Point, I could not withhold this letter from your view. Nothing will be done as regards it, until the transfer of the contract is completed.

With respect, &c.

ALEX. MACOMB,
Maj.-Gen. Chief Engineer.

S. D. INGHAM, Esq.
New Hope, Pennsylvania.

NEW HOPE, October 23d, 1821.

SIR: I have this moment returned from New York, and received your favor of the 15th, with a copy of Mr. Griswold's letter. As the information contained in Lieut. Story's report, was communicated to me confidentially, and as Mr. Griswold misrepresents the fact, as to Mr. Coryell having written to him "that he would have nothing more to do with the job," it is due to myself to offer such explanation as will show what has been done in these particulars; for this pur-

pose, I enclose you a copy of Mr. Coryell's letter to Mr. Griswold, from which you will perceive that we have concealed the authority for our information respecting his affairs at Mobile, and that a full opportunity was given him to satisfy Mr. Coryell of his ability to render his proper equivalent in the undertaking. Here it should be premised, that the marked disapprobation of Mr. Griswold, in Lieut. Story's report, viz: "that any connexion with him will prove, not only excessively, but *peculiarly* irksome, vexatious, and disgusting, to an Engineer officer superintending the works," and the accompanying declarations of the Secretary of War, "That the Department put entire reliance on the judgment of Lieut. Story," were regarded by us as an intimation not to be misunderstood, that Mr. Griswold was, in the opinion of the Department, an unsuitable person to be connected with in such an undertaking. Mr. Coryell was, therefore, advised to write him the enclosed letter, with a view to give him an opportunity of exhibiting satisfactory information of his real situation, and to lay the same before the Department, and abide its decision as to taking him in as a partner; which purpose was intimated in my letter to the Secretary of War, of the 13th of August, in the following words, viz: "Whether Mr. Griswold will have any concern with him, (Mr. Coryell,) will depend upon his ability to contribute materially to its advancement, and other considerations hereafter to be determined upon."

This, I trust, will satisfactorily explain our conduct thus far, both as to the Department and Mr. Griswold; but subsequently, in consequence of the insulting reproach and menace in Mr. Griswold's reply to the enclosed letter, the business became a personal concern, which left Mr. Coryell no alternative connected with honorable feelings, but a separation of their interests, and to relinquish all claims to the contract, that were alleged by Mr. Griswold to have been derived from him, which he did in the following words, viz: "If you had it in your power to obtain the contract without me, I know of no reason why you may not now do it as well, and whatever "power" you have given into my hands, you can revoke at pleasure: each will then stand on his own bottom. I will further add, in reply to the latter part of your letter, that it has never entered into my mind, in the event of my undertaking the contract, to do you the least injustice, or to take advantage of my situation, to obtain any thing from you, without paying fairly for it."

Thus, I have given you a history of this business. I would have sent you copies of the correspondence; but it is too voluminous to requite you for the trouble of reading it. Should Mr. Griswold make any complaint, I hope he will have the candor to show you Mr. Coryell's letters to him.

I take this occasion to renew the expression of my very great respect and regard, and remain your humble servant,

S. D. INGHAM.

Major Gen. MACOMB.

NEW HOPE, *August 16th*, 1821.

SIR: I have duly received your's of the 6th instant. We have written since you were here for information respecting several matters which it was desirable to understand better than we did. To these letters answers have been received, and we have, in consequence of this information, proposed some modifications of the points decided on by the Secretary of War, which are now before him for consideration: but I regret to learn, by a person from Mobile, that Colonel Russell's force is dispersed, the marshal of the United States having, by order of the Court, taken the bonded negroes into possession. If this be the fact, it will materially change the whole prospect of the undertaking; and, if to this be added the refusal of Colonel Russell to give quiet possession of the property, &c. it may become necessary to commence the whole undertaking anew.

I will only remind you, that the security required of me is in the sum of \$150,000, and the Department has required evidence of the sufficiency of the sureties for this amount in real estate. The undertaking, therefore, is a heavy one to myself and to my sureties, and I could not think of taking a single [step] in it, without the most mature consideration. Feeling, therefore, the weight of this responsibility, I need no apology for reminding you that every partnership is a matter of interest, and, to be profitable and satisfactory to the parties concerned, each must be able, in some way, to contribute his equivalent of advantage to the concern. I have, therefore, mentioned the situation of Colonel Russell's affairs, that your attention may be drawn to its consequences at an early moment, and that you may be able to suggest by what means you can render your proper equivalent, before any thing conclusive is determined on.

L. S. CORYELL.

MR. GILES GRISWOLD.

NEW HOPE, *Oct. 29th*, 1821.

SIR: I have just received a letter from Mr. Tillotson, from which I copy an extract, viz: "I find from a letter which I have received in answer to mine, that Mrs. Hawkins has left every thing to be conducted by a brother, whose professional character forbids the hope of indulging any expectation that he will be either just or honorable, and I therefore candidly think they would throw every embarrassment in the way. I am satisfied there are certain persons behind the scene who wish to get possession of the contract for themselves, and are probably availing themselves of the matter of form to effect their object." He adds, that he cannot suppose that the transfer of the contract by the representative of Hawkins, will be in-

dispensable to its continuity, and that he will release and send it to me, if I "deem it necessary."

I have nothing to add to what I have already said, and am not aware of any thing further that it will be proper for me to do, until I get your decision upon the propriety of assenting to the transfer by the securities of Hawkins to Mr. Coryell.

I had some hope of getting a letter from the Department by the mail this day, and am not without fear that the robbery of the Southern mail, which took place on the 26th, may have intercepted your letters.

I have the honor to be,

With great respect, yours,

S. D. INGHAM.

Hon. SECRETARY OF WAR.

DEPARTMENT OF WAR,

29th October, 1821.

SIR: After I was informed of the difficulty which Mrs. Hawkins had thrown in the way of the proposed arrangement in relation to the work at Mobile Point, I took the opinion of the Attorney General on the point, whether, under the act of Congress of the 1st of May, 1820, I could, after forfeiting the contract with Col. Hawkins, make a new contract with Mr. Coryell. He has decided the point in the affirmative, which removes that particular difficulty. Another, however, grows out of it. Should I forfeit it, and make a new contract with Mr. Coryell, I would be compelled to proceed, under the old contract, against the representative of Col. Hawkins and his sureties. To avoid this, I see no other way than to give to the latter, on their application to that purpose, the opportunity to complete the work under the contract. Against this there can be no solid objection. This being effected, the arrangement which it is desired to be made, may then be effected. The sureties may engage Mr. Coryell to execute the work, transferring to him full control over the works, and the receipts and profits which may result, he counter-securing them. The Department to agree to the arrangement, with an understanding, that the modifications of the contract agreed on by you and the Engineer Department, will be made. Should it be desired by the sureties of Col. Hawkins, an arrangement may be made with them, on transferring the counter-security to the Department, (if it can be legally done, as I suppose it may) not to hold them liable, even in the event that Mr. Coryell might fail to fulfil the contract, so long as the counter-security should be good for the amount due to the government in such possible failure.

I have transmitted a copy of this letter to the securities of Col

Hawkins, and if they should agree to it, the Department will at any time be prepared to declare the failure, and execute its part of the arrangement.

I have, &c. &c. &c.

J. C. CALHOUN.

Hon. SAML. D. INGHAM, *New Hope, Pa.*

DEPARTMENT OF WAR,

29th October, 1821.

GENTLEMEN: I inclose a copy of your letter to Mr Ingham, in answer to one which I received from him, as the agent of Mr. Coryell. It is the only arrangement which I can devise to get over the difficulty occasioned by the unreasonable objection of Mrs. Hawkins, to make the transfer of the contract to Mr. Coryell. I have informed Mr. Ingham that I have transmitted the copy of the letter to you.

I have, &c. &c. &c.

J. C. CALHOUN.

ROBERT TILLOTSON and
SAML. GOUVERNEUR, Esqs.

Sureties of Col. Hawkins.

NEW HOPE, 3d November, 1821.

SIR: I have just received a letter from Mr. Tillotson, in which he says he is about to make, with the aid of your letter, a last appeal to Mrs. Hawkins. I presume he is induced to prefer that course in consequence of the expression of a doubt as to the legal power of the Department to exonerate the sureties of Hawkins, upon the assignment of the bonds of Mr. Coryell & Co. If this point were adjusted to his satisfaction, it might remove some difficulty, and avoid a part of the delay which now is so serious to Mr. Coryell. That you may have a full opportunity of judging of the sufficiency of the security proposed to be given by Mr. Coryell, I enclose you Dr. Moore's certificate. I have not seen Mr. Cheves.

I have the honor to be,

With great respect,

Your obedient servant,

S. D. INGHAM.

Hon. JOHN C. CALHOUN,
Secretary of War.

DOYLESTOWN, PENNSYLVANIA,

October 15, 1821.

I hereby certify that the value of the property of Lewis S. Coryell, William Maris, and Samuel D. Ingham, citizens of Buck's County, Pennsylvania, exceeds the amount of one hundred and fifty thousand dollars. Having examined the subject with care, I give this opinion with a clear conviction of the fact.

Understanding that the purpose, for which this certificate is required, will be satisfied by an assurance to the above amount, I consider it unnecessary to express an opinion as to the full value of their property.

SAMUEL MOORE.

Hon. J. C. CALHOUN.

SIR: I have received a letter from Mr. Tillotson since I wrote you, intimating further discouragement as to prevailing on Mrs. Hawkins to do any thing, and that he would prefer one of two other plans for the transfer to the one proposed by the Attorney General, viz: 1st. That the sureties should transfer their right to Mr. Coryell, he and his sureties giving bonds direct to the Government for the performance of the contract by him, (Mr. Coryell) the bonds of Col. Hawkins' sureties to be cancelled; or 2d. The bonds of Mr. Coryell and sureties to be given for the performance of the contract by the sureties of Col. Hawkins; or their assigns, upon which they, the securities of Hawkins, will make a full assignment of all their right, &c. to Mr. Coryell, with the assent of the Department, it cancelling the former bond. I am not able to perceive any difference in the validity of the transaction upon either of the modes.

The continuity of the contract being preserved by permitting the securities to execute it by the employment of Mr. Coryell, whose counter securities can be assigned to the Government, may not the securities of Hawkins *then* be considered, as to all the purposes of this transaction, as principals? If so, could they not, as such, transfer the contract, by consent of the Government, to Mr. Coryell, he giving security, direct, to the Government, for its performance, in the same manner as if he had received the contract from the representatives of Col. Hawkins? And, in such a case, the security given by Mr. Coryell being accepted by the Government, could it not release the former sureties with the same effect that it could have released the principal, if he had transferred the contract with its consent? I have only to add, that Mr. Tillotson prefers the first of the foregoing propositions.

You will pardon the liberty I have taken in offering these remarks, for which I should have no apology but for the circumstance of having

become, in some measure, an organ of communication between Mr. Tillotson and the department.

I have the honor to be,
With great respect,
Your obedient servant,
S. D. INGHAM.

Hon. J. C. CALHOUN,
Secretary of War.

DEPARTMENT OF WAR,

November 13th, 1821.

SIR: Your letter of the 3d enclosing the certificate of Doctor Moore, has been received. The certificate is satisfactory.

Since writing you on the 29th ultimo, Mr. Tillotson has made application to Judge Thompson, to take the opinion of the Attorney General as to the practicability of himself and Mr. Gouverneur, transferring the contract of Col. Hawkins, after the forfeiture which I propose to declare of the contract, so that Mr. Coryell and his securities should be made responsible to the Government instead of themselves. That the Department would prefer this arrangement from the entire confidence in Mr. Coryell and his securities, if it could legally be adopted, but, on consulting the Attorney General, I find he is of opinion, it cannot be legally done. Judge Thompson has apprised Mr. Tillotson of the opinion of the Attorney General, and I presume he and Mr. Gouverneur will speedily decide on their final course.

I have, &c.
JOHN C. CALHOUN.

Hon. SAML. D. INGHAM.
New Hope, Pennsylvania.

ENGINEER DEPARTMENT,

WASHINGTON, 18th November, 1821.

SIR: Your letter, post marked the 12th, addressed to the Secretary of War, has been referred to this Department.

On examining the letters of the War Department, of the 29th ult. and of the 13th of this month, I find your inquiries substantially answered. The Government finds, on strict examination, that it is not practicable for Messrs. Tillotson and Gouverneur to transfer the contract after the forfeiture which it is proposed to declare; so that Mr. Coryell and his securities should be made responsible to the Government, instead of themselves.

In case of forfeiture, as it was proposed, in order to avoid proceeding against the securities of Hawkins, to give them, on application to that effect, an opportunity of completing the work under the contract, this being effected, the securities may engage Mr. Coryell to execute the work, transferring to him full powers and control over the works and the receipts and profits thereof, he countersigning them: the Department of War to agree to the arrangement, with an understanding that the modifications of the contract, agreed on by you and this Department, will be made. I shall leave this tomorrow for New York, where I shall see Mr. Tillotson, and also Mr. Gouverneur, and urge them to come to some definite arrangement.

I am, &c.

ALEXANDER MACOMB, *M. G.*

HON. S. D. INGHAM,

New Hope, Pennsylvania.

NEW YORK, Nov. 21, 1821.

SIR: In behalf of my sister, Mrs. Hawkins, the widow of the late Col. Samuel Hawkins, I take the liberty of asking for information respecting the contract with the United States' Government, for the building of a fort, &c. at Mobile Point. I understand the contract was made with Mr. Benjamin Hopkins, and, after his death, assigned to Col. Hawkins, who commenced the performance of what remained to be done, but that the greatest part still remains unfinished. I also understand, that Col. Hawkins made some agreement for the assignment of the contract to a Colonel Russell, to be performed by him, but who failed to fulfil those things which were to be performed by him, to render the agreement binding on Col. H. or his representatives, and that the government have not consented, and will not, probably, consent, that Col. Russell should have any thing to do in the business; but, I am informed, that it is still contemplated, on the part of government, to have the original contract executed, and that it is considered necessary that a transfer or release of the contract should be made by Mrs. Hawkins, as executrix and legal representative of her husband, to the person who should undertake to perform the same. Under these circumstances, a Mr. Griswold proposes to take the contract upon terms favorable to Mrs. Hawkins, and which would probably afford her the means of discharging the debts of her late husband, and of furnishing some support for herself and family, who are now destitute. Mr. Griswold offers to give security to government for the performance of the contract, which shall be quite satisfactory, and, I am informed, and believe, his own means are very considerable. Others have also proposed to take the contract upon like terms; but it is impossible for Mrs. Hawkins or her friends to enter into any arrangement respecting the business, till they are informed whether the original contract, as the same came into the hands

of Col. Hawkins, can be now performed by Mr. Griswold or any other person, with the assent of government, upon the same terms, and with the same advantages, sufficient security being given for the performance. Or whether there was any alteration made in the contract between the government and Col. Hawkins, after the same came into his hands, and what alteration, if any, was made; and whether such, or any other alteration from the original contract will be insisted on in the performance. She is also very desirous of knowing, whether there will be any objection to have Mr. Griswold take and perform the contract, upon giving satisfactory security for his performance; or, whether any other person whom she or her friends might procure to take the contract, would be permitted to take and perform the same upon the original terms, sufficient security being given. It appears also necessary to know, what sums of money have been advanced by government upon the contract from the beginning, and, also, what credits have been given; and whether any other credits will probably be given for labor, or any other thing, the precise amount of which is not yet ascertained. To obtain information respecting the accounts, I have written to Mr. Hagner, one of the Auditors of the Treasury; but, if any credits are to be given on account of any matter not now ascertained, he may not be informed of all the facts which have come to your knowledge. In that case, I must ask the favor of you to communicate such information as to the probability of future credits, as may be done with propriety. I hope the circumstances of the case will be a sufficient apology for my requesting the above information, and that it will be convenient to give it at an early period. Please to direct to the care of Doct. Amaziah Wright, New York.

I am, sir, with great respect,

Your obedient servant,

PHILO RUGGLES.

Hon. J. C. CALHOUN.

DEPARTMENT OF WAR,

November 30, 1821.

SIR: I have received your letter of the 21st inst. in which, in behalf of your sister, Mrs. Hawkins, the widow of the late Col. S. Hawkins, you ask for information respecting the contract for building a fort at Mobile Point.

In answer, I have to inform you that the Department, seeing no prospect of the fort at Mobile Point being completed by the 1st July, 1821, conformably to the stipulations of the contract in question, deemed it to be its duty to give notice of the fact to the sureties of the bond for the faithful performance thereof; and, accordingly, on the 15th June last, addressed them a letter to that effect. At the same time it was intimated to them that the Department would have no objection to

a reasonable extension of the time for completing the fort, on being satisfied that the work would be prosecuted with vigor and success, but that such extension could only be given with their assent. They promptly signified their desire to avail themselves of it, and, to that end, proposed that Mr. Coryell should be recognized, in their behalf, to carry it into effect, requesting, at the same time, that the security which he would offer might be accepted in substitution of theirs, and their bond be cancelled. To this the Department expressed its readiness to agree, provided there should be no legal objection. The opinion of the Attorney General was taken and stated, that the Department, at the joint request of the representative and sureties of Col. Hawkins, might permit the contract to be continued by them, by their agent, or by an indifferent person, in his own right, and might accept the security of the last, and exonerate the old security. This was communicated to the sureties, with a notification that the Department would complete the arrangement proposed according to it. These answers stated that Mrs. Hawkins, the representative of Col. H. would not consent to the assignment of the contract being made to Mr. Coryell, in compliance with the arrangement they had proposed to make for the mutual benefit of herself and themselves, which they had not anticipated. They regretted the event, and requested that the Department would consent to some other arrangement, by which they might be relieved from the responsibility attaching to them as sureties, and which would not require the assent of Mrs. H. as the representative of Col. H. The Attorney General was consulted, and gave, as his opinion, that an arrangement for the continuance of the contract could not be acceded to without the mutual consent of the representatives and the sureties; that, in failure thereof, the Department would have no other alternative than to declare a forfeiture of the contract; and that being done, they might sue for the penalty, or, if disposed to indulge, might permit the sureties to carry on the work, by an agent, if they pleased, but on their own responsibility. Upon being informed of this, the sureties requested the indulgence it authorizes might be granted to them; and the Department has signified to them that the forfeiture shall be declared as soon as an arrangement, which is now progressing, shall be matured. It is proper to observe, that, at the time the arrangement with the sureties was commenced, the Department was not aware of the facts of a will having been left by Col. H. and of a legal administration on his estate having been settled. Had it been, the legal representatives would have been included in that arrangement, the sole object of which was to afford, to the parties concerned in the contract, such indulgence as would relieve them from the ruinous consequences that would have followed upon a declaration of its forfeiture.

But it is now too late to enter upon any new arrangement. Serious prejudice to the Government is likely to result from the loss of time occasioned by that now about to be closed with the sureties. The Department could not consent to incur a further loss of time, and, therefore, could not comply with the desire of Mrs. H. in that respect to which your letter alludes, even if there appeared to be a probability

that it would eventuate in an arrangement satisfactory to all parties, which may be doubted.

But no other difficulty being in the way, the Department would object to Mr. Griswold's having any direction in the contract, because the inquiries it was induced to make some time ago, when he was a direct applicant on that subject, did not afford such evidence of his fitness as would be necessary to satisfy the Department, in an undertaking of such magnitude and importance.

The enclosed copy of a report from the Engineer Department, contains the information you requested of Mr. Hagner.

I have the honor to be, &c.

J. C. CALHOUN.

PHILO RUGGLES Esq.

To the care of Dr. Amaziah Wright, New York.

NEW HOPE, 27th Nov. 1821.

SIR: This will be handed you by Mr. Coryell, to whom I have to beg the favor of you to furnish such credential as will ensure him an opportunity of acquiring the best information from the Engineer at Mobile in relation to the object of his journey. I have lately received a letter from Mr. Tillotson, intimating his willingness to accede very readily to the views of the Department, as to the manner of transferring the contract, &c. This induced Mr. Coryell to hesitate about starting to Mobile before the contract was made, but, upon full consideration, it has been thought best for him to go on—he will make all possible despatch, and having left full powers here to do whatever may be needful in his absence, we are in hopes there will be no serious delay. In the mean time it will be well to have the details and forms of all the papers settled and prepared for signing at a short notice. I have written Mr. T. to this effect.

I have the honor to be,

With great respect,

Your obedient servant,

S. D. INGHAM.

Hon. JOHN C. CALHOUN.

DEPARTMENT OF WAR,

November 30th, 1821.

SIR: I have received your letter of the 22d inst. and I would at once declare the forfeiture, and apprise Mr. Coryell of the fact, were it not that I infer from your note that you take a different view of the effect of the forfeiture from that which this Department does.

You seem to think that, after such forfeiture, the representatives of Col. Hawkins might still make such conveyance as to enable the department to relieve his securities by substituting in their place those offered by Mr. Coryell. Such is not the opinion entertained by this Department. The effect of the forfeiture would be such as to deprive the representatives of Col. Hawkins of all control or influence over the contract, and would simply leave it in the power of the Department to give indulgence to the sureties of Col. Hawkins to complete the work, as stated in my letter of the 29th October last to Mr. Ingham, a copy of which has been forwarded to you.

Will you favor me with an answer as soon as practicable, whether, with this view you desire that the forfeiture should be made at once, so that the arrangement which has been proposed may be carried into effect.

I have no recollection of the reservation alluded to, as being contained in a note addressed to me when you were here, and which cannot now be found. I will not have it in my power to give an opinion respecting it unless you will do me the favor to send me a copy of the note in question, or to repeat the particulars of the reservation.

I enclose you a copy of a letter addressed this day to Mr. Ruggles, the brother of Mrs. Hawkins.

I have the honor to be, &c.

JOHN C. CALHOUN.

ROBERT TILLOTSON, Esq.

New York.

NEW YORK, *December 5, 1821.*

SIR: I perceive, from your letter of the 30th of November, this moment received, that I was mistaken in the view I had taken of the effect of declaring the forfeiture of the contract at Mobile; and I now perceive from your letter, that the representatives of Colonel Hawkins would, in that event, have no such control or connection with the contract, as to enable the Department, on a subsequent transfer by his executors, to cancel my bonds.

The only remaining question which I wish to present to the Department, relates to a reservation made in my note of the 21st of July last; a copy of which I enclose, and to which I undertood you to say, during the last winter, to me, you had no objection. Conceiving myself as legally exempted from responsibility, in consequence of the subsequent contract made between Colonel Gadsden and Mr. Hawkins, of the 7th of June, and wishing to do no act that would waive that exemption, I made the reservation in my note of the 21st of July. The arrangement intended at that time has failed, in consequence of the refusal on the part of the executors of Mr. Hawkins to make the transfer to Mr. Coryell; a different mode of arriving at the same result is proposed, in an extension of the right

to complete the contract, to the sureties on their application. The effect of that application would, I conceive, be a waiver of all the legal rights, to which the sureties conceive themselves entitled, and would therefore place them in a very different situation from that contemplated when I was at Washington. That this is neither the object or the wish of the Department, I am satisfied, from my conversations with you during the last winter, when conversing on this subject, as you then informed me, that, if I conceived myself possessed of any legal rights, I might go on and execute the contract myself, or through another, without any prejudice to those legal rights. Was I to receive any pecuniary benefit from the execution of the contract, I would not ask any such reservation; but that being conferred on another, for whose acts I am still to remain responsible, and to whose pecuniary resources I am a stranger, it will readily occur, that I do not wish to place myself, (unless compelled to do it) in a worse situation than I am at present. It was to avoid this dilemma, I have tried every means to procure the transfer from the executors: which, having failed, I am left to make such an arrangement with the Department of War, as will prevent the ruinous consequences of a forfeiture of the contract. The reservation I would propose, is merely "that the application on the part of the securities for an extension of the contract, is not to be considered as prejudicing any rights they may have at the time of application."

I am only waiting for Mr. Ingham to forward me the instrument of assignment from the securities to Mr. Coryell, to complete any part of the arrangement that depends on them.

I have the honor to be,

Your obedient servant,

R. TILLOTSON.

Hon. JOHN C. CALHOUN,
Secretary of War.

Copy of a note addressed to the Secretary of War, 21st July, 1821.

WASHINGTON, July 21, 1821.

SIR: As the period has expired within which the contract for the construction of the works at Mobile Point was to have been executed, and as it is important that an extension of time should be given by the War Department for its execution, it is both the wish of Mr. Gouverneur and myself, that such extension should be given, and that the contract be transferred to Lewis J. Coryell, who is an applicant for the same, reserving to ourselves whatever legal rights we may now possess.

With great respect, yours, &c.

R. TILLOTSON.

Hon. JOHN C. CALHOUN,
Secretary of War.

NEW YORK, *December 31, 1821.*

SIR: I have this day transmitted to Mr. Ingham all the papers necessary on my part to complete his arrangement for the transfer of the contract at Mobile. A temporary absence from town has delayed the drafting of these papers longer than I expected.

With great respect, I remain,

Your obedient servant,

R. TILLOTSON.

Maj. Gen. A. MACOMB.

DEPARTMENT OF WAR,

6th April, 1822.

GENTLEMEN: Mr. Coryell has declined to engage in the Mobile Point contract, as you will perceive by his letter to me on the subject, a copy of which is herewith enclosed.

It is to be regretted, as his ability, and competency of his sureties, could not be doubted.

The indulgence you were to have received under the arrangement contemplated to have been made with him, will still be extended to you under any other arrangement of the same nature. But you will perceive the necessity of its being done promptly, as so much time has already been lost.

The appropriation will shortly be made, and unless the arrangement can be made within a reasonable time, the Department will be under the necessity of declaring the contract to be forfeited.

Believing that you would be desirous of making an arrangement for executing the contract, and thereby preventing the forfeiture, the papers which were forwarded to you to effect the arrangement with Mr. Coryell have been carefully examined, and such alterations made in them as to make them correspond with the views of the Department.

The packet marked A contains the papers prepared in conformity with the views of the Department, which may aid you in effecting an arrangement. The other papers are returned. It is desirable to hear from you without delay.

I have the honor to be, &c.

J. C. CALHOUN.

MESSRS. ROBERT TILLOTSON,
and N. GOUVERNEUR, *New York.*

WASHINGTON, *12th August, 1824.*

I request to be informed if a case of the United States vs.* Tillotson and Gouverneur, which was instituted in the District of New

*No such case has been brought up to the Supreme Court.

York, and decided there in favor of the defendants, has been brought up to the Supreme Court.

GILBERT C. RUSSELL.

Clerk of the Supreme Court.

TREASURY DEPARTMENT,

Fifth Auditor's Office, June 9, 1824.

SIR: Agreeably to the request contained in your letter of yesterday's date, I now enclose a copy of the agreed case of the United States vs. R. Tillotson and N. Gouverneur. The judgment upon the trial having been rendered against the United States, as I have been *verbally informed by our Counsel, Mr. Ogden, in the Circuit Court, the case has been carried to the Supreme Court, by writ of error, where it is now pending.

I have the honor to be, respectfully, sir, your obedient servant,

S. PLEASANTON,

Agent of the Treasury.

Gen. A. MACOMB.

*District Court of the United States of America, }
for the Southern District of New York. }*

The United States of America,

vs.

ROBT. TILLOTSON AND N. GOUVERNEUR, } CASE.
Survivors of Saml. Hawkins, deceased. }

This is an action of debt on a bond bearing date the second day of November, 1819, executed by Samuel Hawkins, since deceased, and the defendants as his sureties, delivered at Washington, in the month of November, 1819. The cause was tried at the term of this Court, 1823, and a verdict found for the plaintiffs, and the damages assessed at subject to the opinion of the Court, on the following case, which either party may turn into a bill of exceptions, or special verdict, and subject also to be reduced, as the Court may direct, in case the judgment should be in favor of the plaintiffs. The declaration sets out the bond and condition, and then assigns breaches, which either party may refer to on the argument. The bond was produced and proved, and read in evidence, a copy whereof is as follows, viz:

[Here follows bond and condition.]

*The Counsel has said, both verbally and in writing, that the Tapia contract released T. & G. from all liability.

The contract referred to in the condition of said bond, bearing date on the 13th day of May, 1818, between General Swift, then Chief Engineer of the United States, and the said Benjamin W. Hopkins, since deceased, was also produced, proved, and read in evidence, on the part of the plaintiffs, a copy whereof is as follows, viz:

[Here follows the contract.]

It was then proved that the said Benjamin W. Hopkins had, in his life-time, begun to construct, under the superintendence and direction of an Engineer, as provided for by the said contract, a fort on Mobile Point, at the place for that purpose designated, according to the said contract, and had received from the plaintiffs, through their agents, at different times, the sum of ninety thousand nine hundred and seven dollars and twenty-nine cents, as charged in the transcript hereinafter referred to, and had performed the work for which he is credited in the said transcript, the sum of five thousand nine hundred and two dollars and three cents, but that he died, on or about the 9th of August, 1819, without having completed the said fort, or having done any work thereon, other than that for which he is credited as aforesaid.

It was further proved that the abovenamed Samuel Hawkins, after the death of the said Benjamin W. Hopkins, became, and was the lawful assignee of the aforesaid contract between the Chief Engineer and Benjamin W. Hopkins; and that, after the time of the delivery of the foregoing bond, and always afterwards, he was admitted and acknowledged by the plaintiffs, or those acting, and authorised to act, in their behalf, as the lawful assignee or substitute of the said Benjamin W. Hopkins, in relation to the said contract, and the performance thereof on his part.

It was also further proved, that the said Samuel Hawkins, after the assignment to him of the aforesaid contract, entered upon the performance and execution thereof, under the like superintendence and direction, as aforesaid, and that he received from the plaintiffs, through their agents, at different times, the several sums of money charged to him, in the transcripts hereinafter mentioned, as appears by the receipts of the said Hawkins, now in the Treasury Department at Washington, exemplifications of which (marked A.) may be referred to as a part of this case, and that he died on or about the month of March, 1821, without having completed the fort, in the said contract referred to, and before the time therein stipulated for its completion, having performed no work, nor done any thing in regard to the erection of the said fort, other than he is credited for in the said transcripts, and that the money advanced to Benjamin W. Hopkins and Samuel Hawkins, respectively, has not been farther or otherwise accounted for, than in the said transcripts is mentioned. Two transcripts of accounts from the Treasury Department, being those already referred to, relating to the foregoing contract, assigned to the said Samuel Hawkins, which were duly certified according to law, were

then produced and read in evidence, copies of which are as follows, viz:

[Here follows the transcripts.]

The times at which, and the circumstances under which, the advances charged in the said transcripts were made, appeared by certain documents on file in the office of the Treasury Department, copies whereof is duly certified by Peter Hagner, Third Auditor of that Department, were produced, and read in evidence, copies whereof (marked A) are annexed and referred to as part of this case.

It also appeared in evidence, that after the execution of the bond above mentioned and set out, and whilst the said Samuel Hawkins was proceeding in the execution of the contract assigned to him as aforesaid, to wit: on or about the seventh day of June, one thousand eight hundred and twenty, Colonel James Gadsden, then acting as the agent for fortifications at Mobile Point, and thereto duly authorized by the War Department, did enter into a certain agreement or contract with the said Samuel Hawkins, touching the foregoing contract with the said Benjamin W. Hopkins, and the erection of the fort therein provided for, which agreement or contract was produced, proved, and read in evidence, a copy whereof is as follows, viz.

[Here is the contract between Col. Gadsden and Col. Hawkins.]

It was then proved that the foregoing agreement or contract, was entered into and executed by the parties thereto, without the knowledge, privity, or consent of the above defendants, but that, as soon as the same had been executed, it was transmitted, in the usual course of mail, to the War Department, where it was received, and where it now is, and that, immediately thereupon, a copy thereof was enclosed in a letter from the Secretary of War, dated the —— day of ——, and directed to the defendants at New York, where they resided, which was put into the post office at Washington, by which they were requested to declare their assent or dissent to the said agreement or contract, stating that the former would induce its ratification, the latter its rejection. It was further proved, that no answer to the said letter was ever received at the War Department from the defendants, but there was no proof that they had ever received the letter. That in consequence of receiving no answer to the said letter, written to the defendants as aforesaid, the agreement or contract last mentioned and set out, was not ratified by the Secretary of War, nor ever acted upon, except so far as it may appear to have been ratified and acted upon by the transcripts which are annexed to this case, marked A.

It was further proved that Benjamin W. Hopkins, in his life time, did make a claim to a considerable amount, on the Government for damages by way of compensation for expenses and loss of time, alleged to have been produced by the failure of an Engineer to attend and point out the site for the fortification at Mobile Point, at the time stipulated in the contract for the commencement thereof.

States, passed a law on the third day of March, one thousand eight hundred and twenty-one, entitled "An act for making appropriations for the Military Service of the United States for the year one thousand eight hundred and twenty-one," by which there was appropriated for fortifications, two hundred and two thousand dollars, in addition to an unexpended balance of one hundred thousand dollars, to be applied to certain fortifications, in the proportions therein designated, among which was mentioned "Mobile Point," thirty thousand dollars, as will more fully appear on reference to the said act of Congress; and further, that the estimate by the Engineer Department of the United States, of the actual cost to complete the said fortification at Mobile Point, was six hundred and ninety thousand dollars, as will more fully appear on reference to paper marked C. hereto annexed. It was further proved that no moneys, to a greater amount than the said thirty thousand dollars, could have been paid by the said War Department under the aforesaid appropriation towards the completion of the said fortification, had the same been demanded by the said Samuel Hawkins or his representatives.

A correspondence between the representatives of Samuel Hawkins and the War Department, in relation to the contract aforesaid, and the performance thereof, was also produced and proved, and read in evidence, copies of which being considered as a part of this case, are as follows, viz.

[Here follows the correspondence.]

A verdict was then taken for the plaintiffs, and the damages assessed as already stated.

STATE OF ALABAMA, }
County of Baldwin. } ss.

By this public instrument, be it known to all to whom the same doth or may concern, That I, William Coolidge, a Public Notary in and for the said county of Baldwin, duly commissioned and qualified, and dwelling in the town of Blakeley, do hereby certify, that the following copy of articles of an agreement between the late Samuel Hawkins, deceased, and Joseph G. Swift and Robert Tillotson, and marked and numbered from one to four pages, is a true copy from my record, of the original instrument, as delivered to me for record, by J. Wingate Wing, Esq. administrator of and upon the estate of Samuel Hawkins, deceased.

In testimony whereof, at my office in Blakeley, aforesaid, I, the said Notary, have subscribed these presents, and I have hereunto affixed my seal of office, the seventh day of March, in the year of our Lord one thousand eight hundred and twenty-two, and of American Independence the 46th year.

WM. COOLIDGE, Notary Public.

This article of agreement, made this ninth day of November, in the year one thousand eight hundred and nineteen, between Samuel Hawkins, of the city of New York, Esquire, of the one part, and Joseph G. Swift and Robert Tillotson, of the same city, Esquires, of the other part, witnesseth,

That, whereas the said Samuel Hawkins did heretofore purchase a certain contract, made by the late B. W. Hopkins, to and with the Government of the United States, for the construction of a Fort at Mobile Point, in the state of Alabama, and whereas it became necessary for the said Samuel Hawkins to furnish to the United States good and sufficient security, for the due and effectual performances of the said contract, in order to enable him to avail himself of all the benefits, privileges, and advantages, which have arisen and which may hereafter arise under and in virtue of the said contract; and whereas the above named Joseph G. Swift and Robert Tillotson did undertake and engage, to and with the said Samuel Hawkins, to give such security to the said United States, and in fulfilment whereof, they, the said Joseph G. Swift and Robert Tillotson, did furnish a certain bond, dated the second day of November, one thousand eight hundred and nineteen, and executed by the said Samuel Hawkins and Robert Tillotson, and by Nicholas Gouverneur, as by reference to the same on file, in the War Department of the United States will more fully appear.

Now, therefore, in consideration of the execution and delivery of the said bond, the said Samuel Hawkins doth, for himself, his executors, administrators, and assigns, promise, covenant, and agree to and with the said Joseph G. Swift and Robert Tillotson, their executors and administrators, that they, the said Joseph G. Swift and Robert Tillotson, shall be, and hereby are declared to be equally entitled to one half of all the profits, emoluments, and advantages, together with one half of all and singular the immunities, rights, estates, both real, personal, and mixed, which have accrued and may hereafter accrue to the said Samuel Hawkins, by virtue of the said assignment and transfer of of the aforementioned contract and estate, which belonged to the said Benjamin W. Hopkins in his life time.

And the said Samuel Hawkins doth hereby further covenant with the said Joseph G. Swift and Robert Tillotson, their executors, administrators, and assigns, that he will make and keep, or cause to be made and kept, a full and true account of all charges, expenses, and receipts, together with an account of all work and materials which shall be passed to the credit of the said Samuel Hawkins, and will remit an aggregate statement once in every month, to the said Joseph G. Swift and Robert Tillotson, during the progress of the work under consideration.

And the said Samuel Hawkins further covenants with the said Joseph G. Swift, and Robert Tillotson, their executors, administrators, and assigns, that, whenever upon the rendering of such monthly statement, it shall appear that the United States are indebted to the said Samuel Hawkins, under the said contract, he the said Samuel Haw-

kins, shall and will, at the request of the said Joseph G. Swift and Robert Tillotson, or either of them, remit to such Bank in the city of New York, as they or either of them shall indicate for that purpose, to be placed to their credit respectively, the amount of such money as they shall be severally entitled to under this agreement, for their proportion of such debt: and also, that, on fulfilment of the said contract, and the completion of the Fort thereby agreed to be built, he, the said Samuel Hawkins, shall forthwith adjust, arrange, and liquidate, all accounts, debts, demands, charges, and expenses, in any wise appertaining to the business under present consideration; and may, if deemed necessary, by and with the consent of the said Joseph G. Swift and Robert Tillotson, proceed to sell, to the best advantage, all the property and estate, both real, personal, and mixed, which may be transferred by Roswell Hopkins, the father of the said Benjamin W. Hopkins, or otherwise acquired, and which may remain undisposed of at the completion of the said Fort. The one equal half of the proceeds whereof, together with the equal one half of any balance that may then be due from the said United States, under the said contract, he, the said Samuel Hawkins, shall remit as aforesaid, for the benefit and on account of the said Joseph G. Swift, and Robert Tillotson, their executors, administrators, and assigns, respectively, and in proportion aforesaid; which obligation to remit, shall be a sufficient order and authority to the accounting officer of the United States, to pay over to the said Joseph G. Swift and Robert Tillotson, their executors, administrators, and assigns, the proportion of the balances due, to which they are severally entitled, after the completion of the said contract.

And it is hereby further and mutually agreed, by and between the parties aforesaid, that the said Samuel Hawkins shall be allowed and authorized to deduct from the nett proceeds or profits, that may arise from and under the aforesaid contract, his reasonable expenses when employed in the execution and fulfilment of the said contract, or in travelling to and from the said Fort, on business of and concerning the aforesaid contract, until the same shall be fulfilled, agreeable to its stipulations and terms.

And the said Joseph G. Swift, and Robert Tillotson, for themselves, their executors, and administrators, do hereby covenant and agree to and with the said Samuel Hawkins, his executors, administrators, and assigns, that, in the event of the decease of the said Samuel Hawkins, they, the said Joseph G. Swift, and Robert Tillotson, or one of them, or some other person by them duly authorized for that purpose, shall take the place of the said Samuel Hawkins, in executing the aforesaid contract, and shall settle and close the business of this concern with the government, and receive all balances that may be due from the said Government to the said Samuel Hawkins, at the time of his decease, in as full and ample a manner, as he the said Samuel Hawkins could do in his lifetime; and who shall allow to the representatives of the said Samuel Hawkins, one equal half of all emoluments that accrued prior to his death, and one fourth

part of such profits as shall or may arise after the death of the said Samuel Hawkins, under the said contract.

In witness whereof, the parties to these presents, have interchangeably set their hands and seals, the day and year first above written.

SAMUEL HAWKINS, [SEAL.]
J. G. SWIFT, [SEAL.]
ROBERT TILLOTSON, [SEAL.]

Signed, sealed, and delivered in the presence of

Received the above and foregoing instrument for record, this 28th day of February, A. D. 1822. And recorded by me, in Book A. pages 49, 50, 51, 52, 53 and 54.

WILLIAM COOLIDGE, *Notary Public.*

POUGHKEEPSIE, December 12, 1821.

SIR: I wrote you the latter part of October last, in answer to your letter received before that time, and requested some further information as to what was necessary to be done, if any thing could be done, to carry the agreement, made by Mr. Hawkins and Col. Russell, into effect. In the letter, since writing to you, and some time in November, I received a letter from Col. Russell, dated in October, in which he stated that if the Executive should take the contract from him, there would be nothing due from him to the estate of my late husband; but if he should go on and finish it, there would be a large sum due. I have been endeavoring, for some time, by means of my friends here, to ascertain the real state of the business, and to know whether the contract with Government would be carried into effect by Col. Russell, or any other person, in such manner that, in my helpless situation, I might receive some benefit from it. After receiving your letter, enclosing the agreement between Mr. Hawkins and Col. Russell, I had no idea of the contract being disposed of in any other way, 'till I was requested by Mr. Tillotson to release all my interest in it with Government, so that it might be transferred to a man by the name of Coryell; and in which it appeared, that a man by the name of Ingham was to be some way interested. It was stated, that such a release was necessary, for the purpose of having new bonds given, that the sureties of Col. Hawkins might be discharged. But, after having received from you a copy of the agreement between Mr. Hawkins and Col. Russell, by which it appeared that there was a prospect of realizing something from the transfer of the contract, I declined giving up any release, and was the more determined to take that course, from the circumstance that Mr. Tillotson and General Swift had entered into an agreement with Mr. Hawkins, that, in case of his death, they would carry the contract into effect, and allow to his family a certain portion of the profits; and by which agree-

It was admitted that Congress, without the assent or approbation of the defendants, otherwise than their being citizens of the United States it appears that they were to receive a considerable part of the profits of the original contract, if carried into effect by him. Of this arrangement between him and them I was wholly ignorant, until I received the abovementioned letter from Col. Russell, enclosing the last article of the contract between them. I presume you have seen the original, as it appears to have been among Mr. Hawkins's papers, and which, Col. Russell says, are now in his possession. After Col. Russell's letter was received, enclosing a part of the abovementioned contract, my friends, upon inquiry of some people from Mobile, or near there, found a gentleman in New York, by the name of Giles Griswold, who stated that he had been at Mobile, and was well acquainted with you and Col. Russell, and that he had contemplated uniting with him in building the fort, &c. and had been at Washington respecting it, and that he was willing to take the contract still upon the same terms that Col. Russell had agreed with Mr. Hawkins, and to allow to his representatives the same that Col. Russell was to allow him: And, I understood, that he was so far connected with Col. Russell, that, if he took the contract with Government in his own name, it would or might be executed substantially in the same manner, and for the same purposes, as was contemplated, when Mr. Hawkins made the agreement with Col. Russell. In the mean time, Mr. Tillotson suggested that there would be no probability that the Government would permit Col. Russell or Mr. Griswold to have any thing to do with the contract, but that the Secretary of War had already so far consented to have the contract taken by Mr. Coryell, that no other person would be permitted to take it; and still wanted me to give a release, that the contract might be passed over into Mr. Coryell's hands, and that he, Mr. Tillotson, might be released from his responsibility. But I have made no such release, and have no idea of doing it, unless I should see the subject in a light different from what it now appears. Under these circumstances, my brother Philo Ruggles, of Poughkeepsie, who has helped me in this concern, addressed a letter to the Secretary of War, to learn the real state of the business, and also the state of the contract, as to debt and credit with the Government, and to know whether Mr. Griswold, or any other person, who could give sufficient security, could be permitted to take the contract, and finish the work. He received the Secretary's answer on the 7th instant, in which he mentions several communications between him and the sureties of Mr. Hawkins, relative to having Mr. Coryell take upon himself the performance of the contract, and give new securities; but that it became necessary to have a different course pursued, in consequence of not obtaining a release from the legal representatives of Mr. Hawkins, and that it was too late to enter into any new arrangement in the business, and that Mr. Griswold would not be permitted to have any direction in the contract. And it is believed, from what the Secretary has written, that Mr. Coryell is to perform the contract, though he has not

said so in terms. But, however this may be, I presume my rights and interest, if possible, are to be put wholly out of view; and I have too much reason to fear, that the business will be transacted in such a manner, as to extinguish the gleam of hope which I was led to indulge, when I first received your letter containing the copy of the contract between Col. Russell and Mr. Hawkins, and was informed of Col. Russell's willingness to carry it into effect: And while I feel borne down with affliction, and perceive my hopes of obtaining a support for myself and family continually diminishing, and suffer all that alarm for their future destiny, which their orphan state so naturally inspires, I cannot sufficiently express the gratitude I feel to you, and to Col. Russell, on being assured that the few articles of property which have come to your hands, or will be put in your power, and which belonged to my beloved husband, will be returned to me. The watch, breast-pin and gun, with few other articles, though of small value to a stranger, will be inestimable to me. Permit me, therefore, to express an earnest wish, that they may be forwarded on as soon as can be done, with propriety and safety. I do not know with what facility you can send them to Washington; but if they could be sent there without difficulty, they might be directed to Charles H. Ruggles, Esq. now a member of Congress from Ulster county, in this state, who spent his early part of life in my family, and who was always a favorite of Mr. Hawkins, and would do any thing in his power to promote my interest or happiness. And if you or Col. Russell have any communications to make to Washington, in relation to the Mobile business, or any other in which he could aid you, I feel a certainty that he would do it to the utmost of his power. My brother made him acquainted with all the transactions within his knowledge, previous to his going to the City of Washington. I have written a few lines to Col. Russell, and have referred him to you, as to the particulars above stated, and will thank you to communicate with him upon the subject. I hope to hear from you and him soon, and that I shall be informed what has taken place relative to the business generally; and I very much want to have the original contract, between Mr. Hawkins, Gen. Swift, and Mr. Tillotson, sent to me. Perhaps it may never be of any use, though future events may render it useful; but it is, I think, pretty certain, that it cannot be of any use to any body, but me; and, as far as can be done, with propriety, I should be glad to have all Mr. Hawkins's papers sent to me. Shall be glad to learn that this reaches you.

Respectfully,

HANNAH HAWKINS.

Mr. WINGATE WING.