55TH CONGRESS, 2d Session. } HOUSE OF REPRESENTATIVES. { REPORT No. 1197.

OLIVER M. BLAIR, ADMINISTRATOR.

APRIL 26, 1898.—Committed to the Committee of the Whole House and ordered to be printed.

Mr. MAHON, from the Committee on War Claims, submitted the following

REPORT.

[To accompany H. R. 9949.]

The Committee on War Claims, to whom was referred the bill (H. R. 9949) for the relief of Oliver M. Blair, administrator of Thomas P. Blair, deceased, submit the following report:

A bill similar in its nature was before the Committee on War Claims of the Fifty-third Congress and was reported favorably.

Your committee adopt now as their own the report made in the House of Representatives, third session Fifty-third Congress, a copy of which is hereto attached and made a part of this report.

Your committee recommend the passage of the bill, and attach to their report the testimony of Captain Ashmead and ask that it be printed as a part of this report.

[House Report No. 1791, Fifty-third Congress, third session.]

The Committee on War Claims, having had under consideration the bill (H. R. 8173) for the relief of Oliver M. Blair, administrator of Thomas P. Blair, deceased, beg leave to report thereon as follows:

Hon. Thomas P. Blair, whose estate is the claimant in this case, resided in Shippensburg, Cumberland County, Pa., for many years before, during, and after the war of the rebellion, and died on November 7, 1887, when his son, Oliver M. Blair, became his administrator. The decedent was engaged in the grain business and his warehouse was located on the Cumberland Valley Railroad, which passes through his town.

In the spring of the year 1863 Albert S. Ashmead, captain and assistant quartermaster of volunteers, United States Army, employed the firm of Oaks & Linn, of Chambersburg, Pa., 10 miles distant from the town of Shippensburg, to purchase oats and corn along the line of the Cumberland Valley Railroad for the use of the Government, at Hagerstown, in the State of Maryland, the southern terminus of said railroad.

The firm of Oaks & Linn, in pursuance of their authority from Capt. Albert S. Ashmead, assistant quartermaster in United States Army, acting in the name and by

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the authority and direction of the Secretary of War, agreed that they would take for the United States all the oats and corn the decedent could furnish at a certain stipulated price, to wit: For corn, $1 per bushel, and for oats, 80 cents per bushel, the decedent to put the same into bags to be furnished by the said Captain Ashmead, and to store in his warehouse in said bags, duly marked as the property of the United States, until orders and transportation were sent to forward the said oats and corn.

The decedent executed his part of the agreement and purchased a large quantity of oats and corn, to wit, 25,000 bushels of oats and 12,000 bushels of corn; that Captain and Assistant Quartermaster Ashmead furnished the bags, properly marked as the property of the United States, into which the decedent put said oats and corn, and allowed it to remain in his warehouse, as directed by said agents of the United States.

In consequence of the invasion of the Cumberland Valley and the State of Pennsylvania by the rebel forces under the command of General Lee in June, 1863, Captain and Assistant Quartermaster Ashmead desired to have said oats and corn sent to Harrisburg, in the State of Pennsylvania, instead of Hagerstown, in the State of Maryland, and on the 22d day of June, 1863, the decedent received orders from Captain Ashmead to forward the said oats and corn to Harrisburg, and was notified that on the next day (the 23d of June, 1863) cars would be at the decedent's warehouse to take it away. In the meantime, however, the advance guard of General Lee's army came to Shippensburg, and finding said oats and corn identified and set apart in the warehouse of the decedent as the property of the United States, seized and appropriated the same to their own use.

On these facts the United States became justly indebted to said decedent in the sum of $32,000 for the value of said oats and corn, but no payment for the said oats and corn has ever been made. The decedent in due time presented his claim for payment to the Quartermaster-General of the United States Army, but his claim was not allowed on the ground that the Quartermaster-General did not believe that he had jurisdiction, and that Congress alone could grant the decedent relief. That thereupon the decedent presented his petition for relief to Congress, and the bill now under consideration (H. R. 8173) was introduced and sent to the Committee on War Claims.

The committee find very clearly from the evidence that Captain Ashmead, through his agents, agreed to take at market price for the use of the Government all the oats and corn which Mr. Blair could buy and store in Government bags in his warehouse at Shippensburg, Pa., in the summer of 1863. June 22, 1863, Mr. Blair had in Government bags in his warehouse 25,000 bushels of oats, worth at market price 80 cents per bushel, and 12,000 bushels of corn, worth at market price $1 per bushel, aggregating $32,000, which he had purchased for the Government.

This corn and oats belonged to the United States Government and would have been removed by it on June 23, 1863, if the forces of General Lee had not seized and appropriated it. The fact that the Confederate troops seized the oats and corn after it had become the property of the Government was no reason for the Government refusing to pay for it.

The Quartermaster-General would have been fully authorized under the law to have approved Mr. Blair's claim, and the extreme caution with which he acted, and the rigid construction which he put upon the contract, were not justified by the law and the facts.

"When the terms of sale are agreed on, and the bargain is struck, and everything that the seller has to do with the goods is complete, the contract of sale becomes absolute between the parties without actual payment or delivery, and the property and the risk of accident to the goods rest in the buyer. (Kent. Com., vol. 2, p. 492, 12th ed., and numerous authorities there cited.)

"Heineccius, in his excellent treatise on the law of nature, says that the risk of the thing purchased after the bargain is completed, though without delivery, ought to fall on the buyer in cases free from fault or delay on the part of the seller, quia emptor jure naturæ sine traditione sit dominus. (Jur. Nat. et Gentium, 6, 1, c. 17, sec. 353.)

"Marking the parcels in the store of the warehouseman with the initials of the name of the purchaser is a delivery. (3 Caines, 182.)

"The change of mark on bales of goods in a warehouse by direction of the parties operates as a delivery of the goods. (Lord Ellenborough, 14 East., 312.)

"The selecting and marking of sheep in the possession of the vendor, who retains possession for the vendee, is a sufficient delivery to complete the sale and pass the property. (2 Vermont, 374.)

"If no place be designated by the contract the general rule is that the articles are to be delivered at the place where they are at the time of the sale. (Kent Com., vol. 2, p. 505, etc.)"

Mr. Blair's claim is a just one and payment should no longer be delayed.

The committee therefore recommend the passage of the bill.

Testimony of Albert L. Ashmead, taken this 11th day of March, A. D. 1897.

[Questions by the notary public.]

Q. What is your age? Where do you reside? Are you related to the claimant in this case? Have you any interest, direct or indirect, in this claim?—A. I am in my sixty-third year, and reside at Jeffersonville, Montgomery County, Pa. I am not related to the claimant and have no interest in this claim.

Q. Were you a captain and assistant quartermaster of volunteers, and how long did you serve?—A. I can not give you the dates, but I was captain and assistant quartermaster until the middle of November, 1865, and I was quartermaster of the Twenty-ninth Pennsylvania Volunteers from about the commencement of the war until I was promoted and made captain and assistant quartermaster.

Q. As captain and assistant quartermaster in the spring and summer of 1863, where were you?—A. I was in Chambersburg, Pa. I had charge of the purchase of forage for the Department of Pennsylvania.

Q. Did you ever give a firm by the name of Oaks & Linn, of Chambersburg, authority to purchase oats and corn along the line of the Cumberland Valley Railroad; and if so, was the authority written or verbal?—A. I did give them authority, but I can not say whether it was verbal or written. I think it was verbal.

Q. What was the contract?—A. It was to purchase forage, not only corn and oats, but hay, if they could get it, and all the grain that was purchased I was to furnish bags for on account of the Government.

Q. Did you know T. P. Blair?—A. I do know him.

Q. Did Oaks & Linn contract with him for you?—A. Yes.

Q. Were you to send the cars for this grain?—A. I was. I was to furnish cars as fast as the grain could be furnished. The original destination of the grain was Hagerstown, but when the invasion of the State took place I had to change it to Harrisburg.

Q. Do you know that Mr. Blair was prevented from sending this grain for want of cars?—A. Yes; I understood that Mr. Blair had a large amount of grain collected and I had sent him a number of bags, showing that I was ready to take it. These were Government bags.

Q. Did Mr. Blair do all that he could to comply with the contract?—A. Mr. Blair saw me in Reading, Pa., and he told me he had collected a large quantity, which I knew to be the case.

Cross-examined by COUNSEL:

Q. With whom was the contract for this grain?—A. With Oaks & Linn.

Q. To whom did you give contracts?—A. With the party themselves. Oaks & Linn would notify me; then the parties would send me the bill of lading. Oaks & Linn were my agents to procure from the parties having it grain for the use of the Government; in other words, they were my agents to purchase, and the settlements I made with the parties who furnished the grain.

Q. Did you notify Blair and other parties where to deliver the grain, etc.?—A. No, sir; as soon as delivered in the cars I sent it to where it was needed. My contracts were to have the grain delivered in the cars which were sent to their warehouses, and I then sent the loaded cars wherever they were needed.

Q. Did you settle by voucher or payment for all the grain you received at Chambersburg while quartermaster?—A. Yes.

Q. Do you know of anything else material to this claim?—A. There is no doubt that Mr. Blair had collected large quantities of grain in consequence of this contract, and as I was as anxious to get the grain as he was to deliver it, the cars would have been sent to him in ample time had it not been for the invasion of our State by the Confederates, and therefore the nondelivery on the cars was not Mr. Blair's fault.

ALBERT S. ASHMEADE.

Affirmed and subscribed to before me March 11, 1887.

JOHN J. CORRON, *Notary Public.*