THIRTIETH CONGRESS—FIRST SESSION.

Ex. Doc. No. 12.

HOUSE OF REPRESENTATIVES.

MATTHEWS, WOOD, AND HALL.

LETTER

FROM

THE SOLICITOR OF THE TREASURY,

TRANSMITTING

The testimony with his opinion in the case of Matthews, Wood, and Hall.

DECEMBER 28, 1847.

Read, and referred to the Committee on Claims.

OFFICE OF THE SOLICITOR OF THE TREASURY,
May 31, 1847.

SIR: By virtue of a resolution of the House of Representatives, passed on the 20th of January, 1846, referring the claim of Mathews, Wood, and Hall, to this office, with instructions to the solicitor thereof to take "testimony in New York, in behalf of the United States, and also of the petitioners, as to the truth of the various facts alleged, and that he report the testimony with his opinion thereon," &c., I have now the honor to report:

That under the authority aforesaid, I duly constituted Theodore B. Myers, Esq., of the city of New York, a commissioner to take testimony of the witnesses, and, (as the numerous and pressing engagements of Mr. Butler, the U. S. Attorney, did not admit of his attending to the business,) I appointed F. F. Marbury, Esq., as the special counsel of the United States, to attend before the commissioner, cross-examine the witnesses, &c., and the documents herewith submitted, present the correspondence of the office in relation thereto, the testimony taken under the commissioner, together with

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the several papers transmitted to this office, under and accompanying the resolution of the House, above referred to. The papers transmitted from this office, are:—

No. 1. Copy of a letter from this office to the United States attorney, dated February 6th, 1846.
No. 2. Reply of United States attorney thereto, dated February 16, 1846.
No. 3. Copy of a letter from this office to the United States attorney, dated February 26, 1846.
No. 4. Reply of the United States attorney, dated March 5th, 1846.
No. 5. Copy of a letter from this office to F. F. Marbury, Esq., dated February 26, 1846.
No. 6. Reply of Mr. Marbury, dated April 25th, 1846.
No. 7. Letter from Mr. Marbury to this office, enclosing his account of fees, &c., dated April 27, 1846.
No. 8. Letter from P. Bailey Myers, Esq., commissioner, enclosing his return to commission, with his account of fees, &c.
No. 9. The depositions taken by commissioner Myers.

The matters at issue in this case, have arisen under a contract entered into between the claimants and the United States on the 29th of July, 1834, whereby the former bound themselves, among other things, to provide and deliver all the cut marble needed for the basement story of the custom-house in the city of New York, at the site thereof; the one half by the 10th of December next thereafter, and the other half by the 15th of June, 1835, the whole to be "cut to patterns or moulds to be furnished them," by the superintendent of the latter, &c. These are are all the terms of the contract necessary to be stated, because they cover all the issues which have been made, either in the memorials of the claimants to Congress, or in the several reports of the Committee of Claims of the House of Representatives thereon; and the proofs now taken have reference and apply to them and to them only, and hence, too, the only questions to be disposed of are: Whether these terms have been fulfilled or broken by both or either of the parties, and if broken by either, whether any damages resulted therefrom.

The proofs now taken, plainly establish that both parties were in default, though only one of them seems to have been injured materially from the breaches committed.

The claimants, for instance, far from delivering one-half of the marble by the 10th of December, 1834, and the other half by the 15th of June, 1835, had delivered little more than one-half by the latter period, and, judging from the payments which were made to the claimants, the delivery was not completed until the about the first week of May, 1836, but it does not appear that the delay was ever complained of in behalf of the United States, or that any injury to them resulted therefrom, of which any estimate can be made. The only delay imputed to the claimants in the proofs, seems to have been but of little consequence. George Cook, the foreman of tne mason's work, says, (deposition, p. 7,) "the marble was delivered, with the exception of one or two blocks, as fast as we could

use it;" and again, (p. 14,) "the work was not retarded by claimants, except on one or two occasions, and then only for a day or two." These delays ,too, seem to have been set off and more than compensated by the delays which the claimants were subjected to on the part of the United States. The contract required the claimants to commence tbe delivery of the marble, "on or before the 15th of September, 1834," and yet Mr. Cook says, (p. 7,) "he thinks they were not ready to receive the marble earlier than the forepart of November," 1834, and thus the claimants appear to have been delayed eight or nine weeks, and that too in the working season of the year, for the proofs establish that it is "dangerous and disadvantageous to quarry marble after a severe frost," and that, as well from the cold as from the state of the roads, little of consequence could be done under such a contract during the months of December, January, February, March, and part of April, and the work was in the main suspended during that time. Then again, the claimants appear to have been greatly retarded, at subsequent periods, by the failure of the government agents to have the marble worked into the building as fast as it was delivered, and the want of space at the custom house, to receive a large quantity at a time, and the contract (as we have seen) required of the claimants that "the marble shall be delivered *at the site of the said building*" and no where else. The proofs are full and conclusive on these points.

Deposition, pp. 8, 9 and 10, Mr. Cook says, "The streets (about the custom-house) are quite narrow and great thoroughfares; the United States had no other place for the reception of the marble; we were sometimes very much put to it to know what to do with the materials when we got them; the streets were wholly occupied or blocked up with marble, so that we did not know where to lay the stone at the time that the water table blocks were coming. When the water table was being delivered, it could not be worked into the building as fast as it was delivered. There were about 8 or 10 of the large blocks, weighing from 20 to 30 tons each, deposited on Whitehall dock, about a quarter of a mile from the custom-house, and the delivery of these were suspended, in the fall of 1835, for about two months, under instructions of Mr. Frazer the superintendent of the United States.

Deposition, p. 21 and 22, John Frazer, (superintendent.) We were always in difficulty about room, the streets were so narrow, Pine and Nassau streets in particular. In the fall of 1835, and the next spring, we had considerable marble on Whitehall dock, for which we had not room at the building; we were obliged to tell them to stop delivering when they crowded it on.

Deposition, p. 34, George Darrah, (teamster,) says: There were orders given to me to tell Messrs. Matthews, Wood and Hall, not to send the marble in faster than they sent directions what kind of stone to send in, for that they could not receive them. These orders were given to me most generally by Mr. Cook.

From the foregoing and other testimony, I infer that the delays attributable to the claimants, in the delivery of the marble under the contract were excusable, from the counter delays (of 8 or 9

weeks) to which they were subjected, in commencing the delivery in the fall of 1834; that up to the resignation of Thomson, the superintendent, (about the first of May, 1835,) the marble was delivered about as fast as it could be worked into the building; that after the recommencement of the work in the fall of 1835, the delivery was more rapid than comported with the convenience of the United States, they having no place for its deposite, and it coming in faster than it could be worked into the building; and hence, I conclude that no damage or injury has resulted to the United States therefrom, for which they could justly claim to be recompensed, by deducting same from the amount of damages which may have accrued to the claimants for other breaches of the contract, should they be entitled to any; and, indeed, so far from any such claim being put forth by the United States commissioners, the proofs make known, that one of them, (Mr. Walter Bowne,) deposed, that the claimants performed their contract to the perfect satisfaction of the commissioners. [See deposition, pp. 40–1.] All the damage sustained by the breaches of the contract now referred to, seem to have pertained to the claimants exclusively; but, as they have not addressed their proofs to the *quantum* thereof, so that any estimates of value can be made, and indeed appear to have confined their claim for damages to a different and specific breach of the contract, (hereinafter referred to,) I am bound to consider them as waiving and renouncing all claim to damage for any other.

The breach of the contract just referred to, relates to that part thereof wherein the claimants were bound to furnish their marble, "cut to patterns or moulds, *to be furnished to them by the superintendent free of expense*," &c., and they of course could furnish no other; and it is plain, and the only sound and legal interpretation of this part of the contract, that if they were bound to work by such "patterns or moulds," the United States were equally bound to furnish and keep them provided with such "patterns or moulds" to work by. Now the complainants allege, that for a period of near four months, in the best working season of 1835, they were not provided by the United States with any "patterns or moulds" to work by, and in consequence thereof, that their work was almost entirely suspended during that time, and prevented them from completing their contract before the winter set in, whereby they were subjected to a vast additional expense, in the wages of the workmen and in furnishing provender for their horses and oxen at high and advancing rates and prices through the winter of 1835–6, and that it was *necessary* to the prompt and faithful performance of their contract, that they should keep their workmen together until the whole work was done. I think they have proven all these allegations clearly and fully through the testimony now taken. That testimony establishes that Thomson, the superintendent, resigned his situation in the last week of May, 1835, and took away with him all the "patterns and moulds" and left the claimants without any; that Mr. Frazer, (Thompson's successor,) was not appointed until the 25th of July, 1835, and Frazer himself deposes, that he was unable and did not furnish the claimants with patterns, &c., until eight or ten

weeks thereafter, bringing the time fully up to the last week of September, and making the entire suspension of the work, therefore, reach to fully four months, or one hundred and twenty days of the working season. The evidence in relation to the almost entire suspension of the work during that period, the necessity of keeping their principal workmen and teams through the winter, the unusually high rates of wages and prices of provender, during the winter and spring of 1835–6, is hardly less satisfactory than that already referred to in relation to the period of the suspension of the work, of which I need say no more. But in my view of the case, it is quite important to ascertain and determine, whether the claimants might have completed their contract before the winter of 1835 set in, had no delays intervened in the summer and fall of 1835, in furnishing them with patterns, &c., to work by, and in receiving the marble as fast as it was ready for delivery. I deem the proofs plenary and conclusive upon this point, and will here make some reference thereto.

Depositions, page 21.—John Frazer, (superintendent) says: He thinks the claimants could have completed the delivery of the marble in the fall of 1835, or nearly so, because they lost some three or four of the best working months in the year. I think they would have had no occasion to keep their teams through the winter.

Depositions, page 42.—Walter Bowne, (U. S. Commissioner) says: This delay, in regard to the working plans and patterns, occasioned great disadvantage and loss to the claimants. My impression is, that, not being able to receive the marble for want of the working plans, occasioned them the expense of keeping their cattle over the winter.

Depositions, page 30.—Hiram A. Norris, (U. S. Assistant Architect) says: He had read the depositions of Mr. Cook and Frazer, and that they correspond essentially with his own impressions and recollections.

Depositions, page 35.—George Darrah, (teamster): Believes if there had been no delay during the summer of 1835, and the work had gone on as usual, and there had been no orders to keep back stone, the marble could have been delivered before the winter of 1835–6.

These opinions of the witnesses are more than confirmed; they are fully demonstrated by the facts which have been proven. The last payment to the claimants, of any considerable amount, makes it manifest—upon the terms of the contract—that the delivery of the marble was completed, at least, as early as the first week in May, 1836, though there had been less than one *working* month—say from the 15th of April—since the winter of 1835–6 had set in; and of course, at that time, there was less than a month's work to be done. Yet, the testimony heretofore cited and adverted to, satisfactorily proves, that some four months were lost in waiting for patterns, &c., to work by, and some two months more after they were furnished, and after the work was recommenced in the fall of 1835, from the inability of the United States superintendent, Mr. Frazer, to have the marble put into the building as fast as it was

delivered, or was offered and ready for delivery, had the United States furnished the claimants with room for its deposite "at the site" of the new custom house.

I take it, therefore, as proven fully, that the claimants could have completed their contract by the 1st of December, 1835, had they not been retarded by the failure of the United States to provide them patterns to work by for so long a time, and, when they were furnished, in not working the marble into the building as fast as the same was ready for delivery, or providing them space for its deposite; and hence I conclude that the claimants have a perfect legal right to such an amount of damages as is proven to have resulted from the delay.

It only remains to ascertain how these damages are to be computed, and what they amount to. If the suspension of the work in the summer and fall of 1835 had been total, and the work could have been carried on as well during the winter and early spring as in the summer and fall, and if the wages of labor and the prices of provender had remained stationary all the time, then I should say that the measure of damages would have been the amount of the wages of the workmen, and the amount of the outlays for provender during the period of suspension. But this is not the case, and hence I think that a simpler and fairer mode of estimating the damages would be to take it as proven that, but for the breaches of the contract on the part of the United States, the work would have been completed by the 1st of December, 1835, and hence that the expenses of keeping their workmen and teams from that time to the completion of the contract, (about the first of May, 1836, being a period of five months,) is the true measure of the actual damages incurred from expenditure and outlays, though not for the consequential injury in being prevented from entering upon the performance of other contracts, resulting from the loss of time, &c.

Without elaborating this report by going into all the details, the proofs establish that during the months of December, 1835, January, February, March, and April, 1836, the claimants had in their employ three foremen, two blacksmiths, two strikers, one wheelwright, thirteen teamsters, fifteen quarry men and drillers, and for the month of April about ten common laborers, and that their average wages respectively during that period were about as follows: A foreman, $3 per day; a blacksmith, at least, $2; a striker, $1; a wheelwright, $2; a teamster, $1 50; a quarry man and driller, $1 25; and a common laborer, $1.

That, during the same period, the claimants had in keeping about 40 oxen and 18 horses; that the average price of hay at that time was, at least, $1 25 per cwt.; meal, 75 cents per bushel; and oats, 70 cents per bushel; and that an ox would eat 30 lbs. of hay and 1 bushel of meal per day, and a horse 20 lbs. of hay and 3 pecks of oats.

Such being the average rates of wages, prices of food for the teams, and quantities of grain and provender needed for each per day, gives the following results as the *quantum* of expenses esti-

mated to have been incurred by the claimants, during the 5 months referred to :

3 foremen, at $3 each per day, $9 ; at 30 days, $2 70 ; five months	$1,350 00
2 blacksmiths, at $2 each per day, $4 ; at 30 days, $120; five months	600 00
2 strikers, at $1 each per day, $2 ; at 30 days, $60 ; five months	300 00
1 wheelwright, at $2 per day, $2 ; at 30 days, $60 ; five months	300 00
15 quarry men and drillers, at $1 25 each per day, $18 75 ; at 30 days, $562 50 ; five months	2,812 50
13 teamsters, at $1 50 each per day, $19 50 ; at 30 days, $585 ; five months	2,925 00
10 common laborers, at $1 each per day, $10 ; at 30 days, as it is not to be doubted that they might be discharged in winter and proceed in spring	300 00
Whole amount of wages for workmen, &c., for five months	8,587 50
40 oxen, 30 lbs. of hay each, 1,200 lbs. per day, at $1 25 per cwt., $450 for 30 days ; five months	$2,250 00
40 oxen, 1 bushel of meal each, 1,200 bushels for 30 days, at 75 cents per bushel, $900 ; five months	4,500 00
Whole amount of cost of ox feed for 40 oxen for five months	6,750 00
18 horses, 20 lbs. of hay each per day, 360 lbs., at $1 25 per cwt., at five months	$675 50
18 horses, 3 pecks of oats per day each, 13½ bushels, at 70 cents per bushel, for 30 days, $285 50 ; five months	1,417 50
Whole amount of cost of horse feed for 18 horses for five months	2,092 50
Whole amount of cost of horse feed for 18 horses for five months	$2,092 50
Whole amount of cost of ox feed for 40 oxen for five months	6,750 00
Whole amount of wages for 45 workmen and laborers for five months	8,587 50
	17,430 00

This amount seems large, and is, indeed, more than double the amount of damage estimated by Mr. Solicitor Birchard in his report to the House of Representatives of December 7, 1840, but the

testimony before him was not the same with that before me, nor did we fix upon the same measure of damages. If I am deemed right in the principle and mode I have adopted for estimating the damages, it is sure that I am never above, but often below, the average rates and prices established by the proofs. Under them I could, in fairness, have made higher, much higher, estimates for the claimants than I have done; but I could not have gone lower, in my judgment, without a manifest and unauthorized departure from the weight of the proofs. That I could not do, either under my sense of what was just and proper or under the requisition of the House to give my *opinion* thereon.

With regard to interest, I have made no estimates, because not required to do so. That is a matter respectfully submitted to the judgment of Congress, and if allowed, for what period of time; but I have no hesitation in declaring my opinion that, if I be deemed correct in the measure and principle of compensation, interest would be justly due the claimants from the 1st of May, 1836, when the contract was completed, until paid; and my reason for thinking so is, that I regard the claim as one strictly *legal*, and have only deduced these results from the proofs, which, in my judgment, a court and jury would have come to if the like case, under like proofs, had been litigated at any judicature at common law between private individuals under a like contract, &c.

The charges of Mr. Commissioner Myers for executing the commission amounts to $104 30, as per bill annexed and filed in No. 8; and the fees, &c., charged by Mr. Marbury, for his services as special counsel of the United States in attending before the commissioner and taking the testimony, &c , amounts to $150, as per bill annexed and filed in No. 7, both of which demands seem to me both moderate and reasonable, and I respectfully recommend that a special appropriation be made for their payment, if the House also deems them reasonable, for I am not aware of any means applicable to their payment, except through such an appropriation or out of the contingent funds of the House.

I have not deemed it my province to enter into a question heretofore raised upon this claim, of a variance and repugnancy between two of the earlier memorials of the claimants to the House of Representatives, because I conceive that the testimony now taken makes it plain beyond all question that, from the very origin of those delays, for which damages are estimated in this report up to the last session of Congress, the claimants complained and protested against them, and went so far at one time as to threaten to give up the contract before it was completed, on account of the heavy losses they were subjected to, and were only turned from their purpose by such assurances as the superintendent and commissioners deemed it proper to make them that, in their opinion, Congress would relieve for any losses they might sustain, in consequence of the failure of the United States to perform their part of the contract, &c. These memorials, indeed, were drawn very inartificially, but this error seems to have been substantially corrected in all the subsequent memorials; and the very reference of

the matter to this office for a report would seem to be a waiver of an exception of this nature, and with good reason, for even under the rigors of pleading in a court of law, the party who has drafted his declaration inartificially barely risks a nonsuit, with the liberty of a revivor of action upon the real merits.

A misapprehension for a long time as to the purpose of the claimants to take additional testimony, and severe indisposition since then, has occasioned a delay in making my report, which I very much regret.

All which is respectfully submitted.

S. BARTON,
Solicitor of the Treasury.

Hon. Robert Winthrop,
Speaker of the House of Representatives.

No. 1.

Office of the Solicitor of the Treasury,
February 6, 1846.

Sir: There has been received at this office a resolution from the House of Representatives in the following words:

"*Resolved*, That the Committee of Claims be discharged from the further consideration of the claim of Matthews, Wood, and Hall, and the petition and papers of said claimants be referred to the Solicitor of the Treasury, with instructions forthwith to take sworn testimony in New York, in behalf of the United States, and also of the petitioners, as to the truth of the various facts alleged; and that he report the testimony, with his opinion thereon, at as early a day as practicable."

The petitioners are claiming remuneration for damages they allege to have sustained, in consequence of the delays to which they were subjected, in the delivery of the marble for the basement of the custom-house at New York, under their contract with the government. The damages claimed, include not only the expenses of the unemployed workmen, teams, &c., and their maintainance during the delay, but for the enhanced price for labor and provisions, which they allege to have taken a considerable rise abont that time, &c., &c.

The object of the present communication is to inquire whether you can direct me to the proofs? the names of witnesses? where to be found? to what points they can be examined? to whom to direct the commission? whether you could attend to the taking of the testimony? and in the event that you could not, who could be substituted who would give the matter his promptest and strictest attention?

Do me the favor to let me have your answer at your earliest leisure; and I shall be obliged to you for any suggestions you may

make to facilitate me in the discharge of the duty thus devolved on me.

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

S. BARTON,
Solicitor of the Treasury.

To Hon. Benj. F. Butler,
U. S. Attorney, city of New York.

No. 2.

United States Attorney's Office,
New York, February 16, 1846.

Sir: I have the honor to acknowledge the receipt of your letter of the 6th instant, in relation to the claim of Matthews, Wood and Hall, referred to you by the House of Representatives.

Pursuant to your request, I have conditionally arranged with Theodore B. Myers, esq., of this city, a commissioner of deeds, who, under our State laws, has authority to administer oaths and take affidavits to be read in our State courts, to act as commissioner in taking the testimony of such witnesses as may be produced on the part of the claimants, and also on the part of the United States, should you think proper to appoint him for this purpose. He is an attorney-at-law, and is perfectly qualified to perform with accuracy and despatch the duty in question; and he will also give to it his immediate attention. I also learn from the claimants, (one of whom has called on me in relation to the matter,) that the selection of Mr. Myers will be entirely satisfactory to them.

It will not be in my power to be present at the examination of the witnesses; but, as Mr. Myers (if employed by you) will take the testimony in the evening, it will be entirely consistent with the duties of my assistant, Mr. Marbury, to give his attention to the matter; and I know of no one to whom the interests of the United States could be more safely committed. His charge, as well as that of Mr. Myers, (should they be employed,) will, I have no doubt, be made satisfactory, as each will expect only a reasonable compensation for the time and labor devoted to the subject.

Until I shall see the claims which are set up by the petitioners, I cannot advise as to the counter-proofs, if any, to be produced on the part of the United States; but will cheerfully afford to Mr. Marbury, or whomsoever else may be selected to appear for the United States, all the information in my power on this or any other point embraced in the inquiry.

Very respectfully, yours,

B. F. BUTLER,
United States Attorney.

Seth Barton, Esq.,
Solicitor of the Treasury.

No. 3.

Office of the Solicitor of the Treasury,
February 26, 1846.

Sir: I duly received yours of the 16th instant, in reply to mine of the 6th instant, in reference to the claim of Matthews, Wood, & Hall, referred to this office by the House of Representatives with a view to taking testimony, &c. Agreeably to your recommendations, I have appointed Mr. Myers the commissioner to take testimony, and Mr. Marbury as the special counsel to attend to the business on behalf of the United States; and I herewith, and to your address, transmit to the latter the commission, with the resolution of the House appended thereto, a letter of instructions to Mr. Marbury, and a number of documents sent to this office by the House, with a list of the same.

As soon as these documents come to hand, I will thank you to hand them over to Mr. Marbury.

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

S. BARTON, *Solicitor.*

Hon. B. F. Butler,
U. S. Attorney, New York.

No. 4.

Office of the Attorney of the United States,
New York, March 5, 1846.

Sir: Your letter of the 26th instant in reference to the claim of Matthews, Wood, & Hall, with the papers accompanying, was only received the day before yesterday—it having, as appears from the post mark, by some mistake gone to Albany.

The commission and other papers have been delivered to Mr. Marbury, as requested by you.

I am, sir, very respectfully, your obedient servant,

B. F. BUTLER,
United States Attorney.

Seth Barton, Esq.,
Solicitor of the Treasury.

No. 5.

Office of the Solicitor of the Treasury,
February 26, 1846.

Sir: Upon the recommendation of Benjamin F. Butler, esq., United States attorney for the southern district of New York, and upon his assurance that you "will expect only a reasonable com-

pensation for the time and labor devoted to the subject," you are hereby appointed special counsel of the United States, to aid in procuring, and to attend to the examination of all witnesses, who may be summoned for that purpose before Theodore B. Myers, esq., (the special commissioner,) touching a claim for damages upon an alleged breach of contract, preferred by Mathews, Wood, and Hall, against the United States, and referred to this office, by the House of Representatives, for the taking of proofs, &c., &c.

The papers accompanying the resolution of the House, and herewith transmitted, (endorsed and identified according to the enclosed list,) will fully explain to you the character as well as the items of claim which have been preferred against the United States.

Among the papers now transmitted is a commission to Mr. Myers, issued from this office under the authority of the resolution of the House, appended thereto, and the latter will advise you of the duties in the premises, devolved on this office, the most important part whereof it will become your function, under this authorization, to perform.

It only remains for me to advise you, in a summary way, of the nature of those duties as they are understood at this office. You will perceive, from the papers now transmitted, that the proof, in the main, adduced by the claimants is of an *exparte* character; some of it sworn to in the form of affidavits, and some of it not sworn to, and in the form of letters, &c.; and I must presume that the House designed that the persons making the statements therein contained should be examined, and cross-examined, as witnesses upon the issues now to be proved. Having then examined these papers, together with the three reports heretofore made by the Committee of Claims of the House, and of Mr. Birchard, a former solicitor of the treasury, (all of which accompany the letter,) you will find the issues between the parties to be, in substance and brevity, these: Was there a breach of the contract? If a breach of it, which of either of the parties committed it? or was it broken by both, and in what particulars? What injuries, if any direct or consequential, resulted to either from the breach or breaches? As to the losses resulting from the imputed delays in furnishing models, patterns, &c., whether the losses were total or partial? whether the workmen and teams were wholly unemployed during the time, and a dead expense to the contractors, or were they occasionally employed, either in furtherance of the work under the contracts, or in the performance of other work? &c.

Such being the issues, your duties, under the resolution and this appointment, will be these: 1st. To ascertain and marshall the proofs before the commissioner in support of the issues made on behalf of the United States. 2d. To have summoned, on behalf of the claimants, all the witnesses they may desire to have examined, and to cross-examine them in behalf of the United States. 3d. To re-examine and cross-examine those persons whose affidavits and statements have been heretofore adduced by the claimants in their behalf. 4th. To ascertain and to adduce (if there be any) any proofs, by way of rebuttal, either to any breach or breaches of con-

tract which may be assigned, or in reduction of the damages claimed, &c., &c., &c.

You will hand the within commission to Mr. Myers, and advise him that you represent the United States, in the taking of the testimony, and expect to be duly notified of the time and places of taking the same. You will also advise the claimants of your appointment, and of your readiness to aid in bringing forward and taking the testimony of any witnesses which they may have; and also that they may have the free use of all such papers, now transmitted, as may have heretofore been adduced by them to the House of Representatives in support of their claim.

As soon as the taking of the testimony shall have been completed, (which I hope will be done at the earliest day practicable,) I shall expect a report from you upon any matters relating thereto which may be deemed material by you.

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

S. BARTON,
Solicitor of the Treasury.

F. F. MARBURY, Esq.,
Counsellor at law, city of New York.

P. S.—I will thank you to acknowledge this letter, with its enclosures, as soon as the same shall have come to hand.

No. 6.

NEW YORK, *April* 25, 1846.

SIR: Pursuant to the instructions contained in your letter of the 26th February last, I have attended, in behalf of the United States, before T. B. Myers, esq., special commissioner on the examiaation of witnesses, in relation to the claim of Mathews, Wood, and Hall, referred to your office by the House of Representatives.

The following persons have been examined, on the part of the claimants, under the commission :

1. Edward Cook, who was engaged as foreman in the construction of the custom-house, in this city, for a year, and who afterwards had charge of the whole of the masons' work until the completion of the building.
2. John Frazer, superintendent and architect, after the resignation of Mr. Thompson.
3. Hiram A. Norris, assistant architect, under Mr. Frazer.
4. George Darragh, laborer and teamster.
5. Walter Bowne, one of the commissioners for the construction of the custom-house.
6. Benjamin Florence, farmer.
7. Charles Bathgate.
8. Joseph Lyon, farmer and ex-sheriff, of Westchester county.
9. Alexander Cunningham, quarryman.
10. William Beard, contractor.

Messrs. Cook, Frazer, Norris, and Bowne, are the persons to whom, from their connexion with the work, as well as from their relations to the government during its construction, I should naturally have looked for evidence to resist an unjust or extravagant claim. These gentlemen were all called by the claimants. I have no reason to suspect the candor or fairness of their statements. The examinations were conducted under the solemnity of oaths, duly administered, in accordance with the rules of evidence, and with as much of the form and rigor of ordinary legal procedure as could be applied.

The depositions of the ten witnesses, examined on the part of the claimants, you will find annexed to the commission, as returned.

No witnesses have been called on the part of the United States, because I knew of none who could state anything material or advantageous.

I have consented that the commission, with the depositions annexed, should be returned to you, reserving to myself the right to produce witnesses, on the part of the United tates, or to re-examine those on the part of the claimants, if for any cause you should desire me to do so. I am obliged to say, that I have no expectation of being able to procure any testimony which would alter the case, as it now stands, in any of its essential features.

You will perceive, on reference to the depositions, that, while the direct examination has been confined within legal limits, I have not gone into as extended a cross-examination as you might, perhaps, have expected. On this point, I have only to say, that I went as far as I thought it either safe or discreet to venture. The witnesses were generally persons of intelligence; all of them, I believe, of good characters, with pretty decided convictions that the claim, to some extent at least, was a just and equitable one. A more minute and rigorous cross-examination would, I feel persuaded, have only served to strengthen the claimant's case, at the expense of the United States.

Without going into an analysis of the depositions, which you will, no doubt, read and consider for yourself, it appears to me that they establish the following points:

1. That there was no breach of the contract on the part of the claimants.

2. That the evidence does not show anything done, or omitted by the claimants, in relation to the subject-matter of said contract, or the performance thereof, of which the United States can justly complain.

3. That, although there may have been no technical or literal breach of the contract, on the part of the United States, inasmuch as they entered into no express covenant to keep the claimants and their associates supplied with working plans and models, nor any covenant to receive the marble as fast as the contractors could deliver it; yet the spirit of the contract, and the manifest understanding of the parties, imposed on the United States the duty of maintaining, at all times during the continuance of the work, a superintendent or architect, so that the contractors might be furnished,

from time to time, with the necessary working plans, and not suffer unnecessary or unreasonable hindrance and delay in their operations.

4. That, for a considerable period of time, between the retirement of Mr. Thompson and the preparation of new working plans by Messrs. Frazer and Norris, the operations of the claimants were, to a great extent, if not almost entirely, suspended for the want of the necessary plans and drawings.

5. That the claimants are entitled to remuneration for all such losses and damages as they were subjected to, in consequence of the omission and failure of the United States to keep up a due supply of working plans or drawings.

On all these points, I agree substantially with Mr. Birchard, former Solicitor of the Treasury.

As to the amount of damages sustained, or of the remuneration to which the claimants are entitled, there is room for a diversity of opinion. The papers returned herewith, and the depositions, will, I believe, place you in possession of all the elements necessary for you to make a computation on any principle which you may adopt. I refrain from making any such computation myself, because it must be, to a considerable extent, matter of conjecture and estimate.

A very important inquiry suggested by you, is, "whether the losses of the claimants were total or partial? &c.; whether the workmen and teams were wholly unemployed during the time, and a dead expense to the contractors, or were they occasionally employed, either in furtherance of the work under the contract, or in the performance of other work?"

On this head, I refer you to the depositions of George Darragh, Benjamin Florence, Charles Bathgate, Joseph Lyon and Alexander Cunningham.

In conclusion, I beg to call your attention to two points, noticed in Mr. Cowen's report, adverse to the present claim. The first is, that in March, 1836, the claimants placed their case on the following grounds: 1. miscalculation; 2. increase in price of labor; 3. increase in the price of food for horses and oxen; and were silent on the subject of delay in furnishing plans, &c., on which they now rest their claim. This change of ground, I confess, appeared very suspicious to me at first; the more especially as Mr. Frazer, in his letter to Mr. Cambreleng, written with the privity of the claimants, does not mention the failure to furnish plans, as a ground for relief. He may have intended to include it in "other unforeseen and vexatious contingencies;" but it seems strange that he should not have given it more prominence. I have no doubt the contract was a hard one for the claimants and their associates; and this delay, in furnishing plans, might have been considered of secondary importance in comparison with the other causes of loss and disappointment; or through some inadvertence, or want of proper advice, the claim may have been originally stated in an imperfect or erroneous manner. The claimants must explain this, if they can. I cannot bring myself to believe that there is any falsehood or fabrication in the case they now present, and yet it is difficult to understand how,

originally, they should have overlooked or forgotten the main facts on which they now rely.

The other point is this: Mr. Cowen states "that the deliveries of stone for the term in which the petitioners say they were out of work, were more than for the like period immediately preceding." How this may be, I am unable to say, as no evidence has been given on the point. The claimants may be able to furnish some explanation.

The papers, from 1 to 33, as sent to with your letter of the 26th February last, are returned herewith. May I ask you to acknowledge their receipt.

I am, sir, very respectfully, your obedient servant,

F. F. MARBURY.

S. BARTON, Esq., *Solicitor of the Treasury.*

P. S.—As I am desirous of forwarding this letter, and the accompanying papers, by the first mail, I am under the necessity of sending it off without preserving a copy. Will the solicitor cause a copy of it to be made and sent me when convenient?

For my services in this business, I think $150 a very moderate charge. There have been fourteen attendances, on as many different days, before the special commissioner. I should not think of charging a private client less for the same time and labor. I was obliged to preserve full notes of the evidence for my guidance.

F. F. MARBURY.

List of papers transmitted by S. Barton, Solicitor of the Treasury, to F. F. Marbury, counsellor-at-law, New York, in relation to the claim of Matthews, Wood, & Hall, with his letter, dated February 26, 1846.

DESCRIPTION OF PAPERS SENT.

1. Matthews, Wood, & Hall, memorial to Congress, dated March 26, 1836.
2. Same to same, December 16, 1836.
3. Same to same, February 24, 1840.
4. Same to same, June 1, 1841.
5. Same to same, December 8, 1841.
6. Same to same, January 15, 1844.
7. Matthews, Wood, & Hall, contract with commissioners for building custom-house, dated July 29, 1834.
8. Matthews, Wood, & Hall, agreement respecting dimension of marble or granite columns, &c., to be delivered.
9. Proposals for furnishing marble and granite for custom house.
10. Brief statement of claim of Matthews, Wood, & Hall, by one of the Committee on Claims.
11. Edward Cook, affidavit relative to above claim, March 1, 1844.
12. Benjamin Florence, do do March 1, 1844.
13. John Frazer, do do March 2, 1844.

14. Joseph Lyon, affidavit relative to above claim, March 5, 1844.
15. Gouverneur Morris, do do January –, 1845.
16. Theodore Crane, do do January 6, 1846.
17. Charles Bathgate, do do March 1, 1844.
18. Letters from F. A. Tallmadge to Hon. E. Whittlesey, June 16, 1838.
19. Letter from John Frazer to Hon. D. Russell, February 25, 1840.
20. do Chas. S. Matthews to Wm. Palmer, March 1, 1840.
21. do Chas. S. Matthews to Wm. Swan, clerk, &c., March 2, 1840.
22. do Wm. Palmer to Chas. S. Matthews, March 7, 1840.
23. do Chas. S. Matthews to Hon. Ogden Hoffman, March 10, 1840.
24. do Chas. B. Penrose, Solicitor of the Treasury, to Hon. B. S. Cowan, December 21, 1841.
25. do Walter Bowne to Matthews, Wood, & Hall, March 1, 1844.
26. do Wm. Swan to Chas. S. Matthews, November 27, 1845.
27. do J. O. Hasbrouck to Hon. S. Gordon, December 22, 1845.
28. do Stephen Ward to Hon. S. Gordon, January 6, 1846.
29. do Dudley Selden to Gov. Vance, January 6, 1846.
30. Report of Committee of Claims, House of Representatives, No. 117, January 17, 1837.
31 Report of Solicitor of Treasury to House of Representatives, Doc. No. 5, December 10, 1840.
32. Report of Committee of Claims, House of Representatives, No. 348, March 8, 1842.
33. Report of Committee of Claims, House of Representatives, No. 495, April 30, 1840.

No. 7.

New York, *April* 27, 1846.

Sir: The papers in relation to the claim of Matthews, Wood, and Hall, accompanied by a letter from me, were deposited in the post office, on Saturday the 25th instant, at the earliest moment I was able to get them off. I presume they have safely come to hand before this.

I enclose, as requested, my bill for services in the matter. In the hurried postcript to my letter of the 25th instant, I stated the number of attendances, on the commission, as fourteen. I think it should have been thirteen; but, for greater certainty, I beg to refer you to the commissioner's bill and report.

Annexed to the bill are certificates to its reasonableness, by the commissioner, William Bliss, esq.; the counsel for the claimants, B. F. Butler, esq., United States attorney; and John McKeon, esq., formerly representative in Congress from this city, and now district attorney of the State for the city and county of New York.

I am sir, very respectfully, your obedient servant,

F. F. MARBURY.

S. BARTON, Esq.,
Solicitor of the Treasury.

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The United States of America,

To F. F. MARBURY, *Dr.*

To services, as special counsel of the United States, in relation to the claim of Matthews, Wood, and Hall, and attending the examination of witnesses respecting the same, under a commission issued by S. Barton, esq., Solicitor of the Treasury, and directed to T. B. Myers, esq., special commissioner, by authority of a resolution of the House of Representatives—13 attendances and 10 witnesses examined..... $150 00

NEW YORK, *April* 25, 1846.

I hereby certify that the above charge of $150, is a reasonable compensation for the services of Francis F. Marbury, esq., as special counsel for the United States, on the execution of the commission directed to me in the matter of Matthews, Wood, and Hall, claimants against the United States.

T. BAILY MYERS,
Special United States Commissioner.

NEW YORK, *April* 27, 1846.

I concur in the above certificate.

WILLIAM BLISS,
Counsel for Matthews and Hall, claimants.

I concur in the above certificate, and add that, in my judgment, the charge for Mr. Marbury's services, is not only reasonable, but moderate.

B. F. BUTLER,
United States Attorney.

From the character and nature of the services rendered by Mr. Marbury, I am satisfied that the charge of one hundred and fifty dollars made by Mr. M., is reasonable.

JOHN McKEON,
Counsellor at law.

NEW YORK, *April* 27, 1846.

No. 8.

April 21, 1846.

Dear Sir: Herewith I enclose the commission issued to me, in the matter of the claim of Matthews and others, against the United States, with the testimony taken under it annexed.

The witnesses examined reside principally in the country, and their attendance was at times somewhat difficult to obtain.

We have pressed the matter to its close as rapidly as could be consistently with arriving at the true state of the facts. Our sittings were necessarily somewhat protracted, and occupied much of our time. The witnesses were mostly men of character and reputation, and testified willingly, without apparent preconcert or drilling. I think the facts, as testified, are reliably correct.

Accompanying, you will find my charges forwarded, as directed.

I am, very respectfully, truly yours,

T. BAILY MYERS.

Hon. Mr. Barton.

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BEFORE SPECIAL COMMISSIONER.

Charles P. Matthews and James Hall, survivors of Charles Wood,
vs.
The United States.

March 3, 1846.—Attending to receive commission and perusing instructions, &c	$3 00
Drawing notice to parties, fo. 4, at 20 cents, and engrossing, at 10 cents	1 20
Two copies at 10 cts.—80; serving same at 75 cts., $1 50	2 30
March 7, 1846.—Attended, some of the parties not being prepared	3 00
Adjourned to 7th.	
March 6, 1846.—Attended and entered upon commission, hearing parties, and arranging mode of proceeding	3 00
Drawing and engrossing citation for witnesses, fo. 2, at 30 cents, 60 cents; 11 copies at 20 cents	2 20
Sealing same	1 50
Adjourned to 14th.	
March 14, 1846.—Attended and took deposition of Cook.	3 00
Drawing and engrossing deposition of witness, Edward Cook, fo. 28, at 32 cents	8 96
Adjourned to 18th.	
March 18, 1846.—Attended and examined John Frazer	3 00
Drawing and engrossing deposition of witness, John Frazer, fo. 22, at 32 cents	7 04
March 23, 1846.—Attended and adjourned, after hearing, &c.	3 00
Adjourned to 24th.	

March 24, 1846.—Attended and examined witnesses, Norris and Darrah	$3 00
Drawing and engrossing deposition of Hiram A. Norris, fo. 10, at 32 cents	3 20
Drawing and engrossing deposition of George Darrah, fo. 17, at 32 cents	5 44
March 26, 1846.—Attended and examined witness, Walter Bowne	3 00
Drawing and engrossing deposition of Walter Bowne, fo. 9, at 32 cents	2 88
March 27, 1846.—Attended and examined Benjamin Florence	3 00
Drawing and engrossing deposition of Benjamin Florence, fo. 8, at 32 cents	2 56
Adjourned to 28th.	
March 28, 1846.—Attended and examined Charles Bathgate	3 00
Drawing and engrossing deposition of Charles Bathgate, fo. 19, at 32 cents	6 08
Adjourned to 31st.	
March 31, 1846.—Attended and examined ex-sheriff Lyon and Alexander Cunningham	3 00
Drawing and engrossing deposition of Lyon, fo. 8, at 32 cents	2 58
Drawing and engrossing deposition of Cunningham, fo. 10, at 32 cents	3 20
Swearing nine witnesses	1 12
April 10, 1846.—Attended to take testimony of William Beard; witness not present	3 00
Adjourned to 16th.	
April 16, 1846.—Attended; witness duly summoned, but not present: issued peremptory summons	3 00
Adjourned to 18th.	
April 18, 1846.—Attended and took testimony	3 00
Drawing and engrossing deposition of William Beard, fo. 5, at 32 cents	1 60
Drawing peremptory citation, fo. 2, at 30 cents	60
Oath, 12½ cents; drawing and engrossing return to commission, fo. 3, at 30 cents	1 02
Copy of depositions, fo. 137, at 6¼ cents, for party	8 22
	$104 30

I certify that my costs and charges in the foregoing matter amount to the sum of one hundred and four dollars and thirty cents.

T. BAILEY MYERS,
Special U. S. Commissioner.

NEW YORK, *April* 20, 1846.

No. 9.

UNITED STATES OF AMERICA.

OFFICE OF THE SOLICITOR OF THE TREASURY,

To Theodore B. Myers, Esq:

By virtue of the authority conferred by and under the instructions given, in the annexed resolution of the House of Representatives of the United States, bearing date the 20th of January, 1846, in reference to a certain claim for damages, preferred by Matthews, Wood, & Hall against the United States, for an alleged breach of contract relative to the delivery of marble for the basement story of the custom-house at the city of New York, and the losses sustained by the delays and increased expenditures to which they were subjected, in consequence of the failure on the part of the United States to fulfil the stipulations on their part to be performed, and within the time prescribed by the contract, &c., you are hereby appointed a special commissioner, with authority to cause to come before you, at such times and places as you may appoint, (the parties respectively being duly notified thereof,) all such witnesses, both in behalf of the United States and of the claimants, as either party may require to be summoned for the purpose; then and there, upon their oaths, to declare, upon their personal knowledge, the whole truth, and nothing but the truth, touching the claim for damages so preferred as aforesaid, with liberty to the parties respectively to cross-examine each others' witnesses.

When the examination of the witnesses shall have been completed, you will without delay certify and transmit the same, together with this special commission, to this office, accompanied by an attested bill of such lawful costs and charges as may have been incurred in executing the same.

Given under my hand, at office, this 24th day of February, 1846.

[L. S.] S. BARTON,
Solicitor of the Treasury.

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The execution of the within commission appears from certain schedules hereto annexed.

T. BAILEY MYERS,
Special U. S. Commissioner.

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TWENTY-NINTH CONGRESS OF THE UNITED STATES—FIRST SESSION.

IN THE HOUSE OF REPRESENTATIVES,
January 20, 1846.

Resolved, That the Committee of Claims be discharged from the further consideration of the claim of Mathews, Wood, and Hall; and the petition and papers of said claimants be referred to the Solicitor of the Treasury, with instructions forthwith to take sworn testimony

in New York, in behalf of the United States and also of the petitioners, as to the truth of the various facts alleged; and that he report the testimony, with his opinion thereon, at as early a day as practicable.

Attest: B. B. FRENCH, *Clerk.*

Depositions of Edward Cook, John Frazer, Hiram A. Norris, George Darrah, Walter Bowne, Benjamin Florence, Charles Bathgate, Joseph Lyon, Alexander Cunningham, and William Beard, witnesses produced, sworn, and examined on oath, by virtue of a commission issuing from the office of the Solicitor of the Treasury, under a resolution of the House of Representatives, bearing date the twentieth day of January, 1846, to me, T. Bailey Myers, as special commissioner for the United States for the examination of such witnesses as might be produced before me by either of the parties in interest in the matter of the claim set up by Matthews, Wood, and Hall, or the survivors of that firm, against the United States.

MARCH 14, 1846.

Edward Cook, a witness on the part of the claimants, being called, and sworn, and examined, saith, that he is fifty years of age, his residence 20 Allen st. in the city of New York, and that he is by occupation a mason or builder; that he has resided in said city for thirty-five years, and has been engaged in his present occupation for that length of time. He is acquainted with the late firm of Matthews, Wood, and Hall, the claimants herein. The firm of Matthews, Wood, and Hall, originally consisted of Charles P. Matthews, Charles Wood, and James Hall. Mr. Wood is dead; he died, I should think, about five years ago, leaving, as deponent believes, a wife and one child.

Question 1.—Had you any, and what, connexion with the construction of the present custom-house in the city of New York, and during what time?

Answer.—I had. I was in the first place employed as foreman, and I remained in that capacity for one year; after that time, I had charge of the entire mason work on the building. I commenced in February, 1834, when the preparations were began on the site of the present custom-house by clearing away the old buildings, and continued my connexion with the work until December, 1840, when the building was completed.

Question 2.—How have you since been employed?

Answer.—For three years, since that time, I have been employed on the islands, in the harbor of New York, in the service of the government of the United States, repairing fortifications and sea-walls.

Question 3.—By whom was you employed on the custom-house?

Answer.—I was first employed by Samuel Thompson, the superintendent and architect. When Mr. Thompson left, he requested

me leave also, but the commissioners for the construction of the custom-house would not consent to it, but desired me to remain, and from that time employed me themselves.

Question 4.—Who was the superintendent or architect who had the original charge of the building; up to what time did his connexion with the building continue, and by whom was he succeeded?

Answer.—Samuel Thompson was the first superintendent and architect, and so continued until sometime in May, 1835, when he was succeeded by John Frazer.

Question 5.—Under what circumstances did Mr. Thomson's connexion with the building terminate?

Answer.—There was a difference between him and the commissioners. He went on to Washington, and, on his return, resigned, taking away with him the plans for the custom-house. I had to work, in consequence of this, for about two months without plans, and then the work came to a stand altogether, and we were obliged to dismiss all hands.

Question 6.—What effect had the want of plans upon the work at the custom-house during the two months, or thereabouts, which you worked at the building, after the resignation of Mr. Thompson, without plans?

Answer.—It had the effect of preventing our obtaining the stone that we required from the quarries for want of patterns, there being no patterns to work it by. During these two months, I kept a few men employed on the building so as not to desert it entirely.

Question 7.—Were these working plans essential to the formation of the patterns or moulds by which the marble for the basement was to be cut, and could the marble be furnished without it?

Answer.—They were, and without them it could not be furnished.

Question 8.—Do you remember when Mr. Frazer entered upon his duties as superintendent and architect?

Answer.—I recollect the circumstance, but not the exact time; my impression is that it was sometime in August, 1835.

Question 9.—What course did Mr. Frazer pursue, after he became superintendent and architect, in relation to the plans and models of the building?

Answer.—The first step he took was to employ an assistant; then the assistant and myself measured the ground, and came as near as we could to the old plan for the building; and, after that, new plans were made out as soon as possible to enable us to go on with the building. In some respects we were unable to follow the old plans, and were obliged to remodel.

Question 10.—Do you remember how late it was in the season when the new plans were furnished by Mr. Frazer?

Answer.—I cannot pretend to state the exact time. I did not charge my memory with it. I should think it was about four or five weeks after Mr. Frazer was appointed before we got the plans ready for working. I cannot state the length of time positively.

Question 11.—During the intervening time between the resignation of Mr. Thompson and the furnishing of the plans by Mr.

Frazer, what effect had the want of the working plans and patterns upon the prosecution of the operations of Matthews, Wood, and Hall?

Answer.—I do not know, only that I have heard complaints from them at the time that they had not patterns to cut stone. The marble could not be prepared without them.

Note.—The counsel for the United States object to any evidence of the declarations or complaints of Matthews, Wood, and Hall.

The counsel for the claimants states that their declarations are offered with a view only to show that they did not acquiesce in breach of contract on the part of the United States, and that the complaints on that subject are not of recent origin. The commissioner receives the testimony, subject to the objection.

Question 12.—What was the description of marble used in the construction of the basement of the custom house, and whence was it brought?

Answer.—There were two kinds of marble used. One description in blocks, varying in weight from 3, 5, 8, to 10 tons; and the other, the water-table and buttress blocks, from 20 to 30 tons. They were brought from Westchester county, New York, from quarries at Morrisania.

Question 13.—What was the distance of this quarry from the city?

Answer.—From twelve to fourteen miles.

Question 14.—Prior to the month of May, when Mr. Thompson resigned, how was the marble delivered at the building?

Answer.—It was brought there on trucks or wagons by land. It was delivered, with the exception of one or two blocks, as fast as we could use it.

Question 15.—How early in the fall of 1834, was the substructure or foundation of the building ready to receive the basement marble?

Answer.—I could not be positive about that, but I should judge in the fore part of November.

Question 16.—In what state was the marble brought to the custom-house?

Answer.—It was brought in a finished state, ready to put up, with the exception of water-table and buttress blocks, which could not be finished at the quarry, and were roughed off. They could not be brought safe, finished.

Question 17.—What effect has frost upon the working and quarrying of marble?

Answer.—It has the effect of making it break in places where it is not required; of rendering it brittle.

Question 18.—Can it be wrought or quarried in a proper or advantageous manner, after the severe frosts commence?

Answer.—It cannot, with any advantage. It is as apt to split in a wrong direction as in the right one.

Question 19.—In respect to the transportation of heavy blocks of marble from this quarry, is it practicable very late in the autumn or early in the spring?

Answer.—They can, quite late in the autumn, for then the road is generally good; but in the spring it is almost impossible; the road is nearly impassable. It could not be done before the roads become settled, which is sometimes earlier, sometimes later, depending on the season. Taking it on an average, the roads become settled from the middle of April to the first of May.

Question 20.—Do you know of any other quarry adjacent to the city, where blocks of suitable marble of the requisite size could have been obtained other than this?

Answer.—I do not know of any other quarry where the same sized blocks could be obtained.

Question 21.—What is the situation of the present custom-house with respect to the adjacent streets? Are they wide or narrow, and are they streets of much or little business?

Answer.—The streets are quite narrow, and are great thoroughfares.

Question 22.—Had the United States any other place for the reception of the marble, except these streets?

Answer.—No. They had no other place for this purpose. I found this out to my sorrow, for we were sometimes very much put to it, to know what to do with the materials when we got them.

Question 23.—Were these streets at any time wholly occupied or blocked up with marble?

Answer.—They were, sometimes, so much so, that we did not know where to lay the stone, at the time the water-table blocks were coming.

Question 24.—Was a large quantity of marble delivered by the claimants during the autumn of 1835?

Answer.—There was a great quantity delivered during that time.

Question 25.—Could it be worked into the building as fast as it was delivered?

Answer.—It could not, when the water-table was being delivered.

Question 26.—When was that?

Answer.—In the autumn of 1835; part was delivered in the autumn of that year, and part in the spring of 1836.

Question 27.—Do you know of any marble being deposited by the claimants in any other place in the city of New York, in the autumn of 1835, because it could not be received at the custom house?

Answer.—I do. There were quite a number of pieces of water-table deposited on Whitehall dock.

Question 28.—Do you remember the number, or about the number of blocks?

Answer.—I cannot speak positively, but I should think eight or ten of the large blocks, weighing 20 or 30 tons each.

Question 29.—What is the distance of Whitehall dock to the custom-house?

Answer.—About a quarter of a mile. The water-table and buttress blocks, for the basement, with the exception of one block, all

came by water; the other marble came by land. The quarry is about a mile and a quarter, or a mile and a half, from the place of shipment.

Question 30.—Were any blocks lost on the passage?

Answer.—Two were sank at Whitehall dock; afterwards got up at considerable expense.

Question 31.—Can you inform us as to the number of oxen and horses used by the claimants in bringing marble from Westchester?

Answer.—As to the definite number, I could not say; but it was a large number. I think I have seen twenty-seven yoke oxen before one stone.

Question 32.—Had they a large number at the close of the autumn of 1835, and at the opening of the spring?

Answer.—They had at those times a larger number than at any other.

Question 33.—At what time in the autumn of 1835, was the work upon the custom-house suspended?

Answer.—I should think it was early in December.

Question 34.—At what time was it recommenced in the following spring?

Answer.—In the fore part of April, I think; but will not be positive as to the time. They continued as long as the weather would permit, and recommenced it as soon as it would permit.

Question 35.—Do you know whether Matthews, Wood, and Hall, during the time they occupied, in the performance of their agreement to deliver marble at the custom-house, or, after they began to deliver marble for the same, were engaged in quarrying or working any marble except that used for the custom-house?

Answer.—I do not know of any other work that they were carrying on in the quarrying business; and do not think they were carrying on any other.

Question 36.—Were any directions given at any time that claimants should suspend the delivery of marble for the custom-house, as there was not room to receive, or they were not prepared to receive it?

Answer.—Yes, sir. I think there were, in the autumn of 1835.

Question 37.—State any other fact which occurs to you, material to the merits of this claim, either on the part of the claimants or of the United States?

Answer.—I do not know that I know of anything more that would be material to either party in any way.

EDWARD COOK.

Subscribed and sworn before me,

T. Bailey Myers,
Special U. S. Commissioner.

Being cross-examined by the counsel for the United States, the witness says as follows:

Question 1.—Do you know of your own knowledge, that directions were given in the autumn of 1835, to suspend the delivery of marble by the claimants? if yea, by whom?

Answer.—Yes, sir; I know that such instructions were given by Mr. Frazer.

Question 2.—For how long a time was this delivery suspended?

Answer.—I should judge about two months; nothing was done in the way of delivery during that time.

Question 3.—Did the boats which brought the marble from the quarry to New York land at Whitehall dock?

Answer.—Yes, sir, they did; and the marble was delivered directly from the boats on the dock, from whence it was removed to the custom-house as required.

Question 4.—How long did the blocks, of which you have spoken as being deposited on the dock at Whitehall, because there was not room to receive them at the custom house, remain on the dock before they were removed?

Answer.—From two to three months, I should think. They were removed by Matthews, Wood, and Hall, and delivered at the custom-house.

Question 5.—After Mr. Frazer furnished his plans and patterns, did the work go on regularly and without interruption until it was suspended by reason of cold weather?

Answer.—Yes; it went on very well during that time.

Question 6.—Was the work retarded by the omission or failure of the claimants to furnish some of the blocks when required?

Answer.—With one or two exceptions it was not, and that was but for a day or so, when we wanted a block and could not get it exactly.

Question 7.—Do you know whether, prior to the resignation of Mr. Thompson, claimants had been furnished with plans or patterns as fast as they required them?

Answer.—I cannot say that; that is hardly in my line. They had some patterns on hand at the time of Mr. Thompson's resignation; but plans for some other pieces of work which were required, they had no patterns. There were new patterns for other parts of the work constantly required.

Question 8.—Can you say whether the work in the quarry, during the interval between Mr. Thompson's resignation and Mr. Frazer's appointment, and the transportation of the marble, were either wholly or partially suspended?

Answer.—I do not think it was altogether suspended; it was abated greatly.

Question 9.—Being asked to describe the situation and dimensions of the various streets in the vicinity of the custom house, the witness answered:

That the lot on which the custom-house is built is bounded south by Wall street, west by Nassau street, which passes on into Broad street, north by Pine street, and east by the Bank of State of New York. Pine street is, I should think, about thirty-five feet wide. Nassau street about the same, and Wall about fifty; but I do not wish to speak exactly.

Question 10.—Prior to the interruption occasioned by Mr. Thomp-

son's resignation, was the marble delivered by the claimants worked into the building about as fast as it was delivered?

Answer.—About as fast.

EDWARD COOK.

Subscribed and sworn to before me,

T. BAILEY MYERS,

Special U. S. Commissioner.

MARCH 18, 1846.

John Frazer, a witness, called, sworn and examined on the part of the claimants, saith that he resides in the city of New York, and has there resided since the year 1818; that he is a sculptor and architect by profession, and is fifty-five years of age and upwards.

Question 1.—Had you any, and what, connxtion with the construction of the present custom-house in the city of New York, and during what period?

Answer.—I was the architect and superintendent of the building from July, 1835, until the building was completed.

Question 2.—On what day in July, 1835, did you enter upon your duties as superintendent and architect?

Answer.—I think it was on the 22d day of July; I think that day I was appointed by the commissioners.

Question 3.—Who preceded you as superintendent or architect?

Answer.—No architect preceded me. Mr. Thompson was my predecessor as superintendent. He resigned his commission on the 28th day of May, 1835.

Question 4.—Please to state under what circumstances you found the building, and the work upon it, at the time you became superintendent and architect. Particularly in relation to plans and drawings?

Answer.—When I came to the building, the work was suspended, or nearly so—only a few men engaged and some little work going on. I asked the commissioners by what drawings I was to erect the building. They told me that the drawings they had been working from had been taken away by the former superintendent, Mr. Thompson, and I received orders from the commissioners to try and obtain those drawings. I called first upon young Mr. Thompson, thinking that perhaps the drawings were in his possession, he being in the city and his father residing at Kingsbridge. I did not get them of him; he told me the drawings were in the possession of his father. I was then referred to Mr. Ross, the draftsman, who might have duplicates. I saw him, but could not obtain them. Then, by the authority of the commissioners, who authorized me to offer for them, at my discretion, any sum not exceeding $2,000, I called on Mr. Thompson, who refused to let the commissioners have them at any price. I was then ordered to proceed to make drawings and remodel the building, as well as I could. It was the wish of the commissioners that I should keep as nearly as I could to the original design, so as to save the marble that was cut. I did so.

Question 5.—Were any plans or drawings of the building found or obtained to assist you in your duties?

Answer.—We found nothing at the commencement of the work. I went to work and measured all the pieces and took their centres. Then Mr. Norris, my assistant, and myself visited the quarries, measured the blocks of marble cut, and obtained what information we could as to the place they were to occupy. In that way, and with the assistance of Masterton and Smith, stone-cutters, we got up the plans. We made all our drawings and advanced so far as to put the stone-cutters at work about the middle of September; it might have been a little later.

Question 6.—When you visited the quarry, in what condition did you find the work there? I allude to the quarry at Morrisania.

Answer.—I found the quarry party uncovered, considerable marble had been taken out and worked for the building; some of it lay partly cut as it was left when work was suspended. That which was finished had been brought to the city and put into the building. The work at the quarry was principally suspended, few hands there; those employed in cleaning away dirt and rubbish. That was the only work which appeared to be doing. I found no plans, patterns, or moulds there, that I recollect of. We examined through all the shops for them; the workmen told me that they had all been taken away. I was at the quarry a number of times during the time we were getting up the plans. I was also compelled to visit the quarries at Eastchester for similar purposes. We could not go on with the building of the basement until we arranged the construction of the principal floor.

Question 7.—During the period which elapsed from your appointment until the time when the ground plans had been prepared by you, in the middle of September, 1835, or later, could the claimants have gone on with the preparation and delivery of the marble for the basement?

Answer.—They could not. They could not proceed until we had the drawings so completed as to furnish them with working plans. After getting up our drawings it was necessary to make working plans of full size, and nothing could be done with the marble until these were given to the workmen. As soon as the working plans were furnished, they commenced operations again. The work was then commenced actively, and was prosecuted with a great deal of vigor. After they got fairly into operation, the stone was furnished as fast, I think, as we wanted it, and I think they gained on us in the fall.

Question 8.—To what extent did you remodel the building?

Answer.—Entirely. There were some alterations and modifications in the basement, but not very important ones.

Question 9.—Was it necessary to determine the plan of the superstructure in order to fix the plan of the basement?

Answer.—The first and principal floor of the superstructure had to be accurately determined before anything could be done with the basement.

Question 10.—Did Matthews, Wood, and Hall, before receiving

the working plans make any applications to you for them or for patterns?

Answer.—They did frequently call upon me, and seemed in great anxiety on account of the delay. We told them that they would have to be patient. They said that they could not keep their teams and teamsters waiting at very heavy expenses, and that they were being subjected to great losses on account of the delay.

The counsel of the United States objects to statements of claimants made to witnesses being admitted in evidence. The commissioner takes the testimony, subject to exception.

Question 11.—How were they induced to go on in the prosecution of the work, notwithstanding the delay?

Answer.—I encouraged them all I could. When they spoke of heavy damages, I told them I thought the United States would indemnify them. Mr. Hall, one of the claimants, threatened several times to give up the contract.

Answer objected to on same ground as last answer, and on the additional ground that the declarations of the witness made to the claimants are inadmissible, inasmuch as it does not appear that he had any authority to speak for the United States.

Question 12.—Please to state whether the claimants could probably have completed the delivery of the marble for the basement during the fall of 1835, or not, if there had been no delay in furnishing plans?

Answer.—I think they could, or nearly so, because they lost some three or four of the best months for working in the year. I think they would have had no occasion to keep their teams through the winter. At the time I visited the quarries, they had a large force of teams and men unemployed, excepting in clearing up the quarry. They were not cutting any marble. They could not cut out the marble without the drawings.

Question 13.—After the plans were furnished, did the claimants proceed with the work to the satisfaction of the commissioners?

Answer.—They did entirely, so far as my recollection extends. I do not recollect of the commissioners making any complaint after they got a going.

Question 14.—Had the United States room to receive all the marble at New York?

Answer.—We were always in difficulty about room, the streets were so narrow—Pine and Nassau streets in particular. In the fall of 1835, and the next spring, we had considerable marble on Whitehall dock, for which we had not room at the building.

Question 15.—State any other facts material to the interests of the claimants or of the United States which may occur to you?

Answer.—Only this; that in the fall of 1835, there was an excess of marble, and we were obliged to tell them to stop delivering, when they crowded it on.

JOHN FRAZER.

Subscribed and sworn to before me,
T. Bailey Myers,
Special U. S. Commissioner.

Being cross-examined by the counsel for the United States:

Question 1.—How much marble quarried and cut did you find at the quarry when you visited it, immediately after your appointment?

Answer.—There was a considerable, but not very large quantity lying around. There were some blocks partly cut, and some not cut. There had been considerable brought down to the building and worked it.

Qestion 2.—Can you state whether or not the deliveries of marble continued through the months of June, July, August, September, and October, 1835?

Answer.—I think there may have been small quantities delivered in July and August, 1835. I was not there in June. There may have been some brought in September; but I don't think much. In October, after we commenced again, the delivery continued pretty regularly. Early part of December, we suspended work on the building, and covered it up. They had some stone at Whitehall, on which some hands were working during the winter. There was not much delivery at the building during the winter.

After I got my working plans ready, about the middle of September or later, there was no delay on my part in furnishing the claimants with plans and patterns to go on with the work.

Question 3.—Suppose there had been no interruption by reason of Mr. Thompson's resignation, do you think it by any means certain that the work on the custom-house could have gone on so fast as that all the marble could have been delivered by the claimants during the fall of 1835, or before the work was suspended by reason of the cold weather?

Counsel for claimants objects to the question, on the ground that the claimants ought not to suffer for any delay in the construction of the custom-house itself. Answer taken by the commissioner, subject to objection.

Answer.—My impression is that they could have delivered most of it without the delay.

Question 4.—How early did it become evident that all the marble could not be delivered that fall?

Answer.—To me it became evident early in the fall. It becomes evident to me in October, that they could not got it all in that season.

Question 5.—How early in the spring was the active delivery of the marble resumed?

Answer.—Early. I think in April, as soon as they could travel with their teams.

Question 6.—Were not the complaints of the claimants as made to you originally of the low price at which they had contracted, and of the greater expense of quarrying and transporting the marble than they had calculated upon?

Answer.—They did not make any complaints of that nature when I first came there; but they did afterwards, at the time they were getting up the large stone.

Question 7.—Did you not, in December, 1836, address a letter to

Mr. Cambreleng, then a member of Congress, in behalf of the present claimants, and asking his exertions to obtain relief for them.

Answer.—I did. A letter dated December 20, 1836.

Question 8.—At whose instance ?

Answer.—At the request of the claimants. I was acquainted with Mr. Cambreling, and they thought a line from me might help them.

Question 9.—How came you to make no mention in that letter of the alleged delay in furnishing working plans, but to place their claim on different grounds entirely?

Answer.—I think my letter was more in consonance with the application of the claimants. The getting out the big block of stone constituted, according to my idea, the burden of their griefs at that time. I did not design in my letter to go into details.

Question 10.—When you wrote that letter of December 20th, did it occur to you that there had been delays in furnishing the working plans injurious to the claimants ?

Answer.—I do not think it did; but it had occured to me before, and had been talked of before a good deal the previous season.

JOHN FRAZER.

Subscribed and sworn to before me,

T. Bailey Myers,

Special U. S. Commissioner.

Direct examination resumed.

Question 1.—Was the letter to Mr. Cambreling referred to by you merely a friendly letter designed to recommend the circumstances of the claimants to his attention and interest, or was it designed for a formal statement of their claim and for official action ?

Answer.—It was merely written as a friendly letter.

JOHN FRAZER.

Subscribed and sworn to before me,

T. Bailey Myers,

Special U. S. Commissioner.

March 24, 1846.

Hiram A. Norris, a witness called on the part of the claimants, being duly sworn and examined, saith, on his direct examination, that he is an architect and civil engineer by profession—that he is thirty-seven years of age, and a resident of the city of Brooklyn at present, but has resided in the city of New York for nearly thirty years.

Question 1.—Had you any and what connexion with the custom-house in the city of New York ? when did it commence, and how long did such connexion continue ?

Answer.—I was appointed assistant architect in July, 1835, after the appointment of Mr. Frazer, and resigned that post in October, 1836.

Question 2.—Since that time how have you been employed ?

Answer.—As civil engineer—part of the time in the service

of the United States in Louisiana, in the survey of the Mississippi river—part of the time as Croton aqueduct commissioner of the city of New York, under its corporation, and part of the time as the engineer of a land company in Florida, at Apalachicola, in laying out that city and improving its harbor.

Question 3.—In what condition did you find the work at the custom-house, and in what state of organization the arrangements for proceeding with the work when you became connected with it as assistant architect?

Answer.—I found the work without order; and there was not a person connected with the work who seemed to have any idea of what was best to be done. I have never seen a work in such a disreputable condition. Not only was the future work not understood, but what had been done seemed not to be understood by those then engaged, and who had taken part in its execution. The newly appointed architect, Mr. Frazer, said he thought he should make one more application to Mr. Thompson for the drawings, and if he could not get them he (Mr. Frazer) believed he would retire from his newly received office. We proceeded, however, Mr. Frazer and myself, to measure the stone piers then partly built; of these I made a drawing, and in this manner partly by conjecture, partly by measurement, began to construct the plan of the basement.

Question 4.—Was the custom-house without working plans or patterns for the basement when you entered upon your duties; and at what times were the working plans and patterns ready for the stone-cutters to proceed with their work?

Answer.—It was without plans—we could obtain none for our own information. After the plan of the basement (I speak of the general plan) was drawn, and ascertained to be tolerably consistent with the other parts of the building, we felt encouraged to make detail or working drawings for the stone-cutters. Without recollecting the precise time, I infer that it could not have been less than six or eight weeks from my appointment to the time when I began to furnish those drawings for the stone-cutters to work upon the basement. When I say that "I infer" that such was the time, I gave the joint result of my recollection of the events, and of my usual progress in executing drawings of that important character. When I began to furnish the working drawings, I furnished only such as my leisure, and the knowledge I had acquired, would permit. It was not for some months in my power to furnish all the drawings necessary for their purposes to enable them to work to advantage.

Question 5.—Was these working plans and patterns essential for the quarry-men as well as for the other stone-cutters?

Answer.—They were.

Question 6.—Until the working plans were furnished as you have stated, what was the state of the work at the custom-house, and of the delivery of the stone for the basement. Was it suspended or not?

Answer.—The marble work was almost wholly suspended until

we began to furnish working patterns. At the quarries in Westchester (I speak of Morrisania) things were in a similar condition.

Question 7.—Have you read the foregoing depositions of Mr. Cook and of Mr. Frazer; and if yea, state whether, in relation to the facts which fell within your knowledge, the statements of those depositions appear to you to be substantially correct or not?

Answer.—I have read those depositions, and they correspond essentially with my own impressions and recollections.

HIRAM A. NORRIS.

Subscribed and sworn to before me,

T. BAILEY MYERS,

Special U. S. Commissioner.

On his cross-examination by the counsel for the United States:

Question 1.—Do you remember on what day in July you was appointed?

Answer.—It was on or after the twentieth day of July, 1835.

Question 2.—As soon as you began to furnish the working plans did the work go on with vigor, and the deliveries begin, (deliveries of marble)?

Answer.—The deliveries began, and the work went on with as much vigor as could be expected under the circumstances. Later in the fall, say in the month of October or November, the architect and myself congratulated ourselves upon the gratifying progress that was making in the work.

H. A. NORRIS.

Subscribed and sworn to before me,

T. BAILEY MYERS,

Special U. S. Commissioner.

George Darrah, a witness, called, sworn, and examined, on the part of the claimants, saith:

Question 1.—What age, residence, and occupation?

Answer.—I am in the fortieth year of my age, and reside in the city of New York. I have there resided, generally, since 1834. I am a laborer by occupation, generally a teamster.

Question 2.—Were you employed by Matthews, Wood, and Hall to transport the marble, as teamster, from the quarry, at Morrisania, to the custom-house at New York, in the years 1834, 1835, and 1836?

Answer.—Yes, sir, I was.

Question 3.—How many teams were employed in carrying the marble for the basement of the custom-house from the quarry to the custom-house?

Answer.—Two six-horse teams were regularly employed every day on the road when we had stone to draw. I drove one of these and John Lenahan the other.

Question 4.—State as to the number of horses and oxen which Matthews, Wood, and Hall had engaged in the transportation of marble for the custom-house, or at work at the quarry in getting

out marble for the custom-house, in the spring and fall of 1835? and, also, in the winter and spring of 1836?

Answer.—In the fall of 1835, we had eighteen head of horses that we worked for that purpose, and we had at that time twenty-two yoke of cattle. They had these during the fall and winter of 1835 and 1836. They retained all these, with the exception of one or two yoke of cattle, which broke down and were parted with, through the spring of 1836, until the work was completed. I am not positive as to the yokes of oxen being parted with; it seems to be in my mind that they were, but I cannot speak positively. It was in the spring or summer of 1836, if it was so. In the spring, summer, and fall, of 1835, we had all these cattle and horses.

Question 5.—Were relays of horses necessary in transporting the marble?

Answer.—Yes, sir; they were. Sometimes horses were illy shod, or lame, and we were compelled to keep extra horses, to be used in such case. We brought the marble to Harlem bridge—if the load was very heavy, with eight horses and one or two yokes of cattle—sometimes three; and then we could bring it to town with six horses on the macadamized road.

Question 6.—During the summer of 1835, what were the facts in relation to the continuance or suspension of the delivery of the marble at the custom-house?

Answer.—We were detained from want of stone being cut to haul—from want of patterns. After this, we commenced by hauling a few loads down to the custom-house in a rough state. I then got orders from the superintendent master mason, Mr. Cook, to bring no more there—that they could not receive it. The rough stone that was thus brought down was cut at the custom-house by the same stone-cutters who had been at work out at the quarry.

Question 7.—Do you know anything about orders in the fall of 1835, or messages about keeping the stone back?

Answer.—There were orders given to me to tell Messrs. Matthews, Wood, & Hall not to send the marble in faster than they sent directions what kind of stones to send in, for that they could not receive them. These orders were given to me most generally by Mr. Cook.

Question 8.—During the summer of 1835, was there much work done at the quarry, and what was the nature of the work which was done there?

Answer.—No, sir; there was not a great deal of work done there during the summer. There were a good many men who were employed there doing work which had never been of any consequence—cleaning up, &c., to keep them employed, so as to retain them, or keep them on hand. They retained pretty much their usual number of men during the summer. Matthews, Wood, & Hall had no other job on hand at that time.

Question 9.—Was there much stone delivered during the summer at the custom-house?

Answer.—No, sir; there was not, during the summer.

Question 10.—If there had been no delay during the summer of 1835, and the work had gone on as usual, and there had been no orders to keep back stone, could the marble, or not, have been delivered before the winter of 1835-'36?

[Question objected to by the counsel for the United States, and put by commissioner, subject to objection.]

Answer.—I believe that it could have been delivered by that time if there had been no delays.

Question 11.—Who purchased the feed for the horses and oxen?

Answer.—I purchased the feed, received it, and took it out to the quarry. I purchased no hay, but grain feed generally, and sometimes bale hay.

Question 12.—State the price of feed in the winter of 1835?

Answer.—We had to pay at that time from 78 to 80 cents a bushel for oats, as near as I recollect. We had to pay for ground feed at high rates accordingly—we had to pay as high as two dollars per hundred pounds.

Question 13.—What was the price of labor at that time?

Answer.—From one dollar to one dollar and fifty cents per day. In 1834, feed was much lower—oats varied from 30 to 40 cents a bushel at the highest. Labor was then also low—the same I am now getting—five shillings a day. The rise of labor (I mean the prices) commenced in the summer, and kept up as the fall came on, and through the winter. Feed commenced to rise in the summer, but did not get to its highest pitch until in the winter.

Question 14.—Did Matthews, Wood, & Hall retain their workmen during the winter?

Answer.—Yes, sir.

Question 15.—State any other fact which seems to you that may be important to the claimants or to the United States in regard to this matter.

Answer.—Nothing occurs to me at present.

GEORGE DARRAH.

Sworn and subscribed before me.

T. BAILEY MYERS,
Special U. S. Commissioner.

On his cross-examination by the counsel for the United States:

Question 1.—How many hands had Matthews, Wood, & Hall employed in quarrying and hauling marble while you worked for them?

Answer.—I could not state to you the exact number. I should judge that they had employed from forty to fifty men, all told.

Question 2.—What kind of hands were these? were they common laboring men?

Answer.—They were men who were used to quarry-work, drilling and scabbling stone. Amongst them were about ten or twelve common laborers—men not getting as high wages as the others.

Question 3.—Was there nothing for these men to be employed about while the patterns were getting ready?

Answer.—No, sir; nothing more than what I have stated before.

Question 4.—How long was the work suspended for want of plans during the year 1835?

Answer.—As nearly as I can recollect, I think about four months.

Question 5.—Do you mean to be understood as stating that, for those four months, forty or fifty men were getting wages for doing nothing?

Answer.—I mean that in those four months we did little or nothing in hauling stone to the custom-house. They were kept cleaning off the quarry, and making preparations, as I have already stated.

Question 6.—Was not this work which they did of use to Matthews, Wood, & Hall in performing contracts which they afterwards took—such as the church in Grand street?

Answer.—No, sir; I do not consider that it was. There were no stones taken out from the place where they worked afterwards, even to this day. This whole force of men was kept up during the four months. I do not believe that there was a man discharged, without he went away of his own accord.

Question 7.—Do you mean to be understood as saying that the horses and oxen had nothing to do, and were idle during the same period, or did they have some work; and, if so, to what extent?

Answer.—They had very little work of any consequence to do. When we wanted a load of feed from the city, we would hunt up a small load of cut stones for the custom-house; but we did nothing else, and often came in with empty wagons for a load of feed.

Question 8.—Could not these teams (horses and oxen) have been put at some work, and thus kept from being a dead expense during the suspension of the work at the custom-house?

Answer.—No, sir. There was no work there for them to do.

Question 9.—During the fall and winter of 1835–'36, did you keep at work with the teams, quarrying and hauling, as far as the state of the weather would permit—weather and roads?

Answer.—Why, in the fall, we could not keep very steady at work, as the stone was not ready, by occasion of the want of patterns. In the winter we could not, on account of the roads and bad weather.

Question 10.—Whose employ are you now in?

Answer.—The Harlem Railroad Company's, as a teamster. I left the employ of Matthews, Wood, & Hall, if I recollect right, in the summer of 1837.

GEORGE DARRAH.

Subscribed and sworn before me.

T. Bailey Myers,
Special U. S. Commissioner.

March 26, 1846.

Walter Bowne, a witness on the part of the claimants, being called, sworn, and examined, saith:

Question 1.—What is your age, residence, and occupation? (Age and occupation waived.)

Answer.—I reside in Beekman street, in the city of New York, and have there resided for more than fifteen years.

Question 2.—Were you one of the commissioners for the construction of the present custom-house in the city of New York?

Answer.—I was.

Question 3.—For how long a time?

Answer.—For the whole time until the building was finished, or nearly so.

Question 4.—Did you, as such commissioner, have occasion to see how Matthews, Wood, & Hall, the present claimants, performed their contract?

Answer.—I did.

Question 5.—Please to state whether they did so to the satisfaction of the commissioners.

Answer.—Perfectly so.

Question 6.—Do you remember under what circumstances Mr. Thompson, the superintendent, resigned?

Answer.—I know the fact that he did resign, and understood that it was caused by a disagreement with the government.

Question 7.—When Mr. Thompson resigned and discontinued his duties as superintendent, did he take with him the working plans and patterns for the construction of the building?

Answer.—Yes, sir; the patterns were all taken away. I do not know that he took all the plans, but he took away the working plans, which stopped our work, and prevented the work regularly progressing.

Question 8.—Were any efforts made to obtain these plans from Mr. Thompson?

Answer.—There were efforts made to obtain them—efforts made by the commissioners unsuccessfully.

Question 9.—In consequence of Mr. Thompson's having taken away the working plans and patterns, was the work at the custom-house delayed for a long time?

Answer.—The receipt of the marble which could have been received from the contractors was prevented.

Question 10.—Did this continue until the new working plans and patterns were furnished by Mr. Frazer?

Answer.—I do not remember the exact time; there was a considerable delay; I do not remember how long, but it was a considerable time. Mr. Frazer could tell more particularly about that; he could speak positively.

Question 11.—Please to state any facts which occur to you in regard to the merits of this claim which you may consider as material to the interests of the United States or the claimants?

Answer.—I will state that this delay, in regard to the working plans and patterns, occasioned great disadvantage and loss to the claimants. My impression is, that not being able to receive the marble for want of the working plans, occasioned them the expense of keeping their cattle over the winter. They might not have got

through, but my impression is that they would. I communicated from time to time to the Secretary of the Treasury all the facts as they occurred—I mean all the material facts.

Question 12.—Will you please to state whether the streets adjacent to the custom-house were so blocked up that marble could not be received?

Answer.—They were so blocked up as to cause frequent complaint from the city authorities, and so that the marble could not at times be conveniently received.

WALTER BOWNE.

Subscribed and sworn to before me.

T. BAILEY MYERS,
Special Commissioner.

On his cross-examination by the counsel for the United States:

Question 1.—Do you remember whether or not that Matthews, Wood & Hall, during the summer or fall of 1835, made any complaint to you respecting their contract, or requested you to make any representations to the government in their behalf?

Answer.—I think they did.

Question 2.—Did they not in their applications to you place their grievances on the ground that they had made a disadvantageous contract, without sufficient knowledge on their part of the expense and difficulty of quarrying and transporting such huge blocks of marble?

Answer.—No; I do not know that they did at all. It was incidentally stated by them or their friends that they had made a disadvantageous contract. According to my recollection they might have complained of the hardness of the contract, but the grand cause of complaint was the delay in consequence of the want of working plans.

Question 3.—Have you any means of stating with precision, or with an approach to precision, how far Matthews, Wood, & Hall were injured by the delay in furnishing working plans?

Answer.—No, I cannot, further than what I have stated before.

Question 4.—Is it by any means certain in your judgment whether, if no delay had occurred in the working plans, Matthews, Wood, & Hall could have been able to complete their deliveries of marble under the contract before the winter set in?

Answer.—I do not know that I have any means of stating positively; I only know there was great delay in consequence of the want of working plans.

Question 5.—After the appointment of Mr. Frazer and the getting up of plans by him, did the work go on with vigor?

Answer.—It went on regularly.

Question 6.—Was there any complaint after that of delay in the furnishing of plans, so far as you know?

Answer.—I do not now recollect.

WALTER BOWNE.

Subscribed and sworn to before me.

T. BAILEY MYERS,
Special U. S. Commissioner.

March 17, 1846.

Benjamin Florence, a witness for the claimants, being called, sworn, and examined, saith:

Question 1.—What is your age, residence, and occupation?

Answer.—I am in my fifty-fifth year. I reside in Westchester county, in the town of Mamaroneck, and have resided there since my birth. I am a farmer by occupation.

Question 2. Are you acquainted with the claimants?

Answer.—I am acquainted with Messrs. Matthews and Hall, and used to be acquainted with Mr. Wood.

Question 3.—During the winter of 1835–'36, did you furnish hay for the cattle and horses of the claimants at work at their quarry at Morrisania, and from what time to what time?

Answer.—I began about the 1st of November, 1835, to carry them hay, and continued on from that time until sometime in March, the forepart I think. I furnished them hay during all this time, furnishing usually at least five tons per week. The first load I carried I was to get $1 per hundred weight for. Then I got at the rate of $1 25 per hundred for a number of tons; then it got up to $1 50 per hundred; then I sold them a number of loads at $1 75 per hundred. I cannot fix the dates of these different prices, but I should think the average was as much as $1 50 per hundred. After I left off in the spring, others supplied them with hay. The price was no lower, I think, after I left off than fourteen shillings ($1 75) per hundred. I do not know whether they obtained hay from other quarters during the time I supplied them.

Question 4.—Do you remember how many yoke oxens, how many cattle claimants kept during the winter?

Answer.—I never counted them. I saw the horses and cattle there, and understood from the persons who had charge of them that they had twenty yoke of cattle and seventeen or eighteen horses.

Question 5.—Have you seen these cattle and horses engaged in getting out marble?

Answer.—I have, sometimes.

Question 6.—How was it in regard to the work at the quarry that winter?

Answer.—It was a very snowy winter, being cold weather. The winter set in pretty early. I should not think the work at the quarry went on a great deal. I was not there every day, but when I was there I thought there was not much doing.

Question 7.—Please to state how much hay and grain per day would be required for the subsistence of oxen and working horses like those of the claimants.

Answer.—It is a little owing to how much meal they eat. About hay, I should think an ox would eat thirty pounds of hay and a peck of meal a day very handy—a working ox. The horses would eat three pecks of oats a day apiece, and twenty pounds of hay. They were large horses. I should think the calculation as to horses was within bounds at all events. BENJAMIN FLORENCE.

Subscribed and sworn to before me.

T. Bailey Myers,
Special U. S. Commissioner.

On his cross-examination by the counsel for the United States:

Question 1. Would it make any difference with regard to the consumption of feed whether the horse or ox was working or not?

Answer.—I should think it would, a little. A horse that works hard will require more feed than one that did nothing; so with an ox likewise. I should think that an ox would eat as much as I have stated, work or play—a horse the same.

Question 2.—When you first commenced supplying them with hay, were the horses and oxen at work?

Answer.—I do not know, as I can hardly answer that question. Sometimes they were at work, sometimes not. Early in November I saw them drawing out some stone from the quarry. I do not recollect seeing them drawing stone upon the road until spring. I had no other business at the quarry excepting to deliver hay.

Question 3.—I wish to know whether all this force of horses and cattle were unemployed either wholly or partially during the time that you were delivering hay?

Answer.—I was sometimes at the quarry twice a week; sometimes every other day. I recollect on one occasion to have seen them drawing a large block of stone, and do not remember that I ever saw them doing any other work until spring.

BENJAMIN FLORENCE.

Subscribed and sworn to before me.

T. BAILEY MYERS,
Special U. S. Commissioner.

MARCH 27, 28, 1846.

Charles Bathgate, a witness called, sworn, and examined, on the part of the claimant, saith: I reside at Morrisania, in the county of Westchester; I am a farmer by occupation, and about fifty-six years of age. I am acquainted with the claimants, and have known them for some time. The marble quarried by them upon their contract for the basement of the custom-house, was taken from the farm on which I resided in 1835, and on which I still reside. I was in the habit of passing the quarry frequently in that year, while the claimants were getting out marble, and had an opportunity of observing what was going on there, and the state of the work.

Question 1.—Do you remember that the work was suspended in the summer of 1835?

Answer.—I do not remember that the work was ever entirely suspended. They always had some men to work, and some teams taking the rubbish off the top of the quarry. I do not know but that they stopped for a week or two, altogether. Thay were busy sometimes in cutting out blocks.

Question 2.—Was your attention particularly directed to the work at the quarry?

Answer.—No, sir.

Question 3.—Did you hear complaints from the workmen there of the want of patterns?

Answer.—Yes, sir, I did.

Question 4.—Many times?

Answer.—Good many times. Many of the men came and applied for work from me, and three of them came and dug a well for me.

Question 5.—Did these complaints continue for any length of time.

Answer.—From the fall, when they first broke off work, pretty much through the winter.

Question 6.—Are you sure that you are correct as to dates?

Answer.—No, sir, I am not sure that I am correct as to dates, for I kept no memorandum of them.

Question 7.—Do you remember whether the workmen made complaint of the want of patterns in the summer of 1835?

Answer.—Yes, sir, I recollect of their complaining at that time.

Question 8.—What was the price of hay and grain in the summer of 1835?

Answer.—I think that hay averaged from $10 to $12 per ton. I think oats were worth 30 and 32 cents per bushel.

Question 9.—What were the prices of hay and grain in the winter of 1835–'36?

Answer.—They were higher. Hay was from twenty-five to thirty dollars per ton in the spring of 1836. In one instance I paid $35 for a ton, and carted it as much as seven miles myself. The prices of grain, and other descriptions of feed, were proportionably high. I kept a large number of cattle myself.

Question 10. How much hay and grain would it take for the subsistence of a yoke of oxen for one day?

Answer.—I think an ox would eat from 30 to 35 pounds of hay a day, if he had a peck of meal?

Question 11.—How much would it take for the subsistence of such working horses as the claimants had to get out marble from their quarry?

Answer.—Each horse would eat three pecks of oats per day, I should think perhaps a little over, and almost twenty pounds of hay.

Question 11.—What kind of horses had they?

Answer.—They were large horses—large heavy draught horses; larger than the most of horses we have around here.

CHARLES BATHGATE.

Subscribed and sworn to before me.

T. Baily Myers,
Special United States Commissioner.

On his cross-examination by the counsel for the United States:

Question 1.—When did hay commence to rise in 1835? and state the course of the rise between the summer of 1835, and the spring of 1836.

Answer.—It began to rise in the latter part of July, 1835. There was a short crop. The rise was gradual until the latter end of May, or the first of June in the next year.

Question 2.—Can you state the average price of hay between July, 1835, and May, 1836.

Answer.—Taking it through, I should think the average would be from $22 to $25 per ton; I am not exactly certain.

Question 3.—Notwithstanding the want of plans, did not the work at the quarry go on during the whole period of this contract with Matthews, Wood, and Hall?

Answer.—They were always doing some work, but what, I did not pay much attention to; but in general most of their cattle were out of work during the time that complaints were made ofwant of plans.

Question 4.—Could not the men and cattle and horses have been employed to some advantage in other work during the time they were waiting for plans?

Answer.—That is a question I cannot answer. They were not employed at any other work that I know of.

Question 5.—Was there no way of giving employment to these men and horses and cattle, so as to enable them to earn their expenses either in whole or in part?

Answer.—They always kept part of their horses and cattle at work; but what they were doing, or whether they were working to any advantage, is more than I know.

Question 6.—Could not the men have been discharged when the work was slack, and the same men or new ones obtained when the work required?

Answer.—I don't think they they could have discharged their teamsters, for they were very difficult to get. I supposed they were in the same situation with their drillers. Common laborers they could get; but how many of them they employed I am not able to say.

CHARLES BATHGATE.

Subscribed and sworn to before me.

T. Bailey Myers,
Special United States Commissioner.

Direct examination resumed:

Question 1.—Do you remember the character of the winter of 1835–'36?

Answer.—We had a very severe winter—very heavy snow. It was the winter of the great fire in New York.

Question 2.—Are you acquainted with quarrying marble, and do you know whether it is easy or difficult to organise the necessary force for quarrying, or was it so in 1835?

Answer.—I do not think that I am acquainted with quarrying; but I should consider it very difficult, from appearances, to organise for such work as they had to do.

Question 3.—If Matthews, Wood, and Hall, allowed the workmen whom they had collected to disperse, would it have been difficult or not for them to get them together again at the busy season of the year?

Answer.—I do not think they could hardly have got them together again, without great loss of time—I know they could not.

CHARLES BATHGATE.

Subscribed and sworn to before me.

T. Bailey Myers,
Special United States Commissioner.

March 31, 1846.

Joseph Lyon, a witness called, sworn, and examined, on the part of the claimant, saith: I reside at White Plains, in the county of Westchester; I have resided in that county since 1828; I am a farmer by occupation.

Question 1.—Have you been sheriff of the county of Westchester?

Answer.—I have. I was elected in 1840, and my time expired in 1843.

Question 2.—Had you any connexion with Matthews, Wood, and Hall, in their contract for the construction of the custom-house in the city?

Answer.—I had. I was one of their sureties.

Question 3.—Had you any, and what occasion to be at their quarry and observe the state of the work there, under their contract, in the spring and summer of 1835?

Answer.—I used to be frequently at the quarry during the spring and summer of 1835. I was supplying them with hay. I cannot state exactly how often I was there; probably once a week during the time that I was supplying them with hay, from September, 1834, to some time in December, 1835. I might not have been there quite so often during the winter.

Question 4.—Please to state whether there was any suspension of the work at the quarry in the spring and summer of 1835?

Answer.—There was a suspension, as near as I can recollect, of some three or four months. I think the suspension took place in May—the last of May.

Question 5.—Please to state to what extent the work was suspended?

Answer.—The teams and men were out of employ mainly. From my general notice of it while I was there, I think there was no considerable work going on.

Question 6.—Did your connexion with this contract, as surety, lead you to any particular observation and inquiry?

Answer.—It led me to inquiry as to the cause of the suspension.

Question 7.—What was the cause of the suspension?

Objected to, unless the witness knows of his own knowledge.

Answer.—I do not know of my own knowledge. I only satisfied myself from inquiry at the time.

Question 8.—Do you know of any cause arising on the part of Matthews, Wood, and Hall for the suspension?

Objected to by counsel for the United States.

Answer.—I do not.

Question 9.—Can you state the price of hay and grain during the summer, fall, and winter of 1835 and '36?

Answer.—Take it from month of May, through June and July, the prices of hay were from seven to eight shillings per hundred; August, September, October, November, and December, from eight to twelve shillings. After that, hay was higher; as high as fourteen shillings. In the spring following, I think there was not much alteration; I think hay sutiained its price. I did not supply them

with grain; but kept a store, and was in the habit of purchasing grain from the farmers. There was a rise from three shillings to about seventy-five cents. I think, in the fall of 1834, grain was worth about thirty-seven and a half cents, and advanced through the winter, spring, and summer of 1835. I do not exactly recollect how it was during the winter and spring of 1835 and '36. Hay being high during that time, grain undoubtedly was.

JOSEPH LYON.

Subscribed and sworn to before me,
T. BAILEY MYERS,
Special United States Commissioner.

Cross-examined by the counsel for the United States.

Question 1.—Have you any interest in this claim growing out of your connexion as surety, or otherwise?

Answer.—None in the least, sir.

Question 2.—When you visited the quarry during what has been called the suspension, were not the men and teams of the claimants at work at something?

Answer.—No, sir; generally speaking, I found their oxen and horses in the stable. There might have been some few horses going after feed or something for the quarry. I judge from appearances. Generally speaking, I found the cattle idle, or the main part of them.

JOSEPH LYON.

Subscribed and sworn to before me,
T. BAILEY MYERS,
Special United States Commissioner.

Alexander Canninghan, a witness on the part of the claimants, being called, sworn, and examined.

Question 1.—What is your age, residence and occupation?

Answer.—I reside at West Farms, in the county of Westchester; I am by occupation a quarryman; I am about thirty-four years of age.

Question 2.—Did you work for Matthews, Wood & Hall, and if so, when, where, and how long?

Answer.—I worked for them between three and four years, I should think; from the time when they opened the quarry at Morrisania, in 1833; I left off sometime in 1837. I worked as a teamster some of the time, and as quarryman some of the time; I should judge near one-half of my time as teamster. Pretty much all I did as quarryman was drilling.

Question 3.—What was the price that was paid by Matthews, Wood & Hall, to their teamsters and drillers?

Answer.—I got twelve shillings per day as teamster during the whole time I acted as such; I had from a dollar to ten shillings as driller. When I did not know much about it, I had a dollar. I nveer got less than these prices. There was one class of teamsters that drove the ox teams, and another the horse teams; I drove an ox team, and was a green hand at the time. Experienced teamsters

could get more than I could. I should think they were worth all of fifty cents a day more than I was. Drillers were worth from ten to twelve shillings per day; they were worth ten shillings when wages were low, twelve shillings when they were high; other quarrymen commanded about the same wages.

Question 4.—Do you know about how many teamsters Matthews, Wood, & Hall had?

Answer.—They had thirteen teamsters in all.

Question 5.—Can you state as to the number of drillers, quarrymen, and common laborers?

Answer.—I could not state positively; I should judge the number of them, in all, was between thirty and forty, over and above the teamsters.

Question 6.—Were there any foremen besides?

Answer.—Yes sir, there were three, my brother was one of them.

Question 7.—Do you know what wages, as a foreman, he had?

Answer.—He had, I believe, three dollars per day.

Question 8.—Did Matthews, Wood, & Hall take any part in the work at the quarry or not?

Answer.—Yes sir; there were some of them hurrying the teamsters along, chaining stone, &c. They were generally engaged there like myself, except when some of them were absent on business.

Question 9.—Were there any persons in addition to those whom you have named, connected with the work at the quarry, as blacksmiths or wheelrights?

Answer.—Yes, sir; there were two blacksmith, one wheelright, and two helpers employed all the time while the custom-house work was going on. I do not know what wages they got.

Question 10.—During the summer of 1835, what work was doing at the quarry?

Answer.—There was not much doing from May; there was a stoppage. We were cleaning a little about the quarry, and such like, to no purpose.

Question 11.—Did Matthews, Wood, & Hall, keep their ordinary force of men during the summer?

Answer.—Yes sir.

Question 12.—How was it the next winter?

Answer.—They kept their force on through the winter.

Question 13.—Suppose Matthews, Wood, & Hall, had allowed their men to disperse in the summer, would it have been dfficult or not, to have collected an adequate force again?

Answer.—Yes, sir; it would have been very difficult to collect such a force as they had there.

Question 14.—Was the work which they were doing for the custom-house, easy or difficult work; did it require skill and experience, or not?

Answer.—It required an experienced and skilful man.

ALEX. CUNNINGHAM.

Subscribed and sworn to before me,

T. Bailey Myers.

Special United States Commissioner.

Cross examined by Mr. Marbury, for the United States.

Question 1.—After the work stopped in May, as you have stated, did not the claimants discharge some of their men?

Answer.—Not as I know of. I dis-recollect whether they did or not.

Question 2.—Do you mean to be understood as saying, that this force of men was kept there doing nothing?

Answer.—Yes, sir; some of these were at work around with their teams, clearing the quarry, and such like, to no purpose; to keep them out of idleness as much as anything.

Question 3.—Is there any difficulty in getting teamsters or quarrymen, in Westchester county, when you went there?

Answer.—Yes, sir; at that time there was, they had to go to Connecticut after teamsters. They had to make drillers as they could; it took a couple of years to make them understand the business. There would be a difficulty at any time, even now, to get proper workmen for working marble.

Question 4.—Do you know, whether or not, the number of men that Matthews, Wood, & Hall had employed, varied at different times?

Answer.—I do not know that it varied much, sometimes they had more men than I have stated, sometimes less.

Question 5.—What business are you engaged in now?

Answer.—Quarrying principally, blasting of wells, and any other work that offers.

Question 6.—Have you kept any memoranda which enables you to speak of the number of men Matthew, Wood, & Hall, had, or do you speak from recollection?

Answer.—I speak from recollection.

Question 7.—Have you had your memory refreshed in any way, since you left their employ?

Answer.—No, sir; I only heard Mr. Lyon give his testimony this afternoon.

ALEX. CUNNINGHAM.

Subscribed and sworn to before me,

T. Bailey Myers,

Special United States Commissioner.

Direct examination resumed:

Question 1.—Is your brother now living?

Answer.—No sir.

Question 2.—Are the quarrymen and drillers who worked with you at the quarry, now to be found in this part of the country, or are they now generally dispersed?

Answer.—They are all dispersed. I have seen but one since I left the quarry.

ALEX. CUNNINGHAN.

Subscribed and sworn to before me,

T. Bailey Myers,

Special United States Commissioner.

William Beard, a witness called, sworn, and examined on the part of the claimants, saith:

Question 1.—What is your age, residence, and occupation, and in what business have you been engaged for several years.

Answer.—I am about forty-three years of age; my business is that of contractor, and has been for the last 18 or 19 years. During that time I have had a number of contracts from the city of New York for levelling, macadamizing roads, blasting rocks, and also on the Harlem railroad, and other railroads. I reside in Brooklyn.

Question 2.—How many men have you had usually under your cmploy?

Answer.—Sometimes more, sometimes less; at times, four hundred. Usually, a large number.

Question 3.—Are you able to state, and will you state, the comparative price of labor in the summer of 1831, and the spring of 1836?

Answer —Common laborers, what we call shovellers and pickers, from 87½ to 93¾ cents per day. In the spring of 1836, the ssme men were worth from $1 12½ to $1 25. Wages rose during this time about 26 per cent. Common drillers, in 1835, were worth $1, and $1 25 in 1836; flag and feather drillers were worth $1 25 in 1835, and $1 50 in 1836. I have usually employed drillers myself for rough work, and not for building marble.

Question 4.—Will you please to state the value of the labor of oxen and horses in 1835, and 1836?

Answer.—I had no oxen in 1835; I had some for some days in 1836; I used to keep a great many, but had none at that time. A yoke of oxen was worth from $2 to $2 50 per day in 1836, without a driver. A pair of horses at that time, such as the claimants used, were worth from $3 to $3 50 per day, without a driver. I would make 75 cents per day difference in the value of horses between 1835 and 1836 on account of feed. The difference in a yoke of oxen would be about 61½ cents less than in the first mentioned year. I would make from 12½ to 25 cents difference between oxen and horses.

Qestion 5.—What is the weight of ground corn meal per bushel?

Answer.—From forty-four to fifty-six pounds.

WILLIAM BEARD.

T. Bailey Myers,
Special U. S. Commissioner.

On his cross-examination by the counsel for the United States:

Question 1.—When did this rise in the prices of labor of which you have spoken begin?

Answer.—In march, 1886. It was at its highest point, I should think, in May and June, and there was no fall in the price until September, or October.

WILLIAM BEARD.

T. Bailey Myers,
Special U. S. Commissioner.