

Report No. 250.

[To accompany bill H. R. No. 243.]

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HOUSE OF REPRESENTATIVES.

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WILLIAM P. ZANTZINGER'S ADMINISTRATORS.

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FEBRUARY 29, 1848.

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Mr. CROWELL, from the Committee of Claims, made the following

REPORT:

*The Committee of Claims, to whom was referred the memorial and accompanying papers in this case, report:*

That, after a patient and laborious examination of all the documentary and other evidence pertaining to the claim of Mr. Zantzinger, late purser in the navy, they are satisfied that it is just, and ought to be paid.

The proof is voluminous, and where it is derived from the *opinions* of witnesses, which, all experience demonstrates, are very apt to be influenced by personal and other considerations, it is somewhat contradictory. But, upon the whole, and in view of the statements made officially by some of the witnesses at the time of the chase, compared with their testimony taken recently by the Fourth Auditor and now on file, the committee feel confident that at least eight thousand dollars worth of slop-clothing and purser's stores were thrown overboard during the chase of the *Hornet*. And a part only of this claim having been allowed and paid by the accounting officers of the Treasury Department, the committee report a bill for the residue, and recommend its passage. The committee fully concur in the views presented in a report from the Committee of Claims at the second session of the 28th Congress, presented to the House, December 23d, A. D. 1844, and make it a part of this report.

HOUSE OF REPRESENTATIVES.—December 23, 1844.

*The Committee of Claims, to whom was referred the memorial of William P. Zantzinger, report :*

That in the late war with Great Britain your memorialist was a purser in the navy, and was attached to the ship-of-war *Hornet*, bound on a cruise to the Indian ocean. On this cruise the *Hornet* was chased by an enemy's ship of greatly superior force—(a British 74.) This chase is memorable in the history of the war for the length of its continuance, (upwards of seventy hours,) as well as for the distinguished gallantry, seamanship, skill, and perseverance of the officers and crew ; which rendered the escape of the *Hornet* one of the most remarkable occurrences of the war. During its continuance, one of the expedients resorted to by her commander was to throw overboard, not only all her armament, (save one gun,) boats, &c., but "*everything whatever from below, as well as off deck,*" including the purser's stores ; and, to use the language of one other witness, "the order was to heave overboard every thing that weighed a pound."

Congress, at its last session, passed a "joint resolution," which authorized and directed the accounting officers "to audit and settle the accounts of William P. Zantzinger, and allow him the value of such stores as were thrown overboard from the United States ship *Hornet* ; to be ascertained by deducting from what shall appear to have been at that time the usual amount taken on board a sloop-of-war going upon a cruise like that of the *Hornet*, the quantity which the said accounting officers may be of opinion was probably issued or expended between the period of the vessel's sailing from New York and the time at which the chase occurred."

The better to enable him to settle the accounts of Mr. Zantzinger, under this act of Congress, the Fourth Auditor applied to several pursers now in service, for their opinions as to the probable amount issued or expended between the period of the vessel's sailing from New York and the time at which the chase occurred. The pursers applied to, it appears, had not been employed on *sea-going service* in time of war, and consequently could not have known the requisite amount nor kind of stores to be taken on board on such a lengthened cruise as that of the *Hornet*. Nor could it be expected that they would be familiar, or, indeed, have had any accurate knowledge of the prices paid in the war for such stores of the description taken on board that ship ; which prices, it is alleged and believed, were nearly one hundred per cent. in advance of what has subsequently been paid for similar stores. Of the *nine* witnesses whose opinions were taken, *five* (being a majority of the whole number) estimated the amount of purser's stores on board, on the day of chase, to be at an average of \$9,921, and the lowest of *those five* at \$8,551. Two of the pursers, however, estimated for a smaller sum. The Auditor made up his award of allowance under the joint resolution of Congress, which amounted to \$5,724 ; but by what process this sum was arrived at, does not appear. Evidence was subsequently ob-



tained, and before the award was approved by the Comptroller, (which was not attainable at an earlier day, because of the absence from the United States of the officer who gave the evidence,) which goes to establish with as much accuracy as, it is presumed, is possible, *the amount which it would seem ought to be allowed.*

While the allowance of the Auditor was pending before the Comptroller, the evidence of Captain David Connor, who was first lieutenant of the *Hornet*, was obtained; which, if it went for any thing, would go for an allowance *far below* that made by the Fourth Auditor. Lieutenant Connor, it is alleged by the memorialist, could have known little or nothing of what was thrown overboard, as it appears from the facts in the case that he was at the time confined to his cot below, suffering under the effects of a severe wound received in the brilliant action between the *Hornet* and the British ship-of-war *Penguin*, a short time previously, in which the *Penguin* was captured. This, certainly, sufficiently accounts for the want of accuracy in the knowledge of Lieutenant Connor.

Just, however, after the opinion of Lieutenant (now Captain) Connor was received, it fortunately for the memorialist happened that Lieutenant (now Captain) Newton arrived in this country, and at the seat of government, from the Mediterranean. Captain Newton was the second lieutenant of the *Hornet*, and, in consequence of the wound and confinement of Lieutenant Connor, was doing the duty of first lieutenant, and was the *officer on deck* in charge of the ship, and was superintending the execution of the orders to lighten the ship by throwing every thing overboard. *His testimony was taken on the part of the United States, and is the very best that the nature of the case is susceptible of.* He states, as his opinion, "that Captain Connor was in error as to the probable amount of slop-clothing and purser's stores taken on board, and that he has no hesitation in saying the amount must have greatly exceeded the sum stated by Captain Connor; and that it could not have been less than \$8,000, after deducting the probable amount of issues from the day of leaving New York to the day of the chase."

If the opinion of Captain Connor could have influenced the accounting officers, the allowance would probably have been much below the sum fixed by the Auditor. Yet, notwithstanding, the Comptroller ratified the decision of the Auditor for the sum of \$5,724, without, as it seems to your committee, *any regard to Captain Newton's evidence.*

It appears to your committee *that the statement of Captain Newton*, the second lieutenant of the ship, the officer in charge of the deck at the time the transaction took place, and the officer who actually superintended the throwing the stores of every kind into the sea, and who ought to know better than any other person what was thrown overboard, *is more to be relied upon than the statement of any other person belonging to the ship.*

The committee, believing that the opinion of Captain Newton is entitled to great confidence, report a bill for the relief of your memorialist.

A.

*To the Senate and House of Representatives of the United States of America, in Congress assembled:*

The memorial and petition of William P. Zantzinger, late a purser in the navy of the United States,

RESPECTFULLY SHOWETH:

That on the 15th day of June, 1844, Congress passed a joint resolution for your memorialist's relief, in the following words, viz:

"That the accounting officers of the treasury are hereby authorized and directed to audit and settle the accounts of William P. Zantzinger, and allow him the value of such stores as were thrown overboard from the United States ship *Hornet*; to be ascertained by deducting from what shall appear to have been, at that time, the usual amount taken on board a sloop-of-war, going upon a cruise like that of the *Hornet*, the quantity which the said accounting officers may be of opinion was probably issued or expended, between the period of the vessel's sailing from New York, and the time at which the chase occurred."

That the Fourth Auditor, not satisfied with the evidence upon which the action of Congress was predicated—although there was no question to be decided by him under the said resolution, which was not fully covered by that evidence—issued a circular to various pursers in the navy, for their *opinions*; a copy of which circular accompanies this memorial. This course was considered by your memorialist as arbitrary and unsatisfactory, and calculated to do him great injustice, as he conceived; inasmuch, as the pursers, to whom the circular was addressed, had not been employed on *sea-going service* in time of war; and consequently could not have known the requisite kind of stores to be taken on such a cruise, as that of the *Hornet*, nor the quality, quantity or "*amount taken on board a sloop-of-war, going upon a cruise like that of the Hornet.*" At length the opinions of seven pursers, in addition to the testimony of Messrs. Coxe and De Selding, were obtained, which, with the other testimony submitted to your honorable bodies, *completed*, as your memorialist supposed, the evidence in the case.

Upon this evidence, the Fourth Auditor, on the 5th of September last, made a decision and reported an allowance in favor of your memorialist, under the aforesaid joint resolution, of five thousand, seven hundred and twenty-four dollars—say \$5,724 *only*; a sum *far short* of the just claim of your memorialist, and *far short* of the sum authorized and required by the *evidence*, which will fully appear to your honorable bodies, upon any just rule of weighing evidence, as your memorialist believes, by the fact that of the *nine* witnesses whose opinions had been asked, *five* (being a majority of the whole number) estimated the amount of purser's stores, unexpended and remaining on board, on the day of the chase, at an average sum of *nine thousand nine hundred and twenty-one dollars*; and the lowest of those *five*, at *eight thousand five hundred and fifty-one dollars*. Of the other four witnesses, *two* presented estimates so

extremely and unreasonably low and inadequate, as to be overruled and discredited by the whole of the other *seven* just spoken of—being *largely less* than one-half of the amount estimated by the *lowest* of *all* the others; and one of them fixing the amount of all kinds of purser's stores remaining on board on the day of the chase, as low as *sixteen hundred dollars*; and leaving but this trifling amount of stores on board—scarcely sufficient for *one month's* regular supply at *war* prices—(proved in course of the investigation to have been nearly one hundred per cent. higher than the *peace* prices) for the prosecution of the long and arduous cruise of the *Hornet* in the Indian ocean, where it was clearly proved no fresh supplies could have been obtained. The other two of the *four* witnesses presented estimates approaching much nearer those of the five first named.

This final decision of the Fourth Auditor was laid before the Second Comptroller for his signature, in the form of a *joint award*, on the same day on which the decision was made, viz: the 5th of September, 1844.

Here your memorialist supposed the action of the Fourth Auditor had closed, by this rendition of his final report or decision; but to the surprise of your memorialist, and, as he believes, in violation of his just rights and of all *just rules* of proceeding, as well as in violation of the joint resolution itself, passed for his relief by your honorable bodies, the said Fourth Auditor, after having made his final decision and officially communicated the same to the Second Comptroller, as aforesaid, and while the case was pending before the said Second Comptroller, and before his final action thereon, and without any notice whatever to your memorialist, caused the testimony of Captain David Connor, who was a lieutenant on board the *Hornet* at the time of the chase, to be obtained and laid before the Second Comptroller. In taking this evidence, it would seem that the Fourth Auditor did not confine himself to the inquiry limited by the joint resolution of your honorable bodies, as to the amount of your memorialist's loss, as required by the terms of said resolution, viz: "to be ascertained from what shall appear to have been at that time the usual amount taken on board a sloop-of-war, going upon a cruise like that of the *Hornet*, the quantity which the said accounting officers may be of opinion was probably issued or expended between the period of the vessel's sailing from New York, and the time at which the chase occurred;" but, departing therefrom, sought to establish the *amount* of that loss by a rule absolutely prohibited by the joint resolution, and thus virtually to overrule the decision which your honorable bodies had made in favor of your memorialist, by attempting to show that little or nothing had been thrown overboard—a fact which had been already favorably and conclusively settled by your honorable bodies. The testimony of this witness thus irregularly and illegally taken, though an officer of the *Hornet* it is true, but whose peculiar situation precluded *all* knowledge of the events and occurrences which took place during the period of the chase, and could alone account for the errors in his statement—induced the Second Comptroller to call for the testimony of Captain John Thomas Newton; your memo-

rialist having represented to the Second Comptroller that the testimony of Captain Connor was a tissue of errors and misapprehensions, and that his confinement below, in the cabin, to his cot, from a serious wound received in action some weeks previous to the chase, and which for months afterwards prevented him from knowing any thing whatever of the events of the chase; while *Captain Newton*, being in command of the deck of the ship during the whole period of the chase, was executing the order to "throw every thing overboard from below as well as off deck," and was consequently the very best living witness as to all matters connected with the events of the chase. Captain Newton was, therefore, called upon by the Second Comptroller as a witness on the part of the United States, and he gave in his evidence under dates the 30th September and 2d October last, to which your memorialist asks the special attention and consideration of your honorable bodies.

That upon this evidence, which had *not* been before the Fourth Auditor, and particularly that of Captain Newton, now a post captain in the navy, distinguished for his bravery and good conduct in the late war, and who deservedly stands high in public estimation, not only for his gallant services, but his demeanour as a gentleman, and from whose peculiar and conspicuous station on board the *Hornet* during her memorable chase, his evidence merited the highest confidence and consideration—your memorialist confidently looked for, and had a right to expect that the Second Comptroller would have overruled the decision of the Fourth Auditor, and have allowed your memorialist *at least* the sum of not less than *eight thousand dollars*, the amount Captain Newton states, in his letter to the Second Comptroller, to have been on board and unexpended on the day of the chase; but he declined doing so, without assigning any reason, and finally *confirmed* the Fourth Auditor's award of but *five thousand seven hundred and twenty-four dollars*.

Thus left *remediless* by the injustice now complained of, your memorialist, although reluctant again to trouble your honorable bodies, feels himself necessarily constrained to do so, that he may obtain his just rights. He, therefore, prays that your honorable bodies will pass a supplementary act for his further relief, which will authorize and direct the Fourth Auditor of the Treasury to allow your memorialist, in addition to the sum already allowed by the accounting officers, under the "joint resolution" passed for your memorialist's relief, during the last session of Congress—say, *five thousand seven hundred and twenty-four dollars*, the further sum of *two thousand two hundred and seventy-six dollars*, making together an amount equal to *eight thousand dollars*, being the sum stated by Captain Newton, in his evidence on the part of the United States; he having stated that the amount of purser's stores, on board the *Hornet*, "*could not have been less, on the day of chase, than eight thousand dollars;*" an amount *less* than your memorialist's actual loss, and *less* than the amount estimated by a majority of the witnesses herein mentioned.

And, as in duty bound, your memorialist will ever pray, &c.

WM. P. ZANTZINGER.

CITY OF WASHINGTON, December 16, 1844.



*To the Senate and House of Representatives of the United States of America, in Congress assembled:*

The memorial of the undersigned, Louisa F. Zantzinger, widow of William P. Zantzinger, lately deceased, and of William C. Zantzinger, her son, administrators,

RESPECTFULLY SHEWETH:

That, at the last session of the last Congress, the Committee of Claims of the House of Representatives unanimously made a favorable report upon the memorial of said William P. Zantzinger, accompanied by a bill awarding him the additional sum of \$2,276, as justly due him under the joint resolution for his relief, approved 15th June, 1844, for losses incurred by said William P. Zantzinger, during the late war with Great Britain, by the destruction, under the order of his superior officer, of certain property committed to his care; for which he was held accountable to the government of the United States, and actually paid the amount of said loss into the treasury of the United States.

The undersigned, administrators, respectfully accompany this memorial with the proofs and documents necessary to establish the claim of the deceased to this additional relief of \$2,276; and, believing that he had, and they, as administrators, have, a just and legal claim to this additional amount for losses incurred as aforesaid, respectfully and earnestly pray that your honorable bodies will pass the said bill for their relief, as well in consideration of the justice of the said claim as of the destitute circumstances in which the death of the said William P. Zantzinger has left his family; thereby enabling them to pay into the treasury of the United States an alleged balance now standing against the deceased and his sureties.

And your memorialists will ever pray, &c.

LOUISA F. ZANTZINGER,  
WM. C. ZANTZINGER,

*Administrators.*

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B.

TREASURY DEPARTMENT,  
*Fourth Auditor's Office, July 7, 1843.*

SIR: A letter addressed to you on the 1st instant by Purser Zantzinger, respecting a claim which he has made to reimbursement for loss alleged to have been sustained by him, from certain property belonging to him, or for which he was held to account, having been thrown overboard during the last war, by order of the commander of the vessel to which he was attached, while she was chased by an enemy, having been, with the accompanying papers, referred to me for "a report on the newly discovered evidence," I have the honor to state, that, as the claim has never been presented to this office, and as there is nothing in the letter or documents that shows what portion of the testimony has been newly

discovered, I have not the means of distinguishing it; and I will therefore proceed to report the facts, as they appear upon the whole evidence submitted, with such marginal references as may be requisite to point you to the particular testimony upon which each fact rests. The following facts, then, appear to me to be more or less clearly proved:

Mr. Zantzinger was appointed a purser in the navy on the 24th July, 1813. The first order which he received was to the *Hornet*, and was dated on the 2d August of the same year. He continued to be attached to that vessel until the 28th November, 1815, when he received a furlough. When he joined the *Hornet*, (which was in August, 1813,) she was blockaded in the Thames, near New London, by a superior British force; in which situation she remained until November, 1814, when she escaped from the enemy, and on the 23d of January, 1815, she put to sea upon a cruise to the East Indies. Between the period at which he became attached to the *Hornet* and the time of her sailing, Mr. Zantzinger purchased on his own account, to be disposed of (as was then customary) to the officers and crew, private stores, (commonly called "small stores,") to the amount of \$5,983 29; and when the vessel sailed, he had the usual or proper quantity on board, which is estimated by Purser Thornton, whose opinion has been obtained upon that point, at \$5,000. During the same period—that is to say, between the time at which Mr. Zantzinger joined the *Hornet*, and that of her sailing—he received slop clothing from the navy agent in that quarter, to an amount exceeding \$4,178 33, but how much beyond that sum does not appear. This slop clothing was charged to Mr. Zantzinger, and has been long since paid for to the United States, by him. The small stores which were taken on board, were stowed in the spirit room, and the slops in the purser's store room; both of which apartments were below deck. On the 27th, 28th, and 29th of April, 1815, the *Hornet* being chased by a British ship-of-the-line, Captain Biddle ordered everything from below to be thrown overboard, for the purpose of lightening the vessel; which order (including, as it did, every article except such provisions as might be necessary to sustain the officers and crew) was carried into execution.

If the evidence in support of these facts be satisfactory, it seems to me clear that Purser Zantzinger has a just claim upon the government for the value of the property belonging to him, or for which he has since been held to account, that was thrown overboard; and I do not perceive how Congress, if applied to, could refuse to make an appropriation for his relief.

I can see no distinction, in principle, between this case and that of private property on land, taken and used by the troops of the United States for purposes of defence, and, in consequence thereof, destroyed either by them or by the enemy. The cases strike me as alike included by that clause of the constitution which provides that "private property shall not be taken for public use without just compensation."

Although the loss thus sustained by Purser Zantzinger was no

doubt considerable, and might reasonably be estimated at some thousands of dollars, the amount cannot be fixed with any near approach to accuracy, until it be shown what were the probable expenditures from the slops and small stores, procured as above stated, between the time at which they were received, and the time at which those remaining were thrown overboard.

The papers referred to me are herewith returned.

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

A. O. DAYTON.

The Hon. A. P. UPSHUR,  
*Secretary of the Navy.*

A true copy from the original on file in this office.

A. THOS. SMITH, *Chief Clerk.*

NAVY DEPARTMENT, September 18, 1843.

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*Extract from the log-book of the United States ship Hornet.*

APRIL 29, 1815.

These 24 hours commence with light breezes and pleasant; all sail set in chase. At half past 3, the Peacock made a signal discovering superior force; took in all the steering sails, and hauled upon a wind on the larboard tack; at half past 3, the Peacock made a signal that the chase was a line-of-battle ship; at 45 minutes past 3, the Peacock made a signal that the strange sail was English; at 4, all sail set on the larboard tack—the enemy on the quarter.

J. T. NEWTON.

At dusk, the enemy bore E. 23° S.—the Peacock E. by N.; at 6, loosed the wedges from the lower masts; light breezes and pleasant.

J. MAYO, *Lieutenant.*

From 6 to 8, light winds; all sail set on the larboard tack by the wind.

E. RUMNY, *Sailingmaster.*

At 8, discovered the enemy weathering on us fast; at 9, cut away the sheet anchor; hove overboard the sheet cable and a quantity of shot, spare rigging, and spare spars, and lost sight of the Peacock; at half past 9, *scuttled the wardroom deck*, so as to get out the iron ballast, and hove overboard 90 pieces of kentledge; shifted some of the round shot from the shot-locker into the spirit room, in order to get at the kentledge in the spirit room under the casks, started 300 gallons of whiskey. At midnight, moderate breezes; all sail set upon a wind; the enemy gaining upon us.

J. T. N.

At 2 a. m., tacked ship to the westward; the enemy also tacked. At 4, all sail set upon a wind; the *enemy of the human race* gaining upon us; at daylight, the *enemy within gun* shot upon our lee quarter; commenced firing upon us—her shot overreaching us half a mile; at 7, broke up the launch and hove it overboard; cut away the starboard bower anchor and cable; the two after and two forward guns; a quantity of shot, kentledge, spars, and rigging. The enemy continued firing upon us until 9 a. m. At 8 a. m., slung the topsail and topgallant yards, and stoppered the topsail and topgallant sheets; at 11 a. m., could perceive the enemy gaining upon us; at half past 9 a. m., hove overboard ten carronades; at meridian, the enemy commenced firing upon us again.

SUNDAY, *April 30.*

These 24 hours commence with moderate breezes and light squalls; the enemy about three-quarters of a mile distant upon our lee quarter—firing upon us with round and grape; hove overboard five of the six remaining guns (leaving only one long gun) and the remainder of the shot; knocked away the stanchions on the berth deck, and cut away the topgallant forecastle; made and shortened sail to the best advantage in squalls; hove overboard 24 *barrels of salt provisions*, the *capstan*, the *armorers' forge*, *all the heavy blocks*, and EVERY THING WHATEVER FROM BELOW, AS WELL AS OFF DECK, *that could lighten us*, from the time the enemy last commenced firing until 4, when his shot fell short; two shot hulled us; some running and standing rigging shot away; no person injured. At 4, fresh breezes; dropping the enemy fast.

J. MAYO, *Lieutenant.*

From 4 to 6, fresh gales and squally; all sail set before the wind; dropping the enemy fast.

E. R., *Sailingmaster.*

From 6 to 8, fresh gales and squally; all sail set before the wind; the enemy not in sight.

J. T. NEWTON, *Lieutenant.*

From 8 to 12, fresh gales and squally, with rain; discovered the enemy at intervals, with the night-glass, directly astern of us. At half-past 10, set all studding sails; at midnight, the enemy some distance astern.

J. MAYO, *Lieutenant.*

From 12 to 4, fresh gales and squally; all sail set before the wind; the enemy in sight, astern.

E. RUMNY, *Sailingmaster.*

At 5, lost sight of the enemy, the weather being hazy; at daylight, discovered her again; at 8, fresh gales.

J. T. NEWTON, *Lieutenant.*



At 9, the enemy shortened sail, and hauled by the wind to the eastward; at half past 10, shortened sail, (having lost sight of the enemy,) sent down topgallant yards, and veered to the northward and westward; at meridian, fresh gales and squally; carpenters employed in stopping up the ports; crew employed in filling up the empty water casks, and restoring the hold and spirit room.

MONDAY, May 1, 1815.

These 24 hours commence with fresh gales and pleasant weather. At 3, hauled up the foresail to repair, and set the mainsail; the watch employed filling up the empty water casks, and restoring the hold.

E. RUMNY, *Sailingmaster*.

From 4 to 6, fresh breezes and pleasant; finished mending the foresail, and set it.

J. T. NEWTON, *Lieutenant*.

At half past 6, set the jib and larboard fore-topmast studding sail; at 7, set the main topmast staysail, and crossed the main-topgallant yard; at half-past 7, set the larboard lower studding sail, and main-topgallant sail; at 8, hauled up the weather clew of the mainsail; moderate breezes and pleasant.

J. MAYO, *Lieutenant*.

At 9, set the larboard studding sails, and hauled down the stay-sails; at midnight, clear and pleasant; finished filling the water-casks.

E. RUMNY, *Sailingmaster*.

From 12 to 4, moderate breezes and pleasant.

J. T. NEWTON, *Lieutenant*.

At daylight, made all sail before the wind; at 8, moderate breezes and pleasant.

J. MAYO, *Lieutenant*.

From 8 to meridian, fresh breezes and pleasant; at three quarters past 8, took in the larboard lower and fore-topmast studding sails; the watch employed on ship duty.

E. RUMNY, *Sailingmaster*.

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BUREAU OF ORDNANCE AND HYDROGRAPHY,  
June 19, 1843.

I certify this to be a true extract from the log-book of the United States ship "Hornet," commencing 24th January, 1815; the original log-book of which ship is deposited in this bureau.

JOSEPH P. McCORKLE,  
*Clerk of Hydrography.*

*From Captain Wm. Skiddy, commanding packet ship the "Garrick," and midshipman (acting as master's mate of the hold) at the time of the chase of the "Hornet."*

NEW YORK, September 28, 1843.

DEAR SIR: Have received yours of the 22d inst., and, in answer to questions, give you, as far as my recollection aids me, what you request.

1. I think the order was, "to heave overboard" everything that weighed a pound; and many small articles were committed to the deep, fearing they would fall into the hands of our enemy, who, at that time, was nearing us within grapeshot distance, and left us little hope of escape. Several midshipmen had muskets presented them after the action with the Penguin, by Capt. Biddle; these, with the exception of my own, they threw overboard during the chase, stating that it could not be honorably done after the surrender.

2. The crew did receive a considerable amount of prize-money when in New London harbor; and, I presume, it did operate very much against your interest.

3. How much, I cannot say.

4. The ship, while lying in New London harbor, was always ready for sea, and, I presume, fully provisioned for the cruise in every respect.

I think I have stated above all you require.

Yours, very truly,

WM. SKIDDY.

P. S.—My day of sailing is 25th October.

### C.

*Statement showing the quantity of public slop clothing, and purser's stores, denominated "Articles of Luxuries," such as tea, sugar, and tobacco, and "Articles of second necessity," per regulation, taken on board the Hornet, and the probable issues from the 27th January, to 30th April, 1815, the period of sailing from New York, and the day of the chase.*

#### *Luxuries.*

8,640 pounds of tobacco, for three years, at 2 lbs. per man per month, a 37½ cents.....	\$3,240
1,800 pounds of sugar, for 6 months, at 2½ lbs. per man per month, a 25 cents.....	450
360 pounds of tea, for 6 months, at ½ lb. per man per month, a \$1 50 .....	540
	<hr/> \$4,230

*Articles of second necessity,*

Such as 2,160 lbs. soap, boxes of chocolate, boxes of mustard, boxes of pepper, gross of iron spoons, gross jack-knives, fine and coarse combs, shoes, pieces of Russia sheeting, pieces of fine blue cloths, pieces of brown Hollands, thick cloth vests, pieces of black silk handkerchiefs, and Madras ditto; colored socks, cotton and woolen; pounds of thread, blue and white; sewing silks, cotton shirts for marines, scrub brushes, shoe brushes, pieces of blue India nankeen, black ribbons, for hats, hats, glazed; pieces of red and white flannels, thousands of common segars, blacking, tapes, needles, &c., &c., &c., amounting to not less than..... \$3,500

Probable amount of purser's stores on board the day of sailing from New York, 27th January, 1815 ..... \$7,730

Deduct probable amount of issues from 27th January to 30th April, 1815, as follows, under the then existing regulations, viz:

<i>Tobacco</i> —per month, 120 men, at $2\frac{1}{2}$ lbs. per man, is 240 lbs., a $37\frac{1}{2}$ —\$90; for three months, 720 lbs. ....	\$270
<i>Sugar</i> —per month, $2\frac{1}{2}$ lbs. per man, a 25—\$87 50; for three months .....	225
<i>Tea</i> —per month, $\frac{1}{2}$ lb. per man, a \$1 50—\$90; for three months.....	270
<i>Soap</i> —per month, 3 lbs. per man, a $12\frac{1}{2}$ —\$45; for three months.....	135
<i>Articles of second necessity</i> —per list.....	750
	<hr/> \$1,650

Small stores on hand on day of chase.....	6,080
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*Public slop Clothing,*

Consisting of pea-jackets, blue cloth jackets and trowsers, flannel drawers and shirts, yarn stockings, black silk handkerchiefs, common, duck frocks and trowsers, banyans, shoes, mat-trasses, blankets, red cloth vests..... \$4,800

Deduct probable amount of issues, from 27th January to 30th April, 1815..... 500

Whole amount of slop clothing on board on day of the chase.....	\$4,300
Add amount of small stores.....	6,080
	<hr/>

Thrown overboard.....	10,380
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P. S. The slop clothing was furnished by the government in kind, and the purser charged with the cost of the amount furnished, for which he was held to account. The articles termed "*luxuries*," and "*articles of second necessity*," were purchased by the purser, the government furnishing the money to make the purchases, charging him with the money so advanced; and for this sum he was also held to account, being only the agent of the government for its proper distribution. The purser, on the final settlement of his accounts, was required to produce the *bills of cost* of all the articles purchased, approved by his commander.



## D.

*Statement of stores taken in vessels of the class of the Hornet, and less, in time of peace, under the direction and authority of the Navy Department; taken from the records of the Bureau of Clothing, &c.*

Names of vessels.	Slop clothing.	Small stores.*	Groceries.				Peace prices, total amount.	Difference be- tween war and peace.
			Tobacco.	Sugar.	Tea.	Soap.		
Plymouth, 18 guns, to the Mediterranean	\$8,200 00	\$1,553 00	\$805 35	\$310 04	\$323 40	\$72 48	\$11,255 27	\$21,947 77
St. Louis, 18 guns, to the East Indies...	5,900 00	1,045 00	325 25	243 72	340 90	169 40	8,024 27	15,647 32
Decatur, 18 guns, to the coast of Africa.	3,316 00	900 00	359 10	135 37	191 50	105 40	5,799 70	11,309 41
Porpoise, 10 guns, to the coast of Africa	1,333 00	320 00	107 50	92 80	119 17	26 95	1,999 42	3,898 86
Truxton, 10 guns, to the West Indies....	3,200 00	290 00	81 25	48 70	66 00	59 29	3,745 42	7,303 56
Lawrence, 12 guns, to the West Indies..	4,062 97	.....	159 80	122 36	82 50	33 88	4,461 51	8,699 94

\* "Small stores," here alluded to, consist of articles of fine clothing, sheeting, thread, needles, tape, &c. During the last war groceries were included, and all called "purser's private stores."

E.

TREASURY DEPARTMENT, FOURTH AUDITOR'S OFFICE,  
*February 12, 1845.*

SIR: I have received your letter of the 10th instant, requesting an official statement of the estimates made by several of the persons whose testimony was before the accounting officers on their recent investigation of your claim, under the joint resolution of Congress of June 15th, 1844, as to the probable amount of slops and purser's stores on board of the *Hornet* when she sailed from New York in the year 1815; and the probable amount expended between the time of her leaving port and that of her being chased by a British ship of war. I proceed to make the statement you desire; and, in order that a fuller view may be had of the testimony than would be afforded by the estimates of the individuals only whom you have named, I shall include those of all the witnesses whose opinions were obtained. It is proper for me to observe, however, that, even when all these estimates are seen together, they afford a very unsafe criterion, without the letters by which they were accompanied, which contain numerous explanations and qualifications very necessary to be considered in forming a judgment as to the relative weight of the calculations, and the mode of their application.

Purser Hambleton estimates the amount on board at the time of the vessel's sailing at \$9,110 93, and the amount expended before the chase at \$4,145 25; or, if the men were well furnished before leaving port, at \$2,737.

Purser Thornton estimates the amount on board at the time of sailing at \$10,000, and the amount expended at \$5,000. Purser Sinclair, the amount on board at \$4,100; amount expended, \$2,500. Purser S. P. Todd, the amount on board, \$11,500; amount expended, \$3,000; or, if the men were well furnished when the vessel sailed, \$2,000. Purser Breese, the amount on board, \$14,000; amount expended, \$3,500. Purser Terry; amount on board, \$3,708; amount expended, \$1,694. Purser J. N. Todd, amount on board, \$11,495 98; amount expended, \$2,890 26. Commodore Warrington (who sailed from New York in the *Peacock* at the same time with the *Hornet*, and on the same cruise) estimates the slops and purser's stores on board at the time of sailing at \$3,500. Commodore Connor (who was first lieutenant of the *Hornet*) estimates them at \$2,500. Commodore Crane estimates them at \$4,000. Commodore Shubrick at \$3,300. These officers do not give the amount in figures which they suppose would have been expended before the chase, but, according to their concurrent testimony, it would have been half at least, leaving on board at the time of the chase, according to Commodore Warrington's statement, \$1,750; Commodore Connor's, \$1,250; Commodore Crane's, \$2,000; Commodore Shubrick's, \$1,650. Captain Newton estimates the amount (of slops and stores) on board at the time of the chase at \$8,000; and Mr. William B. Smith (who was unwarranted master's mate of the *Hornet*, and who states that he attended at the slop room with

the purser's steward during the chase, for the purpose of executing an order which had been given to permit the seamen to take as much of the clothing as they could stow in their bags) estimates the slops on board at the commencement of the chase at \$2,000. Mr. Charles De Selding estimates the amount on board at the time of the vessel's sailing from New York at \$14,000, and the amount expended before the chase at \$3,000. Mr. John R. Cox, jr., estimates the amount on board at the time of sailing at \$13,500, and the amount expended at \$3,000.

These are all the estimates which were before the accounting officers; but, as I have before observed, each individual accompanied his calculation with remarks essential to a correct understanding of his views, and the proper application of his testimony. Some of the estimates are expressly stated to have been based, upon the prices which prevailed at the period to which they relate, and they are all PRESUMED to have been so.

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

A. O. DAYTON.

TO WILLIAM P. ZANTZINGER, Esq.

*Washington, D. C.*

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E 2.

U. S. FRIGATE POTOMAC,  
*Philadelphia, September 19, 1844.*

SIR: I have received your letter of the 4th instant, reciting the provisions of an act passed at the last session of Congress, directing the accounting officers of the treasury to allow W. P. Zantzinger, late purser in the navy, the value of the stores which were thrown overboard from the *Hornet*, during her chase by a British ship-of-the line, in April, 1815, and requesting me to give any information in my power that may aid you in your decision on the matter referred. I will answer to the points to which you direct my attention, in the order they occur:

Was the quantity of slops and purser's stores taken in the *Hornet* as great as would probably have been taken by the same vessel going upon a cruise in time of peace?

The *Hornet* was intended to cruise in the Indian seas, where it was known bread and salted provisions were difficult to be obtained. It was therefore considered important to carry as much of these articles as the vessel could possibly stow, to the exclusion of purser's stores and slops, which, it was believed, could more readily be obtained, either by purchase at the ports she might be able to enter, or from the vessels captured. I am, therefore, induced to believe her supply of slops and purser's stores, at the time of her sailing from New York, was not near so great as would be taken by a vessel of the same class on so distant a cruise, in a time of peace.

Was Captain Biddle, from what you know of him, likely to al-

low to the purser much latitude in the amount of slops and stores to be taken on board?

Captain Biddle was at the time, and has ever been, extremely careful as to the amount of slops and stores he allowed the purser to take on board the vessels under his command, limiting them to the smallest quantity necessary. He was particularly so with Purser Zantzinger, with whose conduct in regard to these matters, previous to sailing from New York, and afterwards during the cruise, he was much dissatisfied. It is not, therefore, likely, much latitude was allowed to him in this case.

For how many months could the Hornet carry provisions and water for one hundred and twenty men; and for what number of months do you suppose that slops and small stores were taken on board?

The Hornet could carry a full allowance of beef and pork for six months; bread for five, and water for four months. A portion, however, of the salt provisions and bread, when this quantity was on board, had to be carried on the berth deck. The slops and small stores, in the present case, could not have amounted to four months' supply, if so much.

Can you express any opinion as to the probable amount of the slops and stores which would have been received into such a vessel, going, at the period in question, upon a cruise like hers; and as to the proportion which would probably have been expended within three months after her sailing?

Although I have no exact knowledge of the amount or value of the stores put on board of the Hornet at the time of her sailing, yet, as I had seen the purser's bills on other occasions, when preparing for a cruise, and giving due consideration to what I have already stated, as to the reasons which operated on Captain Biddle at the time, in regard to the supply of slops and stores in the purser's department, I should say the whole amount of those articles would not exceed \$2,500, if so much. I cannot say as to the proportion that would have been expended in three months. It is likely, however, that a large portion of the sugar, tea, and tobacco had been issued. I would, however, here remark, that it is probable such articles as tea, sugar, and very likely tobacco, remaining on board, and stowed in spirit room, were thrown overboard at the time of the chase. From the time we had been at sea, the quantity must have been small. As to the slops and other light stores of that nature, they were stowed in a store-room on the berth deck, and were not thrown overboard at all; but the crew were suffered to take whatever they might require and could stow in their bags. After our escape, I understood from the officers, that the articles so taken were all restored or accounted for. Enclosed is a list of slop clothing and small stores put on board the Erie, while under my command in 1829-'30. The Erie sailed from Norfolk in November, I believe, and did not obtain any further supply until the following June. It may guide you in forming some estimate of the value of such stores on board the Hornet. The number of



men on board of her at that time, can be obtained by a reference to her muster-rolls in your office.

What was the period for which seamen were then enlisted ; and had commanders of vessels a right to detain them after the expiration of that term; or was it the practice to do so ?

In relation to this matter, more exact information may be obtained from Mr. W. B. Smith, a resident of this city, who was master's mate on board the *Hornet* at the time, to whom I would refer you, and recommend his being ordered to Washington, where you could obtain all the information he possesses on the subject.

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

D. CONNOR.

A. O. DAYTON, Esq.,

*Fourth Auditor of the Treasury.*

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F.

*Remarks by Mr. Zantzinger on Captain Connor's letter, addressed to the Fourth Auditor.*

Captain Connor states in his letter, "I am, therefore, induced to believe her supply of slops and purser's stores, at the time of leaving New York, was *not* so great as would be taken by a vessel of the same class, on so distant a cruise, in time of *peace*."

Captain Connor has ventured on his opinion, predicated on the belief that, as the cruise was a distant one, it became *necessary* to exclude the purser's stores, with a view to have an opportunity of stowing as much salted provisions and bread as the ship would or could carry; for, he says, it became "*important* to carry as much of those articles as the vessel could possibly stow, to the *exclusion* of purser's stores and slops, which, it was believed, could more readily be obtained, either by purchase at the ports she might be able to enter," &c.

When that officer was *laboring* to find some *excuse* for making it appear that the purser could only have had a small amount of purser's stores on board, he *forgot* the fact that the "*Macedonian*" brig and "*Tom Bowlin*" were in company with the squadron for the express purpose of supplying the wants of the squadron with salted provisions and *bread*, (I think.) Hence it will be seen that no such reason as Captain Connor's could be *sustained*, to exclude the purser's stores, &c., &c. As to the assertion that slops and purser's stores *could* have been "*readily*" obtained in the India seas, it is not the fact. If such articles could have been obtained "*readily*," or *at all*, in those seas in *time of war*, why is it that our Navy Department is *now* engaged in sending *large supplies* of the *same* articles, in this time of *general peace*, to the *same* quarter, for the use of our squadron there ? or why is it that every purser, who has sailed for the East Indies *since the war*, has been *permitted* to

carry large supplies of purser's private stores?—as in the cases, particularly, of the “Potomac” and “Constellation” frigates. Purser Slacum, of the “Potomac,” carried out \$24,000, and Purser Wilson, of the “Constellation,” \$30,000, in private stores, with the knowledge of the government. Let these facts be answered *satisfactorily*. I think I have shown that Captain Connor's argument, in this part of his letter, is *not* sustained by fact.

Captain Connor next speaks (*gratuitously*) of Captain Biddle having been “*extremely careful* as to the amount of slops and stores he allowed the purser to take on board the vessels under his command, limiting them to the *smallest* quantity necessary.” “He was particularly so with Mr. Zantzinger, with whose conduct, in regard to those matters, *previous* to sailing from New York,” &c. This is an *insidious* assertion of Captain Connor, and evidently intended to injure Mr. Zantzinger and his claim. It is *not the fact* that I ever had any difficulty with Captain Biddle previous to leaving New York, or even previous to leaving New London, or during the time the ship had been blockaded there, say 18 *months*. It is *not the fact* that Captain Biddle ever had cause to find any fault with me on account of *providing stores*, &c., for the ship during the above periods, or at any subsequent period. When I joined the Hornet, in *August*, 1813, she was laying blockaded at New London in company with the “United States” and “Macedonian” frigates. I relieved Purser Atwood, (since dead.) The ship was then ready for sea, or nearly so. Her *provisions*, and many *other stores*, I found already on board for the intended long cruise. How then, do I ask, could Captain Biddle have had any cause of dissatisfaction with me for what had been done by another purser? From the period of my first joining the Hornet until the 24th *March*, 1815, near two years, Captain Biddle treated me with marked attention and confidence. He never in any instance, during that long period, *ever attempted to interfere or control* me in the *manner* of laying in my supplies for the ship; but, on the *contrary*, relied upon me to supply the ship with any and everything that would contribute to the comfort of the crew, and never controlled me in the *means* asked for by me for such supplies. It was my misfortune to have a difficulty with Captain Biddle *several days after the action with the Penguin*; but it grew out of a trifling manner—about the *cooking of some birds*, which I had procured on the island near us. This was the *first* difficulty. When I joined the Hornet, Captain Biddle had just been promoted for his gallantry in action. The Hornet was his *first* command. He then possessed none of those *unenviable* traits of character which are now ascribed to him by men who call themselves his *friends*.

The next matter to notice is, wherein Captain Connor speaks of the probable *capacity* of the ship for carrying stores. He says she could only carry six months' provisions and four months' of small stores. Admitting it to be true, that she could only take in six months salted provisions, yet this was no reason *why* the purser's stores should have been restricted in quantity, or excluded; for it

has been herein stated, that the squadron was accompanied by store vessels, to supply them in case of any want of provisions.

In reply to the Fourth Auditor's question, as relates to the probable amount of stores and slops which would have been necessary for such a vessel as the *Hornet*, on *such* a cruise, &c., what is Captain Connor's answer? "That I should say the *whole* amount of those articles *would not exceed \$2,500, if so much.*" How manifestly *preposterous* is such a statement. It does not surprise me, because the reply is given under *malign* influence and *excessive ignorance* of the subject. It contradicts the statements of *seven* old and experienced witnesses—five of them old and experienced pursers in the navy—received witnesses on the part of the Fourth Auditor, who had issued to them *circulars* for information. Captain Connor's estimate does not amount to the amount of *issues* for *three months*, as given in by those pursers. If we assume Connor's statement, and deduct the *difference* between *war* and *peace* prices, say *fifty per cent.*, would leave Captain Connor with a supply of purser's stores amounting to \$1,250, for a crew of 120 men, on a cruise to the East Indies.

Captain Connor states, that "as to the slops and small stores, they were stored in the store-room on the *berth deck*, and *were not* thrown overboard *at all.*" In the first place, he is grossly mistaken. There was *no* purser's store-room on the *berth deck*. The purser's so called "slop-room" was situated *inside* of the *purser's berth* or *state-room*. That state-room was, say, about *six feet square*. That six feet square was arranged thus: a portion of it was *taken off* for the accommodation of the (from the state-room bulkhead or side) *ship's muskets*, perhaps the *marines' muskets*, some 30 or 40 in number. Another portion of the six feet square was laid off for the *purser's sloop-room*, say, in size, five feet *high* and three feet *wide*. From this description of the slop-room, it may easily be conceived that it could not contain many stores of any kind—perhaps *two months' supply*. The question that now suggests itself, where were the slops and other stores kept? I answer, without fear of honest contradiction, in the *spirit-room*. The *slops* were in barrels and bundles, or bales; the tobacco, sugar, tea, &c., in kegs and boxes of *various sizes*—some small and some tolerably large—so that it was *easy and convenient* to find places of stowage, without interfering with Captain Connor's six months' provisions; for those articles were stowed in the *main* and *forward holds*, their proper places of stowage.

Take the description of the *slop-room* as given, and say what quantity would it have held of the following named articles of *slops*, viz: *pea jackets*, *blue cloth jackets* and *trowsers*, *red vests*, *flannel shirts* and *drawers*, *duck frocks* and *trowsers*, *woolen stockings*, *shoes*, *spare mattresses* and *blankets*? and many other articles that might be named. Is it not *manifest* that *two months' supply* could scarcely have been carried in so small a space? The balance I have stated were carried in the *spirit-room*, in boxes, bales, &c.

The chase commenced at about eight o'clock at *night*; the lights were all put out, owing to the proximity of the enemy; the night

was extremely dark; the *spirit-room* was first opened, and the throwing overboard *first* commenced there, as is in *evidence*. It is also in evidence, that the *first* articles which came to hand were the purser's stores. It is in evidence, also, that in consequence of the apparent certainty of the capture of the *Hornet*, an *indiscriminate* throwing overboard *did* take place, even to the ship's *thermometer*, &c.; and Captain Skiddy states (he was master's mate,) that the order was to throw overboard "*every thing that weighed a pound.*" The log-book says: "*every thing whatever* from below as well as off deck was thrown overboard."

And *where*, permit me to ask, was Captain Connor when all this scene of destruction was carried on? He was lying in his *cot*, *dangerously ill*, (in the cabin,) from a wound he had received in the action with the *Penguin* three or four weeks previous to the chase; where he remained confined, and his life despaired of, even till he arrived at New York, when he was taken on shore in a *litter*. With these facts staring him in the face, this officer undertakes to state, *twenty-eight years* after the occurrence, of *his own knowledge*, "*that the slops and other stores were not thrown overboard at all!*" Further comment is scarcely necessary. Captain Connor, it is manifest, *could not have known anything whatever* as to matters and occurrences that took place in the chase; nor was his situation such as to have enabled him, in the *slightest* degree, to have taken any interest whatever in the matter. Lieutenant Newton, now Captain Newton, became the first lieutenant and nominal commander from the time Captain Biddle and Lieutenant Connor were wounded. He *alone* conducted the matters of the chase; and to him alone is to be given a large portion of the honors acquired on that memorable day—for his great skill and bravery displayed on the occasion.

Captain Connor further says, in his letter, "the crew were suffered to take whatever they might require, and could stow in their bags. After our escape, I *understood* from the officers, that the articles so taken, were all restored and accounted for." The circumstance alluded to is *greatly exaggerated*, and I will now state the real facts of the occurrence.

In the afternoon of the second day of the chase, when everything whatever had been thrown overboard to lighten ship, and every skill and ingenuity seemed to have failed us, and it became self-evident that the enemy was fast coming up, and that the *Hornet* must be captured, I went below to prepare for such an event. Whilst in my room, some eight or ten of the crew came down the ward-room ladder, and said to me that they had been sent down to help themselves; that the ship would soon be captured. I answered, "my lads, you will find but little left, for everything is overboard." However, they commenced searching; they went into the slop-room and found some few articles that were *scattered* on the floor; such as jack-knives, and perhaps some few articles of clothing, with which they retreated to the *spirit-room*; and, I believe, *there* picked up some other small matters. After the ship's escape, an effort was made to find out what had been taken, and to require the men to account for the same. In some few instances restoration was made.



Those who may be acquainted with the *sailor*, and particularly with the peculiar *character* of a man-of-war sailor, will smile at the idea of obedience to an order to restore what they, *at the time*, and *under the circumstances*, did consider as *fair plunder* from the *purser*. It is known to be a *fixed maxim* among *sailors* never to give up any thing stolen from the *purser*. He is always looked upon as *fair game*. What respectable officer will deny this? and, notwithstanding, Captain Connor says, "*that the articles taken were all restored or accounted for*;" a matter which, if it had taken place, he could have known nothing of.

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G.

WASHINGTON, September 24, 1844.

DEAR SIR: I have carefully examined your written remarks on the letter of Captain Connor to the Fourth Auditor, and I take leave to state that I am satisfied that all the material facts, to which you allude, are substantially correct.

I was the officer in charge of the deck during the whole period of the chase, and of course well acquainted with all the occurrences of that memorable event. Lieutenant (now captain) Connor could have known nothing of the events or incidents of that chase; he had been wounded, three or four weeks previously, in the action with the *Penguin*, and was considered dangerously ill, confined to his cot in the cabin during the chase, and he continued so until his arrival at New York.

I believe Captain Connor to be in error in regard to his estimate of the probable amount of public and private stores, which you may have had on board the *Hornet* at the time of her sailing from New York. The reasons assigned by him for so small an amount is virtually overruled by the fact that two store vessels were in the squadron with supplies of provisions for any contingency.

The amount of public and private stores must have been much greater in amount than estimated by Captain Connor, as the cruise was expected to be a long and arduous one, and consequently would require a large supply of purser's stores.

The provisioning and storing of a ship-of-war, rests entirely between the captain and his purser.

I am, very respectfully, yours,

JOHN THOMAS NEWTON,  
Captain.

WILLIAM P. ZANTZINGER, Esq.,  
Washington.

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WASHINGTON, September 30, 1844.

SIR: The day previous to receipt of your communication, covering a copy of a letter from Captain Connor to the Fourth Auditor,

on the subject matter of Mr. William P. Zantzinger's claim, Mr. Zantzinger had furnished me with a rough copy of some intended remarks, which he designed to furnish your department with, on the contents of Captain Connor's letter, and requested that I would examine the same, and make any corrections I might see requisite and proper to make, as he only desired that the remarks should be confined to truth alone. I presume Mr. Zantzinger will furnish you with my written answer to his request; to which I respectfully refer you.

I take leave to report, what I therein stated in substance, that I am of opinion Captain Connor is in error, as regards the probable amount of slop, clothing, and private stores taken on board the *Hornet* by the purser, previous to the sailing of the ship from New York. The provisioning and storing of a ship of war generally rests entirely with the commander and the purser. The commander informs his purser the length of his contemplated cruise, and orders him to provide for that time every thing necessary for the comfort of the crew. Should the purser neglect his duty, he would be arrested for the offence.

My opinion is, that Mr. Zantzinger must have had a much larger amount of public and private stores on board the *Hornet* than is stated by Captain Connor. The very fact of \$2,500 being scarcely sufficient for a supply of *three months*, saying nothing of the actual nature of the cruise in question. The cruise was *in time of war*, the ship bound to the East Indies, on a long and arduous service, where it might reasonably be expected no essential supplies could be had; that, in all probability, the crew would be attacked, not only with the *scurvy*, but many other serious diseases which prevail in that climate.

Under such facts of the case, it became necessary that the purser should provide a large supply of proper clothing and stores, commonly called purser's private stores; I have no hesitation in saying it must have greatly exceeded the sum stated by Captain Connor, and could not have been less, on the day of the chase, than *eight thousand dollars*; after deducting the probable amount of issues from the day of leaving New York to the day of the chase.

I am, very respectfully, your obedient servant,

JOHN THOMAS NEWTON,

Captain U. S. Navy.

To ALBION K. PARRIS, Esq.,

Second Comptroller, Treasury Department.

The foregoing is a true copy of a letter from Captain Newton to the Second Comptroller, now on file in this office.

A. O. DAYTON.

TREASURY DEPARTMENT,

Fourth Auditor's Office, December 11, 1844.

WASHINGTON, *October 2, 1844.*

SIR: I am in receipt of yours of this date, and have to state in reply, to the best of my recollection there was no store room on the berth deck of the *Hornet* appropriated as a purser's store-room. The only slop room, that I know off, was in the purser's own state room, and that was a very small one, and contained but few articles in his department. The stores in that room were all thrown overboard during the chase, as well as every thing else that came to hand. The probable amount of stores in the room, above alluded to, judging of its size, (for I have frequently looked into it,) could not have exceeded \$2,000, if as much. The rest of the purser's stores were all stowed away in the spirit room, a place always appropriated on board ship for such articles, in the purser's department, as could not be stowed elsewhere.

I am, very respectfully,

JOHN THOMAS NEWTON,  
*Captain U. S. Navy.*

ALBION K. PARRIS, Esq.,  
*Second Comptroller, Treasury Department.*

The foregoing is a true copy of a letter from Captain Newton to the Second Comptroller, now on file in this office.

A. O. DAYTON.

TREASURY DEPARTMENT,  
*Fourth Auditor's Office, December 11, 1844.*

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H.

PHILADELPHIA, *May 3, 1844.*

DEAR SIR: I have this day received your letter of the 1st instant. In 1815, the *Hornet* was chased by an enemy of superior force; and in 1843, (28 years afterwards,) it is alleged that the slop clothing and the private stores of the purser were thrown overboard in consequence of the order to lighten ship. It is perfectly absurd to suppose that such things did or could happen. Had any such articles been lost or destroyed during the chase, it is certain I would, at the time, have furnished the purser with a voucher to that effect; and, it is also certain, that the purser's claim would have been allowed at once, and without hesitation, at least as to the slop clothing. Connor, Newton, and Mayo, were the three lieutenants of the *Hornet*. They are all captains, and now living. You can refer to them.

Very respectfully,

JAMES BIDDLE.

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PHILADELPHIA, *July 19, 1844.*

SIR: I have received your letter of the 16th. I have no recollection of the amount of stores in the purser's department taken on

board the *Hornet* in 1815, nor can I now form any opinion as to the amount then usually required for a vessel of her class bound upon a cruise beyond the Cape of Good Hope.

I believe that a less amount of these stores were usually taken on board during the war than are usually taken on board in time of peace. I think the *Hornet* sailed from New York January 22, 1815, and was chased on the 27th of April. It seems to me absurd to suppose that any slop clothing was thrown overboard in consequence of the order given by me to *lighten the ship* when chased by an enemy of superior force. It seems to me incredible, had any slop clothing been thrown overboard, that the purser's claim to be allowed for it should have been permitted to sleep for so many years.

Had any slop clothing been thrown overboard, it seems to me certain that I would have furnished, before the end of the cruise, such a certificate as would have enabled the purser to have obtained the proper credits in the settlement of his accounts quite as readily as in cases where slops are condemned by surveying officers, according to the regulations of the service.

The *Hornet* went alongside the Brooklyn navy yard in August or September, 1815. Perhaps, by reference to the books of the naval storekeeper of that day, it may appear whether any slop clothing was then landed from the *Hornet*.

Very respectfully, your most obedient,

JAMES BIDDLE.

A. O. DAYTON, Esq., *Washington*.

CITY OF WASHINGTON, *June 4, 1844*.

SIR: I thank you for the opportunity which you have afforded me of seeing and replying to the extraordinary letter of Captain James Biddle, in relation to my claim now before you, as it will enable me, I trust, to remove any unfavorable impression which the positive and unqualified assertion of such high authority is, without explanation, well calculated to produce. It cannot, I should think, sir, have escaped the notice of so close and accurate an investigator as yourself, that the *style* of Captain Biddle's letter is not such as a simple sense of justice would have dictated to a high minded, chivalric, or dignified commander, called upon to speak *impartially* between man and man. It bears upon its face, as it seems to me, the strongest evidence of an *inveterate* enmity with which he has *causelessly* pursued me for thirty years, and from the effects of which I have more than *once* severely suffered. The knowledge of his hostile and vindictive feelings towards me would have prevented me, under *any* circumstances, from applying to him for a "voucher" of my losses. In the actual state of things it was rendered totally unnecessary from the fact, that during the time of the chase, and throughout, when the order was given to throw "*every thing* off deck as well as *from below*"—that either could tend to lighten ship or prove serviceable to the enemy in



case of *capture*—was under execution, Captain Biddle was confined and laboring under a serious wound which he had received in a previous engagement, only two weeks before, with an enemy's ship of war, and could not, therefore, with *propriety* have given me a such a "*voucher*," as he suggests, even had I been so unreasonable as to have asked for it.

The log-book of the ship, and Captain Biddle's *official* account of the chase, certified copies of which from the Navy Department you have before the committee, furnish proof as strong as any certificate of the captain could have furnished, not only of the order to throw overboard, but of its progressive *execution*, and certainly better than his present statement, made after a lapse of "28 years." It is not *the fact* of the loss I sustained, that the proper accounting officer of the treasury has disputed, but the want of authority in the department to give relief without an act of Congress. No one but Captain Biddle doubts for a moment "that the stores of the purser *were* thrown overboard, in consequence of the order to lighten ship," however it may now please him to pronounce it "*absurd* to suppose that such things did or could happen."

The evidence you have before you is,—

1st. Extract from the *log book*, which states "that *every thing* *WHATEVER* from below as well as *off deck*," was *thrown overboard* to lighten ship.

2nd. Captain Biddle's official account to the government, states "that *every thing* from *off deck* as well as from *below* was *thrown overboard* to lighten ship.

3rd. Midshipman Skiddy says "the order was, to heave overboard *every thing* that *weighed a pound*."

4th. Captain Newton, to whom Captain Biddle refers the committee, and who was in command of the deck and executed the order, uses the *same strong* language!

Such evidence, which you have *now* before you, is *undeniable* and *most conclusive* as to the facts; and the common sense of every man, at all acquainted with the usages or stowage of a ship-of-war, would at once lead him to acknowledge that such orders as were given during the chase, *could not* have been easily executed *WITHOUT* the destruction of the purser's stores.

It pleases Captain Biddle to imagine, that I remained quiescent under my losses from 1815 to 1843, ("28 years afterwards,") as he sneeringly remarks! What could have been his object in this gratuitous and unfounded impeachment of the honesty and *validity* of my claim, without any inquiry as to the facts he assumes, I am at a loss to perceive. Had he made inquiry, he could hardly have remained ignorant of the fact, that in the first settlement of my accounts, after the ship's return, this claim was made at the proper department, and that it was suspended at first, only on the ground of a doubt as to the power of the department; and, subsequently, from the same cause, and the additional one of the loss of papers and evidence by the burning of the department. The history of the claim, from its revival by the production of new evidence to the present time, is before you in a form to show that it was never

for a moment abandoned, and never will be abandoned, so long as I cherish a confidence in the justice of my country.

I will not fatigue you, sir, by recapitulating here the numerous authentic documents in your possession, which corroborate all the facts set forth in my memorial to Congress, but will merely take the liberty of asking your particular attention to *Captain Biddle's* official accounts of the incidents of the chase; from which I think you will draw a conclusion very *different* from his present assumption, that it would have been "*absurd*" to throw overboard the slops and purser's stores! many of which, in point of fact, were *heavy*, and contributed much to lighten ship and facilitate her escape—particularly such as the sugar, tobacco, soap, tea, &c. &c.

In reply to his *sneer*, that I have delayed to make any claim for this loss, until *after* the lapse of "*28 years*," I now beg leave to refer you to an extract of a letter from *Rufus G. Amory, esq.*, late a distinguished and highly respectable member of the Boston bar, and well known to many honorable gentlemen of the present Congress. I enclose you now the extract in question, having very recently laid my hands upon it. You will perceive it speaks of this claim in 1833, *upwards of eleven years ago*, as that "*old claim, founded on goods thrown overboard from the Hornet in chase at sea*;" long known to Mr. Amory, as remaining unsettled in the Navy Department. The original of this letter is in my possession, and if deemed necessary by yourself or the committee, I will cheerfully furnish it. The Hon. John Quincy Adams, or the Hon. Mr. Choate, can testify to the high standing and signature of Mr. Amory.

There is but one other remark in Captain Biddle's letter which it seems to me to be necessary for me to notice, and that is, his reference to his three lieutenants, now Captains "*Connor, Newton, and Mayo*." One of these, Lieutenant Connor, was, at the time, in the same wounded condition as the captain himself, as will appear by Captain Biddle's official account of the action between the Hornet and Penguin, which you will have before you; and, therefore, *unable* to take any cognizance whatever of what occurred during the chase. From Captain *Newton*, who was the *officer in command* of the deck, you have a *fair, full and accurate* statement, satisfactorily establishing the fact, that *he* did not think it "*absurd*" to throw overboard the purser's stores; while the midshipman, acting master's mate of the hold, Mr. Skiddy, whose province and duty it was, more particularly to see *what was* thrown overboard, most fully corroborated the statements of the log book, *Captain Biddle's* official statement, and that of Captain Newton.

I enclose you a letter from Mr. De la Roche, who you will perceive was in the navy during the whole of the war, and actively employed. He stood then, as he does now, high in public estimation, is well known to all the older officers in the service, who will attest his general character as an officer and a gentleman. He is now employed as draughtsman in the bureau under Commodore Warrington. Please read *his* letter.

I cannot close this letter, sir, which will probably be the last opportunity I shall have of communicating with you on the subject

matter of my claim, before the close of the session, without once more entreating you to bear in mind, that the *validity* of this claim is not disputed by the accounting officers of the government; but, on the contrary, *expressly admitted*, by the Fourth Auditor, whose only doubt has been as to his want of *authority* to admit the same without an act of Congress. It is particularly to obviate that difficulty that I have, at last, though reluctantly, been compelled to pray the interference of Congress; and I cannot but hope, that the testimony submitted, will be found sufficient to induce you to concur in the joint resolution which passed the House of Representatives by so decided a majority.

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

W. P. ZANTZINGER.

P. S. Captain Biddle refers the committee to Acting Lieutenant (now captain) Mayo. *What says this officer in his remarks in the log-book, over his own signature?*

"These 24 hours commence with moderate breezes and light squalls; the enemy about three-quarters of a mile distant upon our lee quarter, firing upon us with round and grape; hove overboard five of the six remaining guns, (leaving only one long gun,) and the remainder of the shot; knocked away the stanchions on the berth deck, and cut away the top gallant forecastle; made and shortened sail to the best advantage in the squalls; hove overboard 24 barrels of salt provisions, the capstan, the armorer's forge, all the heavy blocks, and EVERY THING WHATEVER FROM BELOW, AS WELL AS OFF DECK, *that could lighten us*, from the time the enemy last commenced firing until 4, when his shot fell short; two shot hulled us; some running and standing rigging shot away; no person injured. At 4, fresh breezes; dropping the enemy fast.

"J. MAYO, *Lieutenant.*"

To the Hon. WM. H. HAYWOOD,

U. S. Senator, &c.

# I.

WASHINGTON, August 21, 1844.

SIR: Your communication of this morning has been duly received by me, and in compliance with the request it contains, I will give you, cheerfully, my "undisguised opinion in relation to the estimates" as furnished to the Fourth Auditor, by the several pursers to whom he had addressed a circular, in reference to the stores supposed to have been required for a sloop of war of the class of the late Hornet, during the last war.

Examining these estimates, I was surprised at the extraordinary differences of the estimates of Messrs. Sinclair & Terry, when compared with those made by Messrs. Hambleton, Thornton, Todd, and Breese. It is evident that these gentlemen have not properly understood the inquiry made by the auditor. No commander of a sloop

of war would proceed to sea, even to the West Indies, with so scant a supply, as given in the estimate of Mr. Sinclair, as \$2,100; or that of Mr. Terry, as \$3,700; nor would he venture upon a European voyage with such a supply, to secure the health and comfort of his crew; to proceed to the East Indies would be out of the question. An inquiry of what amount of stores are now put on board our smallest ships, would soon satisfy and show how utterly wrong these estimates are, when brought upon the subject matter of the inquiry. This will appear the more glaring when the time is taken into consideration when the supplies of the hornet were required; during the height of a war, destined for a long and distant voyage, with no port to touch at for a long time, where fresh supplies could be obtained; calculating for a variety of contingencies, such as making captures and having prisoners on board; chasing and being chased by an enemy, and thus brought far beyond any contemplated course, and thereby prolonging the voyage. Providing for such contingencies, and allowing but the ordinary supplies to the crew, I cannot conceive from what datas these gentlemen could have gathered the opinion, that supplies of \$2,100 and \$3,700 would have been sufficient to carry a sloop of war of 137 officers and men to the East Indies, especially when the prices of most articles were then at least 50 per cent. higher than they now are.

It is impossible to give, at this time, any thing like a true estimate, and much must be left to conjecture. But experience in the mode of supplying ships of war when fitting out, may enable persons to approximate near the true amount. *The estimates as furnished by Messrs. Hambleton, Thornton, Todd, and Breese, are, in my opinion, near the truth*, although there is some difference in the respective amounts, which may be accounted for in the common fact, that no two individuals will ever agree precisely upon the same points. The best judges in these matters, I should suppose, are the pursers and other officers who are directly concerned; and the best evidence should be found on the books of the treasury, which would show what has been furnished to the purser in money and stores. If I do not mistake, these sums have been named by the Auditor in his report to the committee of the house, and should form the basis of the award for the losses sustained by you, as being far preferable to the mere opinion of gentlemen who cannot be cognizant of any facts to illustrate the subject of inquiry correctly.

Very respectfully, your obedient servant,

CH. DE SELDING.

WM. P. ZANTZINGER, Esq.

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Mr. De Selding was Purser Slacum's clerk, on board the frigate "Potomac," during her cruize to the East Indies, and, subsequently, around the world.



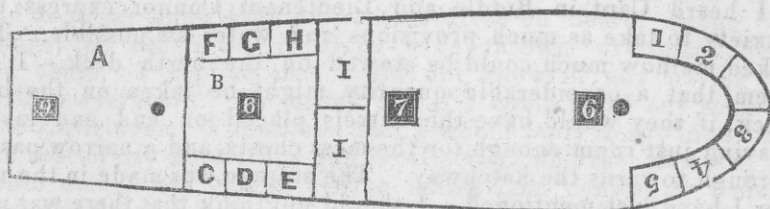
NEW YORK, July 29, 1845.

DEAR SIR: In answer to your letter received this day, I have to state, that, to the best of my knowledge, there was no store-room on the Hornet's berth deck appropriated as a purser's store-room, and that his *slops and stores* were stowed in his own private state-room in the ward-room, and in the spirit-room, under the ward-room deck.

I cannot say what articles were thrown overboard, but the order was to heave every thing that came to hand, weighing a pound, overboard, and I believe the order was pretty effectually executed.

Your state room was situated at the foot of the stairs leading from the deck into the cabin and ward-room.

*Plan of berth deck.*



1. Sail maker.
2. Boatmen.
3. Gunner's store-room and carpenters.
4. Gunner.
5. Carpenter.
6. Fore hatch.
7. Main hatch.
8. Spirit-room.
9. Magazine.

- A. Captain's cabin.
- B. Ward-room.
- C. Purser's room.
- D. 2d Lieutenant.
- E. 1st Lieutenant.
- F. Lieut. marines.
- G. Dr. Kissam.
- H. Master.

Respectfully yours,

WM. SKIDDY.

WM. P. ZANTZINGER, Esq.

P. S. My day of sailing is on the 11th August.

J.

*Statement made by William B. Smith, on examination by the Fourth Auditor of the Treasury, on the 14th day of October, 1844.*

I belonged to the United States ship Hornet, at the time of her chase by a British ship of the line, in 1815. She sailed from New York, and went out to sea, to the best of my recollection, on the 22d or 23d of January of that year. The President went to sea soon after leaving New York, while the Hornet and Peacock, hav-

ing dropped down to Staten island, were detained about two weeks before they went to sea. I was unwarranted master's mate on board the *Hornet*. I assisted in stowing away the provisions and water. We carried as much provisions and water as we could; a part of the provisions was stowed on the berth deck; we had provisions for about five months and water for four; that was as much as we could carry; the water was stowed in the hold, with a part of the provisions. The spirits, vinegar, &c., were in the spirit-room, under the ward-room. There was a slop-room on the berth deck; part of the slops were there, and part in a small store-room at the foot of Mr. Zantzinger's state-room, in the ward-room. A part of the purser's stores, such as tobacco, &c., was stowed in the spirit-room; the lighter articles, such as knives, buttons, needles, &c., were kept in the store-room, at the foot of Mr. Zantzinger's state-room.

I heard Captain Biddle and Lieutenant Connor express their anxiety to take as much provisions and water as possible. They asked me how much could be stowed on the berth deck. I told them that a considerable quantity might be taken on the berth deck, if they would have the barrels placed on end and lashed, leaving just room enough for the mess chests, and a narrow passage through towards the hatchway. The storage was made in the manner I have just mentioned. I should not think that there was more than two thousand dollars worth of slops in the slop-room at the commencement of the chase. The heavy articles of clothing were all in that room, and my duties being necessarily on the berth deck, I had frequent opportunities of looking into it when it was opened by the purser's steward. There were some light articles, such as handkerchiefs, &c., in the store-room, at the foot of Mr. Zantzinger's state-room. I was employed as master's mate in executing the order of Captain Biddle to lighten the ship. While so employed, I was in various parts of the vessel, and superintended in getting of the articles out of the hold and out of the spirit-room. All the articles were thrown out of the hold, except the water and twenty-five barrels of beef, and two hausers, two spare gun slides, and one bumpkin. All of the articles were thrown out of the spirit-room, except some flour, beans and raisins, and some tobacco. I do not recollect particularly whether there was any tea or sugar in the spirit-room at the time the articles were taken out to be thrown overboard. I do not know whether any slops were thrown overboard; I did not see or hear of any being thrown overboard.

During the chase, and when we were so near to the enemy that we were expecting every minute to be captured, Captain Biddle ordered that the men should be permitted to take from the slop-room such articles as they chose, and could stow in their bags, which they did; and, after we had escaped, an order was given that the articles should be returned or charged to the men. The order to open the slop-room and permit the men to take the clothing was given to the purser's steward and myself, and was executed by us jointly, the purser himself having been previously suspended from duty. I know that there was slop clothing on board when the

vessel arrived at New York, and that it was handed over to Purser Wayne, who succeeded Purser Zantzinger. The quantity I cannot specify.

A vessel in time of war would not ordinarily take as large a quantity of slops and purser's stores as she would in time of peace; because, in the former case, as much room as possible would be wanted for provisions and water, and because calculation would be made upon procuring slops and stores from prizes that might be captured.

Mr. Cox, who was formerly in the United States navy, but who now resides in Philadelphia, called upon me, in behalf of Mr. Zantzinger, the latter part of last month, with a letter to him from that gentleman, and made several inquiries of me respecting my being on board the *Hornet* when she left the United States, in 1815, and previously; and at the time of the chase by a British man-of-war, and as to my knowledge of what occurred on board; among other things, he asked me if slops were thrown overboard during the chase. I replied that I did not know of any having been thrown overboard. He asked me if I could be of any service to Mr. Zantzinger. I answered that I would reply to any inquiries to the best of my knowledge and recollection, and that that was all I could do. I had charge of the spirit-room constantly from the time the vessel left New York; it was previously to that, that Mr. Skiddy had charge of it. There were no slops in the spirit-room at any time to my knowledge.

WM. B. SMITH.

Subscribed and sworn to before me, this 14th day of October, 1844.

A. O. DAYTON,  
*Fourth Auditor of the Treasury.*

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I certify that in 1815 I was a master's mate on board the United States ship *Hornet*; that I was in the action with the *Penguin*, and also was on board and on duty during the chase by an English 74; that during the chase I was on duty in every part of the ship; that I know the purser had on board a quantity of stores; but as to their value, I cannot speak. I know that a great many articles were thrown overboard during the chase, but I do not know whether any of the purser's goods were so thrown. I suppose we had on board at least six months' provisions and stores, as we were full, and the berth deck crowded. The crew were placed on an allowance of nine upon eight rations, and thus the provisions would last longer. Lieutenant Connor was dangerously wounded in the action, and was unable to attend to his duty during the chase, and for a long time after. During the chase he was in his cot, in the cabin, and never came on deck. The crew had a large amount of prize money paid them in New London, and were allowed to purchase what they wanted from persons who came on board; so that they

drew very little from the purser. The *Hornet* was *fully* provisioned all the time she laid in New London, so as to be at all times ready for a start.

WM. B. SMITH.

PHILADELPHIA, September 24, 1844.

K.

U. S. NAVY YARD,  
NEW YORK, July 20, 1844.

SIR: In reply to your letter of the 29th ultimo, asking my opinion in relation to the amount of small stores and the amount of slops which might be supposed to have been taken on board a sloop of war, with one hundred and thirty-seven officers and men, going on a cruise of uncertain length, to the China and Java seas, during the last war, in the early part of 1815, &c., &c.," I have to state that the amount of slops might have been about \$2,100, and the amount of small stores about \$2,000, and that the amount of slops which may have been issued between the 23d January and 29th April, 1815, was about \$1,400, and small stores about \$1,100, all at first cost; leaving on hand on the latter day \$700 in slops, and \$900 in small stores. In making the estimates from which the above results have been deduced, I have been governed by the capacity of the ship for storing her provisions and water, and the necessity then existing of taking on board as large a supply of those articles as possible, which would have confined the purser to taking only such slops and small stores as were absolutely required for the health and comfort of the men; besides, I presume he would not have risked a larger amount, as he would have calculated to replenish his stores, except tobacco, at any port where the vessel might be obliged to touch for provisions and water. The prices I have used are those taken from bills of supplies furnished the President, Spark, and other vessels, and to the navy yard at this place in November and December, 1814, and January, 1815, a list of which I enclose.

In my estimate, I made but a small allowance for winter clothing to be taken to sea, as I presume the vessel having laid in this port during the most inclement part of the winter, the men must have been amply supplied with the article, and being bound to warm latitudes, summer clothing would alone be requisite.

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

WM. SINCLAIR.

A. O. DAYTON, Esq.,

*Fourth Auditor of the Treasury, Washington.*



*Prices of slops and small stores taken from bills of supplies furnished in New York, to the President, Spark, and other vessels, and to the navy yard, in November and December, 1814, and January, 1815.*

Mattresses.....	\$3 00	to \$4 00
Blankets.....	4 00	to 6 00
Pea jackets.....	10 50	
Duck trowsers.....	2 00	to 2 12 $\frac{1}{2}$
Flannel shirts.....	2 62 $\frac{1}{2}$	to 3 00
Stockings.....	0 87 $\frac{1}{2}$	
Wool hats.....	1 00	
Jackets.....	6 50	to 7 50
Trowsers.....	5 75	to 6 00
Vests, red.....	4 00	
Vests, blue.....	5 00	
Duck trowsers.....	1 50	to 1 62 $\frac{1}{2}$
Leventine drawers.....	1 75	
Shoes.....	1 12 $\frac{1}{2}$	
Black silk handkerchiefs.....	1 50	
Tobacco, per pound.....	0 22	
Soap, per pound.....	0 13 $\frac{1}{2}$	
Knives, per dozen.....	6 00	
Razors, per dozen.....	10 50	
Scissors, per dozen.....	6 00	
Tin pots, each.....	0 41	
Tin pans, each.....	0 45	
Scrub brushes, each.....	0 15	
Fine combs, per dozen.....	2 00	
Coarse combs, per dozen.....	1 12 $\frac{1}{2}$	
Looking glasses, each.....	0 50	
Shaving boxes, per dozen.....	3 50	
Suspenders, per dozen.....	3 00	
Check shirts, each.....	1 37 $\frac{1}{2}$	
Tea, black, per pound.....	1 50	
Sugar, per pound.....	0 23	
Pepper, per bottle.....	0 14	
Mustard, per bottle.....	0 25	
Spoons, per dozen.....	2 00	
Needles, per thousand.....	5 00	
Thread, per pound.....	1 75	
Horn buttons, per gross.....	0 37 $\frac{1}{2}$	
Tape, per dozen.....	1 25	
Ribbon, per piece.....	2 25	
Razor strops, each.....	0 37 $\frac{1}{2}$	
Madras cotton handkerchiefs, each.....	1 00	
Guernsey frocks, each.....	1 62 $\frac{1}{2}$	
Blue nankeen, not to be had.		

NEW YORK, July 20, 1844.

*Copy of bills of private stores received on board the United States ship Erie, D. McF. Thornton, purser, 1829.*

Stores.	Prices.	
	Cost.	Issued at.
20 pounds thread.....	\$0 95	\$1 19
57 pieces ribbon.....	55	69
120 pieces tape.....	61 $\frac{1}{4}$	8
40 dozen papers needles.....	8 $\frac{1}{2}$	11
24 pairs scissors.....	25	31
150 tin pans, middle size.....	25	31
24 tin pans, large.....	35	44
150 tin pots.....	20	25
300 jack knives.....	21	26
200 spoons.....	61 $\frac{1}{4}$	8
50 bundles half Spanish segars of 100 each	55	71
17 razors.....	28	35
12 razor straps.....	37 $\frac{1}{2}$	47
12 do.....	45	56
12 sheath knives.....	25	31
50 scrub brushes.....	16	20
12 pair shoe brushes.....	32	40
6 dozen Windsor soap.....	5	6
5 chests, 436 pounds tea.....	97	1 46
12 barrels, 3,295 pounds sugar.....	101 $\frac{1}{2}$	15
4 kegs Cavendish tobacco.....	40	50
4 kegs Cavendish tobacco, about 130 pounds	25	
3 boxes Cavendish tobacco.....	40	
20 boxes soap, 1,319 pounds.....	71 $\frac{1}{2}$	11
200 bottles pepper.....	11	17
144 bottles mustard.....	121 $\frac{1}{2}$	19
Ivory combs, fine.....	10	15
Coarse combs.....	6	9
5 pieces blue nankeen of 9 yards each.....	.....	28

D. McF. THORNTON, Purser.

*Value of slops, clothing, and small stores, received on board the United States frigate Potomac, from January to August, 1844, both inclusive, viz:*

Where received.	When.	From whom.	Clothing.	Small stores.
Boston .....	January 9, 1844...	Purser Stockton .....	\$5,762 51	\$966 61
Boston .....	January 1, 1844...	Naval storekeeper .....	3,481 00	1,118 62
Pensacola.....	April 18, 1844....	Naval storekeeper .....	151 35	245 53
Pensacola.....	June 1, 1844.....	Naval storekeeper .....	26 50	272 30
Pensacola.....	July 13, 1844.....	Naval storekeeper .....	92 75	11 40
Santa Cruz.....	February 24, 1844.	.....	.....	8 62
Havana .....	March 27, 1844...	.....	.....	3 33
			9,514 11	2,626 41
				9,514 11
Aggregate of slops and small stores.....			.....	12,140 52

Respectfully submitted:

To Commodore DAVID CONNOR,  
*Present.*

PHILO WHITE, *Purser.*

L.

WASHINGTON, October 2, 1844.

SIR: I am in receipt of yours of this date, and have to state, in reply, that, to the best of my recollection, there was no store-room on the berth deck of the *Hornet* appropriated as a purser's store-room; the only slop-room that I know of was in the purser's own state-room, and that was a very small one and contained but few articles in his department. The stores in that room were all thrown overboard during the chase, as well as everything else that came to hand. The probable amount of stores in the room above alluded to, judging of its size, (for I have frequently looked into it,) could not have exceeded *two thousand dollars*, if as much.

The rest of the purser's stores were all stowed away in the spirit-room—a place always appropriated on board ship for such articles in the purser's department as could not be stowed elsewhere.

I am, very respectfully, your obedient servant,

JOHN THOMAS NEWTON, *Captain.*

ALBION K. PARRIS, Esq.,

*Second Comptroller, Treasury Department.*

*Statement showing the discrepancies in the estimates of Purser  
Terry and Sinclair.*

The *Constellation* frigate, with a crew of 350 men, bound to the East Indies, in time of peace, took on board in slop clothing \$3,008 30, and in purser's stores \$30,000,—making together \$33,008 30. Add 95 per cent. difference between war and peace prices, would have been \$64,366 18. Allowing the *Constellation's* crew to be two-thirds more in number than the *Hornet* carried at the time she sailed from New York, the *Hornet* will have had \$21,455 36 on board.

The *Potomac*, with a crew of 500 men, bound to the East Indies, in time of peace, took on board in slop clothing \$14,704 89, and \$24,000 in purser's private stores,—making together \$38,704 89. Add 95 per cent. difference between war and peace prices, would make \$75,474 53. Say the *Potomac* had three-fourths of a crew more than the *Hornet*, would make the *Hornet's* stores \$18,868 63, on board at the time of leaving New York.

Auditor Dayton, by a comparison between war and peace prices, from vouchers taken from the files of his office, established the difference between war and peace prices to be 94 and a fraction per cent.—nearly 95 per cent.—and I have assumed 95 per cent. in my calculations.

*Notes in reference to Mr. Zantzinger's claim.*

In the year 1814, a certain amount of money was advanced to Purser Zantzinger, for his use, as purser of the United States ship



Hornet, with which he was charged on the books of the treasury, and for the legal expenditure of which he was held to account.

He would have been entitled to a credit for this amount, either by the repayment of the money so advanced, or by showing that it was expended in the service of the ship, to which he was attached.

The law, and the custom of the service, authorized and required pursers to purchases with government funds, for the use of the officers and crew, certain supplies, not coming within the usual government allowances, but deemed essential to their comfort while on a long cruise. The purchases so made, in the event of a purser's death, were authorized to be turned over to his successor as the property of the government; for which that successor was held to account, and the purser's account credited with the amount in the same manner as if such money had been left unexpended.

Supplies of the character thus mentioned, were purchased by Purser Zantzinger for the use of the "Hornet," to the amount of \$5,983 29. Three months afterwards, whilst the ship was at sea on her cruise, circumstances rendered it necessary for the safety of the ship, in the opinion of the commanding officer, that most of the stores on board, including those of the purser, should be thrown overboard; and the purser claims that his account ought to be credited with the amount so thrown overboard, in the same manner as if the goods had been actually expended or transferred to another purser.

In the latter case, the accounting officers of the government would not have hesitated to allow the credit; and where, it is asked, is the difference? The order of the commanding officer to throw the stores overboard, both in law and equity, is equivalent to the receipt of another purser for the transfer of the goods.

In addition to the stores herein spoken of—upon the disbursement of which the purser was entitled by regulation to a profit—Purser Zantzinger was also charged with, and held to account for, the "public slop clothing" to the amount of upwards of \$6,000;\* the greater part of which shared the same fate of the stores already mentioned. As well might the commanding officer of the ship have been held to account for the guns, and other heavy articles of the ship's stores, thrown overboard by his orders.

The whole amount with which Purser Zantzinger stood charged, is shown to have been "expended" for the service of the ship. The moment it was expended, and the amount put on board in stores, they became subject to the orders of the commanding officer, and the purser the mere agent for their distribution.

The bills and receipts for the purchases ought to be deemed and taken as evidence of the proper "expenditure" of the money charged; and Purser Zantzinger is not only equitably, but in law legally entitled to a credit for the amount, in the same manner as he would have been had he shown that the goods were all distributed to the officers and crew.

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\*\$4,178 33, per report of Fourth Auditor.

*Remarks on the case of Mr. Zantzing.*

When a ship of war of the United States is put in commission, and her officers and men are on board, the commander informs the purser of the nature and length of the contemplated cruise; and he directs him, accordingly, to cause the ship to be supplied with stores for the comfort of the officers and crew. The stores generally consist of provisions, slop clothing, and purser's stores, commonly denominated "articles of second necessity." The provisions are charged to the purser, and he is held to account for their distribution; and should he fall short  $7\frac{1}{2}$  per cent. in such expenditure, he is charged with such difference. "Slop clothing" are the common articles of dress for the crew. The purser is charged with the cost of the same, and held to account. All those articles are furnished upon the requisition of the purser, approved by his commanding officer. The purser is likewise authorized to make a requisition for such moneys as may be required under various heads of appropriation; but the largest amount is under the head of "pay and subsistence," with which he is charged and held to account. The law, as well as the usage of the service, has always authorized and required the purser to purchase, out of the moneys thus advanced, for the use and comfort of the officers and crew, such supplies as he deemed necessary and essential for the duration of the cruise. Purchases so made, in case of the purser's death, were authorized and directed to be turned over to his successor, who was held to account; and the preceding purser's account credited with the amount so transferred on the books of the treasury, in the same manner as if the money had been expended. From this fact, it is self apparent that the stores being purchased with the public money, the government has a deep and abiding interest in the matter; and, although the stores are denominated "purser's private stores," they are, in reality, stores belonging to the government; and the purser is thereby considered in no other light than the disbursing agent, for which he receives a per centage by regulation.

Supplies of the character just named were purchased by Purser Zantzing for the use of the *Hornet*. Three months out from New York, the ship was hard chased by an enemy's line-of-battle ship, for two days and upwards, under such extraordinary circumstances, too, as to render it necessary for the final safety of the ship and her gallant officers and crew, in the opinion of her commanding officer, to "throw overboard every thing whatever from below, as well as off deck;" which order embraced the purser's stores. The facts thus stated are in evidence before the committee. Purser Zantzing claims that his account shall be credited with the amount of stores thrown overboard, in the same manner as if the stores had been expended or transferred to another purser. In the latter case, the accounting officers of the government would not have hesitated to allow the credit; and where, it is asked, is the difference? The order of the commanding officer to throw the

stores overboard, both in law and equity, is equivalent to the receipt of another purser for the transfer of the stores.

In addition to the stores denominated "purser's private stores," just spoken of, Purser Zantzinger was also charged with, and held to account for, the "public sloop clothing," to the amount of upwards of \$6,000; the greater part of which stores shared the same fate as the other stores already mentioned. Surely, as well might the commander of the ship have been charged and held to account for the guns, and other heavy articles of ship's stores; all of which were thrown overboard by his orders.

The whole amount with which Purser Zantzinger stood charged is shown to have been "expended" for the service of the ship. The moment it was expended, and the amount put on board in stores, they became subject to the orders of the commanding officer, and the purser the mere agent for their distribution. Purser Zantzinger is, therefore, not only equitably, but in law legally, entitled to a credit for the amount, in the same manner as he would have been had he shown that all the stores had been distributed to the officers and crew.

By way of another illustration, we say that a ship leaves New York for a long cruise; the purser should die when out only 4 or 5 days, which might render it necessary to return into port to obtain another purser. The deceased purser will have had, say \$20,000 of "privates stores," as they are (improperly) denominated, on board. How would they be disposed of? Would the purser's heirs or administrators be permitted to take charge of them? No! they would be ordered to be transferred to the succeeding purser, and the deceased purser's account credited with the same at the treasury. If these be the facts, how, it is asked, can the stores of the purser be considered as his property; and that they are his private adventure? as has been stated on the floor of Congress.

The articles denominated "purser's private stores" are enumerated in the book of regulations of the navy; and which it is his imperative duty to have on board. Was he to leave port without such stores, he would be forthwith arrested and tried by a court martial, and dismissed the service for gross neglect of duty. What becomes the imperative duty of the purser to take on board, cannot be considered his private stores or private adventure. When on board, he cannot dispose of an article of any description, without the written permission of his commanding officer. Nor can he, if laying in a foreign port, where the prices of the articles in his possession may be worth 200 per cent. more than he receives on board his ship, dispose of a single article without an express written permission; and then it would be in violation of the laws of the service, and the captain held accountable.

M.

*Synopsis of the case of Mr. Zantzinger.*

On the 7th July, 1843, the 4th Auditor of the Treasury, in obedience to an order from the then Secretary of the Navy, Judge Upshur, made a report upon certain papers referred to him, relating to Mr. Zantzinger's loss of stores, thrown overboard from the United States ship *Hornet*, in chase, during the last war. The Fourth Auditor, in that report, states that, "it seems to me clear that Purser Zantzinger has a just claim upon the government for the value of the property belonging to him, or for which he has since been held to account, that was thus thrown overboard; and I do not perceive how Congress, if applied to, could refuse to make an appropriation for his relief."

Whilst this matter was pending, Mr. Henshaw, then Secretary of the Navy, reported Mr. Zantzinger to the President as a defaulter, in amount upwards of \$8,000; and, on the 17th January, 1844, he was dismissed from the navy, without any opportunity of defence against this unjust and sweeping charge. At the moment of his dismissal, Mr. Zantzinger was engaged in perfecting bonds, with the approbation of the Solicitor of the Treasury, securing this alleged defalcation to the government, until the result of his contemplated application to Congress should be made known. He, accordingly, petitioned Congress, as the only source from which, as the Fourth Auditor conceived, he could obtain relief. The amount of his loss, in the language of the Fourth Auditor, "might reasonably be estimated at some thousands of dollars." Congress granted his prayer, and passed a "joint resolution" for his relief. The accounting officers have since audited his claim, and have allowed him the sum of \$5,724; which sum is far short of Mr. Zantzinger's actual loss, as the evidence clearly shows. Having thus admitted, virtually, that this amount was justly due him, and unjustly withheld for 28 years and upwards.

The alleged balance against Mr. Zantzinger is now stated by the Fourth Auditor to be \$1,674 94, only; and had he been retained in the service, as he conceives he should have been, under the peculiar circumstances of his case at the time, and this alleged balance had been found to have been ultimately due the United States, it would have been promptly settled,

Mr. Zantzinger still claims from the United States the further sum of \$2,276; and thinks, in common with his numerous friends, that this amount is justly due him, upon the evidence produced, on the part of the United States, before the accounting officers previous to the final award; and he has, accordingly, memorialized Congress for this further sum, which will exceed, by several hundred dollars, the alleged balance now standing against him upon the books of the treasury.

The Committee of Claims, of the last Congress, to whom was referred the memorial of Mr. Zantzinger, unanimously reported a bill for his relief, amounting to \$2,276, the additional sum which he claimed as justly due him, under the evidence adduced before the



accounting officers of the treasury. This amount will exceed the balance now alleged against him. Owing to the shortness of the session, and the vast amount of pressing important public business before the legislative body, Mr. Zantzinger's bill was not finally acted on, and it adjourned without affording him that relief which he had sought, and which he had confidently expected to obtain.

Under these circumstances, and from the painful situation in which Mr. Zantzinger is placed, by (which he conceives) the harsh treatment which he received at the hands of the late Executive, he earnestly and confidently appeals to the present head of the Navy Department, for that justice which has been too long withheld from him.

The strong ground of Mr. Zantzinger's position is, that he should have been removed from the situation which he had so long and honorably filled, in the service of his country, (and for which services, in the late war with Great Britain, he received a medal with the thanks of Congress;) as a defaulter, on the 17th January, 1844, when, six months previously, the Fourth Auditor of the Treasury had made a report, under the direction of the then Secretary of the Navy, Judge Upshur, admitting that Mr. Zantzinger had a legal claim against the government for "some thousands of dollars," and he did "not perceive how Congress, if applied to, could refuse to make an appropriation for his relief;" and that, "subsequently, all the facts alleged in support of his claim have been fully sustained, showing that he was not a defaulter."

Mr. Zantzinger had, previously to memorializing Congress last session, laid before the Representatives of his native State, Pennsylvania, all the facts connected with his removal from the navy; and so strongly impressed were they that there had been no just reason for that harsh course, that they addressed a memorial to the late President, asking him to restore Mr. Zantzinger. The position taken by those Representatives has been fully sustained throughout, by the subsequent action of Congress. On the day of the passage of the "joint resolution" for Mr. Zantzinger's relief, forty-five honorable Representatives of Congress, from various States, of both political parties, recommended his restoration to the navy, on the grounds that he was not, and had never been, a "defaulter." These papers were never laid before the late President, but are now respectfully submitted for the consideration of the honorable Secretary of the Navy.

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N.

TREASURY DEPARTMENT,  
*Fourth Auditor's Office, April 2, 1846.*

SIR: I have the honor to transmit to you, agreeably to your request, several papers in relation to the accounts of the late Purser Zantzinger, all which I certify to be correct copies of originals on file in this office. During the session of 1843-44 Mr. Zantzinger

presented to Congress a memorial, in which he stated that, during the chase of the United States ship *Hornet* (of which vessel he was purser) by a British ship of the line, in the year 1815, all his stores, including the clothing for the men which was in his charge, and for which he was accountable, were thrown overboard by order of Captain Biddle, the commanding officer, and he prayed that an act might be passed for his relief, allowing him the value of the property so lost. His petition was granted; and on the 15th of June, 1844, a joint resolution was passed directing the accounting officers to allow him the value of the articles of which he was thus deprived, "to be ascertained by deducting from what should appear to have been at that time" (the time of the loss) "the usual amount taken on board a sloop of war going upon a cruise like that of the *Hornet*, the quantity which the said accounting officers should be of opinion was probably issued or expended between the period of the vessel's sailing from New York and the time at which the chase occurred." The accounting officers, in the execution of the duty imposed upon them by this resolution, having received such testimony as the claimant thought fit to present, and having obtained such other evidence as was within their reach, determined, after a careful investigation of the matter, that the value of the property in question, ascertained in the manner prescribed by the resolution, was \$5,724, with which sum Mr. Zantzinger was accordingly credited. Not satisfied with the amount thus awarded, which the accounting officers then thought, and which they have much more reason now to consider, a liberal allowance, the claimant, at the last session of Congress, procured from this office a copy of a single paper, selected by himself from the mass of testimony in possession of the accounting officers, and laid it before the Committee of Claims, who, without calling upon the officers who had settled the account for any other part of the evidence, or for information as to what might be said on the part of the government against the claim, reported a bill, directing those officers to credit the claimant with an additional sum of between two and three thousand dollars, making the whole amount allowed him precisely that which was specified in the statement of Captain Newton; which is the paper above alluded to, as selected and presented to the committee by the claimant. The bill thus reported did not pass; but I am informed that the application has been renewed in behalf of the family of Mr. Zantzinger, who is now deceased, and that a bill for their relief has been reported by the Committee of Claims, upon what testimony I am unapprised; but it is certain that the greater part of the evidence which was taken by the accounting officers was not before them.

Supposing all the stores to have been thrown overboard, as alleged by Mr. Zantzinger, you will see by the papers which I send you how unsafe it would be to rely upon the single statement of Captain Newton as to their value. He supposes it to have been \$8,000, while the estimates of the first lieutenant of the vessel, of three among the oldest captains in the navy, and of two of the oldest pursers, fix it at less than half that sum. Next to the testi-

mony of Commodore Connor, (who, as first lieutenant, had the care of preparing the vessel for sea, and who, it will be observed, was then well, though he was afterwards wounded in the battle with the Penguin,) that of Commodore Warrington is probably the most important, as he commanded a vessel in the same squadron to which the Hornet belonged, and of about the same size. In judging of the dependence to be placed upon Captain Newton's memory at this distant period, it should not fail to be noticed, also, that, according to the concurring testimony of Commodore Connor and William B. Smith, who was the master's mate of the Hornet, he has forgotten the very existence of the principal apartment in which the clothing was kept, viz: the store-room on the berth deck. While making these remarks it is proper for me to say, to prevent misapprehension on your part, that the papers of which I enclose you copies do not constitute the whole evidence which was before the accounting officers in relation to the value of the stores. There were several other statements, varying from those I send, and from one another, and it was upon a careful consideration and comparison of the whole that the result which I have mentioned was arrived at.

In the joint resolution of June 15, 1844, to which I have referred, Congress assumed that all the stores which were on board of the Hornet at the time of the chase were thrown overboard, and the accounting officers were consequently obliged to proceed upon that basis in making their estimate. Commodore Biddle, in his letter to this officer, as you will perceive, denied that the clothing was thrown overboard, and he is supported in that denial by the deposition of William B. Smith, the master's mate of the vessel. But testimony has since been discovered, under the hand of Mr. Zantzinger himself, which is conclusive upon that subject. Until within a few months it was supposed that the account rendered by him as purser of the Hornet, as it had relation to a period antecedent to the year 1817, had been consumed at the burning of the treasury building; but it was found not long since among the old papers in the attic of the Navy Department, and I now send you a copy of it. By that it will be perceived that Mr. Zantzinger, after having supplied the crew during the cruise, brought home and transferred to his successor in the Hornet clothing (called slops) to the amount of between thirteen and fourteen hundred dollars, for which he received credit, and it is rendered equally clear, by the same evidence, that none was purchased subsequently to the chase. It is also established by the same account, signed by himself, that during the whole time he was attached to the Hornet, which was from August, 1813, to November, 1815, during which time she was kept in readiness for sea, he received clothing only to the amount of about \$6,000, and that he claims to have issued to the crew (including his commission of 10 per cent. upon the cost) the amount of \$5,212 74, which, when added to the amount of \$1,345 which he brought home, would scarce leave any to have been thrown overboard.

As it was the custom at that period to blend the receipts and issues of the other stores with the money accounts of the purser,

the document upon which I have been remarking does not throw the same light upon the disposition which was made of them; but, as the witnesses who were produced by the claimant before the accounting officers generally estimated the value of those stores at about the same sum as the clothing, I think there can be no doubt that, even upon the supposition that they were all thrown overboard, Mr. Zantzingher was abundantly reimbursed for all his losses by the action of Congress upon the subject during his life time.

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

A. O. DAYTON.

To the Hon. J. R. J. DANIEL,  
*House of Representatives.*

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O.

*To the President of the United States:*

SIR: Having been earnestly advised by judicious friends, on whom I can safely rely, to present to you the treatment which I received under the administration of Mr. Tyler, and feeling persuaded, from your well known disposition promptly to redress wrongs when unjustly inflicted, that I can certainly obtain of you a calm and dispassionate examination of the injuries sustained by me; I confidently appeal to you alone, sir, for that redress which I am sure that I am entitled to under the circumstances, and earnestly trust that you will not hesitate, upon a full understanding of my case, to restore me to my situation from which I have been so wrongfully removed. For this purpose, and to enable you fully to comprehend the merits of my case, I have prepared for your consideration the following exposition of the facts connected with the settlement of my accounts with the accounting officers of the government, and with the just and equitable demands I have claimed of the United States, and which, you will perceive, have been, to a great extent, fully recognized during the first session of the last Congress.

These facts clearly indicate that I had brought to the consideration of the accounting officers various claims which I have always contended ought to have been allowed me in the settlement of my accounts; that these allowances had been claimed long prior to the institution of the suit against me; and that it was understood by Mr. Upshur, and the accounting officers, that an amicable suit should be instituted, and that, on the trial of the suit, every facility should be afforded me to settle those claims upon principles of equity and justice. With that view the following agreement was entered into:

“Mr. Zantzingher’s proposition is, that the various claims of the government upon him, and of him upon the government, in the trial to take place, may be submitted to the court and jury fairly and fully, unincumbered by merely legal objections; but that all



claims shall be admitted, which, in the broadest sense of conscience, right, and equity, ought to be allowed, whether coming from the government or Mr. Zantzing. In order that, with these broad ideas of equity and right in view, the whole matters of dispute and difference between Mr. Zantzing and the government may, through the means of the suit about to be instituted, be finally, conclusively, and entirely, settled."

The District Attorney, on the trial of the case, dissented from this arrangement; and, to my great surprise, insisted that my claims should be tested on strict legal principles only. This course resulted in leaving my case in a condition which neither justice nor equity required, and which coerced my counsel to take exceptions to the direction of a majority of the judges of the court, (the chief judge having dissented therefrom,) with a view of appealing to the Supreme Court. Five years are granted to take an appeal to that court; but, believing that a more summary mode of redress, and certainly a less costly one, would be to apply to Congress for relief, I have, as yet, omitted to take the case to that tribunal, until the action of Congress might be obtained on the subject.

Congress did pass a law for my relief, and thereby acknowledged the justice of my claim. The case was referred back to the accounting officers, and they awarded me a sum which I conceived to be much below what the evidence in the case had shown to be due to me. I was thus, by the action of the District Attorney, in opposition to the pledge and assurance of the then Secretary of the Navy, Mr. Upshur, and of the Solicitor of the Treasury, and of the Fourth Auditor, Mr. Dayton, as, also, of the Second Comptroller, Mr. Parris, deprived of the benefit of submitting my claims to the judgment of an impartial jury, to be decided upon principles of equity and justice, and was afterwards forced to rely upon the mere prejudiced views of the accounting officers of the government. It is needless to dwell upon the disadvantage and ultimate injury I sustained by this unexpected, and, I may add, unrighteous course of proceeding, which substituted the mere technicality of law for the more enlarged justice of equity, which excluded me from the privilege of having those claims acted upon by a jury, and which placed me in a condition far worse than what I possessed anterior to the agreement with the officers of the government, that an amicable suit should be instituted against me, and that the claims of the parties should be tested alone by principles of equity and justice. This agreement turned out to be, what was not contemplated by the officers of the government, a mere snare to entrap me, as the following statement will clearly establish:

My claims had been presented to the consideration of the accounting officers of the treasury. No final settlement or decision had been made by them of the accounts. *They* were impressed with the conviction that they were equitable and just; and with this view *agreed* that the suit should be directed, and that the proceedings should be governed by such principles. Now, I beg you to observe, that I had a right to require of these officers that they should pass upon my claims, that is to say, either to allow

or to disallow my several credits. In lieu of this, the suit was agreed upon with a view to a settlement upon principles of equity and justice; the very principles which these officers had acknowledged were favorable to my claims. It so happened, that the act of the 3d of March, 1797, prohibited any claim for credit from being admitted upon the trial but such as had been previously disallowed by the accounting officers of the treasury; and the Supreme Court had, in the case of the *United States vs. Wilkins*, 6 Wheaton, page 135, already decided "that, not merely legal, but *equitable credits* ought to be allowed to debtors of the United States by the proper officers of the treasury." By this law, and by this decision of the court, I had a right to have had not merely legal, but *equitable* credits allowed me by those officers. Prior to the trial, they were bound to allow or disallow the credits claimed. That having been done, the claims could have been presented to the jury; but the officers said, try your case, and you shall have the benefit of those credits upon these principles in the same manner as if we had decided in your case. But, when the case was tried, the District Attorney said no, the accounting officers have not *disallowed* your claims, and, therefore, they shall not go to the jury. Thus was I unwittingly entrapped; the rights secured to me by the act of Congress, and by the decision of the Supreme Court, defeated by this breach of the terms of the professed amicable suit, and my property trampled upon by this worse than judicial mockery. Trusting to the integrity of the government, I relied upon the assurances of its officers that the trial should be conducted upon principles of equity and justice; and had I but dreamed of a departure from that pledge, I could have guarded my rights by having, prior to the suit, obtained from the officers a disallowance of the claims, in order that they should be suffered to go to the jury. Such is a fair sample of the justice which I have received from the government.

My claims, however, have not been finally acted upon by the courts. An appeal can be taken to the Supreme Court, at any time within five years; and until that time shall have elapsed, or a decision shall be rendered in the case, by the Supreme Court, the officers of the government had no right to consider the case as having been settled by due course of law. In the mean time, I petitioned Congress for relief. Congress acted on my petition, and directed the accounting officers to settle one of my claims, for property destroyed on board the *Hornet*. The accounting officers awarded me but the sum of \$5,724. I have again applied to Congress for a further allowance. The Committee of Claims, unanimously, made a report in my favor, accompanied with a bill, which directed that I should be allowed the sum of \$2,276 more; in all \$8000. This bill, I have every reason to believe, would have become a law at the last session of the last Congress, had there been time to have acted upon it; and I have every reason to believe that the next Congress will, unhesitatingly, pass it. So that this claim, which was excluded from the jury in this remarkable way by the District Attorney, has, subsequently to the trial, been admitted to be just, in a report of Mr. Dayton to Mr. Upshur, the Secretary of the Navy,

bearing date the 7th of July, 1843. Congress, by its action, has also admitted it to be just; and the report of the committee of the last Congress, with a bill, directing me to be credited with the sum of \$2,276, will yet become a law; and then it will afford conclusive proof that my claim was not only just, but that the government was actually in my debt, rather than my being a debtor to the government. While this case was thus situated, with a jury disposed to do me justice, with the Secretary of the Navy and the proper accounting officers assent, that such justice should be done me by the jury, my claim is, on a mere technicality, taken from the jury, then declared to be just by the accounting officers and by Congress, a large part of it allowed by those officers, and a yet larger sum reported upon by Congress to be allowed me, and before I could procure ample justice from the government, and while all the facts were in possession of the President, the then Secretary of the Navy, Mr. Henshaw, and the accounting officers, six months at least; my case has been taken as that of a public debtor; when the truth will finally prove that the government was in my debt, that it took my property, openly destroyed it for public purposes, and prevented my claiming compensation for the amount in the trial of the case, from the jury. This was sufficiently oppressive; but, what is far worse, my indebtedness has been assumed, against this array of proof; and for this imputed indebtedness, I have been dismissed from my place; the honors which I won in the service of my country, have, by that illegal act, been soiled, and the gratitude which she indicated for that service, in the medal that she awarded me, has been obscured by this deed of sheer oppression. From this harsh and unjust treatment I now appeal to you, sir, for redress; and invoke of you to repair the injury I have sustained, by restoring me to the place from which I have been thus wrongfully ejected and dismissed, on account of this assumed charge of having owed a balance to the government. I was deprived of my office by the hand of power, as a punishment for an offence that never was committed. Let me calmly consider the case as it regards the settlement of my accounts; the right to remove me under the act of 31st January, 1823; and the right to restore me for this unjust removal.

The act of 1823 enjoins the disbursing officer to render his accounts quarterly to the proper accounting officers of the treasury, with the vouchers necessary to a correct settlement thereof, within three months at least after the expiration of each successive quarter, if resident within the United States, and six months if resident in a foreign country. If he fails to do so, he shall be promptly reported to the President, and shall be dismissed from the public service. Now, as regards this act, I have the testimony of the Fourth Auditor, Mr. Dayton, in a letter (herewith) of the 1st of August, 1843, in which he declared "*that my accounts as purser had been promptly and punctually rendered to his office, and every thing had been done by me to facilitate their settlement.*" Here, then, I have his full and perfect acquittal of having ever offended against the provisions of this act. I, of course, was *never* reported

to the President, by the proper accounting officer, as such an offender; and my dismissal could not, with any propriety, have been sanctioned or justified by its provisions. I shall now, under this proof of the Fourth Auditor that I had complied with the terms of this law of 1823, go back to the settlement of my accounts with that officer, so that my position before him may be fairly understood.

My accounts, in connexion with my claims for credits, were submitted to his consideration; they were admitted to be equitable and just. Had I a right to these credits; in other words, could I claim them, as an equitable setoff, in the settlement of my accounts?

In the first place, I shall observe that such credits are allowed by the well-established usage of the department, as followed by the accounting officers of the treasury. This usage has been the result of the act of the 3d March, 1797, and of the exposition of that law, which was made by the "Supreme Court, in the case of the United States *vs.* Wilkins." I hope that I shall not be considered as disrespectful or unreasonable in the assertion, when I state that the officers of the government have no right to introduce a usage or mode of settlement which is not warranted by the act of 1797; and this decision of the court, that is to say, this law of Congress, having *defined* what offsets shall be received in the settlement of accounts, is binding on the government and its accounting officers; and that no usage, by the officers, could repeal its provisions. This is so perfectly clear to my comprehension that I shall not stop to discuss it. The third section of that act, says Judge Story, in the case of Wilkins, "manifestly supposes that not merely legal, but equitable credits, to debtors of the United States, ought to be allowed by the proper officers of the treasury; and that those credits are to be allowed, notwithstanding they have grown out of distinct and independent transactions, for he is *legally, as well as equitably, entitled* to them." Such is the law.

Let me now again advert to the extraordinary course of proceeding which I have encountered in the settlement of my accounts.

By this act of Congress I had a right, in my settlement, to claim an allowance for all credits, either legal or equitable. If the accounting officers had allowed the credits which I then claimed, and one of which the action of Congress has subsequently admitted to be just and proper, it is very apparent that the balance claimed of me would never have existed. But those credits were not acted upon by the accounting officers, because it was agreed between us that a suit should be instituted against me, and that I should be permitted to claim these credits on the trial, in the same manner that I had a right to do before the action had originated. When the trial came on the district attorney opposed my submitting any proof of those credits, upon the technical ground that the accounting officers had not decided on them, and that he was not bound by their agreement; and, in that way, he succeeded in preventing the jury from considering my claim to those credits. Thus, you perceive that the jury did not reject those credits; they were, by this



device, excluded from the consideration of the jury; and they were, of course, unaffected by the verdict, and remained in the same state as if no suit had been ordered. Suppose, however, that the agreement had been faithfully carried out in the trial of the case, and that I had been permitted by the district attorney to have presented them to the jury; can you believe, sir, that the jury would not have been as just as the Congress of the United States, and have proved, by their verdict, that the government was in my debt, and that there was no balance to be reported against me? Congress have, since that trial, when I was thus inexcusably precluded from a fair hearing of my case by the district attorney, recognized the justice of my claim; and will, by its further action, show what the jury would have shown, if permitted, that the United States was at that time, and still are, in my debt.

Only recollect, sir, that with this claim against the government, *thus acknowledged to be due to me*, I have been dismissed from the public service; and I now respectfully appeal to your sense of equity and justice to decide, whether or not that removal, for this false accusation of being a debtor to the government, was not cruel, unauthorized by the act of 1823, and irreconcilable with every principle of public justice. .

If my removal was unjust and unauthorized under the circumstances, would it be more than right, by way of reparation for the injuries that I have thus unjustly suffered, that I should be restored to my former position and place?

It would be, I am sure, very impolitic to tax your patience by a minute history of the cases where individuals have been restored to office. I shall simply observe that they fully prove that, although the removal may have been legal, yet, if strict justice demanded that the party should be restored, the fact that the dismissal was *legal* did not effect his right to be restored to office. The power then to restore me does not depend upon the legality or illegality of the dismissal. In my case, however, it was *unjust*; because I did not, in fact, owe any balance to the government; and all the injuries which I have suffered were caused by that departure from the agreement, that the credits claimed by me should, on the trial, be decided by the jury, and which credits the act of 1797 authorized me to claim. So that my dismissal was unjust, and without proper cause.

That you, sir, have the power to restore me is abundantly shown by the several cases which are hereinafter mentioned, and which you will perceive are entitled to the highest respect, because they were made by some of the most distinguished statesmen that have presided over the destinies of this government. I refer to the cases of Surgeon Wiley, Lieutenant Byrne, Captain Clack, Passed Midshipmen Duryee and Hunter, Lieutenant Downing, (now a commander,) and many others that may be found upon the records of the Navy Department. The War Department furnishes numerous cases of restoration to office. I will merely select the cases of Lieutenant Drane, Captains Hutter and Bonneville. The power then does exist. It is for you, sir, to decide whether you will ex-

ercise it. That my case will justify you in doing me such an act of mere justice will, I am persuaded, appear from the history I have detailed to you of the injury I have suffered, in the loss of credit, of office, and in my pecuniary condition; a loss, I may add, that has been the result of not receiving from my country a full allowance for the value of my property, which was destroyed to advance her welfare and renown.

Such has been my hard case, and I trust that no other man will ever have cause of such a complaint. It is for you, sir, to decide whether this injury shall be permanent and irreparable, and whether the service which I have rendered my country, in peace and in war, shall be rewarded by this cup of bitterness and wrath; or, whether brighter and happier days shall await me, and the evening of my life shall be full of prosperity and joy.

And now, sir, I desire respectfully to submit my case to your impartial consideration; full of confidence in the justice of my claim, and in the integrity of my conduct, and under the conscientious belief that the government is actually indebted to me.

I have the honor to be, sir, with high respect, your obedient servant,

W. P. ZANTZINGER.

MAY 19, 1845.

P. S. To make this narrative of the extent of the injustice done me more apparent, I take leave, sir, most respectfully to state that with the documents, herewith submitted for your examination, is one of a remarkable character, and of much import in my case. I refer to the letter, marked No. 6, and dated the 30th of April, 1845, from the Fourth Auditor of the Treasury, Mr. Dayton, in which letter he unhesitatingly states that he had made no report of my alleged indebtedness, either to the President or the Secretary of the Navy, Mr. Henshaw, officially or otherwise, subsequent to the 1st July, 1843; which letter was addressed to me in reply to one from me to the Auditor.

The Fourth Auditor's report on my claim for losses on board the *Hornet*, made in obedience to an order from Mr. Upshur, then Secretary of the Navy, is dated on the 7th July, 1843; in which he states, "that Purser Zantzinger has a just claim upon the government for the value of the property belonging to him, or for which he has since been held to account, that was thus thrown overboard; and I do not perceive how Congress, if applied to, could refuse to make an appropriation for his relief."

With the knowledge of this favorable report of the Auditor, and before I could make any application to Congress for relief, President Tyler removed me from office on a charge, made by Mr. Secretary Henshaw, of defalcation, not authorized by any official report from the proper accounting officer, Mr. Dayton. The date of my removal was the 17th of January, 1844, six months after Mr. Dayton had made his report admitting that my claim was just, and amounted to "some thousand of dollars;" since admitted by Congress.

W. P. Z.

P.

TREASURY DEPARTMENT,  
*Fourth Auditor's Office, July 23, 1845.*

SIR: A memorial addressed to the President of the United States by William P. Zantzinger, setting forth the circumstances under which he was removed from the office of purser in the navy, under the late administration, and praying that he may be reinstated, having been referred by the President to the Navy Department, and by the Navy Department to this office for report, I have the honor to submit a statement of the facts of the case, according to my apprehension of them; conceiving the representation made by the memorialist to be, in some respects, erroneous.

Upon the settlement at this office in July, 1841, of the account of Mr. Zantzinger, as purser of the Lexington, there was found to be due from him to the government the sum of \$10,582 07. This debt he was twice requested to pay—once in July, 1841, and again in November of the same year—which, however, he omitted to do; and in the year 1842, he petitioned Congress for the allowance of claims against the United States to a large amount, which had been at various times disallowed by the accounting officers. This office was called upon for the reasons which led to the disallowance of those claims, and they were accordingly furnished; after receiving which, the Committee of Claims made an adverse report upon his petition, and recommended that his prayer should not be granted.

On the 21st March, 1843, the balance I have mentioned still remaining unpaid, but having been reduced by some additional credits to the sum of \$9,149 73, his account was reported to the Second Comptroller of the Treasury for suit. On the 25th May, 1843, shortly before the trial of the cause, another account was stated, in which he received a further credit for pay that had become due to him, whereby his debt was reduced to the sum of \$8,880 72.

On the 16th March, 1843, when preparing for trial, he transmitted to this office a list of claims amounting to \$16,879 18, being principally, and I believe altogether, the same that had been reported against by the Committee of Claims of the House of Representatives; and I gave him a certificate that they all had been previously presented at this office and disallowed, with the exception of two of them, which amounted to but \$74 57. When called upon by the district attorney, in April following, for a statement of the claims which he intended to set-off against the demand of the United States, he furnished the list I have just mentioned as having been presented at this office; and, on the 31st of May, the attorneys of the parties signed a mutual stipulation in regard to the proceedings at the approaching trial, according to which the set-offs of the defendant were to be confined to those enumerated in that list.

Mr. Zantzinger states that an agreement, which he cites in his memorial, was entered into between the government and himself, by the terms of which all his claims were to be admitted on the trial, "which in the broadest sense of conscience, right, and equity

ought to be allowed;" and that the district attorney violated that agreement, by making mere technical exceptions to his claims, and shutting out some of them on the sole ground that they had not been disallowed by the accounting officers. Mr. Zantzinger is mistaken in regard to these facts. No such agreement as he speaks of was entered into. What he quotes as such was but a proposal of his, which was submitted by the Solicitor of the Treasury to the judgment of the district attorney, who declined acceding to it, stating that it would be impracticable to try the cause upon such terms, as the counsel of the opposing parties could never agree upon a definition of what was meant by "the broadest sense of conscience, right, and equity."

It was consequently concluded, and the district attorney was instructed that the case should be conducted upon ordinary principles, mere technical objections, however, to be waived, and the several claims to be contested upon their merits. These instructions were strictly adhered to by the district attorney, as I can state from my own observation, having been present in the court as a witness during nearly the whole of the trial. The case was conducted with great fairness and liberality towards the defendant throughout, and not a single objection was made to any of his claims within my hearing, which did not relate to their merits. Nor do I think that any claim was excluded upon the ground that it had not been previously exhibited to the accounting officers. Mr. Zantzinger states, very much to my surprise, that those officers had declined deciding upon his claims, being under an impression that they were equitable and just, and disposed to have them determined by a jury. On the contrary, I aver that I never refused to make a positive decision of any claim that he presented to me for that purpose; and my certificate before alluded to, and now on file in the office of the clerk of the court, will show such decision in respect to all the claims contained in the list of set-offs agreed upon by the attorneys of the respective parties to be adduced on the trial; and I further assert, that there was not one of those claims which I considered either just or equitable. If any demand not included in that agreement had been brought forward by the defendant at the trial, it would have been obviously incumbent upon the district attorney to object to its admission, as it would have taken him by surprise, and he would not have been provided with testimony on the part of the United States to meet it. The memorialist therefore has, in my opinion, no ground of complaint in the manner in which the suit against him was conducted. The agreement upon which he lays so much stress was never concluded, and consequently was never violated; and no claim which he submitted for adjudication was excluded upon a mere technical exception.

The jury found a verdict in favor of the United States for \$8,258  $\frac{21}{100}$ , thus allowing the defendant \$623  $\frac{51}{100}$  on account of his claims, which amounted to \$16,000 and upwards. In all that I have stated in regard to the legal proceedings in the case, I have no doubt that I shall be sustained by the late District Attorney for this district.

The claim to which Mr. Zantzinger gives such prominence in his



memorial, founded upon the loss of clothing and private stores, which he alleges were thrown overboard from the United States ship *Hornet*, by order of Captain Biddle, during her chase by a British ship of the line, in the year 1815, was not included in the agreement of the attorneys above referred to; and was, consequently, not among those submitted to the court and jury upon the trial.

Although that claim originated in 1815, there is no evidence on the files or records of the Navy Department, or of this office, to show that it ever was presented until July, 1843. The loss of property which gave rise to it is stated to have occurred while he was attached to the *Hornet*; yet in his account, as purser of the *Hornet*, which was settled in 1818, there is not the slightest allusion to any such loss. Since that period he has rendered a multitude of accounts, but in no one of them was this claim included. On the 1st of July 1843, which was after his account as purser of the *Lexington* had been reported for suit, and after the trial had taken place, he brought this claim for the first time, so far as appears, to the notice of the Secretary of the Navy, by whom it was referred, with the evidence in support of it, to this office. On the 7th of that month I made a report upon the subject to the Navy Department, stating the facts which appeared to me to be more or less clearly proved by the testimony that had been adduced, and expressing the opinion that, if the evidence should be deemed satisfactory, Congress would probably make an appropriation to indemnify him for his loss.

At the next session of Congress he procured the passage of a joint resolution, directing the accounting officers to allow him the value of the stores thrown overboard from the *Hornet*, and specifying the manner in which it should be ascertained, viz: by deducting from what should appear to have been at that time the usual amount taken on board a sloop of war going upon a cruise like that of the *Hornet*; the quantity which the accounting officers should be of opinion was probably issued or expended, between the period of the vessel's sailing from New York and the time at which the chase occurred. Congress thus determined the fact of the stores having been all thrown overboard, and prescribed the particular mode by which their value should be ascertained. This duty was imposed upon the Second Comptroller and myself, as Fourth Auditor. After a careful examination and comparison of the testimony which was laid before us, we estimated the value, upon the principles laid down in the joint resolution, at \$5,724. That this was a full and liberal allowance for the loss sustained, I have never since entertained a doubt; my only misgivings have been lest it should be larger than was justified by the evidence.

But for the purpose of showing that the estimate was unreasonably low, Mr. Zantzinger cites a report made by the honorable Mr. Ramsey, of Pennsylvania, in behalf of the Committee of Claims of the House of Representatives, at the last session of Congress, recommending the passage of a bill allowing him an additional sum of \$2,276, which would make the whole amount \$8,000; and with the same view he ventures to conjecture what would have been the

action of Congress upon the report, had there not been a want of time; and he even anticipates the favorable consideration of his claim by the next Congress. I do not think that the report referred to can claim much weight with the Executive, when it is understood that it was made upon the strength of one single piece of testimony, selected by the party interested, from a large mass of evidence that had been before the accounting officers when they made the award which it goes to impeach, and without any enquiry being made of those officers whether the statement, thus singled out by the memorialist, might not in some way be affected by those of other witnesses. Its influence will doubtless be still further diminished, when it is known that the testimony thus implicitly relied upon—while it proceeded from an officer whose integrity is beyond question—was that of a witness, the innocence of whose recollection, as to an important fact connected with the matter in question, was shown by the positive evidence of two other witnesses. The statement adopted by the committee as a basis of their report, was that of Captain Newton, who was the second lieutenant of the *Hornet*, and who estimated the amount of clothing and purser's stores on board of that vessel, at the time of the chase, at \$8,000. Commodore Connor, who was first lieutenant of the ship, differed widely in opinion with Captain Newton as to the amount that was on board, and stated, furthermore, that the clothing was in a store-room on the berth deck, and was not thrown overboard. Captain Newton, upon being informed of that statement, denied, to the best of his recollection, that there was any such store-room on the berth deck; and stated that the only slop-room he knew of was in the purser's own state-room.

The master's mate of the vessel was subsequently discovered in Philadelphia, and having been summoned to this city, was examined upon oath, and confirmed the statement of Commodore Connor; deposing that his duty lay upon the birth-deck; that there was a slop-room upon that deck in which the heavy articles of clothing were kept; that he often looked into it, and that at the time of the chase he was ordered, in conjunction with the purser's steward, to open the room and suffer the men to take such articles as they could put into their bags, which articles were returned, or charged to the men, after the escape of the vessel.

Captain Newton, then, whose statement of the value of stores on board of the *Hornet* at the time of the chase is mentioned in the bill reported by the committee, as the ground and measure of the additional allowance proposed to be made to the memorialist, had never known, or else had forgotten when he made his estimate, the existence of the principal apartment where the clothing was kept; and yet his opinion was deemed by the committee to be so worthy of reliance as to render an examination of the opinions of the other witnesses by them superfluous, and to justify them in pronouncing the judgment formed by the accounting officers, upon a comparison of all those opinions, to be erroneous.

I have already mentioned, it was not a question before the accounting officers whether the clothing and private stores were actually

thrown overboard, that fact having been assumed by Congress in the joint resolution of June 15th, 1844; but it was a question proper for the consideration of the committee and of Congress, upon the application of the memorialist for additional relief. If the committee had called for the evidence in the hands of the accounting officers, they would have seen that Commodore Biddle, who commanded the *Hornet*, Commodore Connor, who was her first lieutenant, and William B. Smith, the master's mate, had all affirmed that none of the clothing was thrown overboard; and if such a call should hereafter be made, I shall have it in my power to show, by an acknowledgement which I have recently discovered under the memorialist's own hand, that clothing to the amount of thirteen hundred and forty-five dollars was transferred by him to the purser who succeeded him, after the vessel returned to the United States.

Mr. Zantzinger has no sufficient ground for presuming, either that the bill reported by the committee would have been passed by the last Congress if time had been permitted, or that a similar one will be passed by another Congress. His want of success at the last session is to be attributed, I apprehend, rather to the information which I deemed it my duty to give to the chairman of the Naval Committees of the Senate and House of Representatives in relation to his claim, than to a deficiency of time for considering the subject.

Mr. Zantzinger was removed from the office of purser in the navy on the 17th January, 1844; at that time he was indebted to the government in the sum of \$7,341, the joint resolution for his relief not having been passed. Afterwards, on the 19th October of that year, he was credited, agreeably to the decision of the accounting officers, under the joint resolution, with \$5,724; leaving a balance against him of \$1,617 94, which still remains due.

The papers referred to me are herewith returned.

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

A. O. DAYTON.

To the Hon. GEORGE BANCROFT,  
*Secretary of the Navy.*

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Q.

WASHINGTON, September 30, 1845.

SIR: I have presumed to regard the kindness which you manifested, in giving me an opportunity of seeing the report of the Fourth Auditor to the Secretary of the Navy—a copy of which was refused to me at the Navy Department, though asked for under your own authority—as the evidence of your willingness to listen to whatever it might be in my power to say, in reply to that report, before you determine finally to act on the communication which I had the honor to present to you.

The first thing, which cannot fail, I should think, to strike the mind even of the most disinterested reader of the Auditor's report,

is, that it is rather a passionate defence of his own course in relation to my claims, than a calm historical view of the various actions upon them, by the several authorities of the government, under whose scrutiny they have passed. The Auditor seems to have thought that he was called upon to justify himself from some supposed attack upon the soundness of his own judgment, rather than to give a plain and impartial narrative of all the facts in the case, which the records of his office would have enabled him to do without difficulty, and from which alone a report from him was asked for. He seems to have regarded my exercise of a right, belonging to the humblest individual, to appeal to Congress, on his interpretation of their joint resolution, as a direct insult to himself. The whole tenor of the report is controversial and recriminative; its manifest spirit throughout, is that of an impassionate advocate, not of a judicial narrator. How far one who writes under such influences, who displays such a spirit, in the performance of a simple official duty, may be relied upon for accuracy of statement and fairness of inference, will be made manifest in the examination and analysis of the report which I have now the honor to submit. Surely the Fourth Auditor cannot be so wedded to his own judgment as to regard all difference of opinion with him as an unpardonable offence! And during the whole period of my official intercourse with him, I am conscious of no other. In the appeal which I made to Congress on his award under the "joint resolution," it would have been more natural to have attributed to me the wish to free myself from the embarrassment of alleged indebtedness to the government, than to the mere unprofitable desire of giving offence to him; a motive which could have been better answered in a thousand other ways. A very brief recapitulation of the circumstances which led to my appeal, will at once show you, sir, the validity of the grounds I had for that appeal, and render manifest the unbecoming spirit in which the report under consideration was made.

Congress had, after a full and laborious investigation of my claim, and a close examination and comparison of all the evidence then brought to light in the case, passed, on the — day of June, 1844, a joint resolution, authorizing and directing the proper accounting officers of the government to ascertain and allow whatever might be the just amount due to me for purser's stores thrown overboard from the Hornet, during the chase of her by a British man-of-war. In this joint resolution, it is evident that Congress had had before it what is regarded as sufficient testimony to prove the fact that the stores had been thrown overboard. This, therefore, was not one of the questions which the joint resolution called upon the accounting officers to investigate. Congress had already investigated it; and the terms of their action in the case show, beyond all cavil, that they were satisfied of the fact of throwing overboard the stores. The only points, then, which the accounting officers were authorized to examine, under the joint resolution, were:



*First.* The probable amount of stores which had been purchased for the cruise of the *Hornet*.

*Secondly.* The probable amount which had been expended between the time of purchase and the time of throwing overboard. And,

*Thirdly,* The prices current of such stores at the time of their purchase.

These were the only questions which the accounting officers were required or authorized to investigate. So interpreting the joint resolution for my relief, and knowing such to be the intention of the committee who introduced it, was it not natural that I should be surprised and disappointed; that I should feel myself injured, and believe the intention of Congress to grant me relief thwarted by the action of the accounting officers? The Auditor undertook to go over again the whole ground which had been previously and thoroughly investigated by the committees who had reported the resolution for my relief in both Houses of Congress. He undertook to say that the evidence of the throwing overboard was not satisfactory. He sought and relied upon the testimony of witnesses who, in the very nature of things, could know nothing about the facts; disbelieving and rejecting the more positive evidence of those whose duty it was to be present, and under whose very eyes the incidents they relate occurred. But what is most of all extraordinary is, that the Auditor, while he affects to doubt whether any of the stores were thrown overboard, nevertheless makes an allowance of \$5,724; being more than double the amount at which some of his witnesses put down the original supply of stores! Did he believe the testimony in which he affects to have so much confidence, and yet, out of his abundant charity, grant me such an amount of public money as a donation? Or did he really believe the evidence of more experienced, more familiar, and, therefore, more competent witnesses, and yet make a compromise with official economy, or personal enmity, or some other unexplained feeling, in cutting me off with little more than half the amount which those witnesses testified to be "the probable amount of stores thrown overboard?"

View the grounds of his award as we may, however wrong I may be as to the influences which produced it, still there was nothing extraordinary, nothing that ought to have been regarded as personally offensive to the Auditor, in the fact that I thought myself aggrieved, that less than justice had been done to me, and that what Congress had designed and characterised as a "relief," was, in fact, no relief at all. In the full conviction that the Auditor had misunderstood or misinterpreted the joint resolution under which he acted, and failing in every effort to induce him to reconsider his decision, nothing was left for me but to throw myself upon the justice of Congress, and to obtain from them such an expression of their intention as could not be misunderstood or misinterpreted. With this view, I offered a memorial to that body, and accompanied it, notwithstanding the Auditor's gratuitous assertion to the contrary, with every tittle of testimony, both for and

against me, which had been before the Auditor and taken as the grounds of his decision; copies of which I had asked for and obtained from him for that purpose.

Was it a consciousness that he had done me wrong, and a fear that such would be established by the action of Congress on my memorial, that induced him, without giving me notice, as it was his official duty to do, and on one of the last days of the session, when he knew there would be no opportunity of counteracting the effect of his officious, not official, interference—was it, I ask, this consciousness, or this fear, which prompted him to give secret information to one of the committees, that he had found a document in my own handwriting which would give the quietus to my claim—nay, more, which would prove that he had already allowed me too much? If he had really found such a paper, after his repeated answers to my call for copies that he had furnished every thing in his possession, was it not obviously his duty, not only as an officer of the government, but as an honest man; actuated only by honest motives, to have sent me a copy of it, or at least to have given me information that he had such a paper and meant to send it to the committee? By every code of ethics, moral or christian, such was his bounden duty. But he does not even send the paper to the committee; he tells one of the members that he has in his possession a paper that will affect my claim! The consequence was natural enough: the member does not doubt the official assurance of the Auditor, but takes it for granted that the paper alluded to is a full, unequivocal, indisputable acknowledgment, on my part, that my claim is without foundation; and so believing, when the motion is made to take up the bill, reported in my favor, he gets up in his place and moves a postponement, with an insinuation that the claim ought not to be allowed. Such a postponement, at the close of the session was, of course, fatal! There was no time for further hearing, no time to call for this evidence of my insatiate and dishonest avarice; and I was compelled to go to work anew to ferret out this unlooked for addition to the persecutions I have suffered. You, sir, were the only power to whom I could apply for redress; you were kind enough to hear me patiently, and it is through that kindness, sir, that I have at last come to the knowledge of the circumstance upon which the Auditor founded his most extraordinary interference, and his still more extraordinary report to the Navy Department.

Having thus said what seemed to me to be necessary to the correct understanding of the Auditor's report, I now beg leave, sir, to submit to you what I feel confident you will regard as a full and satisfactory answer to all its details, relying with the fullest assurance that you will do me the justice which has been denied to me elsewhere.

I have the honor to be, sir, with the highest respect, your obedient servant,

WM. P. ZANTZINGER.

To the PRESIDENT OF THE UNITED STATES.

*Mr. Zantzingers answer to the Fourth Auditor's report, made to the Secretary of the Navy, dated July 23, 1845, respectfully and earnestly referred to the consideration of the President of the United States.*

The Fourth Auditor states: "Upon the settlement at this office, in July, 1841, of the account of Mr. Zantzingers, as purser of the Lexington, there was found to be due from him to the government, the sum of \$10,582 $\frac{1}{10}$ . This debt he was twice requested to pay, in July, 1841, and again in November of the same year, which, however, he omitted to do."

Here, Mr. Dayton has failed to state, that when this balance was rendered, I had expressed my surprise, and mentioned to him my belief that there was some great error in the settlement, and that it was my intention to state that fact to Judge Upshur; and requested that I might be indulged in further time, to investigate the matter, and to prosecute certain claims I had against the United States; which, if fairly examined into, would show that the government was indebted to me. [For proof of this, see my letter to Judge Upshur, marked A, herewith, dated 19th November, 1841; wherein I state my reasons at large for not wishing to comply with the request of the Secretary, to pay in the balance thus stated; and asking, at the same time, "time to carry out my claims before Congress," which request was promptly granted, and made known to the Auditor by me.]

Mr. Dayton again states: "On the 21st March, 1843, the balance I have mentioned, still remaining unpaid, but having been reduced by some additional credits, to the sum of \$9,149 $\frac{7}{10}$ ." This is correctly stated by the Auditor.

Mr. Dayton continues: "His account was reported to the Second Comptroller for suit. On the 25th May, 1843, shortly before the trial of the cause, another account was stated, in which he received a further credit for pay that had become due to him, whereby his debt was reduced to the sum of \$8,881 $\frac{7}{10}$ ."

The suit alluded to by Mr. Dayton was the proposed amicable suit, acquiesced in by himself, as Fourth Auditor of the Treasury, and which would necessarily take the course mentioned, that is, "reported to the Second Comptroller for suit."

Mr. Dayton again says: "On the 16th of March, 1843, when preparing for trial, he transmitted to this office a list of claims, amounting to \$16,879 $\frac{1}{10}$ ."

On the same day, Mr. Dayton wrote the following certificate at the foot of that list of claims:

"I certify that the foregoing claims have all been presented at this office and disallowed, either by myself or my predecessor, with the exception of that for \$63 $\frac{1}{10}$ , the amount of condemned slop-clothing charged to Purser Zantzingers, on the settlement of his accounts as purser of the Lexington; and with the exception also of \$10 $\frac{4}{10}$ , a portion of the amount of \$30, claimed as having been erroneously charged to him, on the allotment of Samuel Jones."

It will be observed, that this "decision" of Mr. Dayton, upon

this large amount of claims, was made on the same day in which he declares they were presented for his consideration and decision. How can this summary and merely formal decision upon my claims be justified by the Fourth Auditor, except upon the understanding that an amicable suit was about being executed, expressly to decide judiciously upon their justice and equity, as I have alluded to, thus rendering a formal decision necessary, in his opinion? In allusion to the written "proposition" made by me, first, to the Secretary of the Navy, Judge Upshur; second, to himself; and third, to the Second Comptroller, as forming the basis of the amicable suit about being instituted,

Mr. Dayton remarks: "Mr. Zantzinger is mistaken in regard to these facts. No such agreement as he speaks of was entered into. What he quotes as such was but a proposal of his, which was submitted by the Solicitor of the Treasury to the judgment of the district attorney," &c.

The Fourth Auditor cannot seriously deny but that I submitted to him the proposition in writing to which he alludes, and to which he expressly acquiesced. If he does deny this statement, I am prepared to make solemn oath to the fact; and, further, that the Secretary of the Navy and the Second Comptroller did the same. Is it not strange that the Fourth Auditor should first deny his knowledge of the proposition made, and in the same moment remarks:

"The agreement upon which he lays so much stress was never concluded, and consequently was never violated."

If there can be a moment's doubt as to the existence and intention of the terms of that proposition, I beg leave to refer to my letter of the 24th March, 1843, to the Solicitor of the Treasury, herewith, marked F, in which I use the following language: "In reference to a conversation I had with you some time since, on the subject matter of my claims against the government, I now take leave to enclose you a proposition in writing, which is to form the basis of a prompt and speedy termination of the claims of the government against me, and of my claims against the government. Should this proposition be acceded to by you, I have to request you will please give instructions accordingly to the United States district attorney," &c.

I now submit a letter from the Solicitor of the Treasury to the district attorney, dated 27th March, 1843, marked E 2, in which he says: "I send you copies of his two communications to me of the 24th instant. If an amicable suit can be instituted in the manner and for the purposes he proposes, such a course has my consent."

Mr. Dayton then goes on to state, "The case was conducted with great fairness and liberality towards the defendant throughout."

His views, and those of my numerous friends, as to the fairness and liberality dispensed toward me, differ widely. On the contrary, my friends think I was harshly and unjustly dealt with. Was it fair or liberal to destroy the original object of the proposed suit,



by having ruled out all my principal claims, and thus cutting me off from a fair jury trial, by raising technical objections, and otherwise embarrassing the course of the suit? which suit was designated by me, as well as by the Secretary of the Navy, Judge Upshur, the Fourth Auditor, Second Comptroller, and Solicitor of the Treasury, to be a trial on principles of strict justice and equity.

Mr. Dayton continues, "Mr. Zantzinger states, very much to my surprise, that those officers declined deciding upon his claims, being under an impression that they were equitable and just, and disposed to have them determined by a jury. On the contrary, I aver that I never refused to make a positive decision of any claims that he presented to me for that purpose; and my certificate before alluded to, and now on file in the clerk's office of the court, which will show such decision, in respect to all the claims contained in the list of set-offs."

My answer to this is, that he did, in a very summary manner, "make a positive decision of my claims," when, as I have before remarked, he received my list of claims on the 16th March, 1843, and on the same day made a formal decision against them. This is what Mr. Dayton means, I suppose, as "a positive decision of my claims." I aver that, in the course of repeated conversations with Mr. Dayton on the subject matter of my claims, he stated that he had no authority to allow them, but at the same time encouraged me to hope for a favorable decision by my applying to Congress for relief; that he believed the claims were just and equitable. The same encouragement was given me by the Second Comptroller.

Mr. Dayton further says: "The claim to which Mr. Zantzinger gives so much prominence in his memorial, is founded upon the loss of clothing and private stores which he alleges were thrown overboard from the United States ship *Hornet*, by order of Captain Biddle, during the chase by a British line-of-battle ship in the year 1815, was not included in the agreement of the attorneys above referred to, and was consequently not among those submitted to the court and jury upon the trial."

Here is another misrepresentation of Mr. Dayton. This claim was offered by my counsel, and withdrawn upon the suggestion that it had never been finally disposed of by the accounting officers. See Mr. Jos. H. Bradley's letter, herewith, marked V, and dated 18th September, 1845, in which he expressly states, "My memory of the fact is quite distinct, that on the trial of the case of the United States *vs.* you, you did present your claim for losses sustained by you during the retreat of the *Hornet*, and it was objected to and rejected, because it had not been passed upon by the accounting officers of the Treasury. Of course no evidence was offered to sustain, nor was any investigation of it had. When I say presented, objected and rejected, I mean that I as your counsel stated the claim. Mr. Fendall objected, and it was rejected by the court on the ground previously settled, that no claim should then be investigated, which had not been formally presented to, and rejected by, the accounting officers."

Mr. Dayton continues, "Although that claim originated in 1815,

there is no evidence on the files or records of the Navy Department, or of this office, to show that it ever was presented until July, 1843."

Mr. Dayton is not only in error, but misrepresents the facts which are, or ought to be, within his own knowledge, as to the fact of this claim having been presented, not only to the Navy Department, but to his office, previous to July, 1843. To contradict his statement, I offer, first, a certified copy of a letter from myself to the Fourth Auditor, dated 18th January, 1843, herewith, marked C, in which I state:

"I also request to state that I have a further claim against the United States for the loss of stores on board the United States ship *Hornet*, during the late war, thrown overboard in time of chase by an enemy. The amount is considerable, but as I have not heretofore been able quite to establish this claim, yet I do not despair of being able to do so very soon. I therefore respectfully desire to claim a right to present this claim hereafter for consideration."

This letter was written to Mr. Dayton six months before his report on this very claim.

And secondly, I refer to another letter from me to the Fourth Auditor, dated 6th July, 1843, marked K, in which I state:

"I take leave to enclose you such testimony as within my reach, in support of my claim for loss of stores in the *Hornet*, during the late war, for which I have never been remunerated. I have frequently presented this claim to the department of the Secretary of the Navy," &c. Again: "This claim is manifestly a *strong* one; full of incident, and commanding your serious consideration. The strong concurrent testimony, herewith, I trust will induce you to give it it a *fair and impartial* investigation."

I now submit an *extract* of a letter from me to Judge Upshur, Secretary of the Navy, dated 1st July, 1843, and marked L.

"Among the various claims submitted to your examination, you may recollect, sir, *one* upon which you entertained strong convictions in its favor. This claim was for loss of stores thrown overboard in chase, during the late war, from the *Hornet*." Again: "Hitherto my testimony has been considered imperfect, so that I could not bring the claim properly before the accounting officers."

This letter shows the fact that I had, *previously* to the 1st July, 1843, conversations with Judge Upshur in reference to this said claim. In proof of which I now offer a certificate from Mr. John R. Coxe, jr., recently received, dated September 3d, 1845, marked Z. This gentleman is favorably known to the Hon. Mr. Dallas, Vice President of the United States, and to the Hon. Mr. Walker, Secretary of the Treasury. What does Mr. Coxe say?

"Having been requested by W. P. Zantzinger, of the city of Washington, to give him a detailed account of various conversations I had with the late Judge Upshur, (then Secretary of the Navy,) relative to the claims of said W. P. Zantzinger against the United States, I hereby certify that I had, at various times, several conversations on that subject with the late Judge Upshur; that

Judge Upshur informed me that he had made a *full* investigation into the merits of Mr. Zantzingers's claims, and was satisfied they were equitable and just, and ought to be allowed; that he particularly pointed out to me Mr. Zantzingers's claim for purser's stores, thrown overboard by order of the commander of the *Hornet*, during the chase of that vessel by an English line of battle ship—saying that claim ought to be allowed in full, with interest from the time the stores were thrown overboard; that he never knew of a clearer case, since private property had been destroyed for the benefit of the government, and that Mr. Zantzinger was, by the *constitution*, entitled to have the whole amount refunded. Judge Upshur also informed me that he had or would advise Mr. Zantzinger to endeavor to obtain the consent of the proper authority for the institution of an *amicable suit*, in order to ascertain the actual amount due said W. P. Zantzinger.

"My conversations with Judge Upshur on this subject were many; and in all, he expressed a decided opinion as to the justice and equity of the whole of the large claims of Mr. Zantzinger. With regard to the small claims, he did not express a decided opinion—saying that he had not fully examined them, as they were of minor importance; and, of some of them, he did not consider himself well qualified to judge. These minor claims, if I recollect distinctly, did not amount to more than a few hundred dollars."

Mr. Dayton further says:

"Yet in his account as purser of the *Hornet*, which was settled in 1818, there is not the slightest allusion to any such loss."

My answer to this is, that I did not think it proper or necessary to place this claim into my general account with the *Hornet*, until it should be allowed. It was not a proper subject to be introduced into general account, until favorably disposed of. I presented it to the consideration of the Secretary of the Navy, and referred to the commander's official account of the chase, and the ship's log-book, as evidence; but such evidence was not thought sufficient, although it was admitted that it was a fair subject of claim. The same views were subsequently taken on the subject by the Hon. Mr. Thomson and Mr. Southard, to both of whom I had on several occasions presented this claim. Had not the accounts and papers connected with the Navy Department, and the office of the Fourth Auditor, been destroyed at the burning of the treasury, ample proof, I have no doubt, would have been found to substantiate these facts. Mr. Dayton, in his letter to me, under date 26th June, 1843, herewith, marked L 3, in answer to an inquiry in relation to certain information required by me, in connexion with my accounts, states:

"The accounts that were settled at this office, previously to the year 1817, having been all destroyed at the burning of the treasury building," &c.

I was prevented from applying to Congress for relief, by the many discouragements I had encountered, and the want of time necessary to such prosecution, and other causes, hereinafter mentioned.

As further proof that this claim had been long since entertained

by me, I now offer an extract from a letter from the late Rufus G. Amory, esq., of Boston, dated 20th February, 1833, marked J. Mr. Amory states:

"You have not noticed to me that OLD CLAIM, founded on goods thrown overboard from the *Hornet*, in chase at sea. It ever appeared to me, by every principle of law and justice, that, whether a public or private ship, the goods saved by the *Jetson* ought to contribute to the loss which was made for their safety. Perhaps I thought too much of that circumstance, and considered it a greater amount than would probably be the result."

Mr. Amory was a distinguished member of the Boston bar, and well known to the Hon. Mr. Adams, of the House, and Mr. Senator Choate. I furnished a copy of this letter to the committee in the Senate, which asked for it, and it proved satisfactory. For the genuineness of the signature, I referred the committee to the above named gentlemen.

That "old claim" of which Mr. Amory speaks, in his letter of 1833, ought to be considered as conclusive evidence, that it was entertained and brought forward by me long before July, 1843. The manner in which Mr. Amory notices this claim, is proof that I had had previous and frequent conversations with that gentleman to February, 1833; for I had been intimately acquainted with him for many years previously. Mr. Dayton, it is apparent from the tenor of his late report, desires to impress upon the mind of the President that this claim was gotten up for the purpose of meeting the judgment, so unjustly obtained against me. He could have no other motive.

Mr. Dayton continues:

"On the 1st July, 1843, which was after his account as purser of the *Lexington* had been reported for suit, and after the trial had taken place, he brought this claim for the first time—so far as appears—to the notice of the Secretary of the Navy; by whom it was referred, with the evidence in support of it, to this office."

I think I have already satisfactorily shown that this assertion of the Auditor is not true in fact, by the various evidence quoted; and particularly that of Mr. J. R. Cox, jr. I will, however, state one additional fact. Some days after the unjust judgment procured against me, I met Mr. Dayton in the street. He took occasion to make mention of my claim for losses sustained in the *Hornet*; and said he considered that claim, always, as one of my strongest claims, and urged me to revive it; stating the insufficiency of the evidence offered by me, and advised me to strengthen the case by obtaining, if I could, the evidence of any of the surviving officers. In that case, he thought he could probably make a favorable report.

Under the *advisement* of Mr. Dayton, I set about and procured such further evidence as was then within my reach. I transmitted the claim and vouchers to the then Secretary of the Navy, Judge Upshur, who directed the Fourth Auditor to make a report on them.

Mr. Dayton then speaks of having made his report on the case to the Navy Department, on the 7th July, 1843.



In that report he states, (marked N,) "The facts which appeared to me to be more or less *clearly proved*," by the evidence adduced; and expressing the opinion, "that if the evidence should be deemed satisfactory, I do not perceive how Congress, if applied to, could refuse to make an appropriation for his relief."

He states, moreover, in his report of 7th July, 1843, "I can see no distinction, in principle, between this case and that of private property on land, taken and used by the troops of the United States for purposes of defence, and, in consequence thereof, destroyed either by them or by the enemy. The case strikes me as alike included by that clause of the constitution which provides that 'private property shall not be taken for public use, without just compensation.'"

Mr. Dayton then goes on to state that, "At the next session of Congress, he procured the passage of a joint resolution, directing the accounting officers to allow him the value of the stores thrown overboard from the *Hornet*, and specifying the manner in which it should be ascertained, viz: by deducting from what should appear to have been at that time the usual amount taken on board a sloop-of-war, going upon a cruise like that of the *Hornet*; the quantity (the accounting officers should be of opinion) was probably issued or expended, between the period of the vessel's sailing from New York and the time at which the chase occurred. Congress thus determined the fact of the stores having been all thrown overboard, and prescribed the particular mode by which the value should be ascertained. This duty was imposed upon the Second Comptroller, and myself as Fourth Auditor. After a careful examination and comparison of the testimony which was laid before us, we estimated the value, upon the principles laid down in the joint resolution, at \$5,724.

"That this was a full and liberal allowance for the loss sustained, I have never since entertained a doubt. My only misgivings have been lest it should be larger than was justified by the evidence."

Mr. Dayton made the above award of \$5,724 before the evidence of Captain Newton, Captain Connor, or Smith, had been received. Had any weight been given to Connor's or Smith's testimony, the amount of the award would have been diminished; but it was not diminished one cent, notwithstanding their evidence. Captain Newton's testimony should have been received, and that consideration given to it, as due from its high character; and the award should have been increased accordingly. The accounting officers were quite willing to award the sum of \$5,724, without regard to the clear and indisputable evidence of Captain Newton; but when that evidence was taken by the Second Comptroller, on the part of the United States, and laid before him, he would not do justice by increasing the award one dollar. The Committee of Claims, of the House of Representatives, considered this wrong and unjust. And was it not manifestly so, when Captain Newton's evidence was considered by them as the very best of any man living?

Senator Bagby, in speaking of Captain Newton's testimony, in

his letter to the Second Comptroller, of 18th October, 1844, (herewith, marked R,) says:

"My own deliberate opinion is, that upon the testimony before you, before Captain Newton was examined, the preponderance of the testimony is clearly in favor of a larger sum than was reported by the Fourth Auditor; and that the testimony of the commander at the time, if doubt existed, ought to be conclusive as to the amount of goods probably thrown overboard. If Captain Newton's testimony had been for the smallest amount testified to by any of the witnesses, I should have taken precisely the same view of it; for, from his position at the time, the fair and reasonable presumption is, that he knows more about it than any other man alive, except the purser himself."

What does the "Committee of Claims," of the House of Representatives, say on this point, in their report of the last session, after having had all the evidence before them? As that report clearly shows:

"If the opinion of Captain Connor could have influenced the accounting officers, the allowance would probably have been much below the sum awarded by the Fourth Auditor; yet, notwithstanding, the Second Comptroller ratified the decision of the Fourth Auditor for the sum of \$5,724, without any regard, as it seems to your committee, to Captain Newton's evidence."

"It appears to your committee, that the statement of Captain Newton, the second lieutenant of the ship, the officer in charge of the deck at the time the transaction took place; and the officer who actually superintended the throwing of the stores of every kind into the sea, and who ought to know better than any other person what was thrown overboard, is more to be relied on than any other person belonging to the ship.

"The committee believing that the opinion of Captain Newton is entitled to great confidence, report a bill, &c."

That bill grants a further allowance of \$2,276, the difference between what the accounting officers allowed and Captain Newton's evidence.

If Mr. Dayton never doubted the "justice and liberality" of his allowance, under the joint resolution, the Committee of Claims, before whom all the evidence was laid, doubted, unanimously. The representatives in Congress, from my native State, Pennsylvania, doubted. The Honorable Cave Johnson, now the Postmaster General, doubted. So, also, did forty-five distinguished Representatives in Congress doubt. And last, though not least, did Senators Bagby and Sturgeon, and other distinguished Senators, doubt.

I offer an extract of a letter recently received from the Honorable Selah B. Strong, who was a member of the Committee of Claims at the time the case was before it; dated Sautuket, New York, 30th August, 1845, marked X:

"I conceive that the validity of the claim was settled by votes of the committee at two successive sessions of Congress, and by the resolution of both Houses, adopted at the session of 1843-'44. The only unsettled question was, as to its extent. As to that, the

Committee of Claims, of the last session, had sufficient evidence before it to satisfy my mind. I thought then, and stated in committee, (and should have repeated in the House, had an opportunity been afforded me to do so,) that much more reliance should be placed upon the evidence of Captain Newton, who was in the actual command of the *Hornet*, when your property was thrown overboard on the chase, for her preservation, and superintended that operation, than upon the estimates of others, who knew but little or nothing about the matter. I assumed his statement as correct, and was prepared to vote for the balance of the amount certified by him, after deducting the sum allowed you by the accounting officers, under our resolution of 1844."

It is evident from this letter, that this gentleman also doubted as to the "justice and liberality" of the Auditor's award.

I have one other letter to offer on this subject. It is from the Honorable Mr. Ramsey, another member of the same committee, (recently obtained,) dated 3d September, 1845, and marked Y. It seems that he also doubted, and says:

"To the best of my recollection—and I had your case assigned me by the committee—to the best of my recollection, I say, you showed a disposition throughout the examination of the subject to answer every query, and to furnish the committee with every information desired. If my memory serves me, it was the estimate of loss given by Captain Newton, upon which the committee predicated their last report; believing that Captain Newton, of all the witnesses who testified to the throwing over the goods, &c., had the best opportunity to be correctly informed. Hoping that that justice which has so long been denied you may be speedily rendered," &c.

As to Mr. Dayton's "*misgivings*," lest his allowance was "*too much*,"—such "*misgivings*" are not very surprising, after the extraordinary weight given by him to the testimony of Smith and "Captain Connor," (then first lieutenant,) who was *not* on deck for several weeks previous to, nor at the time of, the chase, and for months after, and then only to be taken on shore at New York on a litter, as stated in evidence. This fact I mentioned to Mr. Dayton a long time previous to Captain Connor making to him his statement, or, as it should properly be called, *misstatement*.

All that the Auditor has asserted in his present report to the Secretary of the Navy, tending to show that my claim for stores thrown overboard from the *Hornet* was unfounded, *contradicts* his own report of 7th July, 1843—made in obedience to an order from the Secretary, Judge Upshur; *impeaches* his own good faith in the draft of the joint resolution furnished to me as a form; which draft was afterwards submitted to the committee by me, and adopted, and was finally passed into a law—the substance of his letter to Senator Dayton, in which he admits the validity of my claim; and is in direct *conflict* with the action and authority of Congress, as embodied in their joint resolution passed for my relief.

It was both *illegal* and a *contempt* of the authority of Congress, and highly disrespectful for the accounting officers, after the pas-

sage of that joint resolution into a law, to depart from the course plainly pointed out and prescribed by that sovereign expression of the legislative will. And yet most of this defensive report of the Auditor is but a justification of that course.

The action of the accounting officers under the joint resolution was not according to its express, positive, admitted requirements. This, and this alone, formed the subject of my second application to Congress. I asked for no further allowance than the resolution, already passed for my relief, gave me; nor for any new rule of settlement. I was content with that recommended and furnished by Mr. Dayton himself, and embodied in the resolution of Congress. My complaint was, that the accounting officers would not be governed by the rule prescribed by the law.

It had been proved to the satisfaction of Congress, and Mr. Dayton reported, that the *Hornet* was fully supplied with the usual quantity of stores of all kinds for her contemplated arduous and long cruise when she left New York; but owing to the destruction of the accounts, and other evidences, by the burning of the treasury, the exact quantity on board could not be ascertained. Hence, upon the evidence, and Mr. Dayton's first report and recommendation, the amount was fixed by Congress as the usual amount taken on board of a sloop-of-war, of the class of the *Hornet*, bound upon a similar cruise; from that was to be deducted the probable or usual issues from the time the ship left New York to the day of the chase.

In the language of Mr. Dayton's present report, "Congress thus determined the fact of the stores having been all thrown overboard." And now, I repeat, that my just complaint was, and still is, that the action of the accounting officers under the resolution, and the burden of Mr. Dayton's present report is, to contradict and controvert this fact thus "determined" by Congress.

The recklessness of the Auditor's report is unparalleled, when he seeks to detract from the just weight due to the unanimous report of the "Committee of Claims" of the House of Representatives, by alleging, "I do not think that the report referred to can claim much weight with the Executive, when it is understood that it was made upon the strength of one single piece of testimony, *selected by the party interested* from a large mass of evidence that had been before the accounting officers when they made the award, which it goes to impeach, and without any inquiry being made of those officers, whether the statement thus singled out by the memorialist might not, in some way, be affected by those of other witnesses."

This is a bold and serious charge; and, if true, the influence on the mind of the Executive should be what Mr. Dayton intended it to be, viz: that of destroying the weight of the report, and impeaching the honesty and integrity both of the committee and myself; but if untrue, and known to be so at the time when made, then should it not have the contrary effect, viz: of impeaching Mr. Dayton's integrity, and destroy the weight of his present report?

The charge is, that the report of the committee *was made upon*



*the strength of one single piece of testimony, selected by the party interested, from a large mass of evidence that had been before the accounting officers, &c.* On reference to that report, No. 4, second session, 28th Congress, the statement thus made will be readily seen to be totally unfounded and untrue. The report of the committee, after citing that a circular had been issued by the Fourth Auditor to a number of pursers in the navy, the better to enable the accounting officers to settle my claim under the joint resolution, proceeds to state, "that of the nine witnesses whose opinions were taken, five (being a majority of the whole number) estimated the amount of purser's stores on board, on the day of chase, to be at an average of \$9,921, and the lowest of those five at \$8,551. Two of the pursers, however, estimated for a smaller sum. The Auditor made up his allowance, under the joint resolution of Congress, which amounted to \$5,724; but by what process this sum was arrived at does not appear."

Again: "While the allowance of the Auditor was pending before the Second Comptroller, the evidence of Captain David Connor, who was first lieutenant of the *Hornet*, was obtained; which, if it went for any thing, would go for an allowance far below that made by the Fourth Auditor.

"Lieutenant Connor, it is alleged by the memorialist, could have known little or nothing of what was thrown overboard; as it appears from the facts in the case, that he was, at the time, confined below to his cot, suffering under the effects of a severe wound received in the brilliant action between the *Hornet* and the British ship-of-war *Penguin*, a short time previously, in which the *Penguin* was captured. This, certainly, sufficiently accounts for the want of accuracy in the knowledge of Lieutenant Connor. Just, however, after the opinion of Lieutenant (now captain) Connor was received, it fortunately for the memorialist happened, that Lieutenant (now captain) Newton arrived in this country, and at the seat of government, from the Mediterranean. Captain Newton was the second lieutenant of the *Hornet*, and, in consequence of the wound and confinement of Lieutenant Connor, was doing the duty of first lieutenant, and was the officer on deck in charge of the ship, and was superintending the execution of the orders to lighten the ship by throwing every thing overboard. His testimony was taken on the part of the United States, and is the very best that the nature of the case is susceptible of. He states, as his opinion, that Captain Connor was in error as to the probable amount of slop clothing and purser's stores taken on board, and that he has no hesitation in saying the amount must have greatly exceeded the sum stated by Captain Connor, and that it could not have been less than \$8,000, after deducting the probable amount of issues from the day of leaving New York to the day of the chase.

"If the opinion of Captain Connor could have influenced the accounting officers, the allowance would probably have been much below the sum fixed by the Auditor. Yet, notwithstanding, the Comptroller ratified the decision of the Auditor for the sum of

\$5,724, without, as it seems to your committee, any regard to Capt. Newton's evidence.

"It appears to your committee that the statement of Capt. Newton, the second lieutenant of the ship, the officer in charge of the deck at the time the transaction took place, and the officer who actually superintended the throwing of the stores of every kind into the sea, and who ought to know better than any other person what was thrown overboard, is more to be relied upon than the statement of any other person belonging to the ship.

"The committee, believing that the opinion of Captain Newton is entitled to great confidence, report a bill for the relief of your memorialist."

What now becomes of the statement of the Fourth Auditor, that this report of the Committee of Claims "was made upon the strength of one single piece of testimony, selected by the party interested, singled out by the memorialist." This statement is manifestly untrue.

Did the Fourth Auditor believe it to be true at the time he made it? If he had seen the report of the committee, (which is printed and sent, as a matter of course, to the Auditor's office to be placed on file,) which he must have seen—before he would venture to impugn so grossly the action and integrity of a committee in Congress, even if he had no regard for my feelings and character—he must have known that his statement was totally unfounded, and calculated to deceive the "Executive," for whose information a "report of the facts of my case" was asked of the Secretary of the Navy, Mr. Bancroft.

If the Auditor had never seen the report of the committee, which is hardly possible, the denunciation is still more desperate on his part. There is no further comment necessary than to say that the statement he has made is utterly untrue, and without foundation. I accompany this with a list of papers and vouchers to the number of thirty, or more, which were placed by me before the committee and Congress for their information in support of my second application. I particularly request the attention of the President to this paper, herewith, marked O, in support of this, my defence.

The same disingenuousness is manifested in what the Fourth Auditor states about Captain Connor being the first lieutenant of the *Hornet*, and Captain Newton the second lieutenant; evidently designing, or attempting to claim a greater weight of character for the evidence of the first lieutenant over the second lieutenant; while he suppresses the fact, fully shown by the evidence, that First Lieutenant Connor was seriously wounded and below confined to his cot, and could not know anything of the incidents of the chase, and where he remained confined until the vessel's return to the United States; whilst Second Lieutenant Newton was in the actual command of the deck, executing the orders "to throw every thing whatever overboard to lighten ship," to enable her to escape from the enemy. And, again: by representing Captain Connor as contradicting Captain Newton, particularly as regards the location of

the purser's store-room; whilst it was Captain Newton contradicting in the most positive manner Captain Connor, whose statement was procured by the Auditor, and who knew at the time that it had been laid before Captain Newton by the Second Comptroller, requesting his views in relation to the subject matter of its contents. Captain Newton contradicts both Connor's and Smith's evidence generally; and especially in relation to the position of the purser's store-room. (See his statement, herewith, marked S.) He is fully sustained by Midshipman Skiddy, (now Capt. Skiddy, a highly respectable ship-master and owner, sailing out of New York, who resigned his warrant soon after the termination of the war,) who was doing the duty as master's mate of the hold, berth-deck, and and spirit-room, and not Smith, as the Auditor states. (See Skiddy's letter, herewith, marked T, recently received by me, exhibiting a diagram of the ship's berth-deck, ward-room, &c.)

He states, (as Captain Newton previously stated,)

"That there was no store-room on the berth-deck appropriated as a purser's store-room, and that his slops and stores were stowed in his own state-room, in the ward-room, and in the spirit-room under the ward-room deck.

"I cannot say what articles were thrown overboard; but the order was to heave every thing that came to hand weighing a pound overboard, and I believe the order was pretty effectually executed. Your state-room was situated at the foot of the stairs leading from the deck into the cabin and ward-room."

Mr. Dayton states that it was not a question before the accounting officers, whether the clothing and private stores of the purser were thrown overboard, "that question having been settled by Congress in their joint resolution." Now, if Congress had settled that question, why, I repeat, the unnecessary, impotent effort, and contempt of the authority of Congress, in attempting to disprove and undo what Congress had settled by a positive resolution, the manuscript draft of which was suggested by the Auditor himself; saying, in his note to me, herewith, marked O, "I do not think that, under the circumstances of the case, an act less specific would be of much avail?"

Is not this the strongest possible condemnation of Mr. Dayton's course of conduct in my case, both whilst acting under the joint resolution, and in now repeating the same illegal evidence to disparage my claim under that resolution? But the Auditor admits that this was no question for the accounting officers, the fact having been settled by Congress; yet the Auditor states it was a proper inquiry for that body, "upon the application of the memorialist for additional relief."

Congress passed an act for my relief, and, in the language of the Auditor, "determined the fact of the stores having all been thrown overboard," and prescribed a positive rule for ascertaining the amount of my loss. The accounting officers attempted to deny the fact, thus "determined by Congress," and refuse, upon that illegal pretext, to apply the prescribed rule for ascertaining the loss.

I appealed to Congress for redress, and stated, at large, what I

conceived the illegal and irregular course of those officers towards me, and asked of that body to apply the rule laid down by themselves; and the Auditor says that, upon this application, it is proper for the committee and Congress to deny this "determined" fact, and, refuse to apply its own rules, and so trample upon its own law. Is not this absurd and dictatorial to Congress?

Again, Mr. Dayton states, "If the committee had called for the evidence in the hands of the accounting officers, they would have seen that Commodore Biddle, who commanded the *Hornet*," (but who was wounded in the action with the *Penguin*, and was in the hands of the surgeon,) "Commodore Conner, who was first lieutenant," (also wounded, and confined below in the cabin, where he continued confined to his cot, until the ship returned to the United States, and was carried on shore in a litter, whilst Second Lieutenant Newton was in the actual command of the deck, executing the orders to throw every thing overboard, &c.;) "and William B. Smith, the master's mate, had all affirmed that none of the clothing was thrown overboard."

Smith was only acting master's mate; whereas Midshipman Skiddy was doing the duty as master's mate of the hold, spirit-room, and berth deck, for 18 months previous to, and at the time of the chase. Here then, is the same character of disingenuous misstatement of facts, direct or implied, which I have so often had occasion and cause to complain of, in his present report:

*First.* There is a suppression of the condition and situation of the officers, viz: of Captain Biddle and First Lieutenant Connor; both known to him, by the evidence, as being below, wounded, and off duty at the time of the chase, &c.; and the fact of Second Lieutenant Newton being actually in command of the deck throughout the chase, conducting the throwing overboard, &c.

*Second.* Captain Biddle has never said in his letter "that none of the clothing was thrown overboard." He made no direct statement, except that it was "absurd" to suppose that any thing was thrown overboard; and in this he contradicts First Lieutenant Connor and Second Lieutenant Newton, (to both of whom he refers in his communication to the chairman of the Naval Committee in the Senate,) and Midshipman Skiddy, and Acting Master's Mate Smith, as well as other testimony.

*Third.* Mr. Smith merely states, according to the Fourth Auditor's declaration, "that there was a slop-room on the berth deck in which the heavy articles of clothing were kept, and that at the time of the chase he was ordered, (but does not state by whom,) in conjunction with the purser's steward, to open the room and suffer the crew to take such articles as they could put in their bags," which is very far from saying, "that none of the clothing was thrown overboard;" but proves, conclusively, if true, that the order to throw everything overboard had been given and was being executed, when the order to the crew to fill their bags, by seizing and appropriating to their own use the public and private stores under the purser's charge, was given; and further proves, that the latter order was predicated on the previous order, for an indiscri-



minate throwing overboard; and shows the situation and extreme distress of the ship at the time, and a determination on the part of the officers to render the ship as useless to the enemy as possible, in case of her capture, which was looked upon as inevitable. It also shows the extreme point of distress that we had arrived at.

*Fourth.* Lieutenant Connor's statement is substantially the same as Smith's and bears strong evidence of a comparison of notes, except that he characterizes the stores, in the alleged store-room on the berth-deck, as "slops and other light stores of that nature."

*Fifth.* The testimony of Captain Biddle was laid before Congress as early as my first application for relief; and was again before Congress on my second application; and in both cases his statement was overruled by his official account of the chase, made on the occasion to the Navy Department, and the log-book, which is always looked upon as the text book of the ship; proving "that every thing whatever had been thrown overboard from below as well as off deck," &c.

*Sixth.* All the evidence, except the single statement of Smith, was laid before the committee and Congress by me, including the statements of Captains Biddle and Connor, now mentioned by the Auditor; and the report of last session expressly refers to First Lieutenant Connor's evidence. The reason why Smith's testimony was not before the committee was, that it had been taken by the Auditor after his award had been rendered; and I therefore considered it as irregularly and illegally taken, and when about being taken, I formally protested against it, and that protest was laid before the committee.

The Fourth Auditor further states: "I shall have it in my power to show, by an acknowledgement under the memorialist's own hand, that clothing to the amount of \$1,345 was transferred by him to the purser who succeeded him, after the vessel returned to the United States."

Being desirous to give any and every explanation within my power on the subject of the above, I requested the Fourth Auditor to furnish me with a certified copy of the voucher showing the alleged transfer of clothing from the *Hornet*, on her return to the United States. In answer to my request, he has furnished me with a paper, of which the following is a true copy.

#### EXTRACT.

*The United States Navy Department in account with William S. Zantzinger, Dr.*

To this sum transferred to Purser Waine in slops.....\$1,345 10

E. E. WASHINGTON,

12th August, 1818.

The above is a true extract from an account current of William

P. Zantzinger, esq., late a purser in the Navy, now on file in this office.

A. O. DAYTON.

TREASURY DEPARTMENT,

*Fourth Auditor's Office, September 8th, 1845.*

Is it credible, could any one conceive it possible, that a public officer, an auditor, one who ought to be familiar with the nature of accounts and vouchers, would pronounce such a paper a voucher as evidence under my own handwriting, that the purser's stores in the *Hornet* were not thrown overboard; or, that I had already received too much for what had been thrown overboard? Here is an item from an old account current, of who knows what? without date as to the particular item, but generally dated in August, 1818, three years after the *Hornet's* return from her memorable cruize. The *Hornet's* name is not mentioned in it. The ship returned in August, 1815; the crew were paid off late in September, (if my memory be correct,) and I continued attached to her until the 28th of November following, when I received a furlough, on my own application, to proceed to Europe. Before leaving the United States, all my books and papers were placed in the Fourth Auditor's office, for settlement. I returned to the United States in July, 1816; and then a settlement of my accounts was made. Soon after, I received orders to join the Baltimore station.

I am utterly at a loss how to conceive or understand that the paper sent to me by the Auditor can be made to apply to my loss of stores in the *Hornet*. In the absence of all means of explanation, it is impossible for me to force the remotest conjecture how the transaction alluded to occurred; or, how a transfer of clothing, which appears to have been made in 1818, contradicts the positive testimony of the officers under whose eyes the thing took place, and who state that the stores were thrown overboard, even "to a pound weight." And if it does not contradict that, how does it show that I have already been allowed too much?

I would ask, is there the slightest proof produced by the Auditor that the small amount of clothing alluded to, not exceeding from \$600 to \$700, at peace prices, (for there was a difference of 100 per cent. between war and peace prices,) were any part of the stores taken out and returned in the *Hornet*? A charitable and unprejudiced mind would have imagined some mode of accounting for the apparent discrepancy between the period of the chase, in 1815, and the date of the account current in 1818. It was known to Mr. Dayton that, in consequence of the destitute situation of the ship after the chase, she put into a port of Brazil for supplies; that she arrived in New York in August, 1815; that the crew were not paid off until September, and that I remained attached to the *Hornet* until the 28th of November following, a period of nearly three months. If there had been any clothing on board of the *Hornet* at the time of her arrival at New York, it would have been necessarily turned over to the naval storekeeper after the crew were paid off.

Mr. Dayton, whilst acting under the joint resolution for my relief, addressed a letter to the navy storekeeper at New York to ascertain whether there was any evidence on his books that stores were landed from the *Hornet*, and of what description and quantity. The storekeeper replied to him that he "had carefully examined the receipt books of the years 1815, 1816, and 1817, and do not find any entry of clothing, or other articles in the purser's department, were received or landed from the United States ship *Hornet*."

If such be the overwhelming proof that was to put a stop to the action of Congress on my claim, for what Congress "determined" I was entitled to, my regret is that the Fourth Auditor did not permit them to see with their eyes rather than with his.

Mr. Dayton concludes his report by saying:

"Mr. Zantzinger has no sufficient ground for presuming, either that the bill reported by the committee would have been passed by the last Congress if time had permitted, or that a similar one will be passed by another Congress. His want of success at the last session is to be attributed, I apprehend, rather to the information which I deemed it my duty to give to the chairmen of the committees" [on Naval Affairs] "of the Senate and House of Representatives, in relation to his claim, than to a deficiency of time for considering the subject."

Let us see how far the Auditor is correct in his presumptive assertion on this point of the subject.

The "information" which he states "he deemed it his duty to give to the chairmen of the committees" [on Naval Affairs] "of the Senate and House of Representatives," I am left to surmise is no other than the paper he had so "recently" discovered, and upon which I have commented in a former part of this, my answer to the Auditor's report.

So little does that paper bear him out in his prejudiced view and assertion, that it was an acknowledgment in my own handwriting, of the groundless nature of my claim, I will venture to say there is no man of sound reason who will see the slightest connexion between the alleged transfer of stores in 1818 and the throwing overboard of the purser's stores from the *Hornet* in 1815. Does the Auditor presume to doubt the direct testimony of officers of unsullied integrity, who have testified that the stores were thrown overboard? Is it his design to insinuate that the Congress which passed the "joint resolution" for my relief, or that the Committee of Claims, who examined and sifted and compared all the testimony, were not as competent as he to determine what portion of it was credible, and what portion improbable? By what authority does he presume to question a fact which Congress has "determined" and established? If a mere accounting officer of the government may thus, at his will, set aside the solemn decision of the "legislative department," passed almost unanimously, where is the injured citizen to find protection against the caprice, ill-will, enmity, and malignity which it may be his evil fortune to encoun-

ter, where he expects only to find an impartial execution of the law?

The fact that he gave me no such information as he deemed it his duty to give to the chairmen of the [Naval] committees, and that, instead of sending the paper itself to the committees that they might judge of its character and weight, and, above all, of its peculiar bearing upon the point at issue, shows conclusively that he preferred to give his own coloring to that paper, and confine his comments upon it secretly to a single individual in each House; and that he trusted rather to his official character than to his pretended evidence to interrupt the action of Congress on my bill. These facts convince me that the Fourth Auditor has not adopted a proper course in this respect.

It is a mystery to me that the Auditor should have given his "information" to the chairman of the Committee on Naval Affairs of the House, rather than to the chairman of the Committee of Claims, which had charge of the case and reported the bill. The Auditor alone can answer or solve this mystery. He cannot plead ignorance of the fact of the bill having been reported by the Committee of Claims.

Why did the chairman of the Committee on Naval Affairs of the House rise in his seat and avail himself of his privilege of saying, "I object"? and when a numerous body of friends, of both political parties, urged him to withdraw his objection, so that the bill might be reported to the House, and then state his objections, why did he persist in such a singular course? The object is manifest—to "kill" the bill, and so gratify the Fourth Auditor.

That Congress would have passed my bill last session, had not the "objection" been made by the single member in the manner above mentioned, cannot be doubted. I am fully sustained in this assertion from the following facts, viz:

*First.* The report of the committee was favorable and unanimous.

*Second.* I had all the Representatives in Congress from my native State, Pennsylvania, to sustain me.

*Third.* I had good reason to believe that a very large portion of the members of the House were in favor of, and would have voted for, the bill, without distinction of party.

In the Senate I had also good reason to believe that a majority would have sustained the bill. The improper interference of the Fourth Auditor had not the same effect upon the mind of the honorable Senator who presided over the Committee on Naval Affairs of the Senate as it had upon that of the honorable member who presided over that of the House of Representatives, as will be seen from the following facts:

Senator Sturgeon, finding that my bill could not come up in its regular order in the House of Representatives, offered, by way of an amendment to the navy appropriation bill, to incorporate my bill into it. He made some remarks on the subject in its favor; and he was followed by the honorable Senators Bagby, Walker, Choate, Bayard, (chairman of the Naval Committee) and Merrick on the same side. The motion was negatived in consequence of the Hon.



Mr. Evans, (chairman of the Committee on Finance,) who objected solely on the ground of his believing it to be improper to introduce any thing of the kind into an appropriation bill, and not that he opposed my bill. This was distinctly stated by Mr. Evans.

A similar motion was afterwards made in the House by the Hon. Mr. Duncan, of Ohio, who also made some remarks to sustain his motion, which was seconded by a large number of members; and at the moment when the question was about being taken, and would have passed, the chairman of the Committee on Naval Affairs again rose and said, "I object," and the motion failed.

Here are facts to prove that I had good ground to believe my claim would have passed into a law, had an opportunity been afforded to discuss its merits, as I have before stated in my letter to the President of the United States.

Mr. Dayton admits, by his award, that the government has been indebted to me the sum of \$5,724, from the period of the chase, for property destroyed to save the ship, and for which the government was bound, by the provisions of the constitution, to reimburse me; and yet he contends, in his late report, that, until the passage of the "joint resolution," that sum was included in my indebtedness to the government. Is not this mere legal sophistry? since the resolution did not create the credit which he acknowledges I am entitled to, but only ascertained and proved that I was entitled to it. No one can say that I have not been entitled to this credit, and all the further credit to which I may be entitled, under the resolution, ever since my property was destroyed, or since I was so unjustly required to pay for public property, merely placed under my charge, and destroyed from necessity by the order of a superior officer.

After an amicable suit, designed and intended by the officers of the government, and myself, to give me the benefit of all the credits to which I might be justly entitled, and in which, it is conceded, I failed to receive what was justly due me, for losses in the *Hornet*, and an unexpected judgment was obtained against me, and the Auditor had immediately afterwards reported, upon an official call from the Secretary of the Navy, that "some thousands of dollars" were justly due me for the said losses; would it not have been right and proper to give me a reasonable time to make my application to Congress, to which that report remitted me, to obtain the allowance of his officially acknowledged demand? And especially, as I offered to give security to the Solicitor of the Treasury for the amount of the whole judgment, until I could procure a decision by Congress. Had I resisted the alleged claim of the government against me, instead of inviting and trusting to an amicable suit, to be speedily had, under a full conviction of making my offsets available, the law would have given me more than the time consumed by my application to Congress.

I was removed from office on the 17th day of January, 1844, and the joint resolution was passed for my relief in June following. As I have already stated, I had applied to Judge Upshur, then Secretary of the Navy, for time to make application to Congress, which

was kindly conceded to me, and was in the actual prosecution of my claim for that relief, upon the official report which Mr. Dayton had made to the Secretary of the Navy, when I was removed from office; and myself and family plunged into the deepest distress, mortification, and destitution. Had the small and inadequate credit of \$5,724, which was awarded me by the accounting officers, been timely allowed me, it would have been in my power, at any moment, to have paid into the treasury the small balance of \$1,617  $\frac{94}{100}$ , reported by the Fourth Auditor as still due by me; and to which sum, the \$10,580, first reported against me by the accounting officers, has been reduced, by credits found justly due me, acknowledged so by the government. By depriving me of credits to the amount of \$8965, since admitted, the government placed it out of my power. Had I been allowed the amount fairly and justly due me under the joint resolution of Congress passed for my relief, the government would have been proved actually to have been my debtor, when I was removed as a defaulter, without any official report having been made by the proper accounting officer of any indebtedness on my part, either to the President, or the then Secretary of the Navy, Mr. Henshaw, as expressly required by law and the usage of the Navy Department. Mr. Dayton reported, on the 7th July, 1843, six months before my removal, that there was justly due me "some thousands of dollars;" and the Secretary of the Navy, Judge Upshur, at the time granted me further time to apply to Congress for those large credits, thus officially reported to be due me.

Under such circumstances, Mr. Dayton could not have reported me as a defaulter. Mr. Dayton must have known (for it had been rumored) that I was to be removed from office on a charge of defalcation, and he could have saved me from the mortifying circumstances, and all the sad subsequent consequences, had he possessed the magnanimity to have informed Mr. Henshaw that there was a doubt on the subject, and called his attention to his report of the 7th July, 1843. It would have been but an act of official justice, to say nothing more.

Was it just to one who had devoted all the prime of his life to the service of his country, in a profession that unfitted him for every other, and whose only hopes, and those of his helpless family for the remainder of that life, dependent upon this exercise of power, thus ignominiously to cast him from that service?