

DANIEL NIPPES.

MAY 2, 1860.—Reported from the Court of Claims; committed to a Committee of the Whole House, and ordered to be printed.

The COURT OF CLAIMS submitted the following

REPORT.

To the honorable the Senate and House of Representatives of the United States of America in Congress assembled.

The Court of Claims respectfully presents the following documents as the report in the case of

DANIEL NIPPES *vs.* THE UNITED STATES.

1. The petition of the claimant.
2. Evidence offered by the claimant, transmitted to the House of Representatives.
3. Evidence offered by the government, transmitted to the House of Representatives.
4. Claimant's brief.
5. United States Solicitor's brief.
6. Opinion of the Court adverse to the claim.

By order of the Court of Claims.

In testimony whereof, I have hereunto set my hand and affixed the seal of said court at Washington, this first day of May,
[L. S.] A. D. 1860.

SAM'L H. HUNTINGTON.
Chief Clerk Court of Claims.

To the honorable the Court of Claims:

The petition of Daniel Nippes, of the State of Pennsylvania, respectfully represents:

That previously to March 9, 1839, and up to that period, he had been employed by the government of the United States as a manufacturer of public arms, particularly the musket; that at that period he had on hand, to be completed for the United States, seven hundred

and sixty muskets. These consisted of what is (now) called "the old model musket," as distinct from what is termed "the new model musket," hereinafter particularly alluded to.

On the said 9th day of March, 1839, a letter was addressed to your petitioner by George Bomford, then colonel of ordnance, and proper agent of the United States in the premises, stating that, after the delivery of the seven hundred and sixty muskets then due from your petitioner, "there would be received from him, in addition, one thousand muskets of the present" (now old) "model, but that this would be the last order he would receive for muskets of that model." A new model, more complete and efficacious, but more difficult of construction, and more expensive, had been adopted. The offer in the same letter was communicated to your petitioner, that if his terms were acceptable to the Ordnance department, they would receive from him muskets of that model, and he was encouraged to prepare the necessary tools and to enter into said manufacture.

The government had commenced the manufacture of the new model musket at "Springfield armory," Massachusetts, and thither your petitioner was advised by the colonel of ordnance to go, as a suitable place where he could obtain the necessary information on the subject, "and be enabled to determine whether he would choose to go into the manufacture of arms on that model." There was no fixed time for this examination and determination; a reasonable time was of course intended. The said letter further says, that in case the petitioner should decide to go on with the said manufacture on terms acceptable to that department, your petitioner should be allowed "the use of a model musket by which to prepare the necessary tools as soon as he might desire it." And again, "the price of the new model will be regulated by the results of the national armories; it will probably not be less than fifteen dollars for the first year." This letter will be seen at length by reference to executive documents herewith filed as part of this petition, No. 65, 33d Congress, 1st session, (Senate,) page 3.

In a reasonable time your petitioner went to Springfield armory, made his examination, and fixed his determination. He accepted the offer of the government as contained in the aforesaid letter of Colonel Bomford; that is, he agreed to manufacture muskets according to the new model to any extent that might be required by the government, the price to be regulated by the results of the national armories; but requested that his contract might be made as large as any which had been granted to other manufacturers. He also desired that a model musket might be sent him, according to promise. The response of your petitioner to the offer of the government was accepted by it, and the promise given that the model should be sent to him, but its transmission was delayed.

On the 30th of July, 1840, the Hon. J. Farnace, member of Congress from Pennsylvania, acting by the authority and in behalf of your petitioner, addressed an urgent letter to the Secretary of War, requesting that "the model" might be sent to your petitioner, and that he might be allowed a reasonable contract. On the 1st of August, 1840, that letter was replied to by Lieutenant Colonel G. Tal-

cott, of the Ordnance department. In it Mr. Fornance was informed that "the order to the superintendent of Harper's Ferry to send a model musket to Mr. Nippes, had this day been *reiterated*. As it regards the number of muskets to be made by Mr. Nippes, it has not been settled further than to assure him that he shall be allowed eight hundred." On the 27th day of August, 1840, Mr. Fornance is again compelled to write for the model musket, and is assured that there is every reason to believe that it will be prepared and forwarded as soon as possible. These letters are continued until toward the latter part of September, 1840, when the model musket was received by your petitioner. During all this time your petitioner and his employees were idle, and great expense was incurred by him without remuneration. These letters will be found in the above documents, from the 6th to the 13th page, inclusive. In answer to an inquiry whether by eight hundred muskets, mentioned in his letter of August 1, 1840, Colonel Talcott meant eight hundred altogether or eight hundred annually, Colonel Talcott replies: "That it had always been the intention of the department to give your petitioner a contract for eight hundred muskets a year for five years, with liberty to the government to increase the number on giving suitable notice;" thus giving to his letter of August 1, 1840, the definite meaning of eight hundred muskets per annum. Still your petitioner thought it would be best to have a formal agreement in his case, and he applied through his agent, Mr. Fornance, to Lieutenant Colonel Talcott for a conditional contract containing all that the letters of the said Talcott contained of engagements on the part of the government. To this letter Lieutenant Colonel Talcott replied, on the 11th of December, 1840. He assures Mr. Fornance "that there is no hazard or difficulty in the case; that Mr. Nippes" (your petitioner) "may safely rely on the letters from this office, and if he complies with what pertains to his share of the business, he may depend on having a contract. It is not usual," he continues, "to make conditional agreements in any other way than that which has been followed in his case, and he may be assured of its security in any event that can possibly occur." These two letters may be seen on the 15th page of the said documents.

The conditional agreement, therefore, of your petitioner with the government was thus formed. He undertook to supply the government with eight hundred model muskets per annum, in all four thousand, and the government agreed to pay for them a price which should be regulated by the results of the national armories. Is was conditional, because the price was not positively fixed, but made dependent upon certain results.

Before this conditional agreement was formed, to wit, on the 26th of February, 1840, the Secretary of War had entered into a formal contract with an individual by the name of Lemuel Pomeroy, for the manufacture of 6,000 model muskets, deliverable in five years, by instalments of 1,200 each. The contract in this case was adopted as a model contract. Your petitioner is prepared to prove that, *mutatis mutandis*, it was in form and substance adopted in all cases of contract for the manufacture of the model musket; but especially will he also be able to prove that in his case a contract precisely similar, *mutatis*

mutandis, was drawn up by direction of the lieutenant colonel of ordnance, submitted to your petitioner, and approved by him. It was ready, and about to be signed by both of the contracting parties, when, at the instigation of the lieutenant colonel of ordnance, its signature was postponed. He expressed a desire to enlarge the contract of your petitioner as to the number of muskets to be manufactured by him, and declared his belief that a larger number would be given to your petitioner; when that should be the case the contract, including such increased number, could be finally signed. No other alteration was proposed, and that alteration was for the benefit of your petitioner. The contract thus written out has been lost or mislaid, but the aforementioned contract with Pomeroy, of which it was a copy, is extant. It will be seen, by reference to the documents herewith filed as a part of this petition, and already referred to, and on the third page thereof. The 4th article, being that which sets forth the obligations of the United States to the contractor, is in these words, viz:

"Fourth. It is agreed, &c., &c., that the United States shall pay to the said Lemuel Pomeroy \$12 50 for each of said muskets complete. It is, however, provided that when the actual cost of manufacturing muskets at the public armories shall be satisfactorily ascertained, that then the said Lemuel Pomeroy shall be entitled to receive from the United States for each of the said 6,000 muskets the same sum which the actual cost of manufacturing a musket in the Springfield armory shall amount to, in lieu of the \$12 50 aforesaid, the said average cost to be ascertained within two years from the date hereof; it being fully understood by the respective parties to this agreement, that the interest on the entire capital employed at the Springfield armory, insurance against all risk, with the addition of such further per centage for wear and decay as shall be sufficient to preserve said capital unimpaired, shall be charged as making a part of the cost of manufacturing arms at the United States armories."

In the 4th article of the said prepared agreement between your petitioner and the United States, nothing, he believes, was different but the name of the contractor and the number of the muskets: certain he is, nothing was different that would in the slightest degree vary the substance of the article. This article was but the embodiment of the agreement originally made between the Ordnance department and your petitioner, and fully carried out to a final consummation the assurance of Colonel Bomford, in his letter of March 9, 1839, to wit, "that the price of the muskets should be regulated by the results of the national armories."

Your petitioner immediately proceeded to the faithful performance of his part of the agreement. Owing to the new and complex character of "the model musket," requiring new tools and new and expensive machinery, and the delay of the model, it was more than one year before he was fully prepared to go on and continue in a proper and workmanlike manner, and to his complete satisfaction. He did succeed, however, in manufacturing and delivering 200 new model muskets by the 24th of January, 1842, and 300 more in June, 1842. No objection was made on account of the delay of this delivery, and he was afterwards, by a letter of Colonel Talcott, lieutenant colonel of ord-

nance, (and which may be seen on the 20th page of the Senate documents, above referred to and filed,) authorized to deliver the remaining 3,500 muskets within the years 1842, 1843, 1844, and 1845.

The 500 muskets delivered as aforesaid by your petitioner, were the test of his ability and skill in the manufacture of the model musket. They were inspected and highly approved by the proper officers of the government. Colonel Talcott himself, in a letter to the Secretary of War, July 15, 1842, (on the 18th page of said documents,) says: "In January last he" (your petitioner) "delivered the *two hundred* muskets, and the inspectors pronounced them equal in all respects to those made in any other place. These he refers to as the test of his ability to continue the work, and his right to receive more work from the United States. He acknowledges in the same letter the receipt of "three hundred more." For these muskets, at the time of the delivery of each parcel, respectively, your petitioner was paid the aforesaid conditional price of \$12 50 per musket, with an addition of 25 cents per musket for appendages, making \$12 75.

The period of two years had been fixed upon by the government in its contract with Pomeroy within which to ascertain by examinations at the Springfield armory the entire average cost of manufacturing the new model musket, according to the terms contained in the 4th article of said agreement, which average cost was according to the same article to be substituted for the conditional price aforesaid of \$12 50. At the time when your petitioner delivered the above-mentioned 300 muskets, to wit, the 24th of June, 1842, four months over and above the said two years had elapsed, and still said average cost was not ascertained. Your petitioner was satisfied in his own mind, that owing to the small number of muskets per annum that he was allowed to manufacture and deliver, *that* average cost would by no means compensate him for the great expenses he had been compelled to undergo, and loss of time for more than a year, in preparing for his full operations, and the long space of time prescribed to him for the delivery of his muskets, and that it was more profitable for him to manufacture a large number of muskets per annum at a reduced price, than a very small number at the highest. With tools, machinery, and hands capable (as he avers) of manufacturing 1,800 muskets per annum, the honorable court will readily perceive, that he could manufacture that number at a far less rate than he could manufacture the limited number of 800 per annum. This they will the *more* readily perceive, when they are informed that the tools, machinery, and hands required for 800 muskets, would be sufficient for 1,800. The same rule governs in all branches of manufacture. A mill capable of grinding 60,000 barrels of flour per annum, can afford to take far less profit on that number than it can on 15,000 or 20,000. It was upon this principle that your petitioner acted when, on the 14th of July, 1842, in a letter to the honorable Secretary of War, (page 17 of the aforesaid documents,) he offered to manufacture and deliver 1,800 model muskets per annum for three years, at \$14 50 per musket. That this would have been a better contract for your petitioner, and better, too, for the government than the one which he had made, he is prepared to prove. The letter of your petitioner was referred by the Secretary

of War to Lieut. Col. Talcott, who, on the next day, July 15, 1842, in a letter to the Secretary of War, reported against the application of your petitioner. But on the very next day, to wit, on the 16th of July, 1842, the said Talcott, taking advantage of the offer of your petitioner of \$14 50 per musket for 1,800 muskets per annum, arbitrarily and unjustly ordered and established *that* as the price to be allowed your petitioner per musket for the 4,000 which he had contracted to make. How and when this was done your honors will see by reference to pages 18 and 19 of the said Senate executive documents in the letters of Lieut. Col. Talcott to the Secretary of War, and to W. B. Lewis, Esq., Second Auditor. There is no pretence on the part of the government that your petitioner ever agreed that this sum should be established as the full price of his musket; he solemnly denies that he ever so agreed, and he utterly denies the right of the government, *without* his consent, to establish for him in the premises any price less than that *agreed* upon by both parties; or on failure to establish any express agreement, then he denies the right of the government arbitrarily to fix for him any price less than a full and fair equivalent for his skill, work, and labor as a *quantum meruit*.

Your petitioner received the amount thus arbitrarily and unjustly ordered, because his wants were pressing, and it was vain for him to contend with power. He was, as many unfortunate creditors of the government before and since have been, compelled to yield to necessity, and to take what he could get. He did receive for the 500 muskets then delivered the said \$14 50, or rather \$2 per musket in addition to the \$12 50 per musket which he had received, and he received the same price per musket for the remainder as they were delivered, amounting in all to 4,000 muskets. But he assures this honorable court that he would not have received it had he known the true state of the case and the important facts that have since come to his knowledge. Your petitioner now avers that he was grossly and fraudulently deceived by Lieutenant Colonel George Talcott, of the Ordnance, into that acceptance, and into his subsequent quiescence. At the time when the said Talcott arbitrarily established the said price for his muskets, your petitioner fully believed that the contract made on the 26th day of February, 1840, with Pomeroy was still subsisting, and that your petitioner was acting under it as well as Pomeroy. He *was not* told that that contract had been substituted by another between Pomeroy and the government on the 14th of March, 1842. The knowledge of this contract was in the bosom of Col. Talcott, and the contract itself was among the secret records of the Ordnance department. The said Talcott must have been—he was no doubt aware of the ignorance of your petitioner of the existence of this contract. Stranger as he was in Washington, your petitioner had no opportunity of knowing of its existence, much less its character; he could only know it when it should be given to the world in the published report of the War Department. It was not until early in 1847, your petitioner believes, that the report was published referring to the contract; at all events it was not until February, 1847, that it came to the knowledge of your petitioner, some time after he had completed the delivery of his 4,000 muskets, and received for them the arbitrary price “es-

tablished" by the lieutenant colonel of ordnance. This contract gives to Pomeroy \$16 per musket for 2,100 muskets already delivered; for the remainder of his original 6,000 he was to receive \$14 50 per musket. "It was further agreed that in consideration of the great expense incurred by the said Pomeroy in preparing tools and machinery suited to the manufacture of the new model muskets, and the limited number embraced in his said contract, the said parties of the first part do hereby extend the said number to 7,000 muskets and implements for the same; and the number of 1,000 now added to the said original contract, shall be delivered and received subject to all the rules of inspection, &c., but may be delivered by the said Pomeroy and spread, at his own option, throughout the time, viz: three years at his own option that his contract now has to run," &c., "and the said United States shall pay for each of the said 1,000 muskets \$14 50." The said contract may be seen at length on the 16th page of the said Senate Ex. Doc. under the letter B.

Now your petitioner makes known unto your honors, that at the time when the said Talcott "established" the said \$14 50 as the price of your petitioner's muskets, he was told by way of inducement or quietus, that that price had been fixed by Pomeroy and the said Talcott. He did not say that price had been fixed by a new contract with Pomeroy; that fact he concealed from your petitioner, and led him to believe that it had been fixed under the 4th article of the previous contract, and that it was the maximum cost of the model musket at the Springfield armory. He concealed the important fact that \$16 per musket had been paid to Pomeroy for 2,100 muskets—more than one-half the number awarded to your petitioner, and not in the slightest degree superior to them in excellence or value; and he also concealed the important fact that, by way of inducement, Pomeroy was also allowed an additional number of 1,000, with permission to deliver these and all the rest (amounting in all to 4,900) over the short space of three years—terms much better than those prescribed in his first contract, and *far* better than those prescribed to your petitioner under any aspect of his case. Thus was your petitioner deceived into silence and quiescence for the space of four years. He submitted, however, with a full reservation of all his rights. But he humbly conceives that had he signed a receipt in full, or executed a release to the government, such an instrument would have been void under the fraudulent circumstances of the case. In this state of ignorance, therefore, and thus deceived, your petitioner went on to manufacture and deliver the remaining 3,500 of the 4,000 contracted for by him, until the whole were in the hands of the government. They were all regularly inspected, accepted, and pronounced to be "of superior order." He received for these the above established sum of \$14 50 per musket, to which was added 25 cents per musket for appendages.

He is prepared to prove that the actual cost of manufacturing the model musket at the Springfield armory during the two years intervening between the 26th of February, 1840, and the same period in 1842, referred to in the 4th article of Pomeroy's agreement, and the 4th article of your petitioner's unsigned agreement with the government, (particularly in 1840, the period of the commencement of the

manufacture of the said new musket,) was at least \$18 50. In estimating this actual cost, your petitioner includes—

1st. The price of labor on each musket.

2d. All other labor, viz., the making and repairing of tools.

3d. The pay of officers.

4th. Cost of the materials fabricated.

5th. Interest on the entire capital employed, insurance against all risk, with the addition of such further per centage for wear and decay sufficient to preserve such capital unimpaired. He therefore claims under the said express agreement, in addition to the \$14 50 per musket already paid him, the sum of \$4 per musket, making altogether \$16,000.

Should this honorable court, however, entertain the opinion that the express agreement in this case covers only a part of his demand, to wit, the *conditional* price of \$12 50, leaving the remainder to be decided by evidence upon a *quantum meruit* under an *implied contract*, or, should this honorable court be of opinion that there is no express contract in this case, but an implied contract which covers the whole price of the musket under a *quantum meruit*, in either of the said alternatives your petitioner is prepared to prove the actual cost of each model musket to him at his own manufactory to be \$19 44, and the entire cost at the Springfield armory to be \$18 50 per model musket—making your petitioner's claim, according to the first estimate, (of \$19 44,) to be \$4 94 per musket, and \$19,760 for the whole 4,000 muskets; and according to the second estimate, (of \$18 50,) to be \$4 per musket, and \$16,000 for the whole 4,000.

The model musket being an entirely new manufacture, the government was fully aware, not only that new machinery would be required but also, that that machinery would be highly expensive. Hence, in their contracts for its construction, they took into primary consideration, and made allowance for, the nature and character of such machinery, regarding even the interest on the capital invested, wear and tear, and insurance.

In other cases, where the article manufactured has long been known and used, and the machinery for making it has been long and universally in operation, the value of such article is established, with no apparent reference to the expense of the machinery or the difficulty of beginning a new operation. But where the machinery and the article are both of new and difficult construction, the expense of making the one necessarily makes a component part of the value of the other.

In February, 1847, your petitioner applied to the Hon. Wm. L. Marcy, then Secretary of War, to be placed on the same footing with the other manufacturers of the model musket, alleging that his expenses had far exceeded his profits. His application was rejected. He applied again in November, 1853, when the Hon. J. Davis was at the head of the War Department, and was again rejected. These applications, and the correspondence to which they led, may be seen by reference to the aforesaid Senate Executive Documents. He afterwards petitioned the 33d Congress of the United States, at its 2d session. His claim was considered in the Senate, and referred to the

Committee on Military Affairs, who, on the 15th of February, 1855, reported adversely.

The following he submits as a statement of his account.

1st. Under the alleged express contract for the whole work.

THE UNITED STATES

To Daniel Nippes,

Dr.

To 4,000 model muskets delivered as follows :

In 1842.....	800	
In 1843.....	1,000	
In 1844.....	600	
In 1845.....	1,000	
In 1846.....	600 at \$18 50 each,	\$74,000

Cr.

By cash received of the United States, being \$14 50 on each musket..... 58,000

Balance due D. Nippes..... 16,000

Under an implied contract, in the absence of any express contract.

THE UNITED STATES

To Daniel Nippes,

Dr.

To 4,000 muskets, at \$19 44 each.... \$77,760

Cr.

By cash received of the United States, being \$14 50 on each musket..... 58,000

Balance due D. Nippes..... 19,760

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

STATE OF PENNSYLVANIA, *Montgomery county, sct.*

On this _____ day of _____, A. D. eighteen hundred and fifty-seven, before the subscriber, a justice of the peace of the State of Pennsylvania, in and for Montgomery county, personally appears Daniel Nippes, and makes oath that the facts contained in the above petition are true, to the best of his knowledge and belief.

J. P.

33D CONG. 1ST SESS.—SENATE EX. DOC. No. 65.

*Report of the Secretary of War.*WAR DEPARTMENT,
Washington, May 10, 1854.

SIR: As required by a resolution of the 20th ultimo I have the honor to submit herewith copies of all papers and vouchers on file in this department relative to the claim of Daniel Nippes.

Very respectfully, your obedient servant,

JEFFERSON DAVIS,
*Secretary of War.*Hon. D. R. ATCHISON,
President of the Senate.

*Colonel of Ordnance to D. Nippes.*ORDNANCE OFFICE,
Washington, March 9, 1839.

SIR: There will be received from you during the present year, on the usual terms, one thousand muskets of the present model, in addition to the seven hundred and sixty remaining to be delivered.

As this is the last order you will receive for muskets of this model, you will regulate your work accordingly.

At Springfield armory you can have an opportunity of examining the new model musket, and of obtaining the necessary information in relation to it, to enable you to determine whether you will choose to go into the manufacture of arms on that model. In case of your deciding to do so, on terms acceptable to this department, you will be allowed the use of a model musket to prepare the necessary tools, as soon as you may desire it. The price of the new model will be regulated by the results of the national armories; it will probably not be less than fifteen dollars for the first year.

It is proper to advise you that you must expect increased vigilance in the inspection of these arms, and also, that on account of the large stock of muskets on hand, and the increasing demands of the States for other arms and equipments, the orders for muskets will necessarily be diminished considerably in future.

Be pleased to let me hear from you on this subject as soon as convenient.

It must be understood that there is no obligation made on the part of the United States to pay for any part of the arms above ordered before the 1st of July next.

GEORGE BOMFORD,
*Colonel of Ordnance.*Mr. D. NIPPES, *Philadelphia.*

No answer was received to this letter.

G. TALCOTT.

Contract with L. Pomeroy.

This agreement, made this 26th day of February, 1840, between George Talcott, lieutenant colonel of ordnance, in the service of the United States, acting with the consent and under the direction of the Hon Joel R. Poinsett, Secretary of War, of the one part, and Lemuel Pomeroy, of Pittsfield, State of Massachusetts, of the other part, witnesseth :

First. That the said Lemuel Pomeroy on his part has agreed, and doth hereby covenant and engage to manufacture and deliver, for the service of the United States, six thousand muskets with ramrods and flints complete, and that the said muskets shall be delivered in parcels of three hundred each, and at the rate of twelve hundred per year for five years, commencing with the 1st of January, 1840. It being, however, understood that if the said Lemuel Pomeroy shall fail to deliver the whole of said twelve hundred muskets in any one year, except the year 1840, he shall be allowed to make up the deficiency in the next succeeding year to an extent not exceeding three hundred. It is also agreed that the said Lemuel Pomeroy shall be furnished by the Ordnance department with a model or standard musket, such as is used for a pattern at the United States armories, and a box of muskets manufactured at the United States armory at Springfield as a standard of reference in relation to the execution of this contract, and that the said six thousand muskets shall, in all their parts, conform as nearly in model, size, and form, and be as nearly equal in workmanship and quality in every respect to the said model as the muskets contained in the said box so to be furnished are to the same.

Second. It is agreed that the said muskets shall be proved and inspected at the manufactory of the said Lemuel Pomeroy by an officer or person appointed by the chief of the Ordnance department for that purpose, and that the said muskets shall be subjected to and sustain the same rigor of proof to which muskets now manufactured at the national armory at Springfield are subjected. The expenses of proving and inspecting to be paid by the United States.

Third. It is further agreed that the said Lemuel Pomeroy shall cause the said muskets to be safely and properly packed for transportation in good and sufficient boxes, in the manner which is or may be prescribed by the Ordnance department and practiced at the national armories ; each box to contain twenty muskets, twenty screw-drivers, twenty wipers, two ball screws, and two spring vices ; and when so packed he shall cause the said muskets to be delivered at the United States arsenal, Watervleit, to such person as shall be appointed to receive the same. And that the said Lemuel Pomeroy shall be allowed by the United States for each and every screw-driver eight cents ; for each and every wiper thirteen cents ; for each and every ball screw fifteen cents ; for each and every spring vice twenty-five cents ; and a reasonable price for packing boxes and transportation of the arms aforesaid.

Fourth. It is agreed, and the said George Talcott in the capacity and acting with the consent and under the direction aforesaid, doth

hereby engage that the United States shall pay to the said Lemuel Pomeroy twelve dollars and a half for each of said muskets complete. It is, however, provided that when the actual cost of manufacturing muskets at the public armories shall be satisfactorily ascertained, that then the said Lemuel Pomeroy shall be entitled to receive from the United States, for each of the said six thousand muskets, the same sum which the actual cost of manufacturing a musket in the Springfield armory shall amount to, in lieu of the twelve dollars and a half aforesaid—the said average cost to be ascertained within two years from the date hereof; it being fully understood by the respective parties to this agreement that the interest on the entire capital employed at the Springfield armory, insurance against all risk, with the addition of such further per centage for wear and decay as shall be sufficient to preserve said capital unimpaired, shall be charged as making a part of the cost of manufacturing arms at the United States armories.

Fifth. It is agreed that payment for each parcel of three hundred muskets, with the ball screw, spring vices, boxes, &c., shall be made to the said Lemuel Pomeroy at the time of his delivering the same, as aforesaid, or as soon thereafter as may be.

Sixth. It is agreed that if the United States shall alter or modify the pattern or model musket, or establish a model or pattern differing in any respect from that upon which this agreement is founded, then the muskets to be thereafter manufactured under this agreement shall be made conformable thereto, if it be required by the chief of the Ordnance department; *Provided, however,* that the said Lemuel Pomeroy shall be allowed a reasonable compensation for any extra expense occasioned by such alteration, or shall be subject to a reasonable reduction of price, as the case may be; the amount of such compensation or reduction to be agreed upon and established before any alteration is made. No deviation from the established pattern will at any time be made, unless expressly directed, in writing, by the chief of the Ordnance department for the time being.

Seventh. It is agreed that the United States shall possess the right to declare this agreement null and void whenever the said Lemuel Pomeroy shall have failed to deliver, in any one year, four-fifths of the number of muskets, as herein stipulated, except the year 1840.

Eighth. It is further agreed that the United States shall be at liberty to increase the number of muskets to be manufactured and delivered as before stated, not exceeding in the whole two thousand five hundred per year, on giving the parties of the other part six months' notice of this increase, and payment therefor shall be made at the same rate and in the same manner as hereinbefore provided.

Ninth. It is expressly conditioned that no member of Congress is or shall be admitted to any share or part of this contract or agreement, or to any benefit to arise therefrom.

In witness whereof the parties aforesaid have hereunto set their hands and affixed their seals the day and year first above written.

G. TALCOTT, [SEAL.]

Lieut. Colonel of Ordnance.

L. POMEROY, [SEAL.]

Witnesses to the signature of Colonel Talcott—

WILLIAM C. REDDALL,
SAMUEL RAINEY.

Witnesses to the signature of L. Pomeroy—

JULIUS ROCKWELL,
THOMAS HASSARD, Jr.

Approved.

J. R. P.

ORDNANCE OFFICE,
Washington, June 2, 1852.

I certify that the foregoing copy of a contract with L. Pomeroy, dated the 26th of February, 1840, is a correct copy from the record in this office.

A. K. CRAIG, *Colonel of Ordnance.*

D. Nippes to Hon. J. Fornance.

MILL CREEK, May 14, 1840.

DEAR SIR: Since I received your letter my brother has been at Washington. Colonel Talcott gave him an order to go to Harper's Ferry to get the limbs. He got the bayonet and the mounting; the lock has not yet come. It is now four weeks since my workmen are all idle, except two, and have been, some of them, these two months. We are now inspecting; as soon as that is through, which will be in a few days, all are done. Mr. Warner, the master armorer of Springfield armory, passed through Philadelphia yesterday. He informed me that ex-Governor Edwards was at Washington three weeks ago, and government gave him three thousand muskets to make of the old pattern. I wish you would please wait upon the Secretary of War personally and try to get ten or fifteen hundred for me to make of the old pattern, or more, if you can. Even if I had the model gun, it would take several months before we can get ready to go on; it won't do to be in idleness that long. By complying with this request and letting me know the result as soon as possible, you will very much oblige,

Yours respectfully,

DANIEL NIPPES.

Mr. JOSEPH FORNANCE.

Hon. J. Fornance to the Secretary of War.

MAY, 1840.

DEAR SIR: I send enclosed a letter from Mr. Nippes. I hope you will do me the favor to furnish me with an answer for Mr. Nippes as soon as convenient.

Respectfully, yours,

J. FORNANCE.

J. R. POINSETT, Esq., *Secretary of War.*

Secretary of War to Hon. J. Fornance.

WAR DEPARTMENT, *May 20, 1840.*

SIR: In answer to the letter of Mr. D. Nippes, enclosed in your note on the subject of his request to be furnished with a musket of the new model, and to be allowed to continue the manufacture of arms according to the old pattern, I have the honor to transmit you a report of the officer in charge of the Ordnance bureau, which is concurred in by the department.

J. R. POINSETT.

Hon. JOS. FORNANCE,
House of Representatives.

Hon. J. Fornance to D. Nippes.

May 21, 1840.

DEAR SIR: I obtained from the department an answer to your request, and as it is not as satisfactory as I could wish, I have it in writing from them, and send it as I received it.

It is the same answer I have at all times received, with the exception that they now promise, with some appearance of hope, that the model will be soon ready.

Accept my respects, and be assured that there is nothing that I shall not be pleased to do for you in this behalf at any time. And if the promise be not complied with shortly, please write.

Yours,

J. FORNANCE.

DANIEL NIPPES,
Merion square, Montgomery county, Pa.

Colonel of Ordnance to Secretary of War.

ORDNANCE OFFICE,
Washington, June 9, 1840.

SIR: The letter of the Hon. Mr. Fornance, concerning the application of Mr. Nippes to continue the manufacture of muskets of the old pattern, and grounding his claim on the report that three thousand muskets are to be made this year, of the old pattern, by the owners of the Whitneyville factory, is received, and in relation to this matter it is proper to state all the facts. The trustees of Whitney's estate are bound to deliver the armory, with everything in any way belonging to it, to the heir, a son, to whom it was devised, on his coming of age, which takes place in November, 1841. The property of Whitney, at the time of his decease, seventeen years ago, was supposed to be very large, and the particular part devised to the son did not much exceed what was left to each of the other heirs. By the failure of a bank, and

many changes in the value of personal property, the share of the other heirs is now very much reduced in value, and the trustees have considered it their duty not to reduce the amount still further by applying a portion of it to extend and increase the value of the armory. They therefore applied for authority to continue operations without changing patterns. Under this view of the case it was considered proper to permit them to manufacture muskets as heretofore, until November, 1841.

The muskets manufactured at Whitneyville are all made with machinery, and are acknowledged to be of the best quality, with a degree of uniformity in the parts that does not exist to such an extent elsewhere. Mr. Nippes has very little or no machinery, as will appear by the paper enclosed herewith, which is a copy of a report made to me by the former master armorer of the Springfield armory. It appears probable that Mr. Nippes does not intend to provide himself with much, if any, machinery, relying on hand-labor alone. This will suffice with regard to lock-making, if he possesses first rate workmen, but it cannot be extended to the mounting and finishing of arms, without the certainty of loss. How much his desire to continue working on the old model may be prompted by the fear of his inability to meet the requirements of the new model, is not for me to say. He has not yet made any contract for work of the new pattern, nor would he be safe in doing so, unless he is prepared to construct the necessary machinery.

I have not learned that he has yet made a beginning, and on referring to the condition of his several shops last year, it is questionable whether he really intends to incur the expense.

The letter of Mr. Fornance is returned herewith.

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

G. TALCOTT,

Lieutenant Colonel of Ordnance.

Hon. J. R. POINSETT,
Secretary of War.

Hon. J. Fornance to D. Nippes.

JUNE 11, 1840

DEAR SIR: I have endeavored to do something for you without effect. The Secretary says the favors shown to Whitney's estate was without his knowledge, and that he knew nothing of it until he has since called on Colonel Talcott for information, and altogether disapproves of it, though he intimates that there is more reason for it in Whitney's case than in yours.

Colonel Talcott has gone to some trouble to satisfy the Secretary, and among other things says, that the muskets manufactured at Whitneyville are all made with machinery, and are acknowledged to be of the best quality, with a degree of uniformity in the parts that does not exist to such an extent elsewhere. He tells the Secretary that

you have little or no machinery, and refers the Secretary to a letter from J. Weatherhead, an extract from which I send you enclosed.

He tells the Secretary that it appears that you do not intend to provide yourself with much, if any, machinery, relying on hand-labor alone. He says that hand-work may do for locks, with good workmen, but will not do for mounting and finishing of arms without certainty of loss.

He tells the Secretary that he has not learned that you have made a beginning of getting new machinery, and that on referring to the condition of your shops last year, he says it is questionable whether you intend to incur the expense.

He further mentioned that you had made no contract for work of the new pattern, and says it would not be safe for you to do so, unless you are prepared to construct the necessary machinery; and further suggests the probability that your desire to work on the old pattern may be prompted by the fear of your inability to meet the requirements of the new model. I have been particular in sending all of Colonel Talcott's reasons. I fear it shows rather an unfavorable disposition towards you.

Enclosed is the extract of a letter of which I have already spoken.

Yours,

J. FORNANCE.

Hon. J. Fornance to Secretary of War.

JUNE 20, 1840.

DEAR SIR: Your answer, together with Colonel Talcott's explanation, was duly received, extracts from which were sent by me to Mr. Nippes.

I have just received the enclosed from Mr. Nippes. How far it contradicts what is said by Colonel Talcott you will yourself perceive.

It appears, however, that Mr. Nippes has some fears that he is to have no work, whether he prepares or not. Please remove all doubts from his mind on that score.

His fears are not entirely groundless, for Colonel Talcott says he has not yet contracted. I think these are his words. I have not his letter by me.

With great respect, yours,

J. FORNANCE.

To J. R. POINSETT, Esq.,
Secretary of War.

Secretary of War to Hon. J. Fornance.

WAR DEPARTMENT, July 9, 1840.

SIR: I have the honor to transmit to you a report of the lieutenant colonel of ordnance, in answer to your two letters of the 20th ultimo

and 3d instant, relative to the contract which Mr. Nippes wishes to undertake for the manufacture of arms according to the new model.

J. R. POINSETT.

Hon. JOS. FORNANCE,
House of Representatives.

Hon. Jos. Fornance to Secretary of War.

JULY 30, 1840.

DEAR SIR: I have just written to Colonel Talcott relative to the model musket, and also relative to the quantity of arms that are to be allowed Mr. Nippes.

I do sincerely hope that the model will be sent on soon, and that Mr. Nippes will be allowed a reasonable contract. It is of some importance here; and, as I think it may be done without any loss or disadvantage to the government, I wish he may be permitted to have what he so earnestly solicits.

When Mr. Nippes was doing his work by hand, his work was admitted to be among the best. He has now been on to Springfield to get machinery and hands, and has returned much pleased with the improvements, and will, I have no doubt, do as much credit to himself with machinery as he did with hand labor.

With great respect, yours,

J. FORNANCE.

To J. R. POINSETT, Esq.,
Secretary of War.

Colonel of Ordnance to Hon. J. Fornance.

ORDNANCE OFFICE,
Washington, August 1, 1840.

SIR: Your letter of 30th ultimo, concerning the affairs of Mr. Nippes, is received, and in reply I have to state that the order for the superintendent of Harper's Ferry armory to send a model musket to Mr. Nippes has been this day reiterated. As regards the number of muskets to be made by Mr. Nippes, it has not been settled further than to assure him that he should be allowed eight hundred.

The great amount of arms other than muskets annually called for by the different States absorbs a large portion of the sum appropriated for arming the militia, and obliges us to reduce the expenditures for muskets.

It is not necessary for Mr. N. to visit this place.

I am, sir, respectfully,

G. TALCOTT,
Lieutenant Colonel of Ordnance.

Hon. J. FORNANCE,
Norristown, Pennsylvania.
Rep. C. C. 254—2

Secretary of War to Hon. J. Fornance.

WAR DEPARTMENT, August 3, 1840.

SIR: I have the honor to refer you to the accompanying report of the lieutenant colonel of ordnance, in relation to the affairs of Mr. Nippes, in reply to your letter of the 30th ultimo.

Respectfully,

J. R. POINSETT.

Hon. J. FORNANCE,
Norristown, Pennsylvania.

Hon. J. Fornance to Colonel of Ordnance.

AUGUST 24, 1840.

DEAR SIR: Yours of the 1st of August was duly received, and the information it contained given to Mr. Nippes.

A few days ago Mr. Nippes called upon me and informed me that he had not received the model, and wished me again to remind you of the loss he must necessarily sustain by so much delay.

Let me again solicit your attention to this matter, and would hope that his contract might be raised to double what has been allotted to him, to compensate him for the entire loss of this summer.

Yours truly,

J. FORNANCE.

Colonel G. TALCOTT,
Ordnance Office.

Captain Symington to Hon. J. Fornance.

ORDNANCE OFFICE,
Washington, August 27, 1840.

SIR: Your letter of 24th August has been received.

From the tenor of the letter from this office to the superintendent of the Harper's Ferry armory, directing him to furnish a new model musket to Mr. Nippes, there is no reason to doubt that every exertion has been made to prepare and forward it as early as practicable.

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

JOHN SYMINGTON,
Captain of Ordnance.

To the Hon. J. FORNANCE,
Norristown, Pennsylvania.

Hon. J. Fornance to Secretary of War.

SEPTEMBER 2, 1840.

DEAR SIR: Some three or four months ago I called with Nippes in the office of Colonel Talcott, where, in my presence, Colonel Talcott

told Mr. Nippes that he had ordered the superintendent at Harper's Ferry to send Mr. Nippes a model musket.

Since that I have received a letter signed by Colonel Talcott, stating that on the 1st of August he had reiterated the order to the superintendent at Harper's Ferry to send Nippes a model musket.

On the 27th of August, I received another letter, signed by Captain Symington, stating that the tenor of the letter from the office to the superintendent of the Harper's Ferry armory, directing him to furnish a new model musket to Mr. Nippes, is such that there is no reason to doubt that every exertion has been made to prepare and forward it.

Mr. Nippes also informs me, that long before the first period to which I have referred, Colonel Talcott promised to forward a model musket to him.

But to this time Mr. Nippes has received no model musket.

I write this hoping and soliciting a decisive answer, wishing to know, once for all, when Mr. Nippes may expect to get this model and be permitted to go to work. I am induced to take this part, believing that Mr. Nippes has been much injured by so great delay.

With great respect, yours,

J. FORNANCE.

To J. R. POINSETT, Esq.,
Secretary of War.

Captain Edward Lucas to Hon. J. Fornance.

SUPERINTENDENT'S OFFICE,
Harper's Ferry Armory, Va., September 7, 1840.

SIR: In reply to yours of the 2d instant, received yesterday, I have to state that Mr. Nippes came on with the order for the model musket himself, and received every assistance in our power, and was furnished at the time or shortly after with most of the parts of the gun. And had we supposed he was in any great want of the model, we would have forwarded him one of the first that were put together, though they were defective, and not such as Major Moor, the master armorer, would like to let go from the armory as models. I regret very much that Mr. Nippes should have suffered any inconvenience from the delay. One will be ready in the course of a week, and will be forwarded to him. Several alterations have been made since he was here, and we have had great difficulty in getting barrels and locks to please. Out of 100 barrels, five only were taken of the first pattern, and recently but one out of nine that were made for the present models answered.

Very respectfully, your most obedient servant,

EDWARD LUCAS, JR.,
Superintendent.

Hon. JOSEPH FORNANCE.

*D. Nippes to Colonel of Ordnance.*LOWER MERION, *September 16, 1840.*

DEAR SIR: I have spent now about \$1,000 in cash for the purpose of getting machinery proper for making the new model musket. I have also entered into contracts of different kinds making preparation for the completion of said contract, which will in a short time cost me several hundred dollars more, and am waiting now for the model and your order to proceed.

In this condition I have been astonished and mortified to hear that my brother William has been trying to injure me and prevent me from getting the contract. I now regret that I have gone to so much expense as I have in preparing machinery. But having expended and entered into contracts to the amount of near \$1,500, all of which is lost to me if I do not get the contract, I am induced to make further inquiry into the matter.

I hear that my brother William has written you a letter; I understand that he boasts of having done so; I understand further that he tells you that the inspector was imposed on at the last inspection; that the arms turned in last winter were good for nothing; that the stocks were not seasoned, that they were kept in a damp room to make them pass, &c. If he has written you such a letter, I will assure you that I am ignorant of ever committing such an offence, and must have been imposed on as much as the inspector. That the arms were kept in a damp room is, I think, untrue, as I can satisfy any one who will visit the room. I would like to have a copy of his letter if you would do me the favor to send me a copy.

I understand, also, that he says you told him that I was not to have any work until I got as much machinery as there is in the national armory, and then I was only to make 800, not 800 annually, but 800 altogether; that when I was ready, or thought myself so, you would send an inspector, and if I had not all the machinery I should have no work. Now, it is necessary for me to tell you that I cannot spend my money to get machinery to make 800 muskets; I understand 800 per year. The money I have already spent will not be returned in making 2,000 muskets.

I hear that my brother says that you complained because I got Mr. Fornance to interfere in my behalf. I did not think this a crime; Mr. Fornance was for many years a near neighbor and personal friend, and I would have thought hard if he had not shown some interest for me. My understanding always was, and it was confirmed by letters shown to me by Mr. Fornance, that I was to provide sufficient machinery to make all the mounting, &c., so it would shift better than those made by hand, that I should then have for certain 800 per year, and when I told you once 800 was too small, you said this was only nominal, and might be increased, or that amount.

Formerly my letters frequently came through my brother William; please answer this, directed to me, No. 174 Coates street, Philadelphia.

Respectfully, yours,

DANIEL NIPPES.

Colonel TALCOTT, *Ordnance Department.*

Hon. J. Fornance to Colonel of Ordnance.

NORRISTOWN, September 30, 1840.

DEAR SIR: Daniel Nippes is very uneasy, and is still continually calling upon me relative to his proposed contract. Every week or two he gets an opinion from something that somebody tells him, that you do not intend to give him that work, and that consequently he has expended \$1,000 or more for nothing.

I wrote a long letter for him a week or two past, under his direction, requesting a copy of his brother's letter, &c.; to this he has received no answer, and this has caused new alarm.

I wish it could be within your power to send him on a written order to go to work, and then his mind will be at rest on the subject.

I expect to be at Washington next week, and if I can do anything I would be pleased to do it. I have no interest in the matter further than it is a neighbor makes the application.

Yours,

J. FORNANCE

G. TALCOTT, Esq.,
Colonel of Ordnance.

Hon. J. Fornance to Colonel of Ordnance.

NORRISTOWN, October 6, 1850.

DEAR SIR: I have received yours of the 3d. I think you misunderstood my last request; it was that you would send an order to Nippes to go to work; this would set his mind at rest; the model had been received by him before my last.

I will undertake to say for Mr. Nippes, that if you will give him orders to make 1,600 muskets, (which will be two years' work, as I formerly understood it, and as one year has now elapsed it would be nothing more than right,) of the new model; he will not ask the department for any more work, allowing him to proceed immediately with the machinery he now has procured; and that when the 1,600 are finished and passed, he will consider himself precluded from asking any further contract.

I ask this for Mr. Nippes, because it was my advice to him that induced him to spend the money he has spent in getting machinery.

He had some doubts in the beginning whether he would be safe in purchasing machinery without having first a contract by which he would be sure of having several years' employ.

I told him that from what you had said in my presence, together with your letters, I would think it safe for him to expend his money in getting machinery. This he says induced him to spend above \$1,000. Now all I ask for him is one contract that will compensate him *some* for this expenditure, and then to end forever.

He tells me he has machinery to make the mounting, &c., agreeably to the new model. I do not know it to be so, but have his word

for it. I am sorry to trouble you so much, but am now induced because Nippes seems to reflect upon the inducement held out to him to expend his money.

Yours, respectfully,

J. FORNANCE.

Col. G. TALCOTT,
Ordnance Office.

Do me the favor to answer this soon. I expected to have visited Washington this week, but will not, I fear, be able to get there. Mr. Nippes, I believe, will willingly accept a contract on the above terms. His brother's conduct has been such that he desires to leave the business, if he can only be paid something for his machinery; so at least he informs me.

Colonel of Ordnance to Hon. J. Fornance.

ORDNANCE OFFICE,
Washington, October 8, 1840.

SIR: Your letter of the 6th instant has been received. It has been the intention of the department to give Mr. Nippes a contract for 800 muskets a year for five years, with liberty for the government to increase the number on giving suitable notice. The only difficulty has been to save Mr. Nippes from loss, and the United States from disappointment, by the rejection of his work, in case it does not come up to the required standing. If you feel assured of his skill and ability to execute the work according to the model, he may begin at once; but to prevent a great loss, an inspection will be made as soon as he has 200, or any less number, at his option, ready for examination; or, one of the master armorers of the United States may be ordered to make an inspection of the machinery and tools of Mr. Nippes at once, and report whether he will be able to fulfil a contract.

Respectfully, &c., &c.,

G. TALCOTT,
Lieutenant Colonel Ordnance.

Hon. J. FORNANCE,
Norristown, Pennsylvania.

Hon. J. Fornance to Colonel of Ordnance.

DECEMBER 9, 1840.

DEAR SIR: I am sorry to trouble you any more relative to Mr. Nippes's affairs, I feel assured you are already weary, from my continued importunity; but a new difficulty, in the mind of Mr. Nippes, has urged me to do so.

When you last wrote to me, I gave Mr. Nippes a copy of so much of your letter as was important to him to have. I also renewed my

opinion that the government would act fairly with him if he would complete two hundred muskets for inspection, and advised him at the same time to furnish himself with all necessary machinery before he commenced.

In compliance with this advice, Mr. Nippes made some additional preparations, and was about building, or at least enlarging his buildings, so that he might have all his machinery together. This, in part, together with other circumstances, Mr. Nippes informs me, will, in all probability, prevent him from having any ready for inspection before the 1st of April. Now Mr. Nippes's fears have been again alarmed by the result of the late election. He says he has no written contract, and if there should be new officers they may disregard all the labor and attention and expense which he has given, and wishes to be made more secure.

Desirous that right should be done to Mr. Nippes, who is an industrious, deserving man, I had intended to call upon you in person respecting it, but have been prevented from doing so yet. In the meantime please inform me what may be done. You will understand, I hope, that my object is merely to act in compliance with Nippes's request, and to do nothing but what may be strictly just and right. *A conditional contract*, containing all that your letter to me contained, would satisfy Mr. Nippes, and at present I cannot see any impropriety in doing so. I feel myself, however, entirely willing to abide your opinion in the matter.

With great respect, yours,

J. FORNANCE.

Col. G. TALCOTT,
Ordnance Department.

Colonel of Ordnance to Hon. J. Fornance.

ORDNANCE OFFICE,
Washington, December 11, 1840.

SIR: Your letter of the 9th instant, in relation to the affairs of Mr. Nippes, has been received. There is no hazard or difficulty in the case. Mr. Nippes may safely rely on the letters from this office, and if he complies with what pertains to his share of the business, he may depend on having a contract.

It is not usual to make conditional agreements in any other way than that which has been followed in his case, and you may assure him of its security in any event that can possibly occur.

Respectfully, your obedient servant,

G. TALCOTT,
Lieutenant Colonel of Ordnance.

Hon. J. FORNANCE,
House of Representatives.

B.

Contract with L. Pomeroy.

This agreement, made this 17th day of March, 1842, between Geo. Talcott, lieutenant colonel of ordnance, in the service of the United States, acting with the consent and under the direction of the Hon. John C. Spencer, Secretary of War, of the one part, and Lemuel Pomeroy, of Pittsfield, State of Massachusetts, of the other part, witnesseth: That whereas a contract was made on the 26th of February, 1840, between the said Pomeroy, of the one part, and the said Talcott, acting with the consent and under the direction of the Hon. J. R. Poinsett, Secretary of War, of the other part, whereby the said Pomeroy contracted to manufacture and deliver six thousand muskets for the service of the United States, as by reference thereto will more fully appear; and whereas the fourth article of the said contract stipulates that the United States shall pay to the said Pomeroy twelve dollars and a half for each of said muskets complete, and "that when the actual cost of manufacturing muskets at the public armories shall be satisfactorily ascertained, that then the said Pomeroy shall be entitled to receive from the United States, for each of the said six thousand muskets, the same sum which the actual cost of manufacturing a musket in the Springfield armory shall amount to, in lieu of the twelve dollars and a half aforesaid, the said average cost to be ascertained within two years from the date hereof, it being fully understood by the respective parties to this agreement that the interest in the entire capital employed at the Springfield armory, insurance against all risk, with the addition of such further per centage for wear and decay as shall be sufficient to preserve said capital unimpaired, shall be charged as making a part of the cost of manufacturing arms at the United States armories:"

And whereas the time specified in the said contract, to wit, "two years," has already elapsed, so that it has become necessary to ascertain the price that the United States shall pay to the said Pomeroy for the said muskets; and whereas serious difficulties exist and hinder the ascertaining the precise actual average cost of the muskets manufactured within the last two years at the Springfield manufactory, but an approximation thereto has been arrived at, mutually satisfactory:

Now, therefore, be it known, that the said parties to this agreement have agreed, fixed, and settled, and do hereby settle and fix the price to be paid by the United States to the said Pomeroy, for the said six thousand muskets, as follows, viz: for the first two thousand one hundred, which have already been delivered by him, and inspected and received by the United States, the said Pomeroy shall be paid at the rate of sixteen dollars for each musket, and for the thirty-nine hundred remaining to be delivered, he shall be paid at the rate of fourteen dollars and fifty cents for each musket; and the implements, packing-boxes, and transportation of the whole number, shall be paid for as specified in the original contract.

If is also further agreed that, in consideration of the great expense incurred by the said Pomeroy, in preparing tools and machinery suited to the manufacture of the new model muskets, and the limited number

embraced in his said contract, the said parties of the first part do hereby extend the said number to seven thousand muskets and implements for the same; and the number of one thousand, now added to the said original contract, shall be delivered and received, subject to all the rules of inspection, and other conditions pertaining to the original number of six thousand, but may be delivered by the said Pomeroy, and spread, at his own option, throughout the time, viz: three years, that his contract now has to run; and it is further agreed, that the United States shall pay the said Pomeroy fourteen dollars and fifty cents for each of the said one thousand muskets, when inspected and received; and the same price for the implements, boxes, and transportation, as provided in the original contract to which this agreement is a supplement.

In witness whereof, the said parties aforesaid have hereunto set their hands and affixed their seals, the day and year first above written.

G. TALCOTT, [SEAL.]
Lieut. Colonel Ordnance.
 L. POMEROY. [SEAL.]

Witness:

W. C. REDDALL,
 M. ADLER.

Approved, March 18, 1822.

J. C. SPENCER.

ORDNANCE OFFICE,
Washington, May 29, 1852.

I certify that the within contract is a true copy of the record in this office, the original being on file in the Treasury Department.

H. K. CRAIG,
Colonel Ordnance.

D. Nippes to Secretary of War.

JULY 14, 1842.

DEAR SIR: Agreeably to several letters from the Ordnance Bureau, I was instructed and directed to manufacture muskets of the new model, with the understanding to have a sufficient quantity to pay for the trouble of making machinery for the manufacture of said muskets.

This order was given some two years ago; and as yet I have delivered but five hundred muskets, in consequence of having so much machinery to make.

As it is important to me that I should have a certain contract, both as to number of muskets as well as price, I now respectfully ask a specific order to make eighteen hundred per year, for three years, to commence from the 1st January next, at the price of fourteen dollars and fifty cents per musket; said musket to be made agreeably to the model furnished, and to pass the inspection of the proper officers.

With respect, I am, your most obedient servant,

DANIEL NIPPES.

Hon. J. C. SPENCER, *Secretary of War.*

Secretary of War to D. Nippes.

WAR DEPARTMENT, *July 15, 1842.*

SIR: In answer to your letter of the 14th instant, I transmit herewith the report of the officer in charge of the Ordnance Bureau, by which you will see that the only objection to increasing the number of muskets under your contract, is the want of funds to pay for more than are covered by our existing contracts.

Very respectfully, &c.,

JOHN C. SPENCER.

Mr. DANIEL NIPPES.

Colonel of Ordnance to Secretary of War.

ORDNANCE OFFICE,
Washington, July 15, 1842.

SIR: In reply to the letter of Mr. Daniel Nippes, concerning a contract for muskets, referred to this office for report, I have the honor to state that Mr. Nippes was formerly engaged in manufacturing muskets of the old model for the United States, and on the 9th or March, 1839, a letter was addressed to him from this office, a copy of which is enclosed. As Mr. Nippes performed most of his work without the aid of machinery, it was supposed that he could not undertake to make arms of the new model with any prospect of success; but, at his earnest request, he was authorized to make two hundred, and informed that this number would afford evidence of his ability to continue the work, and, in the event of their being received by the inspectors, he should be allowed to furnish not less than eight hundred per year for five years. This was in the summer of 1840. In January last he delivered the two hundred muskets, and the inspectors pronounced them equal in all respects to those made at any other place. In June last he delivered three hundred more. In order to make the workmanship sufficiently perfect to pass inspection, he now states that he has expended a large sum of money in providing the necessary machinery, and desires authority to furnish eighteen hundred muskets a year for three years, to commence on the 1st January, 1843, at \$14 50 each. He states verbally that he can deliver six hundred additional before that time.

The whole number that was first allotted to him for five years, in case of his succeeding in the business, was four thousand—say from January 1, 1841, to December 31, 1845—and the number was thus restricted on account of the demands upon the fund for arming the militia. If he delivers eleven hundred in 1842, and eighteen hundred per year for the next three years, he will exceed the quantity assigned to him twenty-five hundred.

Mr. Nippes was formerly authorized to deliver one thousand muskets per year. In the letter from this office of March 9, 1839, he was informed that the orders for muskets would “necessarily be diminished

in the future," and, having this letter in view, but eight hundred per year were allotted to him.

Under all the circumstances of the case, and without recognizing any right on the part of Mr. Nippes to ask for an increase in the number of arms to be furnished by him, I am compelled to state that the fund for arming the militia has already been pledged by contracts to nearly its full amount, so that no extension can be given to the number of arms to be furnished by any contractor.

The letter of Mr. Nippes is returned herewith.

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

G. TALCOTT,

Lieutenant Colonel Ordnance.

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

Statement of account with D. Nippes.

The United States

To D. NIPPES,

DR.

July 16, 1842.	For allowance on 500 muskets, delivered under his assignment of October 8, 1850, at \$2 each.....	\$1,000
		<u> </u>

Explanations in reference to this account.

On the 9th of March, 1839, an assignment was made to Mr. D. Nippes of 1,000 muskets, at \$12 25 per musket, which he has delivered. In the same letter inducements were held out to him for the manufacture of the new pattern musket, of which an assignment was made to him, on the 8th October, 1840, for the manufacture of 800 muskets per annum, for five years, at the conditional price of \$12 75 each. In the process of their manufacture, it was found that \$12 75 was not an adequate compensation, and it has now been established at \$14 75—viz., \$14 50 for the musket and 25 cents for the appendages—at which price the 500 already delivered, and those hereafter to be delivered, are to be paid for; and it is accordingly requested that the sum of \$1,000 being the amount of the annexed account, may be paid to Mr. D. Nippes, out of the appropriation for "arming and equipping the militia."

To W. B. LEWIS, Esq., *Second Auditor.*

ORDNANCE OFFICE, *July 16, 1842.*

Respectfully submitted to the Secretary of War for his approval.

G. TALCOTT,

Lieutenant Colonel Ordnance.

Approved :

J. C. SPENCER,
Secretary of War.

D. Nippes to Lieutenant Colonel Ordnance.

MILL CREEK, LOWER MERION, PA.,
October 14, 1842.

SIR: On receiving a letter from Captain Thornton concerning inspector to inspect muskets, he mentions that he is not authorized to receive more than eight hundred muskets this year, and that number yearly. The colonel will find in the letter dated July 15, 1842, where it mentions the number of muskets allotted to me is four thousand, say from January 1, 1841, to December 31, 1845.

To turn that number within the time above mentioned would make three thousand five hundred that is yet to be delivered; and eight hundred per year would not amount to the small number of four thousand in the five years.

As it has taken better than one year of the five to make the necessary tools and machinery, at a great expense, to make the muskets as any other made, I understood the colonel to say, verbally, that the department would receive six hundred muskets in addition to the five hundred already delivered in this year, (and should have been done, provided I had not been detained by not having an inspector in proper season.) I have been awaiting now four weeks for an inspector, and have not got one as yet. Captain Thornton informed me yesterday that he would send me one.

Respectfully, I am, sir, your most obedient servant,
DANIEL NIPPES.

Col. G. TALCOTT,
United States Corps of Ordnance.

Colonel of Ordnance to D. Nippes.

ORDNANCE OFFICE,
Washington, October 20, 1842.

SIR: Your letter of the 14th instant has been received. Taking into view all the circumstances connected with your *agreement* for furnishing this department with four thousand muskets from the 1st of January, 1841, to the 31st December, 1845, at eight hundred muskets per annum, it has been thought proper to waive the question of your failure in delivering the stipulated number of eight hundred per annum, commencing from the 1st of January, 1841; and in order, therefore, to still afford you the full benefit of the *agreement*, you are hereby authorized to deliver the remaining thirty-five hundred muskets within the years 1842, 1843, 1844, and 1845—the deliveries in any one of those years not to exceed one thousand muskets. Captain Thornton has been advised of this arrangement.

Respectfully, &c., &c.,

G. TALCOTT,
Lieutenant Colonel Ordnance.

Mr. D. NIPPES,
Mill Creek, Lower Merion, Pa.

P. S. As you have already delivered five hundred muskets this year, of course only five hundred more can be received during the remainder of it.

G. T.

D. Nippes to the Colonel of Ordnance.

LOWER MERION, MONTGOMERY COUNTY, PA.

December 19, 1844.

DEAR SIR : I learn from Mr. Butterfield, of Philadelphia, that it is your opinion that the government will not have any more muskets made by private contract. The four thousand which they gave me to make will soon be completed, as I have a large portion of them now on hand in various stages of manufacture, and will have them all done in a year from this time. I have incurred a heavy expense in making machinery for the manufacture of muskets, and have necessarily involved my property to pay for the same in the expectation that the work would be continued after the completion of the present contract, and if no more work is given me it will be my ruin.

I therefore earnestly solicit, and hope to receive, a continuance of the work, or, if the department cannot give me muskets, I would respectfully ask a share of the pistols, as I can alter my machinery to make them at a small expense, and will undertake to make them (say three thousand a year for five years) as cheap as any armory in the country, subject to the same inspection.

If you will have the goodness to make my case known to the Secretary of War, I cannot but think that his sense of justice will induce him to give me a portion of the work ; by so doing you will greatly oblige

Your obedient servant,
DANIEL NIPPES.

Colonel GEO. TALCOTT.

Colonel of Ordnance to D. Nippes.

ORDNANCE OFFICE,
Washington, December 20, 1844.

SIR: Your letter in relation to further contracts for muskets has been received, and in reply I have to state that nothing has been determined on, except that the stock of muskets belonging to the United States is so large (over five hundred thousand) it is not deemed necessary to increase the number at present.

I am, sir, respectfully, &c.,
G. TALCOTT,
Lieutenant Colonel Ordnance.

DANIEL NIPPES, Esq.,
Lower Merion, Montgomery County, Pa.

Colonel of Ordnance to Hon. J. S. Yost.

ORDNANCE OFFICE,
Washington, February 17, 1845.

SIR: I have to acknowledge the receipt of a letter from Mr. Nippes, which you have referred to me for reply, and in answer have to state, that no such decision has been made as regards future contracts for muskets, the subject being postponed at present; but before the existing contracts shall have been fulfilled I have no doubt it will be taken up by the War Department.

As regards the ability of Mr. Nippes, and the quality of his work, I have no hesitation in saying that the arms furnished by him are stated to be superior to most other contract arms, and, therefore, he stands on as good grounds as any other of the old contractors.

Mr. Nippes's letter is returned herewith.

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

G. TALCOTT,
Lieutenant Colonel Ordnance.

Hon. JACOB S. YOST,
House of Representatives.

Hon. J. S. Yost to D. Nippes.

WASHINGTON, February 18, 1845.

DEAR SIR: After calling repeatedly on the Secretary of War, and Ordnance office, and every time get satisfactory answers and assurances that if the present powers had the contract to renew, you certainly should have a new order to fill; that your muskets were equal, if not superior, to any that were made; indeed, I felt myself very much flattered to hear so much said in praise of the work of one of my constituents. I have no doubt I can get a new contract for you when the present is filled. I hope you will remind me of it when new contracts are given out.

To show you what Mr. Talcott said, I addressed him a note with your letter, the answer thereto you will find enclosed.

Very truly, your obedient servant,

J. S. YOST.

DANIEL NIPPES, Esq.

Hon J. S. Yost to the Secretary of War.

HOUSE OF REPRESENTATIVES, December 4, 1845.

SIR: Mr. Nippes, of Pennsylvania, wishes his contract for making muskets renewed or extended, allowing him to manufacture, as heretofore, from eight hundred to one thousand per annum for five years.

He informs me that at the time of taking the contract of eight hundred per annum he was assured that it was merely nominal, that no doubt he would be allowed an increased number. Relying on this assurance, he purchased machinery amounting to some thousands of dollars, and further states that the amount made by him will not pay him for the expenses he has been compelled to incur in order to make the workmanship sufficiently perfect to pass inspection. He therefore desires authority to furnish five thousand or six thousand more muskets.

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

J. S. YOST.

Hon. W. L. MARCY,
Secretary of War.

Colonel of Ordnance to the Secretary of War.

ORDNANCE OFFICE,
Washington, December 5, 1845.

SIR: In reference to the extension or renewal of the contract of Mr. Nippes, (being the subject of Hon. J. S. Yost's letter of the 4th inst., referred to this office,) I have the honor to report:

That Mr. Nippes has made for this department good flint-lock muskets, and that the number to be delivered under his contract will be completed this year. The stock on hand of this kind of muskets being considered sufficient, it is not thought advisable to procure more; but if it were, this department has not authority to extend or renew the contract without previously advertising for proposals, and taking the lowest bid.

Mr. Yost's letter is returned.

Respectfully, &c., &c.,

G. TALCOTT,
Lieut. Col. of Ordnance.

Hon. W. L. MARCY,
Secretary of War.

D. Nippes to the Secretary of War

WASHINGTON CITY, *February 27, 1846.*

SIR: When I took a contract for making muskets several years since, it was for the small number of 4,000, being 800 a year; the change in the model from which I had formerly worked subjected me to provide a quantity of expensive machinery, which has not only taken all my profits but a great deal more, so that I am much worse off now than when I began. I thought that the United States would always make muskets to arm the militia. I supposed that when my contract was fulfilled, I should get another, provided I made good arms and gave satisfaction, which I believe I have done.

I am met now by a refusal to renew my contract ; and it seems to me a hard case that when I have done well, I should be left to bear all the expenses, without remedy ; for then my expenses were gone into so that the work might be of the very best kind.

I have understood that Mr. Pomeroy had an allowance for his great expenses, by increasing the number of arms to be made by him over and above what his contract called for.

If this is so, I hope the same favor will be allowed to me, more especially as my contract was for so small a number, for it takes about as much machinery to make a few arms as a great many.

Trusting to your sense of justice in this matter,

I remain, respectfully, your obedient servant,

DANIEL NIPPES.

Hon. W. L. MARCY,
Secretary of War.

Colonel of Ordnance to D. Nippes.

ORDNANCE OFFICE,
Washington, March 3, 1846.

SIR: Referring to your letter to the Secretary of War of 27th ultimo, I have now to inform you, that the recommendation of this office to extend your order for muskets, to the extent of two years' delivery, has been approved.

You are therefore authorized to furnish sixteen hundred muskets, in addition to the four thousand ordered of you in October, 1840, and for which you will be paid at the rate of \$14 50 each.

I am, sir, respectfully, your obedient servant,

G. TALCOTT,
Lieutenant Colonel Ordnance.

DANIEL NIPPES,
Mill Creek, Pennsylvania.

The Colonel of Ordnance to the Secretary of War.

ORDNANCE OFFICE,
Washington, March 3, 1846.

SIR: I have to acknowledge the receipt of Mr. D. Nippes's application to you to have his contract extended, as was done in the case of L. Pomeroy, and respectfully report as follows :

In 1840 a contract was made with Pomeroy for the manufacture of six thousand muskets at \$12 50 each, this price to be contingent on the cost of making arms at Springfield armory, and this cost to be ascertained within a given time. Owing to the change of model, and the change of machinery consequent thereto, it was found impracticable to ascertain this cost within the given time, and to obviate difficulties, on the 17th of March, 1842, a supplementary contract was made with him, in which he was allowed to deliver one thousand muskets more,

making seven thousand in all ; he was allowed \$3 50 additional, on two thousand one hundred, which he had already delivered, and was to receive \$14 50 for the three thousand nine hundred which he was still to furnish. This contract has been fulfilled.

In October, 1840, Mr. Nippes was given an *order* for eight hundred muskets a year for five years, at the like conditional price of \$12 50 each. After he had delivered five hundred muskets under this order, he complained that he could not make them for the price, and upon a review of the case he was, on the 16th of July, 1842, allowed \$2 each on the five hundred delivered, and \$14 50 for those to be delivered ; he has still three hundred to deliver to complete the order.

The muskets turned in by Mr. Nippes are stated by the inspector to be of superior quality, and taking into consideration all the circumstances of the case, it would perhaps be an act of justice to increase the order to the extent of two years' delivery, that is, sixteen hundred muskets, at the same price of \$14 50 each, which is respectfully recommended. Mr. Nippes's letter is herewith returned.

I am, sir, respectfully, your obedient servant,

G. TALCOTT,

Lieutenant Colonel of Ordnance.

Hon. W. L. MARCY,
Secretary of War.

Hon. J. S. Yost to the Secretary of War.

HOUSE OF REPRESENTATIVES,
Washington, February 11, 1847.

SIR : You will confer a great favor by giving your earliest attention to the accompanying letters of my friend Mr. Nippes. Please send your answer under cover to me.

I am, very truly, your obedient servant,

J. S. YOST.

Hon. W. L. MARCY, *Secretary of War.*

D. Nippes to the Secretary of War.

WASHINGTON, *February 11, 1847.*

SIR: Permit me to call your attention to a claim which I have against the United States, arising from the manufacturing and delivering of muskets under an engagement based upon a letter of Colonel Bomford, dated March 9, 1839 ; from this letter I expected to be placed upon an equal footing with the other manufacturers of muskets, but from the published report of the War Department I have ascertained that Mr. Pomeroy received for two thousand one hundred muskets \$16 each, whilst I received but \$14 50, having agreed to the receipt of this price under the belief at the time, from representations then made, as I understood them, that \$14 50 was the maximum price ; and as it has

always been admitted that the muskets manufactured by me are equal to those manufactured by Mr. Pomeroy or at the armories, I consider my claim for the additional compensation upon two thousand one hundred muskets of \$1 50 each, to be founded upon principles of justice and equity, and trust that it will be so considered by the department. I would further beg leave to call the attention of the department to the fact that Mr. Pomeroy had awarded to him the manufacture of seven thousand muskets, whilst to me there was awarded but four thousand, and the outlay for machinery being heavy, and as great upon the smaller number as the larger, Mr. Pomeroy thereby derived much greater advantages than I have. My expenditures for machinery have been far greater than the profits realized from the price received; and the machinery for any other purpose is but of trifling value, thereby making the loss to me heavy.

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

Hon. W. L. MARCY, *Secretary of War.*

The Colonel of Ordnance to the Secretary of War.

ORDNANCE OFFICE,
Washington, February 13, 1847.

SIR: On the subject of Mr. D. Nippes's claim, as presented in his letter, accompanying that of the Hon. J. S. Yost referred to this office, I have to report:

Mr. Nippes claims that he ought to receive \$1 50 additional per musket, for two thousand one hundred of the muskets which have been manufactured and delivered by him agreeably to orders from this department. He places this claim on the ground that Mr. Pomeroy was paid at that rate for an equal number of muskets, and that he should in justice be put on the same footing, as he made the same kind of arms and equally good.

In Pomeroy's case there was an agreement in writing, dated February 20, 1840, that he should be paid at the rate of \$12 50 per musket: "Provided, That when the actual cost of manufacturing muskets at the public armories shall be satisfactorily ascertained, then the said Lemuel Pomeroy shall be entitled to receive from the United States for each of said muskets the same sum which the actual cost of manufacturing a musket at the Springfield armory shall amount to, in lieu of \$12 50, the said average cost to be ascertained within two years from the date hereof."

Owing to the adoption of a musket of a new model, and the consequent change of machinery, it was found impossible to ascertain their cost within the specified time, and to settle the question, a supplementary contract was made with Mr. Pomeroy, dated March 17, 1842, by which he was allowed at the rate of \$16 per musket for the two thousand one hundred muskets delivered up to that time, and \$14 50 per musket for those he was yet to furnish.

Mr. Nippes's deliveries were made under an order given him in Octo-

ber, 1840, for eight hundred muskets a year for five years, at the price of \$12 50 per musket. When he had delivered the first five hundred muskets he complained that this price was too low. His case was then examined, and he was, in July, 1842, allowed at the rate of \$14 50 per musket, (the same price paid Pomeroy by the supplementary contract,) both for the muskets then delivered and for those remaining due under his order. The whole amount of his deliveries prior to the date of Pomeroy's supplementary contract was two hundred muskets, and even if their cases are made to agree exactly, as he claims they should, it would give him only the additional \$1 50 on these two hundred muskets. But it is proper to remark that Mr. Nippes has already, in consideration of this very point, been allowed an extension of his order to the amount of sixteen hundred muskets, and of two years time to deliver them in. I do not, therefore, think that Mr. Nippes has any claim for an additional price for any muskets he has delivered.

Mr. Yost's letter with its enclosure is returned herewith.

I am, sir, respectfully, your obedient servant,

G. TALCOTT,

Lieutenant Colonel of Ordnance.

Hon. W. L. MARCY, *Secretary of War.*

Statement of the deliveries of muskets made by Mr. D. Nippes, under the order referred to in Colonel Talcott's report of February 13, 1847, and of the payments made to him therefor.

Date of delivery.	Number of muskets delivered.	Date of payment.	Amount paid, including packing boxes and transportation.	Price per musket, including appendages, at 25 cents per set.
1842.		1842.		
January 24.....	200	January 26.....	\$2,595 00	*\$12 75
June 24.....	300	June 27.....	3,893 00	*12 75
December.....	300	December 19.....	4,492 50	14 75
1843.		1843.		
February 22.....	300	February 24.....	4,492 50	14 75
June 28.....	300	July 1.....	4,492 50	14 75
November 22.....	300	November 23.....	4,492 50	14 75
November 29.....	100	December 1.....	1,497 50	14 75
1844.		1844.		
February 27.....	300	March 4.....	4,492 50	14 75
June 12.....	300	June 13.....	4,492 50	14 75
1845.		1845.		
February 19.....	400	February 24.....	5,990 00	14 75
July 19.....	300	July 21.....	4,492 50	14 75
September 16.....	300	September 18.....	4,492 50	14 75
1846.		1846.		
January 31.....	300	February 4.....	4,492 50	14 75
July 10.....	300	July 13.....	4,492 50	14 75
1847.		1847.		
January 26.....	200	January 29.....	2,995 00	14 75
June 10.....	300	June 12.....	4,492 50	14 75
October 22.....	300	October 25.....	4,492 50	14 75
November 25.....	200	November 27.....	2,995 00	14 75
1848.		1848.		
May 19.....	300	May 24.....	4,492 50	14 75
November 4.....	300	November 8.....	4,494 00	14 75
	5,600		82,868 00	

* July 16, 1842, an allowance was made to Mr. Nippes of \$2 per musket on the 500 delivered by him in January and June, 1842, amounting to one thousand dollars; making the price paid for those muskets \$14 75 each.

ORDNANCE OFFICE,
Washington, June 16, 1852.

An account for the foregoing allowance of one thousand dollars was sent to the treasury, July 16, 1842, with the following explanations:

On the 9th of March, 1839, an assignment was made to Mr. D. Nippes of one thousand muskets at \$12 25 per musket, which he has delivered. In the same letter inducements were held out to him for the manufacture of the new pattern musket, of which an assignment was made to him on the 8th of October, 1840, for the manufacture of

eight hundred muskets per annum, for five years, at the conditional price of \$12 75 each. In the process of their manufacture it was found that \$12 75 was not an adequate compensation, and it has now been established at \$14 75, viz: \$14 50 for the musket and twenty-five cents for the appendages, at which price the five hundred already delivered, and those hereafter to be delivered, are to be paid for; and it is accordingly requested that the sum of one thousand dollars, being the amount of the annexed account, may be paid to Mr. D. Nippes out of the appropriation for "arming and equipping the militia."

G. TALCOTT,

Lieutenant Colonel of Ordnance.

WM. B. LEWIS, Esq., *Second Auditor.*

ORDNANCE OFFICE, *July 16, 1842.*

Respectfully submitted to the Secretary of War, for his approval.

G. TALCOTT,

Lieutenant Colonel Ordnance Department.

Approved July 16, 1842.

J. C. SPENCER,

Secretary of War.

Secretary of War to Hon. J. S. Yost.

WAR DEPARTMENT,

February 18, 1847.

SIR: I have the honor to enclose herewith a report from the Ordnance Bureau of this department, upon the claim of Mr. D. Nippes, presented in his letter of the 11th instant, and transmitted in yours of the same date.

It appears from this report that the price of the muskets furnished by Mr. Nippes, was fixed by contract—not left conditional as in the agreement with Mr. Pomeroy, to which he refers as a precedent in his favor—and full payment has been made to him, according to the terms of that contract.

Very respectfully, your obedient servant,

W. L. MARCY,

Secretary of War.

Hon. J. S. YOST,

House of Representatives.

E. Bates to D. Nippes.

SPRINGFIELD, *September 4, 1847.*

DEAR SIR: Your letter of the 31st August was received on the 2d, to which I hasten a reply. I called on Mr. Smith yesterday, and find since the date of my last letter to you, he has, by the request of Major Ripley, recommenced boring barrels in the Springfield armory, and is now engaged there.

Mr. S. is an excellent workman, and would have suited you. I know of no others here that would.

With respect to the cost of the musket, I will state what I have learned in reference to it, taking five years from 1841, to the end of the fiscal year of 1845 :

Muskets of the flint lock, manufactured.....	29,720
Muskets percussion lock, manufactured.....	15,065
Muskets for cadets, percussion lock, manufactured	534
Pistols for cadets, percussion lock, manufactured.....	2
Total.....	43,321

Total amount expended same years, \$763,963 77.

This sum divided on the number of arms manufactured during this same time, gives the cost of each arm a fraction over \$16 84* At Harper's Ferry during the same were manufactured 24,381.

Sum expended, \$831,200 67. The superintendent's pay, he being an officer of the *army*, and *the interest in the capital invested*, is not included, which would enhance the cost still more. It should be remembered that all the elements comprising the cost of the gun should be reckoned in order to arrive at the true cost, viz : machinery, repairs, permanent improvements, material, tools, and labor, &c.

I am expecting to be re-employed again at inspecting and desire this statement may not be published from me, but from public documents, if at all—but it may be, I think, relied upon. What the exact cost of the percussion is, I know not, but presume but little different from the flint.

Mr. Weatherhead, the master armorer here, it is said has resigned, and Mr. Erskine Allen put in his place ; several other changes of minor importance have been made. Hoping the above may be satisfactory, I remain, very respectfully, your obedient servant,

ELISUR BATES.

D. NIPPES, Esq.

P. S.—I am quite sorry that you could not avail yourself of the services of Mr. Smitn.

E. B.

The Secretary of War passed east a day or two ago, and is expected here on Monday next.

W. C. Reddall to J. H. Eaton.

WASHINGTON, February 25, 1850.

SIR : During the time that I was a clerk in the Ordnance Department, several manufacturers of small arms entered into contracts for the manufacture of muskets of the new models. The price to be paid them was what the musket would cost at Springfield armory, after adding the cost of machinery, interest of investment, &c., &c. By

*Should be \$16 85.6.

reference to the contract previously entered into with Mr. L. Pomeroy of Pittsfield, it will be seen how the price of the arm was to be estimated.

Mr. Nippes, near Philadelphia, was at that time manufacturing the old model musket, and wished to manufacture some of the new model, and I think a proposition was made him to manufacture 800 per annum for five years. As a change of machinery was necessary, and which would involve a heavy outlay of capital, he was to receive the same rate per arm as the other contractors.

I am not certain that he was to manufacture the arms (new model) under an assignment, as I labor under the strong conviction that a contract was drawn by myself and prepared for signature, but its execution was postponed, as some conversation was had by Mr. Nippes and the then chief of the Ordnance department upon the subject of an increased number to be manufactured by Mr. Nippes over the 800 per annum.

Of this, however, I am certain that Mr. Nippes was to receive the same rate per musket as was paid to Mr. Pomeroy, under contract entered into with the Ordnance department by him.

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

W. C. REDDALL,

Of the Home Bureau, Department of State.

Gen. J. H. EATON,

Washington, D. C.

D.

Statement of D. Nippes.

MAY, 1850.

SIR: The following is a conversation that took place between Col. Talcott and myself in 1840. The Secretary of War gave me my choice, to make muskets or rifles. The colonel said he could insure me more than five thousand rifles, but said, "the musket is a national arm of defence and will be continued many years." I told him my only objection to the musket was the small number; four thousand would not justify my incurring the expense. He replied: "Mr. Nippes, that number is only nominal; we will or can enlarge it." I then told him: "Colonel, if you will increase the number, I will keep to the musket, go home and commence work."

Mr. Reddall, the clerk, (I refer you to Mr. R.) asked me if I was going to take the contract? I replied: "Not now; I expect the colonel to increase it." Had I took the contract at this time, it would have placed me upon the same footing with Pomeroy.

You, sir, will perceive that the colonel takes advantage of this circumstance to deprive me of my just due. Mr. Pomeroy's first contract was six thousand. When they settled and established the price they not only paid him sixteen dollars for the two thousand one hundred, but added to his number one thousand more, making seven thousand, which number he was allowed to deliver in five years. I was allowed

only four thousand for the five years. They subsequently gave me sixteen hundred more, to be delivered in two years—being five thousand and six hundred for a period of seven years. To manufacture these arms, I incurred as heavy expense, in getting up of machinery, as Pomeroy did, and the smallness of the number subjected me to many disadvantages that Pomeroy was not exposed to. I could have manufactured double the quantity, with more ease, in the same time.

I am, sir, with respect, your humble friend,

DANIEL NIPPES.

D. Nippes's statement of claim.

JUNE 10, 1852.

In the autumn of 1841, I engaged to make eight hundred model muskets for the United States annually, for five years—being, in all, four thousand—which were made and received by the Ordnance Department, and declared to be of superior quality. The contract was drawn up at the Ordnance Department, but it was not taken away by me, for the reason that I had the expectation of getting an additional quantity to the four thousand already at that time contracted for.

Mr. Lemuel Pomeroy, in February, 1840, had engaged at the department, to make and deliver to the United States a number of these guns, (six thousand;) and, among other things agreed upon, it was stipulated that the price of the gun should be fixed at *what would be ascertained to be its cost* at the *Springfield armory*, and in which estimate was to be included the interest of the entire capital employed, the wear and tear, and the insurance—all of which the United States was to have ascertained. Subsequently, (in March, 1842,) a new contract was entered into with Mr. Pomeroy, when it was agreed that for the two thousand one hundred, which, at that date had been delivered he should be paid the price of sixteen dollars for each gun; but the residue, which was engaged for under his first contract, with the further addition of one thousand more muskets, he agreed that the price to be paid him should be fourteen dollars and fifty cents.

Before the making of this last contract with Pomeroy, to wit, in October, 1841, the undersigned had contracted with the government, the contract drawn up, which engaged that he should be paid the same price which was stipulated to be paid to Pomeroy; and towards the execution of his said contract, had actually delivered over to the government, in January, 1842, two hundred guns; his delivery under his contract, being two months before the first contract entered into with Pomeroy was changed by the second one of the 24th of March, 1842.

The inducement on the part of Pomeroy, to a change of his contract rested on two consideration: First, his number of guns was increased one thousand, and secondly, he was to receive at once sixteen dollars for the two thousand one hundred which at that time had been delivered, thus compromising the price.

But for the second contract, Pomeroy, in virtue of his first, would

have been entitled to be paid the cost of the musket as ascertained at Springfield. The same engagement was made with this memorialist, who has never consented to any change or alteration in it, and Mr. Pomeroy's having done so can in nowise affect him.

Yet, because of this after contract made with Pomeroy, after his own had been entered into, the Ordnance department insisted on paying only fourteen dollars and fifty cents, whereas he is justly entitled to sixteen dollars and eighty-five cents and six mills, the estimated cost of the musket by the superintendent at Springfield; and to which should be added, as the contract engages, interest on the entire capital of the armory, wear and tear, and insurance, which will place the cost of the arm at seventeen dollars and a half. Deducting the fourteen dollars and a half already paid to him, there is a balance of three dollars on each gun yet due to him justly—twelve thousand dollars.

DANIEL NIPPES.

DISTRICT OF COLUMBIA, *Washington County*:

This day appeared before me, a justice of the peace for the county and district aforesaid, Daniel Nippes, who made oath that the facts within stated are true to the best of his recollection and belief.

Given under my hand and seal the 10th of June, 1852.

B. K. MORSELL. [L. s.]

Colonel of Ordnance to Secretary of War.

ORDNANCE OFFICE,
Washington, July 19, 1852.

SIR: I have the honor to enclose herewith the statement of muskets delivered, and the prices paid to Pomeroy, called for by the Hon. J. McNair, in his letter to you of the 16th instant, referred to this office, and which is herewith returned.

I am, sir, respectfully, your obedient servant,

H. K. CRAIG,
Colonel of Ordnance.

Hon. C. M. CONRAD,
Secretary of War.

Statement of deliveries of muskets by, and payments made to, Lemuel Pomeroy, under his contracts with the United States dated February 26, 1840, and March 17, 1842.

Date of delivery.	Number of muskets.	Date of payment.	Amount of muskets, including appendages, at 25 cts. per set.	Am't of packing boxes & transport'n.	Aggregate amount.
1840.		1840.			
September 24	300	September 30	\$3,825 00	\$82 50	\$3,907 50
December 18	300	December 28	3,825 00	82 50	3,907 50
1841.		1841.			
April 20	300	April 23	3,825 00	82 50	3,907 50
June 22	300	June 29	3,825 00	82 50	3,907 50
September 6	300	September 10	3,825 00	82 50	3,907 50
November 26	300	November 29	3,825 00	82 50	3,907 50
1842.		1842.			
March 4	300	March 16	4,425 00	82 50	4,507 50
May 7	300	May 9	4,425 00	82 50	4,507 50
August 4	300	August 18	4,425 00	82 50	4,507 50
October 15	300	October 19	4,425 00	82 50	4,507 50
December 29	300				
1843.		1843.			
April 14	300	January 3	4,425 00	82 50	4,507 50
July 17	300	April 18	4,425 00	82 50	4,507 50
September 20	300	July 20	4,425 00	82 50	4,507 50
		September 23	4,425 00	82 50	4,507 50
1844.		1844.			
January 9	300	January 13	4,425 00	82 50	4,507 50
April 13	300	April 15	4,425 00	82 50	4,507 50
June 11	300	June 12	4,425 00	82 50	4,507 50
October 7	300	October 9	4,425 00	82 50	4,507 50
1845.		1845.			
January 24	300	January 28	4,425 00	82 50	4,507 50
February 26	300	March 3	4,425 00	82 50	4,507 50
June 19	300	June 23	4,424 00	82 50	4,507 50
August 2	300	August 8	4,425 00	82 50	4,507 50
1846.		1846.			
January 10	400	January 13	5,900 00	110 00	6,010 00
	7,000		99,050 00	1,925 00	100,975 00

Agreeably to the contract of February 26, 1840, Mr. Pomeroy was to receive \$12 50 per musket; but as by the 4th clause of that contract it was stipulated that he would be allowed the actual cost of muskets manufactured at the Springfield armory, and, in consequence of the difficulty of ascertaining the said actual cost, it was agreed (as expressed in the contract of March 17, 1842,) to allow him for the first 2,100 muskets \$16 each, and for the remaining muskets \$14 50 each.

In accordance with this agreement, Mr. Pomeroy was paid \$7,350 in addition to the amount above stated, (\$99,050,) being 106,400 in all for the 7,000 muskets.

H. K. CRAIG,
Colonel of Ordnance.

ORDNANCE OFFICE,
Washington, July 19, 1852.

Secretary of War to Hon. J. McNair.

WAR DEPARTMENT,
Washington, July 20, 1852.

SIR: In compliance with the request contained in your letter of the 16th instant, I have the honor to transmit herewith a statement by the Ordnance bureau of delivery of muskets and payments made to Lemuel Pomeroy under his contract with the United States.

Very respectfully, your obedient servant,

C. M. CONRAD,
Secretary of War.

Hon. J. McNAIR,
House of Representatives.

A. S. Nippes to Hon. J. McNair.

MILL CREEK, *July 27, 1852.*

DEAR SIR: Yours of the 23d was duly received, but I am sorry to say that it did not contain *all* what I wrote for; so I have not been able to draw up the comments on the papers that you sent me as well as I should if I had all of the necessary information that was desirable; but such as it is I send it herewith, including all of the papers that you sent me both times. Those that I sent you, you did not return, so consequently you have them on hand. All the use that you can make of my comments, and even the papers that you got from the Ordnance office, will be to inform yourself of the merits of my father's claim, so that you can explain the merits of it to the committee. I hope that you will use all of your influence to get the committee to report in favor of the claim, and have it referred, by a resolution of Congress, to be settled by the Comptroller. My father sends his respects to yourself.

Truly, yours,

ALBERT S. NIPPES.

N. B.—Please push this matter before the committee as fast as possible, as Congress is near its close, and oblige your constituents, A. S. N. and D. N.

Hon. J. McNAIR.

Extracts from public documents.

Extracts from executive documents to be filed in the case of Daniel Nippes vs. United States:

1. 26th Cong., 1st sess., 1839-'40, vol. 1, Doc. No. 2, p. 87, November 29, 1839; from the report of the Ordnance department: "The manufacture of muskets of the new model will be commenced at the national armories early next year, a large proportion of the necessary tools and machinery having been provided."

2. From vol. 3, Ex. Docs., same Cong. and sess., extract from the table of expenses for the fiscal year, being for nine months, ending September 30, 1839, the following:

"Springfield armory.—For lands, buildings, and other permanent improvements, \$3,776 80. Muskets complete, 10,000."

3. 26th Cong., 2d sess., Ex. Docs., vol. 1, Doc. No. 2, page 55; report of the Secretary of War of November 30, 1840; extract as follows: "The manufacture of muskets according to the new model has been successfully established at both the public armories, and at some of the private armories."

4. This year, ending September 30, 1840, George Bomford, colonel of ordnance, reports no new model muskets manufactured at Springfield armory, and only three at Harper's Ferry; and 5,967 old model muskets at Springfield.

5. From Ex. Docs., vol. 2, Doc. 72, p. 15, 2d sess. 26th Cong., as follows: extract from the "statement of contracts made in the Ordnance department during the year 1840:" "L. Pomeroy, contractor for 6,000 muskets and appendages, at \$12 75 each. To be made or delivered at Pittsfield, Massachusetts. 1,200 muskets per annum to be delivered. Contract made on the 26th February, 1840, with Lieutenant Colonel G. Talcott."

6. Admission: "It is admitted that no further report of the Ordnance department of their proceedings and expenses was rendered at the 1st session of the 27th Congress, nor until the 2d session of said Congress."

7. From Ex. Docs., 27th Cong., sess. 1841-'42, vol. 3, Doc. 157, for fiscal year ending September 30, 1841; report of Col. Talcott, colonel of ordnance; extract the tabular statement as follows:

"For buildings, dams, canals, machinery, and other permanent improvements.....	\$10,592 39
"Cost of arms made, (being entirely muskets,) including materials, workmanship, superintendence, and all other expenses.....	170,419 47
"Whole number of arms manufactured, muskets complete.....	10,700 "

Also the following extract: "The product of the armories has been this year much less than usual, in consequence chiefly of the introduction of a new and improved model of the musket, which has rendered necessary an alteration of the machinery for making arms. Since the date of the last report an important change in the admin-

istration of the national armories has taken place, by dispensing with the superintendents heretofore employed at them, and placing the armories under the immediate direction of ordnance officers. It is hoped that the services of other superintendents may be permanently discontinued."

8. 1841-'42, 2d session 27th Congress, (continued,) Ex. Doc. 207, vol. 4. The report of the board convened at Springfield, Massachusetts, August 30, 1841, to examine into the condition and management of the Springfield armory. Date of report, September 25, 1841.

9. It is agreed that the whole or any part of the above document 207 may be read in evidence without printing, on account of its great length.

10. Also "the letter of the Secretary of War, (Ex. Doc., 27th Cong., 2d sess., 1841-'42, vol. 5. Doc. 289,") respecting the disbanding the hands and closing the shops of Springfield and Harper's Ferry armories.

11. 1842-'43, 3d sess. 27th Cong., Ex. Docs., vol. 1, Doc. 2, p. 207; from the tabular report of Talcott, colonel of ordnance, for the fiscal year ending the 30th September, 1842:

"Expenditures in the Springfield and Harper's Ferry armories in the manufacture of muskets, and number of arms—

For Springfield.....\$140,769 56

For Harper's Ferry..... 131,836 90

For repairs and improvements—

At Springfield..... 15,170 51

At Harper's Ferry..... 20,699 64

The muskets made are not apportioned to the respective armories in the report. The aggregate for both given is 16,295 muskets complete."

Further extract: "Some progress has been made in providing models, and in fabricating parts of percussion arms. The expenses of these, together with the cost of arms partly furnished and materials for the fabrication of arms, are embraced in the above statement of expenditures for the manufacture of arms. Much good is apprehended from the change dispensing with the superintendents."

12. From Ex. Docs., vol. 1, Doc. No. 3, 27th Cong., sess. 1842-'43, extract from Colonel Talcott's report and table respecting the private armories and cost thereof, as follows:

"Three private armories at Philadelphia, at which the price of the musket was \$12 25 until 1840.

"Four in Connecticut, at which the price was the same until 1840.

"In 1840, 1841, 1842, the price for the old pattern is quoted at \$12 25;" and during the same time—

"For the new pattern, \$16 at the Pittsfield armory;" and

"\$14 75 at the Philadelphia armories."

IN THE HOUSE OF REPRESENTATIVES, *February 16, 1843.*

Letter from the Secretary of War transmitting a report from the Ordnance office, in relation to the national armories, arms manufactured, &c.

WAR DEPARTMENT, *February 16, 1843.*

SIR: In answer to the resolution of the House of Representatives of the 3d ultimo, requiring the Secretary of War to report to the House, "as soon as practicable, 1st, the cost of the materials for the fabrication of fire-arms at the United States armories; 2d, the prices paid for labor on the musket; 3d, the expense per musket for all other labor, comprising the making and repairing of tools, pay of officers, &c., presenting a distinct statement for each of the last three years; and that he further report the amount expended at each of the armories during the same three years, separately, for all purposes not directly connected with the construction of the musket," I respectfully transmit, herewith, a report of the officer in charge of the Ordnance bureau, which, it is believed, contains all the information required by the resolution, as accurately as it can now be calculated.

The delay in this report has been occasioned by the difficulty of obtaining full returns, in exact conformity to the resolution, from the armories.

Very respectfully, your obedient servant,

J. C. SPENCER.

Hon. JOHN WHITE,

Speaker of the House of Representatives.

ORDNANCE OFFICE,
Washington, February 13, 1843.

SIR: I have the honor to submit herewith a tabular statement, embracing the information called for, in relation to the national armories, by the resolution of the House of Representatives of January 3, 1843. The resolution is herewith returned.

I am, sir, with great respect, your obedient servant,

G. TALCOTT,
Lieutenant Colonel of Ordnance.

Hon. J. C. SPENCER,

Secretary of War.

Statement of the cost of materials, labor, and all other expenses at the national armories during the years 1840, 1841, and 1842, prepared in obedience to a resolution of the House of Representatives of January 3, 1843.

1st. *Cost of the materials for the fabrication of fire-arms.*

Years.	Springfield armory.	Harper's Ferry armory.	
		Muskets.	Rifles and carbines.
1840.....	\$32,790 01	\$28,107 37	\$7,625 02
1841.....	50,613 94	27,737 09	4,727 50
1842.....	44,069 41	20,664 56	5,657 00

2d. *Price paid for labor on the musket.*

Years.	Springfield armory.		Harper's Ferry armory.			
	Old model musket.	New model musket.	Old model musket.	New model musket.	Hall's rifles.	Hall's carbines.
1840.....	\$6 50	\$8 27	\$6 99	-----	\$6 00 56-100	\$7 44 36-100 "
1841.....	-----	8 27	6 99	-----	6 44	-----
1842.....	6 50	8 27	6 97 1-10	-----	-----	5 36

3d. *The expense per musket for all other labor, comprising the making and repairing of tools, pay of officers, &c.*

Years.	Springfield armory.	Harper's Ferry armory.	
		Muskets.	Whole cost belonging to rifles and carbines.*
1840.....	\$5 00½	\$2 74 1-10	\$8,992 94
1841.....	2 66½	2 52 2-10	9,478 06
1842.....	2 44 1-10	2 72 8-10	12,962 78

* The whole cost of rifles and carbines, under the third branch of the resolution, cannot be divided among the number completed without showing a false result, as but 1,213 rifles and 1,003 carbines were completed and turned into store during these years, while 1,000 rifles and 1,000 carbines remain in the shops, though nearly brought to completion.

STATEMENT—Continued.

4th. *Amount paid for all purposes not directly connected with the construction of the musket, including the repairs of buildings, new machinery, &c.*

Years.	Springfield armory.	Harper's Ferry armory.	
		Muskets.	Rifles and carbines.
1840.....	\$15,652 00	\$19,640 97	\$8,650 00
1841.....	12,886 82	18,836 42	9,500 00
1842.....	18,466 01	19,886 28	9,000 00

G. TALCOTT, *Lieut. Col. Ordnance.*

ORDNANCE OFFICE, *Washington, February 13, 1843.*

14. Then from Ex. Docs., vol. 3, 1st sess. 28th Cong., Doc. No. 23, extract from Colonel Talcott's tabular statement for nine months, ending June 30, 1843, when a new fiscal year was adopted, as follows:

"Paid for repairs, improvements, and new machinery for Springfield.....	\$15,466 58
"Paid for materials and tools, for arms and appendages, workmanship on the same, salaries and incidental expenses incurred prior to the year.....	9,860 07
"Number of muskets.....	4,600
"Paid for the same within the said fiscal year.....	\$53,469 48

No rifles, carbines, or other weapons besides new model muskets were manufactured during that year."

15. 2d sess., 28th Cong., 1844, 1845, Ex. Docs., vol. 2, Doc., No. 43. Copy from the report of Colonel Talcott, as follows:

"SPRINGFIELD ARMORY.—A careful and thorough inspection of this armory has been made, and its condition affords ground for bestowing high commendation upon the officer who has for some time past directed its operations. The judicious location of a steam engine at the workshops on the hill, distant from the water power, effects a great reduction in the cost of the work. It affords a blast of twenty-two fires in the forging shop, and motive power for a great number of machines used in finishing many component parts of arms, as well as lathes, &c., used in the machine shop; and much power still remains unapplied for future use," &c.

"The steam-engine is worth a visit to the armory." "The great economy resulting from such an auxiliary to hard labor, and saving the transportation back and forth from the hill to the water shops of

the arms in various states of preparation, besides avoiding delay, is of striking benefit, and is one cause of great reduction in the cost of arms. That cost is now less than twelve dollars per musket. And when barrel iron of still better quality than at present used shall be obtained, it will fall below eleven dollars."

16. From the tabular statement of expenses and number of arms for the fiscal year ending June 30, 1844, extract :

For Springfield.—For repairs, improvements, and new machinery.....	\$38,098 97
For materials, tools, and workmanship on arms and appendages, including salaries and all incidental expenses.....	\$101,141 73
Number of muskets complete—flint locks, 4,700; percussion do., 2,956;	
total.....	7,656

No other arms are reported as manufactured besides muskets, except "234 musketoons."

17. 1st session, 29th Congress, 1845, 1846, Ex. Doc., vol. 1st, Doc. No. 2, page 402. Extract from the tabular report of Colonel Talcott to June 30, 1845:

"For the manufacture of arms, including appendages, component parts, model arms, guages, tools, &c., and for the purchase of materials for the same.....	\$144,706 04
For repairs, implements, and machinery.....	28,718 16
	<hr/>
	173,047 24
	<hr/>

Number of percussion muskets complete.....	12,107
Do. cadets do do	300

996 screw drivers, 3,480 wipers, 50 ball screws, 868 spring vices, 2,370 leather cone pads, besides appendages in different stages of fabrication, which had not been taken from the shops for assembling into complete arms." (See report of Springfield armory, idem page 421; also, Ex. Doc. vol. 4 same session, Doc. 96.

18. Second session, 29th Congress, 1846-'7, Ex. Doc. vol. 1st, Doc. No. 4, page 146; extract as follows from Colonel Talcott's report for the year ending June 30, 1846 :

For Springfield armory : For the manufacture of arms, including appendages, component parts, guages, tools, and the purchase of materials for the same.....	\$175,614 84
For repairs, improvements, and new machinery.....	41,722 56

Number of muskets complete at Springfield, percussion, 14,265; with 30,000 pieces of appendages. (See also the report of Major Ripley, same vol. &c., page 165)

19. To be read in evidence if necessary, tabular statement of expenses at the two national armories aforesaid, number and kind of arms, &c, for the fiscal year ending June 30, 1847; also, Major Ripley's report, same volume of Ex. Doc., &c., &c., page 693.

Further extracts.

20. Ex. Doc. 1840-'41, vol. 2d, page 14; statement of the contract with Pomeroy of February 26, 1840, viz:

"For 6,000 muskets at \$12 50 each for 5 years, 1,200 muskets a year."

21. Also, from Ex. Doc., 1842-'43, vol. 3, Doc. 68, page 57: "Contract with Pomeroy, March 18, 1842, for 1,000 muskets, at \$14 50 each, deliverable in 3 years."

21. Same document, page 58. Under the head "Principal articles obtained by open purchase and agreement at the Ordnance office during the year ending December 31, 1842, as follows:

"From Daniel Nippes 4,000 muskets, deliverable at the Frankford arsenal, price \$14 75 each; date of order or agreement, March 9, 1839, and July 16, 1842. When to be delivered? 800 muskets per annum to January 1st, 1846."

Date of Colonel Talcot's above report, January 4, 1843.

Date of Secretary Spencer's above report, January 17, 1843.

JOHN S. TYSON,
Solicitor for Petitioner.

Depositions of M. Keely, W. Miles, and A. Nippes.

IN THE COURT OF CLAIMS.

DANIEL NIPPES *vs.* THE UNITED STATES.

Depositions of witnesses taken before Samuel C. Perkins, commissioner of said court, at his office, No. 627 Walnut street, in the city of Philadelphia, State of Pennsylvania, on the 31st day of December, anno Domini one thousand eight hundred and fifty-seven, at 11 o'clock in the forenoon of said day, and by adjournment on the first day of January, anno Domini one thousand eight hundred and fifty-eight, at nine o'clock in the forenoon of said last mentioned day, to be used in the above case now pending in said Court of Claims.

SAMUEL C. PERKINS,
Commissioner of the United States Court of Claims.

Miles Keely, a witness, produced, sworn, and examined on the part of the claimant, deposeth as follows:

1. To the first interrogatory on the part of the claimant he answers as follows:

My name is Miles Keely, my age is thirty-eight; I shall be thirty-eight next September, (1858.) I have resided for the past year in Roxborough, twenty-first ward of the city of Philadelphia, State of Pennsylvania.

2. To the second interrogatory on the part of the claimant he answers as follows:

My occupation is that of millwright.

3. To the third interrogatory on the part of the claimant he answers as follows :

I have no interest, direct or indirect, in the claim which is here the subject of inquiry.

4. To the fourth interrogatory on the part of the claimant he answers as follows :

I am not related, in any degree, to the claimant in this case.

5. To the fifth interrogatory on the part of the claimant he answers as follows :

I worked under the employ of Joseph Randall, who was employed by Mr. Daniel Nippes, the claimant, to do the millwright work upon a manufactory for the making of muskets. I was not employed by the claimant to build for him a manufactory for the making of muskets. This manufactory was located on Mill creek, Montgomery county, Pennsylvania; I was employed in working there somewhere in 1840 or 1841. The time is so long ago I cannot recollect exactly. The building had formerly been a manufactory for guns, or muskets, and at the time I speak of as having been employed there it was being altered, and as I always understood the alterations were made for the purpose of constructing there "the new model musket," or a model musket of some kind.

6. To the sixth interrogatory on the part of the claimant he answers as follows :

As I have already stated, the building was already erected there and had been used for the manufacture of muskets. The original building was a one-story frame, with a loft over it. When the alterations were made as I have stated, the original structure was thoroughly repaired; it was also lengthened out, and a wing added at right angles to it on the front, and the whole building as altered was part two stories and part three stories high, another story having been added to the old part. As to the machinery and fixtures, there were two water-wheels, with forebays, each being connected with different parts of the machinery. One wheel was sixteen feet in diameter, and about seven feet wide; the other about fifteen feet in diameter and four and a half feet wide. They were pitch-back wheels. One of the wheels, the small one, drove the boring machine for boring the barrels, and various drilling machines; and the necessary gearing to drive these machines was connected with the wheel. I think this wheel also drove a fan and some other things. The large wheel did all the rest of the work. There were two or three boring machines; three or four drilling machines of different kinds, and a fan for blowing the fire. There was a milling machine; a machine for mounting ramrods, and several large grindstones; a stocking machine; two or three lathes; some punching machines, and sundry other fixtures and machinery, but not being familiar with gun machinery, and it being so long since, I cannot now specify more particularly. I do not mean to speak positively as to the diameters of the water-wheels, but they were about of the size I have stated. I remember there was also a circular saw.

7. To the seventh interrogatory on the part of the claimant he answers as follows :

The said buildings, machinery, and fixtures, were adopted specially for the manufacture of the new model muskets, or the model muskets, which I understood were to be constructed, I understood these muskets were to be made for the government.

8. To the eighth interrogatory on the part of the claimant he answers as follows :

I cannot speak of the cost of the said buildings or gun machinery. The millwright work I don't think could have been put there for less than thirty-three hundred or thirty-four hundred dollars. I include in this the water-wheels, forebays, and main gearing. The wheels were there at the time the alterations were made; they had been used in the old mill, but we thoroughly repaired them, and as it were made new wheels out of old ones. I suppose the expense of the repairs which were put on the millwright work was one-third, at least, of what the original cost would be. The buildings, machinery, and fixtures, were not fit for any other purpose. It was so constructed that they couldn't have altered it for any other purpose that I see. They could, of course, have used the wheels for something; but the way the building was located I don't see how they could have altered it so as to do anything with it. It was a different affair the way it was done for the gun-mill from what it would be for any other mill.

9. To the ninth interrogatory on the part of the claimant he answers as follows :

After the manufactory was completed and ready for work, I cannot say how long a time it was afterward before it commenced operation. They went to work at something as soon as the manufactory was completed, but whether upon the muskets, or not, I can't say.

10. To the tenth interrogatory on the part of the claimant he answers as follows :

I know nothing about the matter inquired of in this interrogatory.

11. To the eleventh interrogatory on the part of the claimant he answers as follows :

I only know in reference to the matters inquired of in this interrogatory that the manufactory was torn down, and a cotton-mill erected in its place. This was about four or five years ago.

12. To the twelfth interrogatory on the part of the claimant he answers as follows :

I am not able to make any estimate of the loss which the claimant sustained by being compelled to abandon the manufacture of the new model musket.

13. To the thirteenth interrogatory on the part of the claimant he answers as follows :

I do not know any other matter relative to the claim in question.

MILES KEELY.

STATE OF PENNSYLVANIA, *City of Philadelphia*, ss :

On this thirty-first day of December, A. D. one thousand eight hundred and fifty-seven, personally came Miles Keely, the witness above named, and having been first sworn to tell the truth, the whole truth, and nothing but the truth, the interrogatories hereunto annexed,

and specifically directed to be propounded to said witness, were severally proposed by the commissioner to the witness; and the answers thereto were written down by the commissioner in the presence of the witness, who then subscribed the deposition in the presence of the commissioner. The deposition of Miles Keely, taken at the request of Daniel Nippes, to be used in the investigation of a claim against the United States, now pending in the Court of Claims, in the name of said Daniel Nippes. It appearing by the memorandum of the deputy solicitor of the United States appended to said interrogatories, hereto annexed, that he consented to said deposition being taken without the formal notice required by the eleventh rule of said court.

SAMUEL C. PERKINS,
Commissioner.

Commissioner's fees, \$3 50.

IN THE COURT OF CLAIMS.

DANIEL NIPPES *vs.* THE UNITED STATES.

Deposition on the part of the claimant.

Interrogatory 1. What is your name, age, and what has been your place of residence during the past year?

Interrogatory 2. What is your occupation?

Interrogatory 3. Have you any interest, direct or indirect, in the claim which is here the subject of inquiry?

Interrogatory 4. Are you in any degree related to the claimant?

Interrogatory 5. Were you or were you not employed by the claimant to build for him a manufactory for the making of muskets? If yea, say when and where, and what sort of musket was to be there constructed?

Interrogatory 6. What was the character and description of the building constructed for this purpose? Describe also the machinery and fixtures connected with said manufactory?

Interrogatory 7. Were the said buildings, machinery, and fixtures adapted specially for the manufacture of the new model muskets for the government?

Interrogatory 8. What was the aggregate or separate cost of said buildings, machinery, and fixtures? Were they fit for any other purpose?

Interrogatory 9. When the said manufactory was completed and ready for work, how long a time was it afterwards before it commenced operation?

Interrogatory 10. If there was delay in such commencement, what was the cause of it?

Interrogatory 11. What disposition did the claimant make of said buildings, machinery, and fixtures, after he ceased making model muskets for the government?

Interrogatory 12. Are you able to make a reasonable estimate of

the loss which the claimant sustained by being compelled to abandon the manufacture of the new model musket?

Interrogatory 13. Do you know any other matter relative to the claim in question?

JOHN S. TYSON,
Counsellor for Claimant.

I have no questions to ask.

JOHN D. McPHERSON,
Deputy Solicitor.

WILLIAM MILES, a witness produced, sworn, and examined on the part of the claimant, deposeth as follows:

1. To the first interrogatory on the part of the claimant he answers as follows:

My name is William Miles; I am thirty-nine years old; my occupation is a carpenter; I have resided during the past year in Lower Merion township, Montgomery county, Pennsylvania.

2. To the second interrogatory on the part of the claimant he answers as follows:

I have no interest, direct or indirect, in the claim which is the subject of inquiry.

3. To the third interrogatory on the part of the claimant he answers as follows:

I am not, in any degree, related to the claimant in this case.

4. To the fourth interrogatory on the part of the claimant he answers as follows:

I have some knowledge of the kind of building formerly used by the claimant as a manufactory of the "new model musket" for the United States; it was what I would call a three story building, one story of stone and two stories of frame; some would call it two stories and a half, or two stories and an attic; the frame part was weather-boarded; it was about seventy-five feet long and thirty feet wide; the wing, which stood at right angles with the main building, was about twenty-two feet by twenty-four or twenty-six feet; there were three apartments in the basement or first story, two working rooms, and the centre room had the water wheels and grindstones; in the second story there were three rooms, two working rooms, and the third room had a grindstone in it; it was just over the wheels in the first story, and the stairway went up through it; the third story was all in one room; the wing was two stories high, but the lower story was open so that they could run the wagons in and load the arms from the trap in the floor above; the second story was all in one room, and was used as an inspection, and finishing, and packing room; the probable cost of the building was about twenty-three hundred dollars; I include in this simply the building, not the water-wheels, nor any part of the machinery or fixtures; there were connected with the establishment two or three other buildings, the cost of which is not included in this estimate; there was a blacksmith shop about twelve feet from the mill or manufactory, and a proof-house, also disconnected from the other buildings, and a magazine for storing powder stood about one hun

dred yards off ; the probable cost of these other buildings was about three hundred dollars altogether.

5. To the fifth interrogatory on the part of the claimant he answers as follows :

In addition to the other buildings, the kind and probable cost of which I have stated in my answer to the fourth interrogatory, there were some six or eight tenant houses, erected for the use of the hands employed in the manufactory. These tenant houses were of the first class ; six of them were of stone, two stories and a half high, and one single frame house two stories high. These tenant houses were all erected to accommodate the increased number of hands necessary and employed in manufacturing the new model musket. There were also upon the premises some three or four tenant houses which had been erected prior to the time when they commenced to manufacture the new model musket. I think the powder magazine was rebuilt at the same time they commenced to alter the building for the manufacture of the new model musket ; and the blacksmiths' shop was, I think, also enlarged. The six new tenant houses I have mentioned, cost probably about twenty-six hundred dollars ; all of that, at least. The new frame tenant house cost probably about four hundred dollars. My estimate for the six stone tenant houses is, now that I think of it, too low. I should have said twenty-eight hundred or three thousand dollars. The tenant houses that were already on the premises, prior to the time when they commenced the manufacture of the new model musket, cost about twelve hundred dollars probably.

6. To the sixth interrogatory on the part of the claimant he answers as follows :

The main building of the said manufactory was not capable of being used for any other purpose than that of manufacturing the new model musket. It stood idle for two or three years after they ceased manufacturing the said musket there, and was finally torn down and another mill for a different purpose erected in its place. The blacksmithshop and proof-house were both there for use in connexion with the manufactory of the muskets ; and when this was torn down there was no further use for these other buildings and they were torn down also. The powder magazine stood back out of the way and was not torn down ; but it was of no use afterwards. The tenant houses were used after the musket manufactory was torn down for the same purpose as before, rented out or occupied for dwellings.

7. To the seventh interrogatory on the part of the claimant he answers as follows :

I have already fully stated in my answer to the sixth interrogatory what became of the said buildings. No new disposition was made of them except as I have fully stated in said answer to the sixth interrogatory. The claimant did sustain loss by such new disposition. He lost the mill—that is, the buildings which were torn down were all a dead loss, except the stone, which was used in erecting the new mill, and a little of the old timber for lintels. He lost a good deal besides in the machinery, much of which was a dead loss to him. I cannot say to what amount he lost upon the machinery, for I have no knowledge. I should estimate his loss from his being compelled to tear

down his buildings at twenty-five hundred dollars. There was a loss also upon the tenant houses, caused by their standing empty and unoccupied during the time the buildings were standing idle and before the new mill was erected. This loss I am unable to estimate.

8. To the eighth interrogatory on the part of the claimant he answers as follows:

I do not know any other matter relative to the claim in question that I recollect of.

WILLIAM MILES.

STATE OF PENNSYLVANIA, }
City of Philadelphia. } ss.

On this thirty-first day of December, anno Domini one thousand eight hundred and fifty-seven, personally came William Miles, the witness within named, and having been first sworn to tell the truth, the whole truth, and nothing but the truth, the interrogatories hereunto annexed and specifically directed to be propounded to said witness were severally proposed by the commissioner to the witness; and the answers thereto were written down by the commissioner in the presence of the witness, who then subscribed the deposition in the presence of the commissioner. The deposition of William Miles, taken at the request of Daniel Nippes, to be used in the investigation of a claim against the United States now pending in the Court of Claims in the name of said Daniel Nippes, it appearing by the memorandum of the deputy solicitor of the United States, appended to said interrogatories hereunto annexed, that he consented to said deposition being taken without the formal notice required by the eleventh rule of said court.

SAMUEL C. PERKINS,
Commissioner.

Commissioner's fees \$3.

IN THE COURT OF CLAIMS.

DANIEL NIPPES vs. THE UNITED STATES.

Interrogatories to be propounded to William Miles:

Interrogatory 1st. What is your name, age, occupation, and residence during the past year?

Interrogatory 2d. Have you any interest, direct or indirect, in the claim which is the subject of inquiry?

Interrogatory 3d. Are you in any degree related to the claimant?

Interrogatory 4th. Have you any knowledge of the kind of building formerly used by the claimant as a manufactory of the new model musket for the United States? If yea, how was it constructed and of what materials? what were its dimensions, its apartments and probable cost?

Interrogatory 5th. Were there any shops, tenant's houses or other buildings erected and used in connexion with the said main building? If yea, what kind were they and what was their probable cost?

Interrogatory 6th. Was the aforesaid main building and the said additional ones capable of being used for any other purpose than that of manufacturing the new model musket?

Interrogatory 7th. After the claimant ceased to manufacture the said musket, what became of the said buildings? what new disposition was made of them, and did the claimant sustain loss by such new disposition? If yea, to what amount?

Interrogatory 8th. Do you know any other matter relative to the claim in question? If yea, state it?

JOHN S. TYSON,
Solicitor for claimant.

I have no questions to ask.

JNO. D. McPHERSON,
Deputy Solicitor.

Abraham Nippes, a witness produced, affirmed, (he having conscientious scruples against taking an oath,) and examined on the part of the claimant, deposeth as follows?

1. To the first interrogatory on the part of the claimant he answers as follows:

My name is Abraham Nippes, and I was fifty-seven years old on Saturday last, the twenty-sixth instant.

2. To the second interrogatory on the part of the claimant he answers as follows:

My residence for the past year has been at No. 522 Dillwyn street, twelfth ward, city of Philadelphia, and State of Pennsylvania.

3. To the third interrogatory he answers as follows:

I have no interest whatever, direct or indirect, in the claim which is the subject of inquiry.

4. To the fourth interrogatory on the part of the claimant he answers as follows:

I am related to the claimant. I am a nephew of his, a son of his brother.

5. To the fifth interrogatory on the part of the claimant he answers as follows:

I am not now engaged in any business, and have not been since the year 1850. My principal business prior to that time was gunmaking. I was engaged in that occupation from the year 1815 to the year 1850.

I had been employed the first two years under Daniel Hinkle, after that under M. T. Nickham, James Baker, George Schott, and Daniel Nippes. This was in one continued establishment, under different heads or employers.

6. To the sixth interrogatory on the part of the claimant he answers as follows:

I was employed by the claimant in the manufacture of muskets for the United States. This was from about 1838 down to the year 1849. From the time I was first employed by the claimant in the manufacture of muskets for the United States down to the early part of the year 1849, I was employed by him in the manufacture of the old model

musket ; and from that time down I was employed by him in the manufacture of the new model muskets. Of the old model muskets I suppose he made about four thousand four hundred during the time mentioned ; and of the new model muskets he made or manufactured two hundred exactly during my time with him. I am not positive as to the number of the old model muskets made by Daniel Nippes ; and I think, on reflection, it was between three and four thousand. I was not employed continuously by Daniel Nippes from 1838 to 1849 ; but from 1838 to 1842 I worked for him in the manufacture of muskets for the United States. I then went to work for Mr. Edward K. Tryon, of this city, in making rifles. I continued with him till about 1848, when I returned to the employ of Daniel Nippes, and was employed by him in altering muskets for the United States from flint locks to percussion.

7. To the seventh interrogatory on the part of the claimant he answers as follows :

The claimant commenced making his preparations for the manufacture of the new model musket about the early part of the year 1840.

8. To the eighth interrogatory on the part of the claimant he answers as follows :

It was not less than two years at least between the time when the claimant commenced making his preparations for the manufacture of the new model musket and the time when he was completely ready to go on with said manufacture and turn out the said musket.

9. To the ninth interrogatory on the part of the claimant he answers as follows :

I can only answer this interrogatory by giving an explanation of the operations of the claimant in preparing for the manufacture of the musket. He commenced making his preparations as I have already stated in the early part of 1840. It was a new thing entirely, and required new machinery and new tools in many of its operations. The claimant was obliged to experiment on different machines and with different tools from time to time, for different portions of the work, until he ascertained by actual and repeated experiments that the machinery and tools were fitted for the purpose. Thus, during the years 1840, 1841, and 1842, he was engaged in the experiments upon different parts of the work, and from time to time, as the proper machinery and tools were discovered, he completed different parts of the musket, so that by about the end of the year 1842 there were completed and ready for delivery, and actually delivered, two hundred muskets. It was after this delivery that I left and went to work with Mr. Tryon. And it was not until shortly before this delivery that the claimant was completely ready to go on with said manufacture and turn out the said musket. These two hundred muskets were the new model muskets, and cost at least twenty-two or twenty-three dollars a piece, perhaps more, to manufacture. I was not employed by the claimant during the years 1843, 1844, 1845 and 1846, and therefore cannot speak from actual knowledge as to the cost of the manufacture of the new model musket during those years ; but from my long and thorough acquaintance with the manufacture of fire-arms, and by my knowledge of the work required in the manufac-

ture of the new model musket, I can say that the average cost of each of the muskets manufactured by the claimant must have been during the years I have mentioned, that is from the commencement, not less than from eighteen to twenty dollars apiece. The claimant was very anxious that I should join him in the manufacture of these muskets; but I declined, because I did not think there was sufficient certainty in the price to be paid for the muskets by the government. Had the government agreed to give eighteen dollars a piece for the muskets, I should probably have accepted the claimant's proposition. I was unwilling to join him, however, without a certainty that the pay would be at least this much. I visited the various manufactories at the eastward where these guns were also manufactured; and from the tools and machinery employed, and the difficulties in the manufacture, I was fully convinced that money would be lost in trying to manufacture them at anything less than eighteen dollars; and I advised the claimant to have nothing to do with the manufacture; but he thought he could get along with it. I was fully convinced, I should have said, that money would be lost in trying to manufacture the muskets at fourteen dollars apiece; but at eighteen dollars apiece I would have been willing to run the risk of making something on the manufacture.

10. To the tenth interrogatory on the part of the claimant he answers as follows:

In my answer to the ninth interrogatory as to the cost of said muskets, I have included in the cost, as therein stated, all the items which would go to make up the actual cost of the musket; and I am unable to state the cost with any greater particularity than I have already done in said answer to the ninth interrogatory; and I cannot, therefore, state, in answer to this interrogatory, what would be the average cost for the whole of said period for insurance, pay of officers, and wear and decay of machinery. It would be impossible for me to form any estimate as to these matters. I can say this, however, that I do not think that fourteen dollars a piece would cover the mere cost of the musket alone, that is, the base material and labor, without any calculation as to the capital and machinery employed, or anything except the actual material and labor expended on each musket.

11. To the eleventh interrogatory on the part of the claimant he answers as follows:

I would not have been satisfied myself with less than four dollars profit on each new model musket, and I think from four to four and a half dollars would be a reasonable profit on each, considering the great difficulty there was in the manufacture, the perplexity, the rigid inspection, and all things together.

12. To the twelfth interrogatory on the part of the claimant he answers as follows:

The claimant did not make any profit on the manufacture of the new model musket, but on the contrary, he suffered a very heavy loss.

13. To the thirteenth interrogatory on the part of the claimant he answers as follows:

The establishment of the claimant was capable of manufacturing from one thousand to twelve hundred muskets per annum. With a

few additional tools and hands, but with the same machinery or perhaps a slight addition, the claimant could readily have manufactured in his establishment, from eighteen hundred to two thousand muskets per annum.

14. To the fourteenth interrogatory on the part of the claimant he answers as follows :

I think, on the old model musket, the claimant made a profit of from two and a half to three dollars, say three dollars apiece.

15. To the fifteenth interrogatory on the part of the claimant he answers as follows :

I do not know any other matter or thing in relation to the above claim, except that I would state that the profit of two dollars and a half on the old model musket was far preferable to what a profit of four dollars would be upon the new model musket, owing to the rigid inspection and the perplexity and difficulty in the manufacture of the latter. There would be more than a hundred per cent. difference in the two. I desire, also, to state here in explanation of the greater cost of the first two hundred muskets, that much of the work on them was done by hand before the proper machinery could be ascertained and perfected, I mean that parts of the musket which were afterwards turned out and manufactured by machinery, were then, that is when these first two hundred muskets were made, made or manufactured by hand labor.

ABR'M NIPPES.

STATE OF PENNSYLVANIA, }
City of Philadelphia. } ss.

On this first day of January, anno Domini, one thousand eight hundred and fifty-eight, personally came Abraham Nippes, the witness above named, and having been first solemnly affirmed, (he having conscientious scruples against taking an oath,) to tell the truth, the whole truth, and nothing but the truth, the interrogatories hereunto annexed and specifically directed to be propounded to said witness were severally proposed by the commissioner to the witness, and the answers thereto were written down by the commissioner in the presence of the witness, who then subscribed the deposition in the presence of the commissioner. The deposition of Abraham Nippes taken at the request of Daniel Nippes, to be used in the investigation of a claim against the United States now pending in the Court of Claims in the name of the said Daniel Nippes. It appearing by the memorandum of the deputy solicitor of the United States, appended to said interrogatories hereunto annexed, that he consented to said deposition being taken without the formal notice required by the eleventh rule of said court.

SAM. C. PERKINS,
Commissioner.

Commissoiner's fees, \$4.

IN THE COURT OF CLAIMS.

DANIEL NIPPES *vs.* THE UNITED STATES.*Testimony of Abraham Nippes.*

Interrogatory 1st. What is your name and age?

Interrogatory 2d. What has been your place of residence for the past year?

Interrogatory 3d. Have you any interest, direct or indirect, in the claim which is the subject of inquiry?

Interrogatory 4th. Are you related to the claimant; if yea, in what degree?

Interrogatory 5th. What is your occupation. How long have you been engaged in it. Under whom have you been employed?

Interrogatory 6th. Were you employed by the claimant in the manufacture of muskets for the United States; if yea, say when and what kind of muskets, and to what extent?

Interrogatory 7th. When did the claimant commence making his preparations for the manufacture of the new model muskets?

Interrogatory 8th. How long a time elapsed between such commencement and the time when he was completely ready to go on with said manufacture and turn out the said muskets?

Interrogatory 9th. What do you think was the cost of the new model musket during the first year of its manufacture, and what the cost during the subsequent years, say 1843, 1844, 1845, 1846?

Interrogatory 10th. What would be the additional average cost for the whole of said period for insurance, pay of officers, wear and decay of machinery?

Interrogatory 11th. What would be a reasonable profit on each new model musket?

Interrogatory 12th. Did the claimant make any profit on the manufacture of the said musket?

Interrogatory 13th. How many muskets per annum was the establishment of the claimant capable of manufacturing. Could he, with the same machinery, tools, hands, &c., which were employed in manufacturing 800 muskets per annum, have manufactured 1,800 per annum?

Interrogatory 14th. What profit did the claimant make on the old model musket?

Interrogatory 15th. Do you know any other matter or thing in relation to the above claim?

JOHN S. TYSON,
Sol. for claimant.

I have no questions to ask.

JNO. D. McPHERSON,
Deputy Solicitor.

IN THE COURT OF CLAIMS.

DANIEL NIPPES *vs.* THE UNITED STATES.*Deposition of Elizur Bates.*

Interrogatories to be propounded to Elizur Bates, a witness on the part of the claimant.

Interrogatory 1st. What is your name, occupation, age, and place of residence for the past year?

Answer. Elizur Bates; by occupation I am a gunsmith; my age is sixty-six years, and my place of residence for the past year in Springfield, Hampden county, State of Massachusetts.

Interrogatory 2d. Have you any interest, direct or indirect, in the claim which is the subject of inquiry?

Answer. I have not any whatever.

Interrogatory 3d. Are you related in any degree to the claimant?

Answer. I am not.

Interrogatory 4th. Have you ever been engaged or employed as a manufacturer of arms (particularly the musket) as armorer, or inspector of arms; if yea, say when, where, and how long?

Answer. I entered the United States armory at Springfield in the year 1816 as a blacksmith, which had been my trade and business several years prior to this, and had carried on the blacksmith business on my own account three years, after having served a full apprenticeship to the business. I first worked at forging tools and the component parts of the musket, such as the bayonet, and worked on bands, plates, and various limbs of the lock, and at times, was employed at *finishing*, as it was called, in fitting and assembling the component parts of the musket together, preparatory to the final inspection, the component parts and limbs of the work having been previously and separately inspected during the process of the work from the first stages.

In the year 1834, I was appointed master armorer of the Springfield armory, and continued in the active duties of that office between three and four years, when I retired from the office and was thereupon appointed inspector of contract arms, so called, and performed that duty at several of the private armories in different States of the Union, where arms were manufactured for the United States, on contract, on private account.

In this service I continued till some time in the year 1842, when I was detailed by order of the Ordnance department to visit the various arsenals in the United States, and with another gentleman, Mr. Hoffman, immediately entered upon the duties of our appointment, of inspecting the arms that have for a long time been accumulating in said arsenals, and also of thoroughly overhauling, classifying, and stamping anew all the arms so deposited, after being properly assorted and examined. This last service was a thorough reinspection, and continued to October, 1846, when I relinquished the business entirely.

Interrogatory 5th. What sort or description of musket was manufactured at the Springfield, and other public armory, previous to 1840. By what name was it known?

Answer. It was called the *French musket*, and known as such when

I first entered the workshops of the Springfield armory. In 1822 it underwent some changes, and the arm was known and called as the *model* of 1822, and was so designated till 1840, when further changes and alterations were made in the musket, and it was then designated as the *model* of 1840.

Interrogatory 6th. Was the style and character of said arm afterwards changed? If yea, when, and how? What was the name of the new arm, and what was the specific difference between it and the old one?

Answer. The style and character of the work on the *model* of 1840 was an essential change. In familiar language, it was called the *French musket* and *new model musket*, but I do not mean to be understood that it was only known as the *French model*, and so recognized in the books, although it was called *French*, in distinction from the English style and characteristics, the latter being much more heavy or clumsy. When any great change was made in the style or character of the *arm*, the workmen found it convenient to designate it as the *new model*, and, in fact, we have had several that were properly called *new model muskets*. The change in the lock was great; the *pan* was dispensed with, and a *cone seat* substituted in its stead, that was attached to the barrel; and many other parts or limbs of the lock were altered, by substituting the percussion for the flint lock. By the introduction of the percussion, it was really a *new arm*, and was often called the *percussion model*, and in producing this many alterations were made in the component parts of the musket. From about 1839 to 1840-'41, the musket seemed to be constant in nothing but change, as regards the style and character of the work. The greatest change, however, was in discarding the *pan* and substituting the *cone seat*. Changes continued, and alterations were made till the time when the *model* of 1842 was produced, and we had another new *model* called the *model* of 1842, which has since been changed, radically, and almost entirely in all its features; and time would fail me to enumerate and point out all the improvements specifically, and the changes between the *models* of 1842 and 1855. The tools, machinery, and fixtures, were altered entirely, and it was necessary that very nearly all of them should be made anew, to produce the exactness and uniformity of style required to carry out a system of manufacture almost entirely new. This last great change, however, is not now a matter of inquiry, and perhaps should not have been here introduced.

Interrogatory 7th. Was any material change in the buildings, machinery, and tools, necessary for the manufacture of "the new model musket," and its accompaniments? If yea, state what change. State particularly all the modifications that you may recollect, and whether the expenses were considerable?

Answer. A material change was absolutely necessary in every old establishment, or armory, for the purpose of adaptation to new work, the new model musket. If the buildings and permanent fixtures were in good or tolerable condition for manufacturing arms generally, without regard or special reference to a new style, some of the arrangements or accompaniments might be saved, and found useful, but in the case supposed, almost everything, except the buildings, would re-

quire great alterations. The labor on new tools is one of the greatest items of expense, and this a very slow process, as I have found from my own experience, having been almost constantly, for a long period, employed on such work, directly and indirectly, during my early connection with the Springfield armory. In getting up a new manufacturing establishment of a new style of work, if of the same material, I know of none where more skill and practical knowledge and experience is required, than in fitting up and stocking with the proper tools and fixtures, with all its equipments, than a new gun shop.

I judge, from my own experience and observation, that the various changes and modifications in the *old model* and adopted in the *new* must have occasioned a very considerable increase of expense to the manufactured article—the *new model musket*—superinduced by such changes and modifications, inasmuch as a greater degree of perfection and uniformity was required and actually carried out, resulting from a long course of experiment and nice workmanship. The changes of model, style, &c., occurred in 1822, 1840, and 1842, and are so known and designated. That of 1855, the greatest of all, does not come within the scope of the present inquiry.

Interrogatory 8. By whom were the annual estimates of the cost of manufacturing arms at the Springfield armory made to the government?

Answer. By the principal officers of that institution—the superintendent and master armorer—assisted by the permanent inspectors of the work in the armory.

Interrogatory 9. In making those estimates, (by whomsoever made,) what elements constituting the cost of said manufacture were taken into consideration?

Answer. The stock and materials of all kinds and descriptions used and employed, and expenses paid for labor and service of all kinds, together with all salaries and pay, whether official, clerical, or otherwise.

Interrogatory 10. What, during the first year of the manufacture of “the new model musket” at the Springfield armory, was the cost of each musket, regarding in your estimate, as the elements of cost, only stock, materials, labor, and officers’ salaries?

Answer. Not less than seventeen dollars and seventy-five cents, or not to exceed eighteen dollars and fifty cents.

Interrogatory 11. What officers were attached to said armory, and what were their respective salaries?

Answer. A superintendent, a master armorer, a paymaster, acting also as military storekeeper, four clerks, and eight permanent inspectors of the work, during my official connexion with said armory. Occasionally, and when necessary for a more rapid despatch of the work, temporary inspectors were employed, and their salaries were, respectively: Superintendent, \$1,500, and quarters, fuel, forage; paymaster, \$1,200, and quarters and fuel; master armorer, \$800, quarters and fuel; inspectors, \$800, quarters and fuel; clerks, \$800, quarters and fuel.

Interrogatory 12. What (speaking, if not *accurately*, yet within the bounds of certainty) was the capital invested in said armory, the

rate of insurance against all risk, and the amount necessary to preserve the machinery unimpaired by wear and decay?

Answer. I should estimate insurance against all risk, and the expense of keeping and preserving the machinery in repair, from five to seven per cent., as nearly as I can form an estimate satisfactory to myself, and, as I believe, about right. I make this by comparison with other manufacturing establishments, which I think is about the usual and a reasonable per centage.

The real estate belonging to this armory is vastly more valuable now than in 1840. Since that time many acres of land, at a high rate and great cost, have been annexed to the armory domain, and building erected of vastly more value and cost than all the other and older buildings here belonging to the government. The additional and new machinery also are entirely beyond, as I apprehend, an accurate or satisfactory estimate by me, at that time or the present; and I can think of no safe and satisfactory way of making an estimate but by a full and patient examination of the books and armory accounts. My recollection will not help me to estimate for 1840 fully.

Interrogatory 13. Is there any material difference in value between the flint-lock musket and the percussion musket of the new-model kind?

Answer. The difference is not very great, if any. There was a difference in opinions in this matter, as well during the progress of the alterations and changes as after they had been perfected and adopted. They were both designated *new models*, or *new-model muskets*, in their turn. In the flint-lock I think the labor may be somewhat more, and the stock and materials a little less, than in the percussion. My opinion is, that there is not much difference.

Interrogatory 14. Have you any knowledge of the claimant as having been a manufacturer of firearms for the United States, particularly the musket? How long have you so known him?

Answer. I have known claimant several years—perhaps fifteen or twenty years—and, about the time I first had any knowledge of him, he was a manufacturer of firearms for the United States, but believe he first made gun barrels, on contract, for the government.

Interrogatory 15. Have you any knowledge of his having been employed by the United States in the manufacture of the *new-model musket*? If yea, when was he first so employed, and how long?

Answer. I have, but cannot say how long he was so employed. He manufactured arms of the *new-model kind*, on a contract with the government, on the model of 1840, which was called the *new-model musket*, and do not recollect of any prior contract of his.

Interrogatory 16. Did the claimant visit the Springfield armory while you were there employed? If yea, say when, what was the object of his visit, and its results?

Answer. He often visited the Springfield armory while I was there employed, and I often heard conversations between him and the officers concerning the *new-model musket*, the tools, machinery, patterns, &c. He was here several days at a time, and appeared to take great interest in relation to his contract with the government; talked about

that and not much else. He was always, when here, quite busy in examining all patterns and tools ; and, as I understood, his work was delayed for the want of patterns, models, tools, &c. I know that the officers in this armory readily gave him all the information in their power, and believe he was satisfied with the results of his visits from time to time. He said that he was going along with his preparations as rapidly as he could under the circumstances. He was furnished with patterns for exemplification, and implements for verifying the work.

Interrogatory 17. Were you present at the manufactory of the claimant at any time during the period in which he was engaged in the manufacture of the "new-model musket" for the government?

Answer. I was ; and believe I inspected some 200 or 300 muskets in the early period of his contract. I had, however, previously inspected the limbs and component parts, as well before as after their being assembled together. This lot, according to my recollection, was of the model with flint-lock, and was "the new-model musket."

Interrogatory 18. Are you able to say, from what you saw while there, or from what you know of the peculiarities attending the manufacture of the "new-model musket" in a private manufactory, whether it was possible for the claimant to manufacture "the new-model-musket" at as little cost as attended its manufacture in the Springfield armory?

Answer. I believe the arm (new model of 1840) may be manufactured for about the same cost at a private manufactory of arms as at the Springfield armory ; and have no doubt of it, provided the private contractor have the privilege of making the same number of arms, monthly or annually, that are manufactured at the Springfield armory in the same period. But to make one-twentieth, or even one-tenth the number, in a private manufactory, the cost would be considerably more in proportion to the private contractor.

Interrogatory 19. With the tools, machinery, hands, and other means possessed by the claimant, what number of "new model muskets" per annum *could* he have manufactured?

Answer. In my opinion I think he might have manufactured fifteen hundred of the new arm, or "new model musket" either on the model of 1840 or 1842, for the difference, if any, is small, and that in the labor.

Interrogatory 20. With tools, hands, machinery, and other means capable of manufacturing eight hundred or a thousand muskets per annum, how many more could be constructed? Suppose the owner of such a manufactory was desirous of constructing one thousand eight hundred "new muskets" per annum, could he do it with the aforesaid means? If not, what additional means would be required for the purpose?

Answer. With a little more capital and small amount of machinery and force, the claimant might manufacture from one thousand five hundred to one thousand eight hundred *new-model muskets* annually. I think the additional capital and force to perform the additional work could not be great ; for I consider his arrangements and facilities already about what would be required for considerable more work than he performed. I think there would be, comparatively, a loss, if

he should not have the privilege of manufacturing more than eight hundred of the same kind of arm annually ; for he had abundant water power, tools, and machinery, and his whole establishment appears to have been fitted up in the best manner for his business, and, as a private one, second only to the national armories. This is my opinion, with the knowledge I then had of the claimant's new armory at Millcreek, about ten miles from Philadelphia, in 1841, and part of the year 1842, according to my best recollection.

Interrogatory 21. Was it possible for the claimant to construct a musket of the new model kind without first having in his possession one such musket for a pattern? And at the same time, when he commenced the manufacture of the said musket, could he possibly obtain such musket anywhere except at one of the United States armories?

Answer. It was not possible, in my opinion, for him to do so ; nor could he obtain such pattern or model anywhere else except at one of the national armories.

Interrogatory 22. What would be the probable capital necessary for such an establishment as was that of Mr. Nippes, including only in your estimate the cost of converting it from the manufactory of the old-model musket to a manufactory of the new-model musket, the purchase of stock and materials, the salaries of officers, and wages of laborers, and amount necessary to preserve the machinery from wear and decay?

Answer. Mr. Nippes's establishment at Millcreek, when I examined his work, was about new, and was not converted from an old to a new armory. The building and workshops were new, and have not previously been used as a manufactory of arms, or any further than the forging and welding of barrels, and perhaps some parts of the musket, but to what extent I cannot say. The buildings were apparently new, as were also the permanent fixtures, machinery, and tools. I should be in doubt how to estimate the capital under this inquiry as embraced in this interrogatory. The amount necessary to preserve the machinery from wear and decay I should estimate at from five to seven per cent. I am not able to estimate the amount of capital invested, nor the value or cost of his establishment accurately, but it must exceed twenty thousand dollars.

Interrogatory 23. Have you at any time as public inspector of arms inspected the work of the claimant? If yea, say when and what was the character of said work?

Answer. I have ; and the inspection was in the fall and winter of 1841-'42. According to my best recollection the inspection was commenced in October or November, 1841, and finished in January or February, 1842. I inspected every part and limb of the work separately, and proved and tried the work by verifying implements, and afterwards the entire musket when the parts were assembled. An officer of ordnance was with me a part of the time, and particularly when the inspection was concluded, and the work was satisfactory in every respect. The workmanship was of a high order, and the materials used in the manufacture were very good and should be classed with the best. I remember distinctly that the officer of ordnance ex-

pressed himself decidedly in favor of the work and materials; and before the inspection was commenced he and Mr. Nippes requested a very thorough inspection, and assigned this reason in particular that this was his first work, or *first job*; and I know that I made a close and thorough inspection.

Interrogatory 24. Supposing that the claimant, with every thing ready for the reception of such pattern musket, was obliged to wait three months for its reception, and then obliged to spend a whole additional year in the construction of the tools and machinery necessary for its manufacture, what (speaking if not accurately, yet within the bounds of certainty) would be to him the average cost per musket of each "new model musket" manufactured and delivered by him as follows: eight hundred in the first year, *thereafter* one thousand in the second year; six hundred in the third year, one thousand in the fourth year, and six hundred in the fifth year; including also in your estimate the charge for superintendence and salaries of subordinate officers, interest on the capital employed, insurance against all risk, and a reasonable allowance for wear and decay of machinery?

Answer. Nineteen dollars and fifty cents, under all the circumstances enumerated in this interrogatory, and the disadvantages and inconveniences attending and obstructing his progress.

Interrogatory 25. What to a private manufacturer for the government would be a reasonable profit per musket upon each new-model musket manufactured by him?

Answer. From five dollars to six dollars per musket would be a reasonable profit.

Interrogatory 26. What price per musket of four thousand muskets, the manufacture and delivery of which is restricted to eight hundred muskets per annum; the first year, including the period when the said musket (the new model) was introduced into the United States, would you consider as equivalent to fourteen dollars fifty cents per musket of five thousand four hundred muskets, to be manufactured and delivered in three years, the first year commencing after the establishment was completely organized and in full operation?

Answer. Eighteen dollars.

Interrogatory 27. Do you know any other matter relative to the claim in question?

Answer. I do not.

ELIZUR BATES.

STATE OF MASSACHUSETTS, *County of Hampden, ss:*

On this 6th day of February, A. D. 1858, personally came Elizur Bates, the witness within named, and after having been first sworn to tell the truth, the whole truth, and nothing but the truth, the questions contained in the within deposition were written down by the commissioner, and then proposed by him to the witness; and the answers thereto were written down by the commissioner in the presence of the witness, who then subscribed the deposition in the presence of the commissioner. The deposition of Elizur Bates, taken at the request of Daniel Nippes, to be used in the investigation of a claim against the United States,

now pending in the Court of Claims, in the name of Daniel Nippes.

The adverse party was notified, did not attend, and did not object.

JAMES W. CROOKS,
Commissioner.

Fees of witness, \$10 ; travel, 2 miles ; attendance, 8 days ; commissioner's fees, \$20.

IN THE COURT OF CLAIMS.

DANIEL NIPPES *vs.* THE UNITED STATES.

Interrogatories to be propounded to Elizur Bates, a witness on the part of the claimant :

Interrogatory 1. What is your name, occupation, age, and place of residence for the past year ?

Interrogatory 2. Have you any interest, direct or indirect, in the claim which is the subject of inquiry ?

Interrogatory 3. Are you related in any degree to the claimant ?

Interrogatory 4. Have you ever been engaged or employed as a manufacturer of arms, (particularly the musket,) as armorer, or inspector of arms ? If yea, say when, where, and how long ?

Interrogatory 5. What sort or description of musket was manufactured at the Springfield and other public armory previous to 1840. By what name was it known ?

Interrogatory 6. Was the style and character of said arm afterwards changed ? If yea, say when and how ? What was the name of the new arm, and what was the specific difference between it and the old one ?

Interrogatory 7. Was any material change in the buildings, machinery, and tools necessary for the manufacture of "the new model musket," and its accompaniments ? If yea, state what change ? State particularly all the modifications that you may recollect, and whether the expense was very considerable ?

Interrogatory 8. By whom were the annual estimates of the cost of manufacturing arms at the Springfield armory made to the government ?

Interrogatory 9. In making those estimates (by whomsoever made) what elements, constituting the cost of manufacture, were taken into consideration ?

Interrogatory 10. What, during the first year of the manufacture of "the new model musket" at the Springfield armory, was the cost of each musket, regarding in your estimate as the elements of cost only stock, materials, labor, and officers' salaries ?

Interrogatory 11. What officers were attached to said armory, and what were their respective salaries ?

Interrogatory 12. What (speaking, if not *accurately*, yet within the bounds of certainty,) was the capital invested in said armory, the rate of insurance against all risk, and the amount necessary to preserve the machinery unimpaired by wear and decay ?

Interrogatory 13. Is there any material difference in value between the flint-lock musket and the percussion musket of the new model kind?

Interrogatory 14. Have you any knowledge of the claimant as having been a manufacturer of firearms for the United States, particularly the musket? How long have you so known him?

Interrogatory 15. Have you any knowledge of his having been employed by the United States in the manufacture of "the new model musket?" If yea, when was he first so employed, and how long?

Interrogatory 16. Did the claimant visit the Springfield armory while you were there employed? If yea, say when, what was the object of his visit, and its results?

Interrogatory 17. Were you present at the manufactory of the claimant at any time during the period in which he was engaged in the manufacture of "the new model musket" for the government?

Interrogatory 18. Are you able to say from what you saw while there, or from what you know of the peculiarities attending the manufacture of "the new model musket" in a private manufactory, whether it was possible for the claimant to manufacture "the new model musket" at as little cost as attended its manufacture in the Springfield armory?

Interrogatory 19. With the tools, machinery, hands, and other means possessed by the claimant, what number of "new model muskets" per annum *could* he have manufactured?

Interrogatory 20. With tools, machinery, hands, and other means, capable of manufacturing eight hundred or a thousand muskets per annum, how many more could be constructed? Suppose the owner of such a manufactory was desirous of constructing eighteen hundred "new model muskets" per annum, could he do it with the aforesaid means? If not, what additional means would be required for the purpose?

Interrogatory 21. Was it possible for the claimant to construct a musket of the new model kind without first having in his possession one such musket for a pattern? and at the time when he commenced the manufacture of the said musket could he possibly obtain such musket anywhere except at one of the United States armories?

Interrogatory 22. What would be the probable capital necessary for such an establishment as was that of Mr. Nippes, including only in your estimate the cost of converting it from a manufactory of the old model musket to a manufactory of the new model musket; the purchase of stock and materials, the salaries of officers, and wages of laborers, and amount necessary to preserve the machinery from wear and decay?

Interrogatory 23. Have you at any time as public inspector of arms inspected the work of the claimant? If yea, say when, and in what was the character of said work?

Interrogatory 24. Supposing that the claimant, with everything ready for the reception of such pattern musket, was obliged to wait three months for its reception, and then obliged to spend a whole additional year in the construction of the tools and machinery necessary for its manufacture, what (speaking, if not accurately, yet within the bounds of certainty,) would be to him the average cost per musket of each "new model musket" manufactured and delivered by him, as follows:

800 in the first year, *thereafter*, 1,000 in the second year, 600 in the third year, 1,000 in the fourth year, and six hundred in the fifth year; including, also, in your estimate, the charge for superintendence and salaries of subordinate officers, interest on the capital employed, insurance against all risk, and a reasonable allowance for wear and decay of machinery?

Interrogatory 25. What, to a private manufacturer for the government, would be a reasonable profit per musket upon each new model musket manufactured by him?

Interrogatory 26. What price per musket, of 4,000 muskets, the manufacture and delivery of which is restricted to 800 muskets per annum, the first year including the period when the said musket (the new model) was introduced into the United States, would you consider as equivalent to \$14 50 per musket of 5,400 muskets, to be manufactured and delivered in three years, the first year commencing after the establishment was completely organized and in full operation?

Interrogatory 27. Do you know any other matter relative to the claim in question?

JOHN S. TYSON,
Attorney and Counsel for Claimant.

I have no questions to ask.

JNO. D. McPHERSON,
Deputy Solicitor.

IN THE COURT OF CLAIMS.

DANIEL NIPPES *vs.* THE UNITED STATES.

Deposition of Samuel Lehman.

Interrogatories on the part of the claimant to be propounded to Samuel Lehman:

Interrogatory 1. What is your name, occupation and age? What has been your place of residence for the past year?

Answer. My name is Samuel Lehman, my occupation that of a gunsmith, and my age forty-five years; my place of residence for the past year, Springfield, Hampden county, Massachusetts.

Interrogatory 2. Have you any interest, direct or indirect, in the claim which is the subject of the present inquiry?

Answer. I have none, whatever.

Interrogatory 3. Are you in any degree related to the claimant.

Answer. I am not.

Interrogatory 4. How long has the above been your occupation? and where have you been so occupied?

Answer. Twenty-five years; and for the last fifteen years have been employed at said business in the national armory at Springfield; and for ten years previously was so employed in Philadelphia, Valley Forge, and at Millcreek, near Philadelphia.

Interrogatory 5. Were you ever employed by the claimant in the

business of manufacturing fire arms? If yea, say when and how long.

Answer. I have, and at the several places mentioned in my answer to the 4th interrogatory, above. I was first in employ of W. S. Evans, then James Baker, and afterwards Daniel Nippes; and fifteen years ago came to the Springfield armory. I was employed by said Nippes about four years, just prior to my coming to Springfield. All the work, however, that I have done for the claimant, has been at Philadelphia and Millcreek.

Interrogatory 6. Were you engaged by him in making preparations for the manufacture of "the new model musket?" If yea, what were those preparations?

Answer. I was so employed by the claimant in making such preparations. I was engaged in his business in all about four years, and the latter part of this time I worked on tools and machinery, preparatory for "the new model musket; I mean the model of 1840. The tools and machinery were about all new, a change from model of 1822, and I assisted in all these preparations, or a considerable part of them. His armory at Millcreek was a new establishment, and the first work done there by the claimant was on "the new model of 1840;" machinery, tools, and fixtures were about all new. On Mr. Nippes's site at Millcreek, he had a long time before done some work for private contractors in the way of boring and turning barrels, and polishing the parts of the musket, in one or two small buildings, but these were all cleared away and a proper or suitable armory established.

Interrogatory 7. At what time did the claimant receive from the United States a "new model musket," as a pattern by which to manufacture the same or similar article? How long a space of time (if any) elapsed between the period when his preparations for receiving it were fully made and the period of its reception?

Answer. I cannot state the time when claimant received the pattern, for I do not remember; but well remember that there was delay about receiving it, and perhaps complaint. His old hands, or employees, were mostly scattered abroad; a few he kept at work on tools and machinery to keep them employed, while he was waiting for his pattern; a long time elapsed, several months, after his works were in readiness, and some preparations made before he received a pattern for "the new model musket."

Interrogatory 8. Were you fully employed during all that interval? How many armorers or mechanics were then employed by the claimant? What were their respective salaries? Did the claimant rent the establishment in which you worked? if yea, what was the rent per annum? State also any other expenses of said establishment, which the claimant was bound to pay during the said interval, and the probable aggregate of all.

Answer. I was not fully employed, and do not remember how many men were employed during this period; but the workmen were all on *short work*, who remained, and some had left; about this time the wages of men were from one dollar to two dollars per day; I used to hear it talked about. His rent in Philadelphia would be about \$300 per annum; at Millcreek he owned the works. The claimant, during

all this interval, was at considerable expense, aside from getting up tools, machinery, &c. He was necessarily obliged to travel about.

Interrogatory 9. What space of time elapsed between the period of the reception of the "new model" pattern and the period when the claimant was ready to go on, and did go on regularly with the manufacture of said arm?

Answer. About one year, according to the best of my recollection.

Interrogatory 10. What was the probable expense incurred by the claimant during that period?

Answer. His expenses must have been considerable, aside from those of fitting up his establishment or armory, as I have already stated under interrogatory 8. The delay in obtaining his pattern for the new model, occasioned much expense and loss of time, for he was obliged to make journeys to Springfield and other places, for the purpose of expediting the business in relation to patterns of different tools, fixtures, and machinery for the new musket. I left Mr. Nippes in 1842, while his tools and machinery were being put forward.

Interrogatory 12. From your experience and knowledge as an armorer, your knowledge of the claimant's manufactory and business, and the peculiar circumstances which surrounded him, superinduced by his engagement with the United States, and allowing him a reasonable profit, what would you consider a reasonable price per musket for 4,000 muskets of the new model kind, manufactured by him in the best style, and deliverable in not less than five years, at the rate of 800 muskets per year?

Answer. In my judgment \$18 per musket would be a reasonable price, under all the circumstances mentioned in this interrogatory.

Interrogatory 13. What capital was, or would be, necessary to carry on such an establishment as was the claimant's? What would be a reasonable amount per annum for insurance, and per centage for preserving the machinery from wear and decay?

Answer. I think the whole capital necessarily employed would not exceed \$2,000, and that 10 per cent. would be a reasonable allowance for insurance and for wear and decay of machinery, fixtures, and tools. I mean ten per cent. for preserving such from wear and decay, and for insurance.

Interrogatory 14. What would you consider the fair value per musket of 4,000 muskets (new model) manufactured and delivered in five years, at the rate of 800 muskets per annum, including in your estimate all the cost and expense of manufacturing the same for the first time?

Answer. Eighteen dollars per musket.

Interrogatory 15. With tools, machinery, hands, and other means capable of manufacturing 800 new "model muskets" per annum, how many more, per annum, could be manufactured?

Answer. With a small addition of capital and force, he might make 1,200, muskets, for he had the shop room, water power, permanent fixtures, and small tools sufficient.

Interrogatory 16. Was it possible for the claimant to manufacture "the new model musket" at a cost less than that which attended its

construction at the Springfield armory during the first five years of its manufacture?

Answer. It is my opinion that he could not.

Interrogatory 17. What would be a fair average profit per musket on 4,000 new model muskets, manufactured and delivered in 1841, 1842, 1843, 1844, and 1845, at the rate of 800 muskets per annum?

Answer. I think five dollars per musket would be such fair average profit; and after all the reflection and investigation I have been able to bring to it, I give that as my opinion and judgment, in reference to this interrogatory.

Interrogatory 18. Do you know any other matter relative to the claim in question?

Answer. I do not.

SAMUEL LEHMAN.

STATE OF MASSACHUSETTS, *County of Hampden, ss:*

On this sixth day of February, A. D. 1858, personally came Samuel Lehman, the witness within named, and after having been first sworn to tell the truth, the whole truth, and nothing but the truth, the questions contained in the within deposition were written down by the commissioner and then proposed by him to the witness; and the answers thereto were written down by the commissioner in the presence of the witness, who then subscribed the deposition in the presence of the commissioner. The deposition of Samuel Lehman, taken at the request of Daniel Nippes, to be used in the investigation of a claim against the United States, now pending in the Court of Claims, in the name of Daniel Nippes. The adverse party was notified did not attend, and did not object.

JAMES W. CROOKS,
Commissioner.

Fees of witness, \$5; travel, 2 miles; attendance, 4 days; commissioner's fees, \$10.

IN THE COURT OF CLAIMS.

DANIEL NIPPES *vs.* THE UNITED STATES.

Interrogatories on the part of the claimant to be propounded to Samuel Lehman:

Interrogatory 1st. What is your name, occupation, and age? What has been your place of residence for the past year?

Interrogatory 2d. Have you any interest, direct or indirect, in the claim which is the subject of the present inquiry?

Interrogatory 3d. Are you, in any degree, related to the claimant?

Interrogatory 4th. How long has the above been your occupation? and where have you been so occupied?

Interrogatory 5th. Were you ever employed by the claimant in the business of manufacturing firearms? If yea, say when and how long?

Interrogatory 6th. Were you engaged by him in making preparations for the manufacture of "the new-model musket?" If yea, what were those preparations?

Interrogatory 7th. At what time did the claimant receive from the United States a "new model musket" as a pattern by which to manufacture the same or similar article. How long a space of time, if any, elapsed between the period when his preparations for receiving it were fully made, and the period of its reception?

Interrogatory 8th. Were you fully employed during all that interval? How many armorers or mechanics were then employed by the claimant? What were their respective salaries? Did the claimant rent the establishment in which you worked? if yea, what was the rent per annum? State also any other expenses of said establishment which the claimant was bound to pay during the said interval, and the probable aggregate of all.

Interrogatory 9th. What space of time elapsed between the period of the reception of the "new model" pattern, and the period when the claimant was ready to go on and did go regularly with the manufacture of said arm?

Interrogatory 10th. What was the probable expense incurred by the claimant during that period?

Interrogatory 12th. From your experience and knowledge as an armorer, your knowledge of the claimant's manufactory and business, and the peculiar circumstances which surrounded him, superinduced by his engagement with the United States, and allowing him a reasonable profit, what would you consider a reasonable price per musket for 4,000 muskets of the new model kind, manufactured by him in the best style, and deliverable in not less than five years, at the rate of 800 muskets per year?

Interrogatory 13th. What capital was, or would be, necessary in order to carry on such an establishment as was the claimants? What would be a reasonable amount per annum for insurance, and per centage for preserving the machinery from wear and decay?

Interrogatory 14th. What would you consider the fair value per musket of 4,000 muskets (new model) manufactured and delivered in five years, at the rate of 800 muskets per annum, including in your estimate all the cost and expense of manufacturing the same for the first time?

Interrogatory 15th. With tools, machinery, hands, and other means, capable of manufacturing 800 new "model muskets" per annum, how many more per annum could be manufactured?

Interrogatory 16th. Was it possible for the claimant to manufacture "the new model musket" at a cost less than that which attended its construction at the Springfield armory during the first five years of its manufacture?

Interrogatory 17th. What would be a fair average *profit* per musket on 4,000 new model muskets manufactured and delivered in 1841, 1842, 1843, 1844, and 1845, at the rate of 800 muskets per annum?

Interrogatory 18th. Do you know any other matter relative to the claim in question?

JOHN S. TYSON,
Attorney and Counsel for the Claimant.

I have no questions to ask.

JNO. D. McPHERSON.

IN THE COURT OF CLAIMS.

DANIEL NIPPES *vs.* THE UNITED STATES.

Testimony of William C. Reddall, for the claimant, taken before Edmund F. Brown, Commissioner for the District of Columbia.

DISTRICT OF COLUMBIA, *County of Washington, ss:*

On the twenty-second day of December, A. D. eighteen hundred and fifty-eight, personally came William C. Reddall, esq., the witness within named, and after having been first sworn to tell the truth, the whole truth, and nothing but the truth, the questions contained in the within deposition were written down by the commissioner, and then proposed by him to the witness; and the answers thereto were written down by the commissioner in the presence of the witness, who then subscribed the deposition in the presence of the commissioner.

The adverse party was notified, did not attend, but sent his cross-interrogatories which are hereunto attached.

EDM. F. BROWN,
Commissioner of the Court of Claims.

Fees of witness—

Attendance, one day, at \$1 50 per day.....	\$1 50
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Commissioner's fees—

Taking testimony, 8 pages, 1,747 words, at 20 cents per 100..	\$3 49
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One oath.....	10
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The deposition of William C. Reddall, taken at the request of John S. Tyson, esq., counsel for the claimant, before Edmund F. Brown, commissioner for the District of Columbia, to be used in the investigation of a claim against the United States now pending in the Court of Claims, in the name of Daniel Nippes *vs.* United States.

First general interrogatory by the commissioner: Please to state your name, your occupation, your age, your place of residence the past year; whether you have any interest, direct or indirect, in the claim which is the subject of inquiry; and whether, and in what degree, you are related to the claimant?

Answer. My name is William C. Reddall. My occupation, clerk in the Department of State. My age is fifty years. My residence the past year, Washington city. I have no interest, direct or indirect, in

the claim which is the subject of inquiry, and am in no degree related to the claimant.

First interrogatory by the counsel for the claimant. Were you at any time, and during what time, a clerk in the ordnance office?

Answer. I was a clerk in the ordnance office from December, 1838, to January, 1846.

2d interrogatory. What were your peculiar duties? Was the drawing of contracts one of those duties?

Answer. My duties were, the examining of army returns, the registry of the daily mail, and the drawing of contracts.

3d interrogatory. Under whose direction were those contracts drawn?

Answer. I was directed to draw them by George Talcott, lieutenant colonel of ordnance, under the sanction of the Secretary of War.

4th interrogatory. Have you any recollection of having during the years 1840 and 1841 drawn any contract or contracts between the government and manufacturer of arms in relation to the manufacture of a new and peculiar form of musket, commonly known as the "new model musket?"

Answer. Yes; with Lemuel Pomeroy, of Pittsfield, Massachusetts, and Daniel Nippes.

5th. interrogatory. Were these several contracts like each other in substance and terms?

Answer. Yes, they were.

6th interrogatory. Have you any recollection of having prepared such a contract between Lemuel Pomeroy and the government? If yea, state when?

Answer. I drew such a contract, I think about the commencement of the year 1840.

7th interrogatory. Was, or was not, that contract used as a model for the formation of all other contracts with private manufacturers for the manufacture of the new model muskets.

Answer. Yes, it was.

Interrogatory 8. Have you any knowledge of Daniel Nippes, the claimant, as a manufacturer of muskets for the government? If yea, state such knowledge, particularly as to his being employed in the manufacture of the "new model musket," how many and upon what terms?

Answer. I was acquainted with Mr. Nippes some time before 1840, he having been engaged in the manufacture of the old model muskets. Some time in 1840, I think during the summer, Mr. Nippes came to the office and was promised by Lieut. Col. Talcott, then in charge of the Ordnance department, that he, Nippes, should have a contract for the manufacture of eight hundred of the "new model musket" per year for five years, and that he should proceed to the manufacture of them.

Interrogatory 9. Have you recollection of having been instructed by the Ordnance department to prepare the form of a contract between the government and Mr. Nippes for such manufacture; if yea, state as nearly as you can the terms and conditions of said proposed contract?

Answer. Such a contract was prepared by me under the instructions of Colonel Talcott, and the terms and conditions of it were precisely

similar to terms and conditions of the contract with Mr. Pomeroy, of Pittsfield, Massachusetts.

Interrogatory 10. Was it signed by the contracting parties? If not, explain the reason why?

Answer. It was not. The reason why it was not signed was, there was some conversation as to extending the number of muskets that Mr. Nippes was to make over the eight hundred per annum which was promised by the department, which addition he was led to believe would be upon the same terms and conditions. My impression is, that he was to have one thousand per annum instead of eight hundred, and that was the reason the contract was not then signed.

Interrogatory 11. Have you read the fourth article of the first contract with Pomeroy, as set forth in the petition of the claimant? If yea, please state whether the article was in substance a part of the contract which you were as above directed to draw between the claimant and the government?

Answer. I have read said fourth article of said contract with Pomeroy, as set forth in the petition of the claimant, and find that it is the same in substance as the one which I was directed, as above to draw between the claimant and the government.

Interrogatory 12. Was it understood by the Ordnance department, after the manufacture of the "new model musket" was determined upon, at least up to the time when said form of a contract between the claimant and the government was made out by you, that the terms contained in said fourth article of Pomeroy's contract were to be the terms of every undertaking for the manufacture of the "new model musket?"

Answer. It was so understood.

Interrogatory 13. Was it understood at all times that such were the terms upon which the claimant originally undertook the said manufacture?

Answer. It was.

Cross-interrogatories by the deputy Solicitor.

Cross-interrogatory 1. If your answer to the last clause of the 14th interrogatory is in the affirmative, state what other contracts were drawn and executed, embracing the terms of the fourth article of Pomeroy's first contract?

[*Note by the commissioner.* This refers to the 12th interrogatory above.—E. F. B.]

Answer. None were executed excepting Pomeroy's.

Cross-interrogatory 2. When did you draw the contract referred to in the 12th and 13th interrogatories? [8th and 9th here.—E. F. B., com'r.]

Answer. In the summer of 1840, as stated in my answer to the 8th interrogatory, the contract was promised, but was not drawn until the fall of 1841.

Cross-interrogatory 3. Was Mr. Nippes willing at the time to execute the contract as drawn by you? Did he not voluntarily defer signing it in the hope that the number of muskets would be increased?

Answer. He was willing to sign it, and deferred it at the request of the Ordnance department, in the expectation of an increase of two hundred additional muskets per annum, as suggested by Col. Talcott.

Cross-interrogatory 4. If you answer the last clause of the 14th interrogatory (11th in this) in the affirmative, state how settlements were made with the contractors therein referred to? State whether the cost of the musket at Springfield was ascertained, and whether the cost so ascertained was ever paid to any contractor?

Answer. I am not able, from my own knowledge, to answer any part of this interrogatory.

Cross-interrogatory 5. Have you knowledge of any case other than those of Pomeroy and Nippes in which a manufacturer of small arms entered into a contract for the manufacture of muskets of the "new model," in which the price to be paid was what the muskets would cost at Springfield armory, and in which that price was paid? If so, please give the name of the manufacturer; if you cannot name him, please endeavor to designate him, that the settlement with him can be found and referred to?

Answer. I have no knowledge of any persons, excepting Pomeroy and Nippes, having contracts for the manufacture of the "new model musket."

2d general interrogatory by the commissioner. Do you know of any other matter relative to the claim in question? If you do, state it.

Answer. I do not.

W. C. REDDAL.

Sworn to and subscribed before me, this 22d day of December, 1858.

EDM. F. BROWN,

Commissioner of Court of Claims.

IN THE COURT OF CLAIMS.

DANIEL NIPPES *vs.* THE UNITED STATES.

Interrogatories to be propounded to William C. Reddall.

Interrogatory 1. What is your name, occupation, age, place of residence for the past year?

Interrogatory 2. Have you any interest, direct or indirect, in the claim which is the subject of inquiry?

Interrogatory 3. Are you in any degree related to the claimant?

Interrogatory 4. Were you at any time, and during what time, clerk in the Ordnance department?

Interrogatory 5. What were your peculiar duties? Was the drawing of contracts one of those duties?

Interrogatory 6. Under whose direction were those contracts drawn?

Interrogatory 7. Have you any recollection of having, during the years 1840 and 1841, drawn any contracts between the government and manufacturers of arms in relation to the manufacture of a new and peculiar form of musket, commonly known as the "new model musket."

Interrogatory 8. Were these several contracts like each other in their substance and terms?

Interrogatory 9. Have you any recollection of having prepared such a contract between Lemuel Pomeroy and the government? If yea, state when.

Interrogatory 10. Was or was now that contract used as a model for the formation of all other contracts with private manufacturers for the manufacture of the "new model musket?"

Interrogatory 11. Have you any knowledge of Daniel Nippes, the claimant, as a manufacturer of muskets for the government? If yea, state such knowledge, particularly as to his being employed to manufacture "the new model musket," how many and upon what terms.

Interrogatory 12. Have you recollection of having been instructed by the Ordnance department to prepare the form of a contract between the government and Mr. Nippes for such manufacture? If yea, state, as nearly as you can, the terms and conditions of said proposed contract.

Interrogatory 13. Was it signed by the contracting parties? If not, explain the reason why.

Interrogatory 14. Have you read the fourth article of the first contract with Pomeroy as set forth in the petition of the claimant? If yea, please state whether that article was, in substance, a part of the contract which you were, as above, directed to draw between the claimant and the government? Were these the terms of all the other contracts for the same object?

Interrogatory 15. Was it understood by the Ordnance department, after the manufacture of the model musket was determined on, at least up to the time when said form of contract between the claimant and the government was made out by you, that the terms contained in said fourth article of Pomeroy's agreement were to be the terms of every undertaking for the manufacture of "the new model musket?"

Interrogatory 16. Was it understood at all times that such were the terms upon which the claimant originally undertook the said manufacture? Do you know any other matter or thing in relation to this claim?

Cross-interrogatories.

1. If your answer to the last clause of the 14th interrogatory is in the affirmative, state what other contracts were drawn and executed embracing the terms of the 4th article of Pomeroy's first contract.

2. When did you draw the contract referred to in the 12th and 13th interrogatories?

3. Was Mr. Nippes willing at the time to execute the contract as drawn by you? Did he not voluntarily defer signing it in the hope that the number of muskets would be increased?

4. If you answer the last clause of the 14th interrogatory in the affirmative, state how settlements were made with the contractors therein referred to. State whether the cost of the musket at Springfield armory was ascertained, and whether the cost so ascertained was ever paid to any contractor.

5. Have you knowledge of any one case, other than those of Pome-roy and Nippes, in which a manufacturer of small arms entered into a contract for the manufacture of muskets of the new model in which the price to be paid was that the musket would cost at Springfield armory, and in which that price was paid? If so, please give the name of the manufacturer? If you cannot name him, please endeavor so to designate him that the settlement with him can be found and referred to.

JOHN D. McPHERSON,
Deputy Solicitor.

IN THE COURT OF CLAIMS.

DANIEL NIPPES vs. THE UNITED STATES.

Testimony of Rev. John Robb, for the claimant, taken before Edmund F. Brown, commissioner for the District of Columbia.

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

On the twenty-second day of December, A. D. eighteen hundred and fifty-eight, personally came Rev. John Robb, the witness within named, and after having been first sworn to tell the truth, the whole truth, and nothing but the truth, the questions contained in the within deposition were written down by the commissioner, and then proposed by him to the witness; and the answers thereto were written down by the commissioner in the presence of the witness, who then subscribed the deposition in the presence of the commissioner.

The adverse party was notified, did not attend, but sent his waiver, which is hereunto attached.

EDM. F. BROWN,
Commissioner of the Court of Claims.

Fees of witness—

Attendance one day, at \$1 50 per day.....	\$1 50
--	--------

Commissioner's fees—

Taking testimony, 5 pages, 1,279 words, at 20 cents per 100...	\$2 55
1 oath.....	10

2 65

The deposition of John Bobb, taken at the request of John S. Tyson, counsel for the claimant, before Edmund F. Brown, commissioner for the District of Columbia, to be used in the investigation of a claim against the United States, now pending in the Court of Claims, in the name of Daniel Nippes vs. United States.

1st general interrogatory by the commissioner. Please to state your name, your occupation, your age, your place of residence the past year; whether you have any interest, direct or indirect, in the claim

which is the subject of inquiry ; and whether and in what degree you are related to the claimant ?

Answer. My name is John Robb ; my occupation, chief clerk in the Pension Office ; my age is over sixty years ; my residence the past year, Washington city. I have no interest, direct or indirect, in the claim which is the subject of inquiry ; and am in no degree related to the claimant.

1st interrogatory by the counsel for the claimant. Had you at any time the principal charge of the armory at Springfield, Massachusetts ? If yea, say what and when.

Answer. I was the superintendent of the Springfield armory from the first day of November, 1833, to about the middle of April, 1841.

Interrogatory 2. Was Elizur Bates under your employ in said armory ? If yea, say in what situation ; what was his skill and capacity ; and what was his general character for truth, faithfulness, and integrity ?

Answer. He was master armorer under my superintendence from January, 1834, until the spring or summer of 1837, when he voluntarily resigned that position. He was subsequently, however, employed in the armory in a different capacity. I considered him an excellent workman, and a first-rate master armorer as to skill and ability ; and such was my opinion of his truth, faithfulness, and integrity, that he would compare favorably with any other man within my knowledge. He was a man of strict integrity and a high sense of honor.

Interrogatory 3. What was your salary ?

Answer. During the latter years of my superintendency, my salary was fifteen hundred dollars per annum and four rations per day commuted, making seventeen hundred and ninety-two dollars per annum.

Interrogatory 4. Was the manufacture of the arm called the " new model musket " commenced while you were so as aforesaid employed in said armory ?

Answer. It was.

5th interrogatory. What was the cost per musket of manufacturing the old musket ; that is, the one in use immediately preceding the adoption of the " new model ? "

Answer. While I was there the cost of the old model musket varied from twelve dollars and thirty cents down to ten dollars and about eighty cents each ; this cost did not include the interest upon the capital invested in ground, buildings, tools, machinery, and wear and tear.

6th interrogatory. What was the cost per musket of manufacturing the " new model musket ? "

Answer. I cannot state precisely the cost of the " new model musket " while I was there, as it is impossible to tell, for the reason that the work was all paid for by the day and not by the piece ; in 1840 there were less than six thousand muskets finished, about seven hundred of which were the " new model muskets " and the remainder the old model ; the average cost of each musket was, I think, in my report to the Ordnance department, stated to be sixteen dollars and eighty cents each.

7th interrogatory. What caused the difference in expense in the manufacture of the two kinds of muskets?

Answer. The different parts of the musket being entirely different, the machinery and tools required to be altered, and many new ones to be made, which involved considerable expense, as the work had to be done by the day until the establishment of a tariff of prices for piece work upon the muskets. This refers to the "new model."

8th interrogatory. Have you any knowledge of the claimant as a manufacturer of muskets for the United States, either of the old or the "new model?"

Answer. I have not.

9th interrogatory. What do you think would be a reasonable profit, per musket, for the manufacture of the "new model musket?"

Answer. If I had the necessary buildings, machinery, and tools, I would not be willing to manufacture eight hundred per year for less than three dollars profit on each.

Second general interrogatory by the Commissioner.

Do you know of any other matter relative to the claim in question? If you do, state it.

Answer. I do not.

JOHN ROBB.

IN THE COURT OF CLAIMS.

DANIEL NIPPES *vs.* THE UNITED STATES.

Interrogatories to be propounded to John Robb.

Interrogatory 1. What is your occupation, age, and place of residence for the last year?

2. Have you any interest, direct or indirect, in the claim which is the subject of inquiry?

3. Have you any interest, direct or indirect, in the claim which is the subject of inquiry?

4. Are you related, in any degree, to the claimant?

5. Had you at any time the principal charge of the armory at Springfield? If yea, say what and when.

6. Was Elizur Bates under your employ in said armory? If yea, say in what situation. What was his skill and capacity, and what was his general character for truth, faithfulness, and integrity?

7. What was your salary?

8. Was the manufacture of the arm called the "new model musket" commenced while you were so as aforesaid employed in said armory?

9. What was the cost, per musket, of manufacturing the old musket; that is, the one in use immediately preceding the adoption of the new model?

10. What was the cost of manufacturing the new model musket?

11. What caused the difference in expense, having reference to new buildings, new tools, new stocks, and other constituents?

12. Have you any knowledge of the claimant as a manufacturer of muskets for the United States, either of the old or the new model?

13. Do you think that the expense of preparing for the manufacture of the "new model musket," and its actual manufacture, would have been materially different in a private manufactory from what it was in a public one? If yea, state such difference.

14. What do you think would be a reasonable profit per musket for the manufacture of the "new model musket," stating it, if you choose, by minimum and maximum?

15. Do you know any other matter relative to the claim in question?

JOHN S. TYSON,
Solicitor for Claimant.

I have no questions to ask this witness.

JOHN D. McPHERSON,
Deputy Solicitor for United States.

Sworn to and subscribed before me this 22d of December, 1858.
[L. S.]

EDMUND F. BROWN,
Commissioner of the Court of Claims.

Affidavit of A. S. Nippes.

MONTGOMERY COUNTY, *State of Pennsylvania*, ss :

Before me, the subscriber, a justice of the peace in and for the county and State aforesaid, appeared Daniel Nippes, of Lower Merion township, in said county and State, who being duly sworn according to law, saith on his oath, that about 1837 he became a contractor with the general government for the manufacture and supply of muskets, and the contract then made was performed and settled; that thenceforward he also supplied muskets to the government, up to about the year 1840; that at the period last mentioned, the government adopted a new model or pattern, and he, the said Daniel Nippes, undertook at the instance of said government about that time to manufacture and supply four thousand stands or muskets, and accordingly did supply them; and that he was to have therefor what the manufacture, &c., of such arms cost at the national armories at that time, which cost per musket was seventeen dollars, as he is informed and believes. He further states, however, that he never received more than \$14 50 per musket from the government for the whole four thousand that he made and delivered as aforesaid; he further says that the actual cost to him of each of the four thousand muskets, was not less than the sum of seventeen dollars per piece as he verily believes; and that he could not manufacture them for a less sum on the most economical plan and by greatest attention, and that if he is now allowed seventeen dollars, he will still be without any profit.

DANIEL NIPPES.

Sworn and subscribed before me, this 14th of January, 1857.

THOS. W. POTTS, *J. P.*

Before me, the aforesaid justice of the peace, also appeared Albert S. Nippes, who being duly sworn, saith on his oath, that he is the son of the above Daniel Nippes, and was connected with his busness and factory as superintendent for him during the time the four thousand muskets mentioned in his affidavit above written, were made, and that he verily believes that the actual cost of making was not less than seventeen dollars per musket.

ALBERT S. NIPPES.

Sworn and subscribed before me, the 14th January, A. D. 1857.

THOS. W. POTTS, *J. P.*

STATE OF PENNSYLVANIA, *Montgomery county, ss:*

I, Bonyer Brooke, prothonotary of the court of common pleas of said county of Montgomery in the State aforesaid, do hereby certify that Thomas W. Potts, esquire, whose genuine signature, in his own proper handwriting, is affixed and subscribed to the foregoing and annexed certificates and affidavits, was at the times of signing the same and now is a justice of the peace in and for said county of Montgomery in the State aforesaid, duly elected, commissioned, and qualified, and legally authorized by law to administer oaths and affirmations; and that full faith and credit are due to all his official acts as such, and that said court is a court of record.

[L. s.] Witness my hand and the seal of said court, at Norristown,
January 14, A. D. 1857.

BONYER BROOKE,
Prothonotary.

Per JARED EVANS,
Deputy Prothonotary.

STATE OF PENNSYLVANIA, *Montgomery county, sc:*

Be it remembered, that on this twenty-sixth day of December, A. D. 1857, before the subscriber, justice of the peace of the county and State aforesaid, before whom the above depositions of Daniel Nippes and Albert S. Nippes were taken, personally appears Daniel S. Nippes and makes oath that since the said 14th day of January, 1857, when the said depositions were taken, to wit, on or about the 14th day of January, A. D. 1857, the said Albert S. Nippes departed this life, and is deceased.

DANIEL S. NIPPES.

Sworn and subscribed before me.

THOS. W. POTTS, *J. P.*

STATE OF PENNSYLVANIA, *Montgomery county, ss:*

I, Florence Sullivan, prothonotary of the court of common pleas of said county of Montgomery in the State of Pennsylvania aforesaid, do hereby certify that Thomas W. Potts, esq., whose genuine signature, in his own proper handwriting, is affixed and subscribed to the within and foregoing certificate, was at the time of signing the same and now is a justice of the peace, duly elected, commissioned, and qualified,

and legally authorized by the laws of said State to administer oaths and affirmations for general purposes ; and th full faith and credit are due to all his official acts as such.

[L. s.] Witness my hand and seal of said court, at Norristown,
December 26, A. D. 1857.

F. SULLIVAN,
Prothonoty.

Account of Daniel Nippes.

MILL CREEK, January 14, 1857.

The United States government to Daniel Nippes, Dr.

Machinery, tools, &c.....	\$3 00	per musket.
Water power (for five years).....	1 25	
Interest on machinery, &c., superintend- ing the manufactory five years, keep- ing the machinery and tools in order, oil, leather, iron, emery, grindstones, hauling, charcoal, and stone coal.....	2 50	
Barrel and breech.....	3 95	
Bayonet	1 09	
Stock.....	1 56	
Lock.....	1 63	
Mounting	1 46	
All the forging but barrel.....	3 00	
<hr/>		
Manufacturing 4,000 stand, at.....	19 44	per musket, \$77,760
Received cash on the above 4,000 muskets.....	58,000	
<hr/>		
Balance.....	19,760	
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IN THE COURT OF CLAIMS.

DANIEL NIPPES vs. THE UNITED STATES.

Evidence for the United States.

Proceedings of the Department of War upon the claim of Daniel Nippes, printed in Senate Doc. 65, 33d Cong., 1st sess., pp. 36 to 52.

JNO. D. McPHERSON,
Deputy Solicitor.

J. H. Eaton to the Secretary of War.

NOVEMBER 3, 1853.

DEAR SIR: I solicit your attention to the case of D. Nippes, under a contract made with the government for arms. My brief, and the papers enclosed with it and referred to, will present to you the whole

case, and there are but few of them. An examination of them will take up but little of your time.

The larger bundle, containing letters and information from the Ordnance bureau, is sent only as a reference, if deemed necessary. The whole gist of the matter, though, is as to the nature and character of the contract, which I have endeavored in my remarks briefly to explain.

With great respect,

JOHN H. EATON,
Attorney for Nippes.

Colonel J. DAVIS,
War Department.

Case of D. Nippes.

In October, 1841, D. Nippes, of Pennsylvania, entered into a contract with the United States to manufacture eight hundred model muskets in five years—equal in all to four thousand stand—at the price of their cost at Springfield armory.

Nippes, a former contractor for making the old muskets, was informed by the department, *in March*, 1839, that no more engagements would be made for the old muskets, and Nippes was invited to enter on the new model, saying: "The price will be regulated by the results at the armories, and will probably not be less than \$15."—(See paper marked No. 1.)

The test, though, being fairly made at the armory, Mr. Bates superintendent, reported the cost of the arm at \$16 85.6; but adding in other items of cost, the whole amount would be \$17 50.—(See paper A.)

In February, 1840, another manufacturer of arms, who doubtless also was invited to contract, (Lemuel Pomeroy,) entered into a contract for six thousand arms. The altering of machinery, obtaining tools, and necessary preparation, involved heavy outlays of money. Aware of this, the government contracted to allow him \$12 50 each stand; meanwhile, within two years from its date, a test should be made at the Springfield armory: "And when the actual cost of manufacturing the musket shall be satisfactorily ascertained, the said Pomeroy shall be entitled to receive from the United States, for each of said six thousand muskets, the sum which the actual cost of manufacturing a musket shall amount to in the Springfield armory, to be ascertained within two years from the date hereof."—(See paper C.)

On the 17th of March, 1842, another contract was made (see C) between the same parties. The two years, as before agreed on, had passed, and the cost was still unascertained; at which time Pomeroy had made and delivered one-third of his engaged number, two thousand stand. It was then agreed in this second contract that for these two thousand, the price should be at \$16; and that an additional number of one thousand stand should be assigned to him. And for this extended enlargement it was bargained that the residue of muskets should be at \$14 50.

Intermediately between Pomeroy's first and second contract, the Ordnance department contracted with Nippes, viz: *October, 1841*. The cost of the arm, as experimented on at Springfield, was yet unascertained. Nippes, a skilful operator—for the ordnance admits the superior excellence of his muskets—conceived the idea that he could work as well and cheaply as any other manufacturer; and agreed to be controlled by Pomeroy's contract—to receive what should be the cost at Springfield armory. It was not until a lapse of six years after making this contract, and when his deliveries under it were fully made, of four thousand muskets, that the cost of making them at Springfield was ascertained, viz: *September, 1847*.—(See Bates's, Superintendent, letter A.)

It was competent for the War Department and Pomeroy to change their first contract, but that change can in nowise affect Nippes, who, was no party to it—it could not affect him.

By the letter and spirit of his contract, Nippes was to be paid the amount of price engaged to Pomeroy, by and under his covenant of February, 1840. His second altered contract of the 17th of March, 1842, could not affect Nippes's contract of October, 1841, made five months previously.

That this contract was made is fully shown by the deposition of Nippes, and the statement of Riddle, then a clerk in the Ordnance Department, and now in the State Department. He says: "Nippes was to receive the same *rate* per musket as was paid to Pomeroy, under contract entered into with the Ordnance department by him." Again he says: "I labor under the strong conviction that a contract was drawn by myself, and prepared for signature; but its execution was postponed, as some conversation was had by Mr. Nippes and the then chief of the Ordnance department on the subject of an increased number to be manufactured by Mr. Nippes, over the eight hundred per annum. (See paper marked C 2.)

But had there been a mere assignment of eight hundred guns for five years, and no contract, justice and right would demand that the cost of making, ascertained at their own armory, should be paid by the United States. But it is clearly shown there was a contract, and its terms; and there is further evidence, viz., a letter from Colonel Talcott, of the Ordnance bureau, to a member of Congress from Pennsylvania, dated December 11, 1840, which says:

"Mr. Nippes may safely rely on the letters from the office; and if he complies with what pertains to his share of the business, he may depend on *having a contract*." (See C 3.)

Against this budget of testimony, how can it be said there was no contract? And yet Secretary Marcy, then of the War Department, in February, 1847, does say:

"That the price of the muskets was fixed by contract—not left conditional, as in the agreement with Mr. Pomeroy, to which he refers as a precedent in his favor, and full payment has been made to him, according to the terms of that contract." (See paper E.)

The error of action in this business has arisen from the fallacious impression that Nippes was to receive *only* what Pomeroy was paid. That is excessively erroneous; there was no such contract. The facts

and circumstances all point to the conclusion that he was to be paid the *actual ascertained cost* at Springfield. Mr. Marcy had not before him the *now newly presented* proof of Nippes and Riddle, who confirm his deposition, or he would clearly have perceived the error of his opinion and declined it. All the facts are in opposition to the conclusion he arrived at, and had they been before him at the time, his opinion must have been different.

Respectfully presented.

JOHN H. EATON,
Attorney for D. Nippes.

Col. J. DAVIS, *Secretary of War.*

NOVEMBER 3, 1853.

4,000 muskets, at \$17 50..	\$70,000
Paid \$14 50.....	58,000
	<hr/>
	12,000
Interest from October, 1846, when the whole was delivered.	5,040
	<hr/>
Balance due.....	17,040
	<hr/> <hr/>

Secretary of War to J. H. Eaton.

WAR DEPARTMENT,
Washington, November 14, 1853.

SIR: I have received and considered the claim of Mr. D. Nippes, presented by you, for an increased price for muskets made by him, under an order of the Ordnance department, during the years 1841, and 1845.

In reply, I transmit you a report made by the colonel of ordnance, and have to inform you that, as the claim has been once decided by a predecessor, (in 1847,) when all the material facts now presented to me were before him, I can perceive no reason for departing from the rule of the department with regard to re-opening cases once decided, and therefore decline to reconsider it.

Very respectfully, your obedient servant,

JEFFERSON DAVIS,
Secretary of War.

Hon. JOHN H. EATON, *Washington.*

Report from the Colonel of Ordnance.

ORDNANCE OFFICE,
Washington, November 9, 1853.

SIR: I have the honor to report on the case of *Daniel Nippes*, laid before you by his attorney, J. H. Eaton, and referred to this office with the several papers accompanying the claim.

There is no written contract, or order, to be found on the records of

this office, or among the papers presented in support of the claim, which specifies the price, per musket, that Nippes was to receive for making the 4,000 new model muskets. In 1839 it was determined to change the model of the musket as then made; and on the 9th of March, of that year, Mr. Nippes was informed by a letter from Colonel Bomford, chief of the Ordnance department, that 1,760 muskets of the old model were all that would be received from him; also, that he might examine the new model musket at Springfield armory, and determine whether he would go into the manufacture of muskets of that model. He was then told that the price of the new model musket would be regulated by the results of the national armories, and would probably not be less than \$15 for the *first* year. No answer appears to have been received to that letter; and no agreement, or bargain of any kind, between the Ordnance department and Mr. Nippes, based thereon, appears to have been made. The only authority which I can find for Mr. Nippes to make the the 4,000 new model muskets for the Ordnance department, is a letter from Colonel Talcott, chief of the Ordnance department to the Hon. Mr. Farnace, M. C., dated October 8, 1840, informing him that it had been the intention of the department to give Mr. Nippes a contract for 800 muskets a year, for five years, but that it had been delayed for fear of rejection of his work; but that if Mr. Farnace felt assured of Nippes's skill and ability, he might begin the manufacture at once. Not a word is said in this letter about the price to be paid to Nippes. In the account kept with Mr. Nippes on the books of this office, the letter to Mr. Farnace of October 8, 1840, is stated to be the authority under which the 4,000 muskets were to be delivered; and the payment for the first two deliveries of 500 muskets, as actually made to Nippes, was \$12 50 per musket, with the usual allowance of 25 cents for the appendages. After the delivery of these 500 muskets, viz.: in July, 1842, Mr. Nippes preferred a claim for a higher price per musket than had been paid him. This claim was then examined, and an additional allowance of \$2 per musket was recommended to be granted to him, and, on the approval of the Secretary of War, was paid. The reason for this additional allowance on the 500 muskets then delivered, and also that it was to regulate the price of the remaining 3,500 to be delivered, will be found in the enclosed account of D. Nippes, dated July 16, 1842, the original of which is on file in the Second Auditor's office. In this arrangement Mr. Nippes appears to have acquiesced, by going on to deliver the residue of the 4,000 muskets, at the increased price recommended and allowed in the account of July, 1842, and by subsequently applying for and receiving an extension of his order to the amount of 1,600 muskets more at the same price, viz. \$14 50 per musket. He appears to have been satisfied with this price, and not to have discovered that he had been paid too little until 1847, when he put in a claim to be allowed the same price that was paid to Lemuel Pomeroy. That claim was referred by Hon. Wm. L. Marcy, Secretary of War, to Colonel Talcott, who had made all the arrangements with Mr. Nippes respecting the manufacture of and payment for the muskets. On his report, a copy of which is enclosed, dated February 13, 1847, the Secretary of War, Mr. Marcy, decided adversely to the claim.

From a full consideration of the claim as now presented, and an examination of all the evidence I can find on the subject, there appears to have been no *formal contract* with Nippes, nor any agreement as to price, (unless it may have been a verbal one, as stated by Colonel Talcott in his report of February 13, 1847, for \$12 50 per musket,) except that to be found in the account of July 16, 1842, viz.: \$14 50 per musket. Mr. Nippes has been paid at this rate for all the muskets he has delivered. I have no doubt that this price was a fair, indeed a liberal, allowance for the work; and, in my opinion, the claim now set up is neither legally tenable nor supported by equitable considerations.

Mr. Eaton's letter and the accompanying papers are returned herewith.

I am, sir, very respectfully, your obedient servant,
H. K. CRAIG, *Colonel of Ordnance.*

Hon. JEFFERSON DAVIS,
Secretary of War.

J. H. Eaton to the Secretary of War.

WASHINGTON, November 16, 1852, ['53.]

SIR: I am aware that your time is of too much importance to the public to be wasted with me in discussing a private right. I will forbear, therefore, to request of you any written response to this, but merely that you will give your consideration to what is here suggested.

1st. The Ordnance office says "there is no contract or order to be found on the records of this office in support of the claim." This is true! and why no contract does appear is fully explained in my first communication. But that fails to molest or change the right. *A verbal* is as valid as a written agreement, if proved. This is done by Mr. Reddall, then a clerk in the Ordnance office, and who was charged to draw up a contract, and which he did. Why it was not taken from the office at the time is fully explained by *his* and Nippes's statement; it was under an expectation that a larger quantity of guns than 4,000 would be assigned by the then Secretary of War.

Then there was a contract, as these statements show, for making this new experimental model gun; and he was to be paid the price contracted for by Pomeroy, with whom a previous contract had been made. That you have amongst the papers. It shows that Pomeroy was to be paid, as he progressed, \$12 50 each, and ultimately the price it would cost to make them at Springfield armory; and this was to be ascertained and fixed within two years.

Previous to the end of the two years, (July, 1842,) one thousand additional arms were assigned to Pomeroy, when the first contract made by him was changed; and it was agreed, that for those he had delivered he should be paid \$16, and for the residue thereafter \$14 50. At a subsequent period the cost at Springfield was found to be \$16 85¹⁰/₁₀₀. (See Bates's, superintendent, statement.)

Now, if this change had not been made in the contract, Pomeroy would, in virtue of his first, have been entitled to the Springfield cost—\$16 85 $\frac{6}{10}$. But Nippes's contract referred to Pomeroy's as fixing the price that he should be paid, and could not be affected by anything that was subsequently done by Pomeroy. He could only change his own, not another's bargain. The paper you enclose me from the Ordnance office says: Nippes was paid \$12 50 for the first delivery. In *July*, 1842, Nippes preferred a claim for a higher price. This claim was then examined, and an additional allowance of two dollars made. You will perceive that this was the same month (*July*, 1843) that Pomeroy made his second contract, and who, having bargained at \$14 50, it occurred to the colonel of ordnance that Nippes was entitled only to the same, overlooking the fact that his engaged compensation was to be what would be the *cost of their manufacture at Springfield*. It was upon this agreement he worked, and which he has never agreed to change. On a question so plain, I cannot perceive how a legal mind can doubt. I may alter my contract, but a stranger party cannot alter it for me.

On this statement of facts, you remark in your letter "that as the claim has been once decided by a predecessor, (in 1847,) when all the material facts were presented, I can perceive no reason for departing from the rule of the department as to reopening cases." Pardon me for ignorance of your department rules; but certainly they cannot be adverse to the rules as laid down by the Supreme Court; for, if so, then are they repugnant to the supreme law of the land. 15 Peters, p. 401, says: "A reopening may take place on discovery of new testimony or mistake in calculation." Now, in 1847, when this case came before Secretary Marcy, Riddle and Nippes's statements (both veritable men) were not before him. They prove a contract made. Hence there is a new and material evidence, which was not before him. But I repudiate this modern notion of *res adjudicata*. Wherever and whenever it is shown that by decision of a ministerial officer injustice has been done, a revision should take place. The courts constantly grant bills of review to correct errors; government should not be less equitable and just. Its faith should be maintained at any sacrifice, or the ties of its citizens will be loosened. Party discords are of little importance while the confidence of the people is reposed in the justice and integrity of the government. Be that removed, and there will be little left to quarrel about. Affection removed, leaves no rallying point behind.

Very respectfully,

JNO. H. EATON, *Attorney*.

The SECRETARY OF WAR.

Nippes's brief.

He was to be paid what Pomeroy contracted for, viz., \$12 50 on delivery, and the further sum of what the musket would cost at the Springfield armory, which was \$16 85 $\frac{6}{10}$.—(See Bates's statement.)

Pomeroy changed his contract afterwards, on receiving a thousand additional arms to make, the price of which was agreed at \$16 for those then delivered, and \$14 50 for future ones.

Nippes made a contract in 1847 for four thousand arms, to be delivered in five years, eight hundred annually. That he made such contract is proved by his own and the statement of Mr. Riddle, who at the time was clerk in the Ordnance office, and was directed to write out the contract, and it was so written out.—(See their statements.)

Colonel Craig says, in his report, no contract is to be found in this office. There is proof that one was drawn up, and was not taken out, from an anticipation that the Secretary of War might enlarge the quantity of arms.

He says Nippes was paid \$12 50, and afterwards the further sum (in 1847) of \$2 addition, and that he acquiesced in the settlement. Of this acquiescence there is no proof offered. He received the two additional dollars, being \$14 50; and to that extent only is it an acquiescence.

Be it that he did receive this amount—and it is so admitted—that does not vary his contract to be paid the cost at Springfield. Such was his contract, and a payment of a less sum does not vary it. Pomeroy was to be so paid, and Nippes was to be paid the price agreed to be paid to Pomeroy. A change by him has no bearing on Nippes!

Pomeroy changed his contract on a consideration, viz., one thousand additional arms—\$16 for those delivered, and \$14 50 for and on account of any future delivery.

How can this after engagement affect Nippes, who was no party to this subsequent contract? This is the *whole* and the *only* point in the case. The response is plain; he is, under his contract, entitled to receive the shown cost of the musket at the armory, viz, \$16 85 $\frac{6}{10}$, less the amount already paid to him of \$14 50. Balance, \$2 35 $\frac{6}{10}$, on 4,000 muskets, equal to \$9,424.

JOHN H. EATON, *Attorney.*

Pomeroy's contract is the 17th February, 1840. He was to be paid what would be its cost at Springfield, which was \$17 50.

Two years was the time within which the cost was to be ascertained, viz., by February, 1842.

In March, 1842, the two years being expired, and the cost not yet ascertained, Pomeroy made a second contract, and obtained an additional one thousand guns to make. (See his two contracts, B and Z.) In that it was agreed to pay him for 2,100 guns \$16, and for the residue (balance of 7,000) at \$14 50, and a second agreement to that effect was entered into. (B.)

Between the dates of these two contracts of Pomeroy, D. Nippes was engaged also to make arms, (December, 1840,) eight hundred for five years, in all four thousand, who was to be paid the same that was engaged to Pomeroy—the cost at *Springfield*. Now, the change made by Pomeroy in his second contract of March, 1842, certainly cannot affect Nippes's contract of December, 1840. The letters of Colonel

Talcott of October 8, and December 11, 1840, (marked Nos. 8, 9,) show a contract with Nippes to be intended and desired.

Mr. Riddle, (deposition on file, marked C 231,) who was a clerk in the Ordnance office, drew up a contract under direction of its head. Nippes did not take it away, but proceeded to make, and did fill out, his four thousand muskets engaged for, which the government received and were entirely satisfied with. The only question is to the price he has been paid—\$14 50. He claims an additional *three* dollars, the cost of the arm at Springfield being \$17 50.

J. H. EATON,
Counsel for D. Nippes.

The whole delay being occasioned by the government, interest ought to be allowed. E.

Daniel Nippes, in 184 , contracted with the War Department for the manufacture of muskets according to the terms of a former contract with Mr. Pomeroy, in February, 1840, which contract stipulated the price at \$12 50 each, or making allowance for cost of machinery, &c., and interest for capital invested, at the *cost of the musket* at the United States armory at Springfield.

Pomeroy and Nippes both received less than what was subsequently ascertained to be the cost at the United States armory, viz : \$17 50. Nippes received but \$14 50 each, 4,000 muskets, but still considers himself entitled, under the terms of his contract, to the difference, three dollars.

Four thousand muskets at \$3, making \$12,000, for which he claims payment.

Decision of the Secretary of War on the claim of Daniel Nippes.

The principal facts necessary to an understanding of this case, are as follows :

On the 9th of March, 1839, the colonel of ordnance, in giving Mr. Nippes an order for 1,000 muskets of the old model, informed him that no more of that description of arms would be needed, but that if he chose to undertake the manufacture of new-model muskets, he could have a pattern, &c., and the price, which would be regulated by the cost of the same arms at Springfield, would probably be not less than \$15, for the first year.

Much correspondence took place the following year in regard to furnishing the pattern and giving an order for the arms. Mr. Nippes appearing to think that the former was unreasonably delayed, and that the colonel of ordnance, who had intimated doubts of his willingness or ability to get up the necessary machinery, did not intend to give him an order. However, on the 8th October, 1840, the colonel wrote to Hon. J. F. Farnace, who was acting for Nippes, that it had been his intention to give Mr. Nippes a contract for 800 muskets a year for five

years, and that if Mr. Fornace felt assured of Nippes's skill and ability to execute the work, the latter might begin at once, but that an inspection would be made as soon as he had 200, or less number, at his option, ready for examination, with a view to ascertain whether he would be able fulfil a contract.

In January, 1842, Mr. Nippes delivered 200, and in June, 300 muskets, which were pronounced perfectly satisfactory, and he was paid \$12 50 for each. He then came to this city, and when here, on the 14th July, 1842, wrote to the department, saying that it was important for him to have a certain contract both as to number and price, and asking an order to make 1,800 muskets a year for five years, from January 1, 1843, at \$14 50 each. On the first of July, the department declined to increase the order. On the 14th of July, an account was stated in the Ordnance bureau in favor of Mr. Nippes against the United States, "for allowance on 500 muskets delivered under his assignment of October 8, 1840, at \$2 each, 1,000." This account was submitted by the Ordnance office, with the explanation that the assignment of 800 muskets a year for five years was made to Mr. Nippes on the 8th of October, 1840, at the conditional price of \$12 75; that the price was found to be inadequate, and "it has now been established at \$14 75, viz: \$14 50 for the muskets, and twenty-five cents for the appendages, at which price the 500 already delivered and those hereafter to be delivered are to be paid for." This account being approved by the Secretary of War, Mr. Nippes, in person, received the amount therein charged, and for the muskets subsequently delivered he received the price therein stated, \$14 50 each.

In February, 1847, he applied to the Secretary of War for a further allowance, claiming that he was entitled to the cost of the arms at Springfield, but the Secretary (Mr. Marcy) decided that the price had been fixed by contract, and that payment had been made according to that contract. General Eaton now endeavors to show that there was a contract between Nippes and the Ordnance department, identical in terms with that made in February 1840, between Mr. Pomeroy and that department for muskets of the same kind, according to which the price was to be the cost of such arms at the national armories. The evidence upon which Gen. Eaton relies is that of Mr. Reddall, who was a clerk in the Ordnance office, and who, in a letter, to him, dated February 25, 1850, says, "he is not certain that Mr. Nippes manufactured muskets under an *assignment*, as he labors under a strong conviction that such a contract was drawn by him and prepared for signature," but its execution was postponed, as some conversation was had by Mr. Nippes and the then chief of the Ordnance department upon the subject of an increased number to be manufactured by Mr. Nippes over the 800 per annum. He adds, that of this, however, he is certain Mr. Nippes was to receive the same rate that was paid to Mr. Pomeroy, &c.

If this statement stood alone, it would be far from establishing the contract sought to be set up. It is made from memory, after the lapse of ten years; the writer does not speak with any degree of certainty, and he states that the contract was not executed on grounds fatal to its

validity—the non-agreement of the parties as to the number of arms, which was just as essential as price.

But whatever was the circumstance under which this contract was drawn and not executed, there is abundant proof that neither party ever considered it for a moment to be in force. It is not alluded to in any manner in the letters of Mr. Nippes, or in the reports of the colonel of ordnance to the department, respecting the agreement with him for the manufacture of arms, while on the other hand the following circumstances conclusively negative the idea of its existence :

Mr. Nippes (in a statement marked D) refers to the transaction stated by Mr. Reddall, and a conversation with Mr. R. on the subject which he says took place in 1840, and he says that the contract now set up was offered him by the Secretary of War, and that he declined it, on account of the small amount of the order—only eight hundred muskets per annum for five years. It would be utterly unreasonable for Mr. Nippes now to attempt to enforce a contract, which, by his own showing, he refused to accept ; but the after correspondence conclusively shows that neither party consider the department pledged to that offer, or that it was binding in any shape.

This negotiation was three or four months previous to September 2, 1840, (see Fornance's letter of that date and Mr. Nippes's statement D,) say in May.

On the 14th May, 1840, Mr. Nippes writes that he has not yet the patterns to make the machinery for the new model musket ; that even if he had the patterns it would take him several months to get ready to go on, and he asked an order *to continue to make old model muskets*. The request was declined June 9. On the 20th of June the Hon. Mr. Fornance communicates *Mr. Nippes's fears that he is to have no work*, whether he prepares or not.

On the 30th of July, he says : " I have just written to Colonel Talcott relative to the model musket, and also relative to the quantity of arms that are to be allowed Mr. Nippes. I do sincerely hope the model will be sent on soon, and that Mr. Nippes will be allowed a reasonable contract."

The answer to this, August 1st, states that the model should be sent soon, and *nothing has been settled with regard to the number, except that he should be allowed eight hundred*.

On the 6th October, Hon. Mr. Fornance writes : " I will undertake to say for Mr. Nippes that if you will give him *orders to make sixteen hundred muskets* (which will be two years' work, as I formerly understood it, and as one year has now elapsed it would be nothing more than right) of the new model, *he will not ask the department for any more work*."

On the 8th of October, 1840, the letter hereinbefore referred to was addressed to the Hon. J. Fornance, to the effect that if Mr. Nippes would make two hundred muskets, or less, for inspection, and *if they proved satisfactory* Mr. Nippes should have a contract to furnish eight hundred muskets a year for five years.

On the 9th of December Mr. Fornance wrote to the colonel of ordnance that *he had communicated the letter of the 8th of October to Mr.*

Nippes, and had expressed his opinion that the government would act fairly with him if he would complete two hundred muskets for inspection, and advised to go on with the work ; that Mr. Nippes's fears had been alarmed by the result of the late election. "He says he has no written contract," and "wishes to be made more secure." "*A conditional contract, containing all that your letter to me contained, would satisfy Mr. Nippes,*" &c.

To this the colonel of ordnance replies the 11th of December, 1840 ; "*Mr. Nippes may safely rely on the letters from this office, and if he complies with what pertains to his share of the business, he may depend on having a contract. It is not usual to make conditional agreements in any other way than that which has been followed in his case,*" &c.

The course of his correspondence is entirely incompatible with the idea that any such agreement had been entered into, or that the department was willing to make such an agreement ; and, moreover, if the department had offered Mr. Nippes a contract for four thousand muskets, and he had refused it, on account of the smallness of the number, it is inconceivable that he should have made no allusion to that circumstance when he was pressing four months afterwards for an order to make only sixteen hundred. Had such been the facts, he could not have refrained from saying, four months ago you offered me four thousand, now I ask only sixteen hundred. His silence upon that subject on that occasion is conclusive, but if any confirmation were needed, it would be found in the statement sent by his son, Mr. Albert S. Nippes, with his father's respects, to the Hon. Mr. McNair, July 17, 1852. In this it is stated that "after Mr. Nippes had received Colonel Bomford's letter of the 9th March, 1839, and had got sufficiently along with the muskets that he was then manufacturing of a different model, he went to Springfield armory in July, 1840 ; he examined the model and the government machinery to manufacture the new muskets, and then came back and wrote to the government, July 20, 1840, for a model to get up the tools and machinery by ; also requests in the same letter a contract as large as the government has extended to the other manufacturers. Mr. Nippes did not get a final order for making muskets till October 8, 1840, when Colonel Talcott wrote him that he shall have eight hundred muskets for five years, but says nothing about the price, but leaves it open, and consequently to be settled by Colonel Bomford's letter of 9th March, 1839. It was in January, 1842, before he made his first delivery of two hundred muskets ; in June following he turned in three hundred more, and received for the two deliveries at the rate of \$12 50 per musket, being the same price as he had received for the old model. He then went down to Washington to have the price settled, also to have his order for muskets increased, &c."

These are unquestionably the plain facts, and the case of the government may be safely rested upon them. He did come to Washington, and, as I have above stated, asked for the settlement at a certain price, and for an increase of the number. The latter was declined, the former acceded to, and the price asked for by him, \$14 50, was agreed to, and fixed on the 16th July, 1842. Indeed, whatever were

the terms of the contract, whether contained in the letters of March 9, 1839, and October 8, 1840, or the unexecuted instrument drawn by Mr. Riddle, they were reduced to a certainty, and fixed by the settlement of July 16, 1842. This settlement recites that there was a "conditional" contract making the price of the muskets contingent, and to be afterwards ascertained, and proceeds to ascertain and fix it. Whether the price was to be *regulated by the cost* at the national armories, as admitted by the Ordnance department, or whether it was to be the exact cost at the armories, (which is really the only difference between the claimant and the department,) the agreement is equally carried out by the settlement of July 16, 1842.

Mr. Nippes, indeed, says that he never acknowledged a final settlement, but took what he could get; but it is utterly inadmissible for him to plead ignorance of the grounds upon which money was paid him, unless he can allege that they were concealed fraudulently, which he does not do.

The impression made upon my mind, upon a review of the whole correspondence, is, that it sustains in the amplest manner the views of the Ordnance department, and it is irreconcilable with the contract set up in favor of Mr. Nippes.

JEFFER. DAVIS,
Secretary of War.

WAR DEPARTMENT, *February 7, 1854.*

Secretary of War to John H. Eaton.

WAR DEPARTMENT,
Washington, February 9, 1854.

SIR: At your request, I have received and fully considered the claim of Mr. Daniel Nippes to be allowed for certain muskets made by him the actual cost of similar muskets made at Springfield armory in lieu of the price already paid him, in support of which claim you seek to set up a contract to that effect, which you say was reduced to writing but not signed by the parties. My conclusions in regard to the matter are as follows:

1. That the evidence entirely fails to establish such a contract. It consists of the testimony of Mr. Riddall, who, writing from memory ten years after the transaction, states that such an instrument was prepared by him while a clerk in the Ordnance office; but he adds that it was not signed because "some conversation was had by Mr. Nippes and the then chief of the Ordnance department upon the subject of an increased number to be manufactured by Mr. Nippes over the eight hundred per annum;" in other words, Mr. Nippes, as he himself states in a paper, without date, marked D, refused to execute it, in the hope of getting a larger contract, as he says "the smaller number, four thousand, would not justify my (his) incurring the expense."

From his own statement, and that of Mr. Riddall, it is obvious that

the alleged contract fails in an essential particular—the agreement of the parties as to the number of guns to be made.

But however strong may be the conviction of Mr. Nippes that such a contract would have been given him if he had been willing to accept it, I am convinced, from an examination of the correspondence between him and the department at that period and subsequently, that he is entirely mistaken on that point. Not only is the correspondence entirely silent as to any such agreement, but the colonel of ordnance frequently expressed strong doubts of his ability to make the muskets. Only a few months after the time when Mr. Nippes says he was offered a contract for four thousand muskets, the Hon. Mr. For-
nance solicited in vain for him an absolute order to make only one thousand six hundred muskets, promising that he would not ask the department for any more work. The utmost that he could obtain was permission to make two hundred on trial for inspection, with the right to make eight hundred per annum for five years if those were accepted. Even this the department refused to put in any other form than that of a letter, though strongly urged to enter into a contract to the same effect.

The inference from these facts, which are irreconcilable with the intentions of the department towards Mr. Nippes, as stated by him, is strengthened by the entire absence of any allusion to such a transaction in the correspondence which was actively going on between the parties at that time and continued for some years after.

2. But even if Mr. Nippes could succeed in establishing the contract, which is at once unsupported by the evidence and disproved by contemporaneous records, it would not advance his claim. It is admitted by the Ordnance department that the price of the muskets made by him was conditional, “whether to be regulated by the results of the national armories,” as the Ordnance department admits, or to be “the actual cost of manufacturing the muskets at Springfield armory,” as you contend, still it was conditional, and open to future settlement. Under these circumstances, Mr. Nippes, on the 14th July, 1842, being in Washington shortly after the delivery and acceptance of the muskets made on trial, wrote to the department, saying it was important that he “should have a certain contract, both as to the number of muskets as well as price,” and proposed to make one thousand eight hundred muskets per year for three years, at the price of \$14 50 per musket. The department declined to vary the number, but an account was stated in his name, in which it was set forth that the price of the muskets had been left conditional; that it had now been settled at \$14 50 per musket; that such allowance should be made in addition to the partial payments already made (\$12 50 each) for those delivered as would bring the price up to that sum, and those to be thereafter delivered should be paid for at that price. This being approved by the secretary, Mr. Nippes at once drew the additional allowance, one thousand dollars, for those delivered, and afterwards the price thus agreed on was paid for all the rest as they were completed. Mr. Nippes attempts to get rid of the force of this paper by saying he took what he could get, and never acknowledged a final settlement. But such a plea is entirely inadmissible on his part after having received the full benefit of its pro-

visions, and drawn the advanced price thus fixed; and, in my opinion, this instrument, in connexion with the letter of Mr. Nippes and his acceptance of the money under it, amount to a new contract, fixing and determining whatever was conditional as to price in any former contract, whether that admitted by the Ordnance department or that asserted by you.

I am, therefore, of opinion that the additional evidence produced entirely fails to affect the grounds on which this claim has heretofore been rejected by this department.

Very respectfully, your obedient servant,

JEFFERSON DAVIS,
Secretary of War.

Hon. JNO. H. EATON,
Washington City.

J. H. Eaton to the Secretary of War.

FEBRUARY, 21, 1854.

SIR: I think you have taken a misconceived view of the case of Nippes. If satisfied of this you will doubtless be disposed to do what strict justice and right demand. I will review it in chronological order.

1. Colonel Bomford's letter of March, 1839, is an invitation to Nippes to engage in the manufacture of *this arm*, in which he says, "the price of the new model gun will be regulated by the armories."—(See paper marked No. 1.)

2. Next in order is Colonel Talcott to the Hon. J. Farnance, dated October 8, 1840, where he says, "it is the intention of the department to give Mr. Nippes eight hundred for five years, with liberty to increase the number; and if you feel assured of his skill and ability to execute the work according to the model, (not then prepared,) he may begin at once; but to prevent loss, an inspection of the two hundred, or any less number, at his option, will be made, to ascertain if he will be able to fulfil a contract."—(See paper marked 18.)

3. In his letter of the 20th of October, 1842, Colonel Talcott says: "Taking into view the circumstances connected with your agreement for furnishing this department with four thousand muskets from the 1st of January, 1841, to the 31st of December, 1845, eight hundred muskets per annum, it has been thought proper to waive the question of your failure in delivering the stipulated number of eight hundred per annum from the 1st of January, 1841, and to afford you, therefore, the full benefit of your agreement, you are authorized to deliver," &c.—(See paper No. 14.)

Well might this waiver of the agreement be admitted, since the fault was with the government, for up to the date of Pomeroy's second agreement, (March 17, 1842,) the model pattern gun had not been furnished by the government. The delay hence originated at the Ordnance office, a delay which, with great propriety, might be over-

looked by it. The agreement, whatever it was, by the government, was thus renewed and confined as before, and in pursuance Nippes satisfactorily fulfilled his contract of delivery.

4. Of the capability of Nippes to make the kind of gun required, the intermediate papers on file afford no information until the 14th of July, 1842, the date of Colonel Talcott's letter to the Secretary. He says:

"At his (Nippes's) request he was authorized to make two hundred muskets, which, if approved, he should be allowed to furnish not less than eight hundred a year for five years. This was in the summer of 1840. In January last (1842) he delivered two hundred muskets, and the inspector pronounced them in all respects equal, &c. In January last he delivered three hundred more."—(Paper 12.)

Here, then, is a recognition of the contract, agreement, bargain, either of which mean one and the same thing, and either of which, *in foro conscientie*, is binding on the government.

Against all this array of circumstance and fact, the objection taken is, there is no *contract* produced. Literally and technically considered, as far as *writing* and *sealing* is concerned, there is none. But when was it or ought it to be that a just government, against a fair consideration of right, should shield itself under *its bond*? The great object and purpose of the government should be to practice justice, how ever and by what means it may be ascertained.

5. In regard to the additional sixteen hundred guns to be made, and which the Secretary mentions as objection to the claim, that took place in March, 1846, and after that the first contract for the four thousand had been fully complied with. These last were awarded at \$14 50. But then there was a marked difference in the matter, for all the expenses of changed machinery, dies, &c, had been encountered, and the gun could then be made at a less price than before.

But apart from these unmistakable facts, there are others which corroborate and confirm all that precedes, and which, taken together, make out a clear case of contract. But were there none others that fail to alter the justice of the demand presented, strict right would require a performance, apart from any additional proof to be adduced.

An agreement or understanding is made by A to build a house for B, and as he quietly proceeds, partial payments are made. On final completion, shall B avoid paying for it on the ground that there is no contract? No court would sustain such defence. What then? A would be bound for a fair estimate of the work; and so with Nippes. If it be objected there is no contract, yet he is entitled to a fair estimate of price; and which price, by the testimony adduced, is the cost of the arm at Springfield armory—a criterion of value which the government itself made and fixed upon. The new model gun was an experiment as to cost. This all the correspondence on file tends to prove. Being favorably considered of, the government was anxious to proceed with the manufacture. To commence it, machinery had to be altered, new dies made, and all the apparatus for working changed by the contractors.

In this dilemma of uncertainty and doubt, the department consented that the cost of the gun should be ascertained at its own armory, and

by that test should be paid for—the test to be made within two years from the 26th of February, 1840, date of Pomeroy's contract, (see paper L,) and such, too, was the pledge to Nippes.

Subsequently, March 17, 1842, Pomeroy, by a second, changed his first contract, fixing his future deliveries at \$14 50.—(See paper B.)

But assuredly this could not affect Nippes, who was no party to it. In the papers there is nothing to show that he knew anything of this second altered contract. All he did or could know was that for *his arms*, he was to be paid what Pomeroy received. The informing him that this was only \$14 50 was a deception practiced, for Pomeroy, under his contract, and up to the time of its change, as the consideration of yielding his first contract, had assigned to him the making of one thousand additional arms, and also of being paid \$16 for the two thousand one hundred guns delivered up to that time. This change of contract by Pomeroy in nowise binds Nippes; he was no party to it.

Concede, though contrary to the proof, as is shown, that Nippes had no agreement, no contract, under what pretence of right and justice should the government avail itself of his artistic skill and labor, and award to him a less rate of compensation than was stipulated for to others for performing identically the same service? Equity revolts at such doctrine.

But there was a contract. Colonel Bomford's letter of March, 1839, (No. 1,) invites him to the undertaking, and says: "The price will be regulated by the armories." The official letters already referred to speak of Nippes's undertaking as a contract, agreement, &c. Confirmatory of which is the affidavit of Nippes, (paper C 1,) than whom there is no man more veritable, and he asserts there was a contract drawn up, by which he was to receive the same price contracted for by Pomeroy. Such being the assurance had at the time, that assurance ought to be fulfilled.

Mr. Riddall, also a gentleman of unquestioned verity, says that, by direction of the Ordnance office, he did draw up a contract, and that one of its stipulations was, that Nippes was to receive the price agreed to be paid Pomeroy under his contract, which was the cost of the gun at Springfield.—(See paper C.)

The facts and circumstances considered, there is no room to resist the conclusions to which they lead: first, that they clearly establish a contract; and second, if they do not, the work being faithfully and well done, Nippes should receive the price agreed to others, under the agreement of the department.

But if, reasonably, anything of doubt can be entertained, then, by the established rules of construction and right, the inclination of that doubt ought to be in favor of the *weaker* party. Be this not so, and the humble citizen must remain a pigmy in a giant's grasp. Send him for relief to Congress? Better to consign him to the spirit rappers, for it is only through them he could ever hear of it again.

In the present case the only question is the *amount that ought to be paid*. At \$14 50 *Nippes is not paid*, for the whole proof shows he was to receive the cost of making it at the armory, (over \$17,) an amount which in justice he should be paid. Between what he has received and what rightly he is entitled to for his performed labor, expense, and

service, is too inconsiderable to authorize a doubt to be thrown around public faith and justice. A nation's honor is the inviolable maintenance of its engagements.

Respectfully,

JNO. H. EATON, *Attorney.*

The SECRETARY OF WAR.

The Secretary of War to J. H. Eaton.

WAR DEPARTMENT,

Washington, March 4, 1854.

I have received and considered your letter of the 21st ultimo, respecting my decisions in the Nippes claim.

There are errors in your statement which it is unnecessary to point out, and I will only assure you that every circumstance brought forward by you in this and former communications was fully considered before my decision was made.

Very respectfully, your obedient servant,

JEFFERSON DAVIS,
Secretary of War.

Gen. JNO. H. EATON,
Washington City.

IN THE COURT OF CLAIMS.

DANIEL NIPPES *vs.* THE UNITED STATES.

Brief of the claimant.

This claim is founded upon an agreement, express or implied, between the government of the United States (through the Ordnance department) and the claimant, for the manufacture and delivery of four thousand muskets called "new model muskets."

The proof of the express agreement, and the precise nature of the agreement itself, is to be found in the letters issuing from the Ordnance department, and papers and documents prepared by its authority, and now presented to this court.

1. The first letter, and the one initiatory of the agreement, was that of George Bomford, colonel of ordnance, March 9, 1839.—(Page 12 of the record.) No period is mentioned in which the examination and acceptance mentioned in said letter is to be made. A reasonable period, therefore, after the commencement of the manufacture at Springfield armory, is to be presumed.

2. This commencement took place early in 1840.—(See extract from Pub. Doc., No. 1, on page 44 of this record; also extract No. 3, page 45.) Besides, it appears from said letter of Colonel Bomford that Mr. Nippes was continued in the manufacture of the *old musket* during the year 1839.

2. Mr. Nippes accepted the proposition in said letter to go to Springfield armory and make the examination, and went.—(See Bates's dep., interr. 16th, page 66.)

3. That this was in the spring of 1840 is shown from the fact that as early as May, 1840, he was making every effort to get possession of the "new model" pattern, which had been repeatedly promised him.—(See his letter May 14, 1840, p. 15; letter to Mr. Fornance from Secretary of War, p. 16; from Fornance to Nippes, p. 16; Fornance to Secretary of War, p. 19; Talcott to Fornance, August 1, 1840, p. 19, in which it is said "the order for a new model has been reiterated." See the several letters, printed on pp. 20 and 21, signed, respectively, Fornance, Symington, and Edward Lucas, jr.)

4. The new model pattern was finally sent and received about the 15th of September, 1840.—(See Lucas's letter, p. 21; and Fornance's letter, p. 23.)

5. The sending of the new model, and the great pains taken to get it ready, is proof that Nippes had accepted the proposition of the Ordnance department contained in Bomford's letter aforesaid, to wit: that in case he decided to go into the manufacture of the "new model musket" upon terms acceptable to the Ordnance department, he was to receive a "new model musket" as a pattern. The testimony is, that a "new model musket" was sent to him at great pains. The conclusion is, that he had agreed to go to work on the new pattern upon terms acceptable to the Ordnance department.

That Mr. Nippes had given his acceptance is proved by his extensive and expensive preparations long before he received the pattern musket.—(See Abraham Nippes's test., interr. 7 and 8, p. 58; and Wm. Miles's test., interr. 5, p. 55.)

The terms acceptable to the government were, that "the price to be paid for the new arm should be regulated by the results of the national armories." The acceptance of the model musket by Mr. Nippes was the acceptance of these terms.

That these were the terms acceptable to the government is further proved by the contract entered into as early as February, 1840, with Mr. Pomeroy.—(See said contract, p. 13, particularly the fourth article thereof.)

6. The aforesaid letter of Colonel Bomford is repeatedly recognized by his successor, Talcott, as a part of the contract with Nippes.—(See the letter of July 15, 1842, p. 27; also December 11, 1840, Talcott to Fornance, p. 25, in which Mr. Nippes is given to understand that he "may safely rely on all the letters from this [the Ordnance] office." See also the letter of the colonel of ordnance to Nippes, October 20, 1842, p. 30, in which he speaks of Mr. Nippes's "agreement for furnishing this department with muskets from the first of January, 1841, to 31st of December, 1845, at eight hundred muskets per annum." Also extracts from Public Documents, p. 50.)

7. The Ordnance departmental ways considered itself bound by the letter of Colonel Bomford. Hence, Mr. Nippes always received assurances that he would be allowed to manufacture a portion of the new public arms, and extraordinary pains were taken to furnish him with a perfect pattern.

8. The contract was complete in every respect, except as to the *number* of the arms to be made by him, and the *time* to be allowed him for their completion and delivery.

9. If in this state of things Mr. Nippes had manufactured any number of model muskets, their acceptance by the government would have given the right to demand payment according to the terms of the agreement. These terms were (as to price) what the results of the public armories would determine to be the worth of the musket.

10. If the government could not or would not ascertain those results in a reasonable time, then would it be bound to pay the claimant for his work, labor, and materials as much as they were reasonably worth.

11. The *hiatus* in the agreement, so far as regards the *number* of muskets, was partly filled up on the first of August, 1840. Mr. Talcott then writes to Hon. J. Farnace, (p. 19,) that the order for the "model musket" had that day been *reiterated*; and as to "the *number* of muskets to be made by Mr. Nippes, it has not been settled further than to assure him that he should be allowed eight hundred."

12. Whether it was the meaning of the Ordnance department that Mr. Nippes should be allowed only eight hundred altogether or eight hundred per annum, or whether Mr. Talcott mentally reserved the right to interpret the offer either way, does not exactly appear.

If the former, then the agreement was incomplete, because the time within which the eight hundred muskets were to be completed was uncertain. If eight hundred muskets per annum was intended, then the contract was complete in all respects.

To settle this doubt—to render the contract perfect and complete—Mr. Talcott writes to Mr. Farnace, on October 8, 1859, as follows: "Your letter of the 6th instant has been received. It has been the intention of the department to give Mr. Nippes a contract for eight hundred muskets a year for five years, with liberty for the government to increase the number on giving suitable notice, &c. If you feel assured of his skill and ability to execute the work according to the model, he may begin at once," &c. That is, begin to complete the four thousand. He had long since begun his preparations, at great expense, for working on the new model musket.

13. This promise, and its acceptance by Nippes, (shown by his proceeding to work under it,) made the agreement between the parties complete.

14. This contract, although made up of several detached parts, like the model musket, is nevertheless a perfect contract, and was so considered by the government.—(See letter of Farnace to Talcott, December 9, 1840, p. 24, in which he asks for a written contract, to contain all that the letter of Talcott contained; and the reply of Talcott, p. 25, in which he virtually acknowledges the letters from the Ordnance department to be equivalent to an agreement, saying "there is no hazard or difficulty in the case. Mr. Nippes may safely rely on the letters from this office.")

15. The contract was nevertheless conditional in regard to the price ultimately to be paid. This did not make the contract any the less perfect.

The price was conditional—dependent upon the price at the national armories.

This is shown by the letter aforesaid of Colonel Bomford, (p. 12;) reiterated in the letter of Talcott to W. B. Lewis, July 16, 1842, (p. 29.) In the latter reference is made to the former letter, and an intimation is clearly made, that, in accordance therewith, an assignment was made to Mr. Nippes on the 8th October, 1840, for the manufacture of eight hundred muskets per annum for five years, at the *conditional price* of \$12 75 per musket.

16. What is here meant by conditional price? The reference to Bomford's letter clearly shows that it means that the price was so to remain until the real price could be ascertained at the national armories.

This letter of Talcott (p. 29) states \$12 75 as the conditional price. His letter to Mr. Marcy (p. 36) gives the price at 12 50. The statement of deliveries (on p. 37) shows the discrepancy to consist in the allowance of twenty-five cents for appendages, \$12 50 being the allowance for the musket.

The statement, therefore, in the letter of Secretary Marcy to Mr. Yost, (p. 38,) in which he says that "the price of the muskets furnished by Mr. Nippes was not conditional," and which statement he founds on the letter of Talcott to Lewis, (p. 29,) and the statement of deliveries, (p. 37,) is a mistake.

The letter of the Secretary of War to Eaton (p. 99, No. 2) admits that the price of the muskets to be made by Nippes was conditional.

17. This view of the contract between the parties is fully sustained by the written agreement between the Ordnance department and Pomeroy, (p. 13.) The principle of the two agreements is the same. Also by the agreement between the United States and Mr. Nippes, drawn under the direction of the Ordnance department, although not signed, dated in the autumn of 1841.—(See the whole testimony of William C. Reddall with regard to this agreement, p. 77.) It was intended by both parties as the agreement between them.

18. So far as the four thousand model muskets were concerned, this was the contract between the parties. The signing was only postponed by mutual consent until more muskets should be added.

19. The contract, so far as it reached, (that is, the four thousand muskets,) was agreed to, was entire, and was retained by the government.

We prove the substance of that contract by the witness who, at the request of the Ordnance department, drew it up.

Whether as a subsisting agreement between the parties, or as evidence of an agreement already subsisting, the draught referred to by Mr. Reddall conclusively establishes the *aggregatio mentium* of the parties.

20. Mr. Nippes long ere this, under the agreement founded on "the letters from the Ordnance office," had begun and continued "faithfully to comply with what pertained to his share of the business;" and he so continued after the said written contract was entered into. His duties under the first and second agreements were substantially the same.

21. In January, 1842, he delivered two hundred muskets; in June, 1842, he delivered three hundred muskets; for each of which, at the time of delivery, he received the "*conditional* price of \$12 50 per musket, and twenty-five cents for appendages."—(See schedule, p. 37.)

22. The quality of these arms appears to have been of the highest order.—(See letter of Talcott to Secretary of War, p. 28, in which he says "the inspectors pronounced them equal in all respects to those made at any other place.")

23. Four months had passed away since the termination of the period fixed upon by the government for determining the price of the musket according to the results of the national armories.—(See fourth article of Pomeroy's first contract, p. 13; sworn to in Reddall's testimony as a part of the agreement with Nippes, p. 78, 11th interr.)

Mr. Nippes had been at immense expense in preparing for the manufacture of and in manufacturing the musket.

This ascertainment of price could only be made property by the government.

24. Whether made within the time specified or made and the knowledge thereof withheld, there was a failure on the part of the government to comply with its contract.

The government knew the price of the musket to be much more than \$14 50. They knew the actual cost thereof at the Springfield armory to be at least \$17 per musket.—(See second agreement with Pomeroy, p. 25, B. See p. 45, extracts from Pub. Doc., No. 7, sess. 1841-2.) And they knew, what is obvious to every one, that Mr. Nippes could not manufacture the model musket at less cost to him.

25. Their duty, independent of positive contract, was to allow to Mr. Nippes that actual cost and a reasonable profit. Instead thereof, the Ordnance department, against the will of Mr. Nippes, without his consent, and, it would seem, without his knowledge, arbitrarily, illegally, and unjustly "*established*" and forced upon him a price far below the actual cost—the ruinous price of \$14 50 per musket, and twenty-five cents for appendages.

26. It is absurd to call this arbitrary establishment of price a contract between Mr. Nippes and the government, as is actually done by Secretary Marcy.—(Page 38, letter to Yost.) There is no evidence that Mr. Nippes even acquiesced in it. He only submitted to superior power. It was \$14 50 or nothing.

This idea of the Secretary was probably induced by a letter from Daniel Nippes to him of July 14, 1842.—(Page 27.) As an inference, it was and is entirely false.

27. It is clearly established by the reason of the thing, and by testimony, that \$14 50 per musket for eighteen hundred muskets per year for three years is equivalent to \$18 per musket for eight hundred per year deliverable in five years.—(See Elizur Bates's test., 26th interr., p. 68; and interr. 20th, p. 67; also the arithmetical rule stated in the petition, pp. 6 and 7.)

On the other hand, we say that the aforesaid letter of July 14, 1842, (p. 27.) was contrived or used as a cunning device by Talcott for the purpose of imposing on Nippes, *apparently* with his own

consent, the arbitrary and unconscionable price of \$14 50 per musket.

The whole documentary evidence is fraught with proof of oppressive and unjust treatment on the part of Col. Talcott towards Mr. Nippes, who appears to have taken a dislike to Nippes, founded, perhaps, on his letter of May 14, 1840, to Fornance, p. 15.—(See that letter and the correspondence ensuing as far as p. 25, inclusive; also the partial contract with Pomeroy, p. 25, B; and the refusal to grant the reasonable request contained in the above letter of Mr. Nippes, July 14, 1842, p. 27.)

Whatever privileges Talcott did appear to accord to Nippes, he accorded reluctantly, and was coerced to it by the powerful outside pressure of members of Congress of high political influence.

The offer to manufacture eighteen hundred muskets a year for \$14 50 was made after long delay in the government to do justice to Mr. Nippes. It was made on the 14th July, 1842. It was rejected in consequence of the letter of Colonel Talcott on the 15th. On the very next day, the 16th, Colonel Talcott, seizing hold of the letter of Nippes with avidity as a pretext, arbitrarily "established the offer of \$14 50 therein contained as the price of the eight hundred muskets per annum." At the same time, he concealed the fact of a better bargain made with L. Pomeroy made only four months previously.

28. The proposition of Nippes, made March 3, 1846, (see p. 33,) to furnish sixteen hundred additional muskets in two years, at \$14 50 each, is afterwards used by Talcott as an additional argument against the claim of Nippes, but with great weakness. The proposition was made after the machinery of Nippes was in full operation, and it gave him the privilege of delivering, at any time within two years, the sixteen hundred muskets, and did not restrain him to eight hundred per year.—(See statement of deliveries, p. 37.)

PROPOSITION OF LAW.

There was either an *express* or an *implied* contract in this case.

If *express*, an essential ingredient of it was, "that the price of the musket should be regulated by the results of the national armories," or (more particularly) of the Springfield armory.

An "*approximation*" to those results we ascertain by the second contract with Pomeroy, (p. 25, B,) and we show it to be \$16 per musket.

A much nearer approximation we show by extracts from the public documents, to be found between pages 44 and 50 of this record, averaging \$19 50.

We further show the results of the Springfield armory by the testimony of Elizur Bates. But before extracting his evidence, I beg leave to advert to the testimony of the Rev. John Robb, a citizen of high standing and chief clerk of the Pension office, in regard to the skill, capacity, and general character of Elizur Bates.—(Top of p. 83.) He says that "he (Mr. Robb) was superintendent of the Springfield armory from November 1, 1833, to the middle of April, 1837. Mr. Bates was master armorer under him from January, 1834, to the spring

or summer of 1837, when he voluntarily resigned that position. He was subsequently, however, employed in the armory in a different capacity. Mr. Robb considered him an excellent workman and a first-rate master armorer as to skill and ability; and such was Mr. Robb's opinion of his truth, faithfulness, and integrity, that he would compare favorably with any other man within his knowledge. He was a man of strict integrity and a high sense of honor."

In a letter on file with the documents, dated September 4, 1847, (p. 39,) Mr. Bates gives the cost of the model musket for five years—from 1841 to 1845—\$16 84, or \$16 85 .6. In this he does not include the superintendant's pay and the interest on the capital invested; nor perhaps other officers' salaries; nor interest on the entire capital employed; nor insurance against all risk; nor any percentage for wear and decay; which would bring it up to the above average of \$19 50. Again, in answer to interrogatory 10th of his deposition, (p. 65,) in which he is asked "what, during the first year of the manufacture of the 'new model musket' at the Springfield armory, was the cost of each musket, regarding in his estimates, as the elements of cost, only stock, materials, labor, and officers' salaries," he says: "Not less than \$17 75, or not to exceed \$18 50." The inclusion of the other elements of cost would make the entire amount \$19 50.

2d. If the existence of an express contract has not been proved, can there be a doubt of the existence of an implied contract? Daniel Nippes undertook to manufacture four thousand muskets of the "new model," deliverable in five years; that is, eight hundred a year, be ginning for the first delivery on the 1st of January, 1841. Owing to the great difficulty in preparing his machinery, and the delay occasioned by his not receiving in a reasonable time the pattern musket, it was more than one year before Mr. Nippes was ready to commence his work. At his request the Ordnance department consented to allow him to deliver more than eight hundred muskets per year, provided the number should not exceed one thousand per year, limiting the final delivery to the year 1845.—(See letter of Nippes to colonel of ordnance, p. 29; and the reply of Colonel Talcott, p. 30.)

This undertaking on the part of Nippes was complied with to the satisfaction of the Ordnance department.

The excellent quality of the work done is admitted by the Ordnance department.—(See Talcott's letters, pp. 28 and 34.)

The law, therefore, gives to him for his work and labor done its full value.

The only remaining question, therefore, is what is that value?

It should consist of the actual cost of the work, labor, and materials, and a reasonable profit on the work.

In estimating the first, we can again refer to the cost of a similar work at the national armories. By the testimony of Bates, (interr. 18th, p. 66,) it is shown that the cost of the "new model musket" at a private manufactory of arms would be about the same as the cost at the Springfield armory; and he has no doubt of it, "provided the private contractor have the privilege of making the same number of guns monthly or annually that are manufactured at the Springfield armory in the same period. But to make one-twentieth, or even one-

tenth of the number, in a private manufactory, the cost would be considerably more in proportion to the private contractor."

It was this consideration and others that induced Mr. Bates, in his deposition, to estimate the cost of the musket to Mr. Nippes at \$19 50, exclusive of a reasonable profit.—(See interr. 24th, p. 68)

This is precisely the amount affixed by Mr. Nippes to his bill made out January 14, 1857.—(p. 87.)

Mr. Nippes and his son, on the same day, make oath that the actual cost to him of each of the said four thousand muskets was not less than \$17 per musket, and that such allowance would be without any profit.

This restriction to \$17 is made by him because, as he clearly shows in the same affidavit, he was under the full belief that he could not claim more than the actual cost of the musket at the Springfield armory, "and that he is informed" that \$17 was such actual cost at the said armory.—(See affidavits of Nippes and son, pp. 85 and 86.)

Mr. Nippes had, previous to 1840, manufactured muskets by hand. It was peremptorily required by the Ordnance department that the "new model" should be manufactured by *machinery*, and that of a new and unusual kind.—(See the letter of Talcott to Secretary of War, June 9, 1840, p. 17.)

Also new tools were to be manufactured and new parts of the musket to be fabricated. This involved Mr. Nippes in great expense, all of which ought to be considered in his estimate of costs. The character of this expense is shown in the deposition of Miles Keely, (6th, 7th, 8th, and 11th interr., p. 52,) and deposition of William Miles, (interr. 4th, 5th, 6th, 7th, pp. 55, 56;) also Mr. Abraham Nippes's deposition, (interr. 9, pp. 58, 59.) In this statement witness estimates the average cost of the model musket for 1842 at \$22 to \$23 a piece, and for the four following years at from \$18 to \$20 a piece.

But Mr. Nippes was also entitled to a reasonable profit on each musket. In estimating this profit, the witnesses vary from three dollars up to five or six dollars.

Mr. Robb (interr. 9th, p. 84) says: That if he "had the necessary buildings, machinery, and tools," he would not manufacture "eight hundred (muskets) a year for less than three dollars profit."

Mr. Ab. Nippes (interr. 14th, p. 60) says: That "claimant received a profit of 'say three dollars a piece' on the old model musket;" but (in interr. 11th, p. 60) he says that "on 'the new model' the profit should have been from four to four and a half dollars a piece."

Mr. Lehman (interr. 17, p. 74) says: "That Mr. Nippes ought to have received a profit of five dollars per musket on those manufactured by him in 1841, 1842, 1843, 1844, and 1845."

Mr. Bates (interr. 25, p. 68) says: "That from five to six dollars per musket would be a reasonable profit."

The claimant in this case has not claimed more than \$19 50 per musket. In one aspect of the case, he has, in his petition, put his claim at a minimum of \$18 50. Under the considerations mentioned in his brief, he extends this last claim to \$19 50, which he considers below what has been actually proven as the actual value per musket of the model musket manufacturer and delivered by him.

JOHN S. TYSON,
Solicitor for Claimant.

IN THE COURT OF CLAIMS.

DANIEL NIPPES *vs.* THE UNITED STATES.*Solicitor's Brief.*

MATERIAL AVERMENTS IN PLAINTIFF'S PETITION.

1. That he had a contract with the War Department to furnish a certain description of muskets called the "new model" musket, to the amount of 4,000.

2. That he was to be paid the price that it cost the United States to make such muskets at Springfield, Massachusetts.

3. That it cost the government to make such muskets at Springfield each \$18 50.

4. That the United States paid him only \$14 50 for those made and delivered by him, with twenty-five cents added for "appendages."

5. That he ought to receive \$19 50 for each musket, and he thinks it cost him that sum.

There are various other matters stated in the petition, none of which are, however, deemed material as to the questions really involved in the case as presented by the record.

MATERIAL FACTS AS UNDERSTOOD BY THE SOLICITOR.

1. That the Ordnance office of the War Department agreed with the plaintiff to take 800 muskets of the new model, for each year for five years, at the price of \$12 50, with the condition that the plaintiff should be allowed what it cost to manufacture them at Springfield, when satisfactorily ascertained.

Mr. Fornance, in behalf of Nippes, wrote the Ordnance bureau on the 6th of October, 1840, in relation to making a contract, and received a reply in these words:

ORDNANCE OFFICE,
Washington, October 8, 1840.

SIR: Your letter of the 6th instant has been received. It has been the intention of the department to give Mr. Nippes a contract for 800 muskets a year for five years, with liberty for the government to increase the number on giving suitable notice. The only difficulty has been to save Mr. Nippes from loss, and the United States from disappointment, by the rejection of his work in case it does not come up to the required standard. If you feel assured of his skill and ability to execute the work according to the model, he may begin at once; but to prevent a great loss, an inspection will be made as soon as he has 200, or any less number, at his option, ready for examination; or one of the master armorers of the United States may be ordered to make an inspection of the machinery and tools of Mr. Nippes at once, and report whether he will be able to fulfil a contract.

Respectfully, &c., &c.,

G. TALCOTT,
Lieutenant Colonel of Ordnance.

Hon. J. FORNANCE,
Norristown, Pennsylvania.—(R., p. 24.)

On the 9th of December, 1840, Mr. Fornance wrote that plaintiff, owing to the elections which had defeated Mr. Van Buren and elected General Harrison, felt somewhat uneasy, and wished a conditional contract, and he thereupon received the following reply :

ORDNANCE OFFICE,
Washington, December 11, 1840.

SIR : Your letter of the 9th instant, in relation to the affairs of Mr. Nippes, has been received. There is no hazard or difficulty in the case. Mr. Nippes may safely rely on the letters from this office, and if he complies with what pertains to his share of the business, he may depend on having a contract.

It is not usual to make conditional agreements in any other way than that which has been followed in his case, and you may assure him of its security in any event that can possibly occur.

Respectfully, your obedient servant,

G. TALCOTT,
Lieutenant Colonel of Ordnance.

Hon. J. FORNANCE,
House of Representatives.—(R., p. 25.)

In consequence of this letter, the plaintiff went to work to make the muskets.

Although the subject of a special contract and price was afterwards considered, no price was specially agreed upon until 1842, when a settlement was made as to the past and a basis for the future agreed upon, as follows :

Colonel Talcott states that "inducements were held out to him for the manufacture of the new pattern musket, of which an assignment was made to him on the 8th of October, 1840, for the manufacture of 800 per annum for five years, at the conditional price of \$12 75 each."—(R., p. 29.)

Colonel Talcott reports this in substance at page 34 of the record. The condition referred to was, to pay what it should actually cost to manufacture at Springfield, when satisfactorily ascertained.

2. That said muskets were delivered.

The delivery of the 4,000 muskets has been conceded on various occasions and in different manners, and has at no time been the subject of dispute or question. The plaintiff states the number in his account at page 87 of the record. Others were delivered under the supplemental contract.

3. That the department intended to pay what it cost to manufacture such muskets at the armory at Springfield, but that this could not be ascertained with requisite certainty, and therefore a price was agreed upon in 1842, and accepted by the plaintiff.

Colonel Talcott, on the 13th of February, 1847, states the facts in relation to this point, after stating that Pomeroy had a written contract for \$12 50 per musket, for certain, and whatever it should actually cost to make and manufacture them at Springfield, as follows :

"Owing to the adoption of a musket of a new model, and the consequent change of machinery, it was found impossible to ascertain their cost within the specified time; and, to settle the question, a supplementary contract was made with Mr. Pomeroy, dated March 17, 1842, by which he was allowed at the rate of \$16 per musket for the two thousand one hundred muskets delivered up to that time, and \$14 50 per musket for those he was yet to furnish.

"Mr. Nippes's deliveries were made under an order given him in October, 1840, for eight hundred muskets a year for five years, at the price of \$12 50 per musket. When he had delivered the first five hundred muskets, he complained that this price was too low. His case was then examined, and he was, in July, 1842, allowed at the rate of \$14 50 per musket, (the same price paid Pomeroy by the supplementary contract,) both for the muskets then delivered and for those remaining due under his order. The whole amount of his deliveries prior to the date of Pomeroy's supplementary contract was two hundred muskets; and even if their cases are made to agree exactly, as he claims they should, it would give him only the additional \$1 50 on these two hundred muskets. But it is proper to remark that Mr. Nippes has already, in consideration of this very point, been allowed an *extension* of his order to the amount of sixteen hundred muskets, and of two years' time to deliver them in. I do not, therefore, think that Mr. Nippes has any claim for an additional price for any muskets he has delivered.

"Mr. Yost's letter, with its enclosure, is returned herewith.

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

"G. TALCOTT,

Lieutenant Colonel of Ordnance.

"Hon. W. L. MARCY,

"Secretary of War."—(R., p. 36.)

4. That after a portion of the arms were delivered it was finally agreed to pay the plaintiff \$14 50 for each of said muskets, and 25 cents for the appendages for each.

When it was rendered certain that the department could not ascertain the exact cost of manufacturing the new model musket at Springfield, it fixed a price, which it believed to be fair and just, and which formed a part of the new written contract entered into with Pomeroy. This price was proposed to the plaintiff and accepted, and his account was made out upon that basis and allowed and paid. The chief of the Ordnance bureau wrote the following letter to the accounting bureau, which was approved by the Secretary of War:

ORDNANCE OFFICE,
Washington, June 16, 1852.

An account for the foregoing allowance of one thousand dollars was sent to the treasury, July 16, 1839, with the following explanations:

On the 9th of March, 1839, an assignment was made to Mr. D. Nippes of one thousand muskets at \$12 25, which he has delivered. In the same letter inducements were held out to him for the manufacture of the new pattern musket, of which an assignment was made to

him on the 8th of October, 1840, for the manufacture of eight hundred muskets per annum for five years, at the conditional price of \$12 75 each. In the process of their manufacture it was found that \$12 75 was not an adequate compensation, and it has now been established at \$14 75, viz: \$14 50 for the musket and 25 cents for the appendages, at which price the five hundred already delivered, and those hereafter to be delivered, are to be paid for: and it is accordingly requested that the sum of one thousand dollars, being the amount of the annexed account, may be paid to Mr. D. Nippes out of the appropriation for "arming and equipping the militia."

G. TALCOTT,

Lieutenant Colonel of Ordnance.

WM. B. LEWIS, Esq.,

Second Auditor.

ORDNANCE OFFICE, July 16, 1842.

Respectfully submitted to the Secretary of War for his approval.

G. TALCOTT,

Lieutenant Colonel, Ordnance Department.

Approved July 16, 1842.

J. C. SPENCER,

Secretary of War.

(R., pp. 37, 38.)

The statement referred to will also be found at page 29 of the record.

The following is a statement made by Governor Marcy in 1847:

WAR DEPARTMENT, February 18, 1847.

SIR: I have the honor to enclose herewith a report from the Ordnance bureau of this department upon the claim of Mr. D. Nippes, presented in his letter of the 11th instant, and transmitted in yours of the same date.

It appears from this report that the price of the muskets furnished by Mr. Nippes was fixed by contract—not left conditional, as in the agreement with Mr. Pomeroy, to which he refers as a precedent in his favor—and full payment has been made to him according to the terms of that contract.

Very respectfully, your obedient servant,

W. L. MARCY,

Secretary of War.

Hon. J. S. YOST,

House of Representatives.—(R. p. 38)

The plaintiff concedes in his petition, as well as in his letter, that he has been paid according to the rates stated in the last above letter from Colonel Talcott.

5. That the plaintiff was settled with and paid at the rate of \$14 50 for all the muskets of the new model manufactured and delivered by him, and that he accepted said payment, without objecting thereto at the time, as his proper compensation therefor.

It is shown above that the plaintiff was settled with and paid at

the rate of \$14 50 for the muskets delivered, and twenty-five cents for appendages.

There is no evidence that the plaintiff at that time complained of this price, or objected to receiving the same ; but, on the contrary, he went on and constructed 3,500 others at that same price. This is conclusive upon him.

The fact that the plaintiff wished, in 1846, to extend or renew his contract, proves clearly that he was not dissatisfied, even at that time, with the price. He got Mr. Yost, a member of Congress, to write to the War Department on the subject of renewal or extension.—(Mr. Yost's letter, R., p. 32.)

The Ordnance bureau at first thought they had muskets enough of that kind, and that if a new contract was made it would be necessary to advertise.—(R., p. 32.)

This advertising became necessary under an act of Congress passed about that time.

The plaintiff's reply (R., p. 33) takes the ground that his contract ought to be extended, and states the reasons therefor. He claimed it as a right or a favor to have an additional quantity to manufacture upon the terms under which he was then working. This was two years after the price of \$14 50 was agreed upon, and he was then receiving it. The following is the letter referred to :

WASHINGTON CITY, *February 27, 1846.*

SIR: When I took a contract for making muskets several years since, it was for the small number of 4,000, being 800 a year. The change in the model from which I had formerly worked subjected me to provide a quantity of expensive machinery, which has not only taken all my profits but a great deal more, so that I am much worse off now than when I began. I thought that the United States would always make muskets to arm the militia. *I supposed that when my contract was fulfilled I should get another, provided I made good arms and gave satisfaction, which I believe I have done.* I am met now by a refusal to renew my contract, and it seems to me a hard case, that when I have done well, I should be left to bear all the expenses without remedy ; for then my expenses were gone into so that the work might be of the very best kind.

I have understood that Mr. Pomeroy had an *allowance* for his great expenses, *by increasing the number of arms to be made by him over and above what his contract called for.*

If this is so, I hope the same favor will be allowed to me, more especially because my contract was for so small a number ; for it takes about as much machinery to make a few arms as a great many.

Trusting to your sense of justice in this matter, I remain, respectfully, your obedient servant,

DANIEL NIPPES.

Hon. WM. L. MARCY,
Secretary of War.—(R., p. 33.)

The favor then asked was granted as follows :

ORDNACE OFFICE,
Washington, March 3, 1846.

SIR: Referring to your letter to the Secretary of War of 27th ultimo, I have now to inform you that the recommendation of this office to extend your order for muskets, to the extent of two years' delivery, has been approved.

You are therefore authorized to furnish sixteen hundred muskets, in addition to the four thousand ordered of you in October, 1840, and for which you will be paid at the rate of \$14 50 each.

I am, sir, respectfully, your obedient servant,

G. TALCOTT,
Lieutenant Colonel of Ordnance.

DANIEL NIPPES,
Millcreek, Pennsylvania.—(R., p. 33.)

Under this arrangement plaintiff went on and and manufactured and delivered the 1,600 additional muskets, and received his pay therefor, as he has frequently admitted, as appears by the record.

There is no evidence that he ever claimed a greater price than was allowed him until after he learned, through the report of the Secretary of War, that Pomeroy had been paid, for a portion of the muskets delivered by him an addition of \$1 50 per musket. He then expressed the opinion he ought to be allowed the same price, although he had no written contract.—(Pl'ffs title, R., p. 35.) But, nevertheless, within sixteen days after that, he asked for the extension of his contract, and four days after applying he obtained the extension to the amount of 1,600 muskets.

7. That at the time of fixing the price at \$14 50 per musket, only 500 had been delivered, and consequently, if the plaintiff were to be allowed an additional price, it could only extend to these five hundred.

It clearly appears that only 500 muskets were delivered.

Col. Talcott states, "In October 1840, Mr. Nippes was given an order for eight hundred muskets a year for five years, at the like conditional price of \$12 50 each. After he had delivered five hundred muskets under this order, he complained that he could not make them for that price, and upon a review of the case, he was, on the 16th of July, 1842, allowed \$2 each on the five hundred delivered, and \$14 50 for those to be delivered."—(R., p. 34.)

If this statement is true, (and it cannot be doubted,) the price for all to be delivered in future was distinctly fixed, so that the claim, upon the grounds assumed by the plaintiff, could only be on the 500 previously delivered.

But Col. Talcott also shows that, as to the muskets previously delivered, the conditional price of \$12 50 was changed into a definite and positive price of \$14 50 for each. This was to apply to the whole 4,000, and was afterwards applied to the 1,600 subsequently agreed for. This adjustment of the price is conclusive upon both parties.

If it were not so, and the original Pomeroy agreement were to prevail, it has not yet been "satisfactorily ascertained by the United States"

what it actually cost to manufacture such arms at Springfield, nor can it be possibly ascertained.

It is believed that these are all the material facts in this case. The solicitor is aware that there is a vast body of facts found in the record other than the above, but he thinks they have no bearing whatever upon the material questions in the case, and for this reason they are not referred to as being among the material facts found in the record.

6. There was no written agreement.

This is distinctly denied by the United States, and there is no evidence that one was made. A contract was drawn out and never was executed by either party, and therefore was not a contract in any legal sense of that word.

This is clearly shown by plaintiff's own statement, marked "D," at pages 40 and 41 of the record.

He went to work, not under written contract, but under Col. Talcott's letter to Fornance, dated on the 8th October, 1840. This is clearly shown by Fornance's letter to Col. Talcott, dated 9th of December, 1840.—(R., p. 24, 25.)

On the 11th of the same month Col. Talcott says, plaintiff may rely upon letters from his office.—(R., p. 25.)

This case does not present any important legal questions. It seems to depend entirely upon questions of fact, and upon them it must be determined.

R. H. GILLET, *Solicitor*.

DECEMBER 15, 1859.

IN THE COURT OF CLAIMS.

APRIL 16, A. D. 1860.

DANIEL NIPPES *vs.* THE UNITED STATES.

SCARBURGH, J., delivered the opinion of the court.

In the year 1839 the petitioner was engaged in furnishing muskets to the United States. On the 9th day of March, A. D. 1839, he was informed by George Bomford, colonel of ordnance, that after the expiration of that year no order would be given him for muskets of the model then in use; that an opportunity would be given him at the Springfield armory to examine the new model musket and obtain the necessary information to enable him to determine whether he would engage in the manufacture of arms on that model; that in case he decided to do so on terms acceptable to that department, he would be allowed the use of a musket to enable him to prepare the necessary tools, as soon as he might desire it; and that the price of the new model would be regulated by the results of the national armories, and would probably not be less than fifteen dollars for the first year.

The petitioner alleges that he accepted this offer; but on the 9th of June, A. D. 1840, Col. Talcott stated that no contract had been made by him with the United States for muskets of the new pattern. (Letter of Col. Talcott to the Secretary of War of June 9th, A. D. 1840.) But

prior to the 1st day of August, A. D. 1840, he was assured by the Ordnance office that he would be allowed to furnish eight hundred muskets of the new model, and on that day an order, which had been previously given by that office to the superintendent of the Harper's Ferry armory to send him a model musket, was reiterated. (Letter of Col. Talcott to Mr. Fornance of August 1st, A. D. 1840.)

On the 8th day of October, A. D. 1840, Col. Talcott stated to Mr. Fornance that it had been the intention of the department to give the petitioner a contract for *eight hundred* muskets a year for five years, with liberty to the government to increase the number on giving suitable notice; and that if he felt assured of the petitioner's skill and ability to execute the work according to the model, the petitioner might begin at once. (Letter of Col. Talcott to Mr. Fornance of October 8th, A. D. 1840.)

On the 11th December, A. D. 1840, Col. Talcott assured the petitioner that he might safely rely on the letters of the Ordnance office, and that if he complied with what pertained to his share of the business, he might depend on having a contract. (Letter of Col. Talcott to Mr. Fornance of December 11th, A. D. 1840.)

On the 14th day of July, A. D. 1842, the petitioner, in a letter to the Secretary of War of that date, stated that he had previously delivered *five hundred* muskets of the new model, and proposed that, as it was important to him to have a certain contract, both as to number of muskets and as to price, a specific order should be given him to make *eighteen hundred* a year for three years, to commence from the 1st of January, A. D. 1843, at the price of \$14 50 a musket; but an extension of the number of muskets to be furnished by him was then refused. (Report of Col. Talcott to Secretary of War of July 15th, A. D. 1842.)

An account in favor of the petitioner against the United States for an allowance of \$2 each, in addition to \$12 75 each, which he had already received for the *five hundred* muskets previously delivered by him, was forwarded to the Treasury Department on the 16th day of July, A. D. 1842, with this explanation: "On the 9th of March, 1839, an assignment was made to Mr. D. Nippes of 1,000 muskets, at \$12 25 *per* musket, which he has delivered." In the same letter inducements were held out to him for the manufacture of the new pattern musket, of which an assignment was made to him on the 8th of October, 1840, for the manufacture of eight hundred muskets *per annum* for five years, at the conditional price of \$12 75 each. In the process of their manufacture it was found that \$12 75 was not an adequate compensation, and it has now been established at \$14 75, viz: \$14 50 for the musket, and 25 cents for the appendages, at which price the five hundred already delivered, and those hereafter to be delivered, are to be paid for; and it is accordingly requested that the sum of one thousand dollars, being the amount of the annexed account, may be paid to Mr. D. Nippes out of the appropriation for "arming and equipping the militia."

G. TALCOTT,

Lieutenant Colonel of Ordnance.

WM. B. LEWIS, Esq.,
Second Auditor.

ORDNANCE OFFICE, *July 16 1842.*

Respectfully submitted to the Secretary of War for his approval.

G. TALCOTT,

Lieut. Colonel, Ordnance Department.

Approved July 16, 1842.

J. C. SPENCER,
Secretary of War.

This account was allowed and paid to the petitioner.

The petitioner having agreed to furnish *eight hundred* muskets a year from the 1st of January, A. D. 1841, to the 31st of December, A. D. 1845, but having, prior to the 20th of October, A. D. 1842, furnished only *five hundred*, he was authorized to deliver the remaining *three thousand five hundred* within the years 1842, 1843, 1844, and 1845, the deliveries in any one of those years not to exceed one thousand. (Letter of Colonel Talcott to the petitioner of October 20, A. D. 1842.)

On the 19th of December, A. D. 1844, the petitioner solicited a further contract, but the department had not then determined to make any other contracts for muskets. (Letter of petitioner to Colonel Talcott of December 19, A. D. 1844, and letter of Colonel Talcott to petitioner of December 20, A. D. 1844.)

On the 27th of February, A. D. 1846, the petitioner requested that he might be allowed to furnish an additional number of muskets; and on the 3d of March, A. D. 1846, he was authorized to furnish, in addition to the *four thousand* ordered of him in October, A. D. 1840, *one thousand six hundred* muskets at \$14 50 each. (Letter of petitioner to Secretary of War of February 27, A. D. 1846, and letter of Colonel Talcott to the petitioner of March 2, A. D. 1846.)

On the 11th of February, A. D. 1847, the petitioner, in a letter to the Secretary of War, said: "Permit me to call your attention to a claim which I have against the United States, arising from the manufacturing and delivering of muskets under an engagement based upon a letter of Colonel Bomford, dated March 9, 1839. From this letter I expected to be placed upon an equal footing with the other manufacturers of muskets; but from the published report of the War Department, I have ascertained that Mr. Pomeroy received for two thousand one hundred muskets, \$16 each, whilst I received but \$14 50, having agreed to the receipt of this price under the belief at the time, from representations then made, as I understood them, that \$14 50 was the *maximum* price; and as it has always been admitted that the muskets manufactured by me are equal to those manufactured by Mr. Pomeroy or at the armories, I consider my claim for the additional compensation upon two thousand one hundred muskets of \$1 50 each to be founded upon principles of justice and equity, and trust that it will be so considered by the department. I would further beg leave to call the attention of the department to the fact that Mr. Pomeroy had awarded to him the manufacture of seven thousand muskets, whilst to me there was awarded but four thousand; and the outlay for machinery being

heavy, and as great upon the smaller number as the larger, Mr. Pomeroy thereby derived much greater advantage than I have. My expenditures for machinery have been far greater than the profits realized from the price received, and the machinery for any other purpose is but of trifling value, thereby making the loss to me heavy."

The petitioner denies that he ever agreed to receive \$14 50 as the *maximum* price of each musket, and he alleges that he was grossly and fraudulently deceived by Colonel Talcott into an acceptance of that price and his subsequent acquiescence in it, and that he was not told by him that Pomeroy's first contract had been substituted by another on the 14th of March, A. D. 1842.

The petitioner presents his claim under two aspects.

1. Under an express contract.

Under this he claims that he is entitled to be paid for 4,000 muskets, at \$18 50 each.....	\$74,000
From which he deducts the amount actually received by him.....	58,000
Leaving the amount claimed.....	<u>16,000</u>

2. Under an implied contract.

Under this he claims that he is entitled to be paid for 4,000 muskets, at \$19 44 each.....	\$77,760
From which he deducts the amount actually received by him.....	58,000
Leaving the amount claimed.....	<u>19,760</u>

The petitioner alleges that the contract with him is the same in terms as that made with L. Pomeroy on the 26th day of February, A. D. 1840, but this is not shown by the evidence. Pomeroy's name nowhere occurs in the correspondence between the petitioner and the Ordnance office. The petitioner, in his letter to the Secretary of War, dated February 27th, A. D. 1846, mentions Pomeroy's name, but not to show that their contracts were originally the same, or with any reference to that subject. It appears from the testimony of W. C. Reddall, that it was his understanding that the two contracts were in substance the same; and that, under the instructions of Colonel Talcott, he prepared a written contract to be executed by the United States and the petitioner, with terms and conditions precisely similar to the terms and conditions of the contract between the United States and L. Pomeroy; and that it was not executed because the parties contemplated that the number of muskets to be furnished by him should be increased. The effect of this evidence is, at most, that such a contract was contemplated by the parties, but never actually made.

The contract between the petitioner and the United States is to be gathered from the correspondence between him and the Ordnance office. Such, we think, was the understanding of the parties. The petitioner,

on insisting that a specific contract should be made with him, was assured that he might safely rely on the letters of the Ordnance office. The contract, as presented by this correspondence, so far as it is necessary now to state it, was, that the petitioner should furnish eight hundred muskets a year for five years at a price to be regulated by the results at the national armories.

Such being the contract, there might be some difficulty in determining its construction, if the parties themselves had not settled it. What was meant by the language, "*regulated by the results of the national armories?*" How and by whom *regulated*? What was meant by "*the results of the national armories?*" The truth is, that on the 9th of March, A. D. 1839, it was not known by either party what would be a fair price, and that was left for future arrangement; but how or to what extent reference was to be had in making that arrangement to "*the results of the national armories,*" we need not now determine. The price was fixed by the mutual consent of the parties, and in a manner obligatory on both, by the transactions of the 16th day of July, A. D. 1842. The petitioner must be presumed to have been cognizant of these transactions, and to have assented to them. He received the money then allowed, and is presumed to have known and assented to the grounds on which the allowance was made. They were matters in which he was directly interested, taking place and entered of record in a public department, and it was no less his duty than his privilege to have taken notice of them. They could not have taken place without his consent, unless the public officers had been guilty of a breach of duty. The basis on which the allowance was made to him had reference not only to the past, but the future; it recited that \$14 75 each had been established as the price as well for the muskets which had been as for those which were to be delivered by the petitioner. The petitioner must be presumed not only to have known, but to have assented to this. The price could not have been established without the mutual consent of the parties.

Such, we think, is the proper view of this case, independently of any admissions on the part of the petitioner. But the petitioner, in his letter to the Secretary of War of February 11, A. D. 1847, expressly states that he agreed to the price of \$14 50 for each musket. It is true that in that letter he alleges that he was misled by the representation that \$14 50 was the *maximum* price. If the proof of his assent depended on this letter, it might be urged that his whole admission must be taken together; but his assent, as we have seen, otherwise appears. As to the allegation of fraud or misrepresentation to his prejudice, the burden of proof is on the petitioner, and there is not a particle of evidence in this case to sustain it.

The contract between the United States and the petitioner, and that between the United States and L. Pomeroy, were two distinct and independent transactions, having no connexion whatever with each other. Moreover, the arrangement between L. Pomeroy and the United States of the 17th of March, A. D. 1842, was plainly upon its face a compromise, and, for that reason, could not be relied on as a guide for an adjustment of price between the United States and the petitioner. It is plain, therefore, that upon no principle was there

any obligation on the part of the United States at any time to communicate to the petitioner what had taken place between them and L. Pomeroy

Our opinion is, that the petitioner is not entitled to relief.

LORING, J. I concur in the result of the opinion read in this case.