

GILBERT & GERRISH.

JANUARY 9, 1874.—Ordered to be printed.

Mr. JOHN B. HAWLEY, from the Committee on Claims, submitted the following

REPORT:

[To accompany bill H. R. 1038.]

*The Committee on Claims of the House of Representatives, to whom was referred the memorial of Isaac Watts, administrator of the estate of William Gerrish, asking damages on account of an annulment of a contract of Abel Gilbert, of the firm of Gilbert & Gerrish, have considered the same, and ask leave to report:*

The following is a statement of the facts in this case, as they appear upon the records in the office of the Quartermaster-General, and not denied by either party:

On the 21st day of May, 1859, a contract was entered into at Salt Lake City between Col. Geo. H. Crosman, deputy quartermaster-general United States Army, and Abel Gilbert, according to the terms of which the latter was to supply the army of General Johnston, then stationed at Camp Floyd, in Utah, with forty thousand bushels of wheat, rye, barley, corn, and oats, in equal or unequal portions of each, at the option of the parties, and for which Colonel Crosman was to pay two dollars per bushel for the wheat, rye, barley, and corn, and one dollar and fifty cents per bushel for the oats; and the contract expressly reserved to the United States the privilege of increasing the quantity of grain to be delivered to one hundred thousand bushels, at any time within fifteen days from the date of the contract. Within the time stipulated, Colonel Crosman notified Gilbert that he would be required to deliver one hundred thousand bushels. The contract was, therefore, for the delivery of one hundred thousand bushels. This grain was to be delivered by Gilbert to the United States at points not more distant from Camp Floyd than the town of Manti, San Pete Valley. But the contract further provided that if Colonel Crosman should require the grain to be delivered at Camp Floyd, Gilbert was to receive two dollars and fifty cents per bushel for corn, rye, wheat, and barley, and two dollars per bushel for oats. Payments were to be made from time to time, as the grain was delivered, or as funds were received by the Quartermaster-General. The whole of the grain was to be delivered, at the convenience of Gilbert, between the 1st of July, 1859, and the 1st day of June, 1860, not less than ten thousand bushels to be constantly kept on hand at Camp Floyd.

Gilbert received notice from Colonel Crosman to deliver the grain at Camp Floyd, instead of the points mentioned in the first article of the contract, and, in accordance therewith, commenced the execution of the

contract by delivering the grain at Camp Floyd, and delivered a large quantity of grain at that point, which was received and paid for, and he was proceeding in the execution of his contract, when, in the winter of 1859, or late in the fall of 1859, he was requested by General Johnston and Colonel Crosman to discontinue further deliveries of grain except in small quantities, from time to time, as needed for issue, they stating that the number of mules had been largely reduced, three thousand having been sold at auction, and that there was no room in the store-houses for more grain at that time.

To this Gilbert assented, with the understanding, as Colonel Crosman says, that there would be no objection to extending the time for completing his contract into another year. Accordingly, on the 17th day of April, 1860, an agreement was entered into between Colonel Crosman and Gilbert, by which the time for the delivery of the grain was extended from the first day of June, 1860, to the 30th day of June, 1861, Gilbert having at that date (April 17, 1860) executed about one-half of his contract.

This change in the contract, as abundantly appears by the statements of Colonel Crosman, was made for the convenience of the Government and for its benefit, at the instance of Colonel Crosman. Gilbert did not seek the change. On the contrary, it appears that he was ready to continue the delivery of grain and complete the contract.

On the 14th of July, 1860, three months nearly after the agreement extending the time for the delivery of the grain had been made, General J. E. Johnston, Quartermaster-General, wrote to Colonel Crosman, informing him that the said agreement changing the time of delivery had been disapproved and annulled by the Secretary of War, on the ground that there were no sureties to guarantee its fulfillment, and that the competition required by the regulations had not been invited, and directing Colonel Crosman to inform Mr. Gilbert of his action. To this letter Colonel Crosman replied, remonstrating against such action, and explaining that the agreement of April 17, 1860, was not a new contract for grain, but merely one extending the time for the completion of the original contract, which had been made at his instance for the convenience and benefit of the Government, and urging that Mr. Gilbert be permitted to complete his contract.

It appears from the records that the original contract with Gilbert was made after advertisement, according to regulations, for proposals to furnish the grain had been made, and that Gilbert's was the lowest bid of fifteen, a majority of which ranged from \$4 to \$6 a bushel, one being as high as \$13, and that both that contract and the one extending the time for its completion were approved by the commander of that department, General Johnston. It also appears that there were approved sureties to the first contract, and that those sureties consented to the extension of time by the second.

Regarding, then, the agreement of April 17, 1860, as merely an extension of time for the completion of the original contract, made at the instance of the Government, and for its benefit, there seems to be no force in the reasons given by the Secretary for disapproving it. That the second agreement was, by its terms, and was intended so to be by both Colonel Crosman and Mr. Gilbert, is conclusively shown by the record.

On the 17th day of August, 1860, four months after the second agreement was made, and while Gilbert was actively engaged in supplying the grain called for by the contract, Colonel Crosman notifies him of

the action of the Secretary of War, and informs him that no more grain will be received from him on the contract.

Mr. Gilbert protested against this violation of the contract, and gave notice of his readiness to comply with his part of the contract by delivering the full quantity of grain required to fill it, representing that he had already purchased the grain, and if it was not received the loss would be ruinous to him. He tendered the grain to Major Clary, then chief of the quartermaster's department of Utah, and Major Clary, under the instructions from the War Department, declined to receive it. Mr. Gilbert then appealed to the Secretary of War to reconsider his action, but in vain. Finally, in November, 1860, the Secretary of War referred the question of the validity of the contract to the Attorney-General for his opinion, who decided that the contract was valid and binding upon the parties; that it had clearly been violated by the Government, and the contractor was entitled to damages; and suggested that the most equitable course would be to permit the contractor to execute the agreement. Mr. Gilbert then again offered to deliver the grain, but the Quartermaster-General declined to receive it, on the ground that they had all the grain that would be needed. Again and again did Mr. Gilbert propose to complete the contract, but his offers were declined. There is not in the record the slightest intimation that Mr. Gilbert failed in any respect to comply with his contract, but the Secretary of War had annulled the contract, and there he let it rest, notwithstanding the opinion of the Attorney-General.

It appears that there were delivered by Mr. Gilbert on the contract 60,976 bushels, leaving yet to be delivered 39,024 bushels.

After the contract with Gilbert was annulled, a new contract was made by the Government with another party for the grain.

From the evidence submitted by the claimants, it appears that at the time Mr. Gilbert received notice of the annulment of his contract by the Secretary of War, in the middle of August, 1860, he had purchased and had on hand at Camp Floyd, ready for delivery under the contract, about 35,000 bushels of the grain, which had cost him an average of about \$1.50 per bushel; that after the crop of 1860, which was an abundant one, was harvested, the prices of all grain declined very rapidly, as grain was very plenty and the demand for it quite limited, and that he lost on the grain on hand in August, 1860, which he had bought to deliver on the contract, from seventy-five cents to one dollar per bushel by the decline of prices alone, to say nothing of the expense of storing and caring for it, transporting it to a market, &c.; that after the harvest of 1860 grain sold in Utah, at market prices, for from fifty to seventy-five cents per bushel, and that thousands of bushels of sound corn, which had been transported from the Missouri River by the Government, was sold by the Government at Camp Floyd early in the summer of 1861 at twenty-five cents per bushel; that the prices of grain in 1859 and the early part of 1860 were high, ranging from \$1.75 to \$2 per bushel, and that Mr. Gilbert made very little, if anything, on the grain which he delivered on the contract, by reason of the high prices and the large expense attending business in that country; that Abel Gilbert was a member of the firm of Gilbert & Gerrish, and that the said firm was greatly embarrassed financially and bankrupted by the violation of this contract by the Government.

Although this contract was made in the individual name of Abel Gilbert, it appears that he was acting for the firm which was composed of Abel Gilbert and William Gerrish. Mr. Gerrish died in 1865, and is represented by Isaac Watts, the administrator of his estate, and Mr.

Gilbert died in 1871, and is represented by Benjamin W. Gilbert, his administrator.

Wherefore, they recommend the payment to these legal representatives of the estates of said Gilbert and Gerrish, as damages, seventy-five cents a bushel loss on thirty-five thousand bushels of grain, amounting to \$26,250, providing said sum shall be received in full satisfaction for all damages sustained by said estates for breach of said contract, and for that purpose the enactment of the accompanying bill.

The following papers are referred to in connection herewith :

1. The original contract, marked A, with copy of notice increasing the quantity attached.
2. The copy of the agreement extending the time, marked B.
3. Copy of Quartermaster-General's letter annulling the contract, marked C.
4. Letter of Colonel Crosman to Mr. Gilbert, informing him of the action of the Secretary of War, marked D.
5. A copy of Colonel Crosman's letter to Mr. Gilbert, in reply to his of the 17th August, 1860, marked E.
6. Letter of Mr. Gilbert to Major Clary, expressing his readiness to complete his contract, dated October 11, 1861, marked F.
7. Major Clary's reply, marked G.
8. Official copy of the opinion of the Attorney-General, marked H.
9. A copy of Quartermaster-General Johnston's letter of January 19, 1861, to the Secretary of War, as to quantity of grain delivered, marked I.
10. Copy of a letter from Quartermaster-General's Office, referring claimant to Congress for relief, marked K.
11. Affidavit of Thomas A. Janney, marked L.
12. Affidavit of C. P. Gilbert, marked M.
13. Affidavit of A. S. Peck, marked N.
14. Affidavit of J. W. Hardesty, marked O.
15. Letters of administration of Isaac Watts.
16. Letters of administration of Benjamin W. Gilbert.
17. Copy of letter of Colonel Crosman of August 20, 1860, to the Quartermaster-General, marked P.
18. Copy of letter of Abel Gilbert to Secretary of War, of August 19, 1860, marked Q.
19. Copy of letter of Abel Gilbert to Colonel Crosman, of August 17, 1860, marked R.
20. Copy of letter of Colonel Crosman to Abel Gilbert, referring to notice, marked S.
21. Copy of indorsement and recommendation of E. S. Sibley, quartermaster in charge.
22. Copy of Quartermaster-General Johnston's letter of October 11, 1860, to Secretary of War.