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case, was a citizen of the same state with the plaintiffs, at the time the contract was made in that state, and remained such, at the time the suit was commenced in its courts. But that these facts made no difference in the cases. The constitution of the United States was made for the whole people of the Union, and is equally binding upon all the courts and all the citizens.

Judgment reversed.

JUDGMENT.—This cause came on to be heard, on the transcript of the record of the supreme court for the eastern district of the commonwealth of Pennsylvania, and was argued by counsel: On consideration whereof, the court is of opinion, that the said supreme court for the eastern district of the commonwealth of Pennsylvania erred, in giving judgment for the defendant, on the demurred of the plaintiffs to the plea of the said defendant: It is, therefore, adjudged and ordered, that the judgment of the said supreme court for the eastern district of the commonwealth of Pennsylvania be and \*the same is hereby reversed and annulled. And it is further [\*135 ordered, that the said, cause be remanded to the said supreme court for the eastern district of the commonwealth of Pennsylvania, with directions to enter judgment for the plaintiffs in the said court.

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*Public contracts.*

Where, in a contract with the secretary of war, for supplying the troops of the United States with provisions, specific prices are stipulated for rations issued at certain places mentioned in the contract; and it is further provided, that "should any rations be required, at any places, not specified in this contract, the price of the same shall be hereafter agreed on betwixt the public and the contractor;" if the parties cannot agree upon the price for the rations thus required, a reasonable compensation is to be allowed, and is to be proved by competent evidence, and settled by a jury; and the contractor, upon the trial, is at liberty to show, that the sum allowed by the secretary of war is not a reasonable compensation.

Under the 3d and 4th sections of the act of the 3d of March 1797, the defendant is entitled, at the trial, to the full benefit of any credit in his favor, whether arising out of the particular transaction for which he was sued, or out of distinct and independent transactions, which would constitute a legal or equitable set-off, in whole or in part, of the debt sued for by the United States.<sup>1</sup>

THIS was an action of debt, brought in the District Court of Kentucky, against the defendant, a former contractor for supplying the troops [\*136 of the United \*States with provisions. The defendant pleaded *nil debet*.

The attorney of the United States, to support the issue on the part of United States, produced a certain account, marked A. The counsel for the defendant, to support the issue on his part, produced the contract marked B; also a paper marked C, and an account for contingent claims, marked D. By the contract entered into between the defendant and the secretary of war, on the 3d of July 1801, it was, among other thing, agreed, that the contractor should receive "for every complete ration issued at the Chickasaw bluffs, at Nashville, at Bear creek, on the Tennessee, or at any other

<sup>1</sup> United States v. Bank of the Metropolis, 15 Pet. 377; United States v. Collier, 3 Bl. C. 326; United States v. Mann, 2 Brock. 9.

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place on the road between Nashville and Bear creek, fourteen cents ;” and “for every complete ration issued at any place in the Chickasaw or Choctaw country, on the road between Bear creek and Natchez, eighteen cents and one-half cent ;” and that, “should any rations be required at any places, or within any other districts not specified in this contract, the price of the same shall be hereafter agreed on betwixt the public and the contractor.”

It appeared from the evidence, that at the time the contract was entered into, the road from Nashville to Natchez crossed the Tennessee river, at the mouth of Bear creek, which empties into the Tennessee river on the south-west side. That after the date of the contract, a new road from Nashville to Natchez, passing through the Chickasaw and Choctaw country, was cut out by the United States troops, which crossed the Tennessee river, about \*137] twelve or fourteen miles above the mouth of Bear creek, and \*about ten miles farther from Nashville. That during the continuance of the contract, a cantonment was established on the south-west side of the Tennessee river, at the crossing point of the new road, and in the Chickasaw country. That the rations on which the two first deductions were made in the paper marked C, were issued at this cantonment, and on the new road, as far as Bear creek. That supplying rations at the cantonment, and on the road as aforesaid, was more expensive to the contractor than it would have been at the mouth of Bear creek. That Fort Deposit is situated on the road from Natchez to Nashville, on the north-east side of the Bayou Piere, about half a mile above the Grindstone ford. That when the contract was entered into, the Bayou Piere was considered the Choctaw boundary ; but at the treaty afterwards held at Fort Adams, it was discovered, that an old boundary line existed between the Choctaw Indians and the French, twenty miles in advance from the Grindstone ford, and this line was adopted in the treaty. That at this post the rations were deposited, on which the third deduction was made in the paper marked C.

On the trial of this cause, the following questions occurred : 1. Whether, under the contract marked B, the defendant was entitled to the sums, or either of them, disallowed in the papers C and D, which had been presented to the proper officers, and by them disallowed? 2. If the defendant be not \*138] entitled to the amount \*claimed in the first, second and third items, or either of them, in the paper marked C, on the ground, that the place at which the rations were delivered is not specially provided for in the contract, has he a right to show, that the sum allowed by the secretary of war for those rations is not a reasonable compensation? 3. Upon such proof, is the defendant entitled to a reasonable compensation for those rations, to be ascertained by the jury? 4. If the defendant be entitled to any of the above sums, can he be permitted to claim a credit for them in this suit?

The opinions of the judges of the circuit court being opposed upon these questions, they were ordered to be certified to this court, according to the act of congress.

February 6th, 1821. This cause was argued by the *Attorney-General*, (a) for the United States, and by *Jones* and *B. Hardin*, for the defendant.

(a) He cited the case of the *Commonwealth v. Matlack*, 4 Dall. 303, in which it was

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February 14th. *Story*, Justice, delivered the opinion of the \*court.—This case comes up from the circuit court of Kentucky, upon a division of opinion of the judges upon certain questions stated in the record.

It appears from the record, that the defendant, on the 3d of July 1801, entered into certain articles of agreement with the secretary at war, for supplying the troops of the United States with provisions, at certain places enumerated in the contract. Among other things, the articles provide, that that the contractor should receive, "for every complete ration issued at the Chickasaw bluffs, at Nashville, at Bear creek, on the Tennessee, or at any place on the road between Nashville and Bear creek, fourteen cents;" and, "for every complete ration issued at any place in the Chickasaw or Choctaw country, on the road between Bear creek and Natchez, eighteen cents and one-half cent;" and that, "should any rations be required, at any places or within any other districts not specified in this contract, the price of the same shall be hereafter agreed on betwixt the public and the contractor."

At the time the contract was entered into, the road from Nashville to Natchez crossed the Tennessee river at the mouth of Bear creek, which empties into Tennessee river on the south-west side. After the date of the contract, a new road from Nashville to Natchez, passing through the Chickasaw and Choctaw country, was cut by the United States troops, which crossed the Tennessee river about twelve or fourteen miles above the mouth of Bear creek, and about ten miles farther from Nashville. During the continuance of the contract, a \*cantonment was established on the south-west side of the river Tennessee, at the crossing point of the new [\*140 road, and in the Chickasaw county. At this cantonment, certain rations were issued by the defendant, for which he claimed the contract price of eighteen and a half cents a ration, as rations in the Chickasaw country. This claim was disallowed by the treasury department, and constitutes the first and second items of an account presented to the treasury, and referred to in the first question as the paper marked C. The remaining item of the same account, which was disallowed by the treasury, was for certain rations deposited at Fort Deposit, for which the defendant claimed also the contract price of eighteen and a half cents a ration, as rations issued in the Choctaw country. At the time the contract was made, Fort Deposit was considered within the Choctaw boundary; but at the treaty afterwards held at Fort Adams, it was discovered, that an old boundary line existed between the French and the Choctaws, which was the line adopted by that treaty, and excluded Fort Deposit from the Choctaw country. There is another account annexed to the record marked D, consisting of certain claims of the defendant against the United States, which were presented to and disallowed by the treasury department. Upon these claims, it is unnecessary to say more, than that this court entirely concurs in the opinion of the treasury department.

The first question, then, is, whether the defendant is entitled to any or

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held by the supreme court of Pennsylvania, under the statute of that state, that a debtor to the commonwealth, who was sued by it, could not indirectly recover from the state a substantive, independent claim, by way of set-off, any more than he could directly recover a debt due from the state, by bringing a suit against it. He also cited *United States v. Giles*, 9 Cranch 212, 228, to the same effect.

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all of the items disallowed by \*the treasury department in the account C. It is contended on behalf of the United States, that the two first items for rations issued and deposited at the cantonment on the new road on Bear creek, were within that part of the contract providing for rations issued "at any place on the road between Nashville and Bear creek," for which the defendant was entitled to the contract price of fourteen cents only; and that this sum had been allowed therefor at the treasury. On the other hand, the defendant's counsel pretends, as has been already stated, that this cantonment was within the Chickasaw country, and that the phrase, "Bear creek on the Tennessee," in the contract, means the mouth of Bear creek, on the Tennessee; so that the defendant is entitled to the contract price of eighteen and a half cents.

We are, however, of opinion, on this point, that the contract must necessarily be presumed to refer to the actual state of things, at the time of its inception, inasmuch as there is nothing in it which shows that the parties had in contemplation any prospective changes. The phrase "Bear creek, on the Tennessee," seems to be an unusual description of the junction of a creek with a river; but in its connection with the context, we are unable to give it any other rational interpretation. And if this were even doubtful, we are of opinion, that the road between Nashville and Bear creek, spoken of in the contract, is the road then in existence and use between those places, and cannot, in the absence of all evidence of intention, be construed to mean a \*142] new road, not then laid out or made, nor shown to be in \*the con-templation of the parties. The rations, then, issued and deposited at the cantonment, on the new road, were not provided for in the contract, at a specific price; not at the price of fourteen cents, for they were not issued at any place on the old road between Nashville and Bear creek, described in the contract; and not the price of eighteen and a half cents, for it was not sufficient, that the cantonment should be in the Chickasaw and Choctaw country, but it must also be on the road between Bear creek and Natchez, existing at the time of the contract. The case, then, falls precisely within that clause of the articles of agreement, that provides, that the price of rations delivered at any other places not specified, shall be thereafter agreed on betwixt the public and the contractor; and this is the construction originally adopted by the government itself.

The same reasons which lead us to this conclusion, constrain us to adopt the construction, that the parties, in their contract, in referring to the Chickasaw and Choctaw country, intended not a disputed, imaginary or rightful boundary afterwards to be settled; but the actual reputed boundary of that country. If, then, Fort Deposit was within the reputed boundary, at the time of the contract, the line as afterwards settled by the treaty at Fort Adams, though the true line, has nothing to do with the case; and the rations deposited at Fort Deposit are to be paid for at the contract price of eighteen and a half cents a ration.

The second and third questions propounded by the circuit court, may be \*143] shortly answered. If \*there be no specific price agreed upon in the contract for rations issued at any place, the contract leaves the price to be adjusted by the government and the contractor. It is to be the joint act of both parties, and not the exclusive act of either. If they cannot agree, then a reasonable compensation is to be allowed; and that reasonable com-

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compensation is to be proved by competent evidence, and settled by a jury, as in common cases ; and the defendant upon such a trial, is at liberty to show, that the sum allowed him by the secretary of war is not a reasonable compensation.

The fourth question is, whether the defendant can be permitted to claim a credit for the sums due him, under the contract, in this suit. The answer may materially depend upon the true construction of the act of congress of the 3d day of March 1797, c. 74, providing for the more effectual settlement of accounts between the United States and public receivers. The third section of that act provides, that upon suits instituted against any person indebted to the United States, judgment shall be rendered at the return-term, unless the defendant shall, in open court, make oath or affirmation, that he is equitably entitled to credits which had been, previous to the commencement of the suit, submitted to the consideration of the accounting officers of the treasury, and rejected, &c. The fourth section then provides, that in suits between the United States and individuals, no claim for a credit shall be admitted upon trial, but such as shall appear to have been presented to the accounting officers of the treasury for their \*examination, and by [\*144 them disallowed, in whole or in part, unless it shall be proved to the satisfaction of the court, that the defendant is, at the time of the trial, in possession of vouchers not before in his power to procure, and that he was prevented from exhibiting a claim for such credit at the treasury, by absence from the United States, or some unavoidable accident. The terms of these sections are very broad and comprehensive. The third section manifestly supposes, that not merely legal, but equitable credits ought to be allowed to debtors of the United States by the proper officers of the treasury ; and the fourth section prohibits no claims for any credits, which have been disallowed at the treasury, from being given in evidence by the defendant at the trial. There being no limitation as to the nature and origin of the claim for a credit which may be set up in the suit, we think it a reasonable construction of the act, that it intended to allow the defendant the full benefit, at the trial, of any credit, whether arising out of the particular transaction for which he was sued, or out of any distinct and independent transaction, which would constitute a legal or equitable set-off, in whole or in part, of the debt sued for by the United States. The object of the act seems to be, to liquidate and adjust all accounts between the parties, and to require a judgment for such sum only, as the defendant in equity and justice should be proved to owe to the United States. If this be the true construction of the act, which we do not doubt, the defendant might well claim a credit in this suit for the sums due him, even if they had \*grown out of distinct and independent transactions, for he is legally, as well as equitably, [\*145 entitled to them. But even if this construction of the act were doubtful, upon the facts of this particular case, so far as we can gather them, we should have probably come to the same result.

This suit seems to have been brought by the United States, for the money price of certain provisions received by the defendant under the articles of agreement. The real object of the suit is, therefore, to procure an account and settlement of that claim. It forms an item in the general account between the parties, like every other advance made by the government to the defendant ; and independent of any statute provision, the defendant

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would have a right to show, that he had accounted for the value of such advance, by delivering the equivalent provisions for which it was originally made. In this view also, the fourth question might be answered in the affirmative.

The opinion of the court will be certified accordingly to the circuit court of Kentucky :

1. That under the contract marked B, the defendant is not entitled to the sums disallowed in the paper D, nor to the sums specifically charged in the first and second items of the paper C, which were disallowed by the treasury officers ; but is entitled to the sum charged in the third item of the paper C, which was disallowed by the same officers, if Fort Deposit was within the reputed boundary of the Choctaw country.

\*146] \*2. That the defendant is not entitled to the first and second items in the paper C, on the ground, that the place at which the rations were delivered is not specially provided for in the contract ; but that he has a right to show, that the sum allowed by the secretary of war for those rations, is not a reasonable compensation.

3. That upon such proof, the defendant is entitled to a reasonable compensation for those rations, to be ascertained by the jury.

4. That the defendant ought to be permitted to claim a credit for the above sums due him in this suit.

Certificate accordingly.

YOUNG v. BRYAN *et al.*

*Jurisdiction.*

The circuit court has jurisdiction of a suit brought by the indorsee of a promissory note, who is a citizen of one state, against the indorser, who is a citizen of a different state, whether a suit could be brought in that court by the indorsee, against the maker or not.<sup>1</sup> No protest of a promissory note, or inland bill of exchange, is necessary.<sup>2</sup>

ERROR to the Circuit Court of Tennessee. This was an action of *assumpsit*, brought in the court below, by the defendants in error, citizens \*147] of Pennsylvania, against the the plaintiff in error, a citizen \*of Tennessee, as the indorser of a promissory note made by another citizen

<sup>1</sup> *Mollan v. Torrance*, 9 Wheat. 537 ; *Evans v. Gee*, 11 Pet. 80 ; *Coffee v. Planters' Bank*, 13 How. 183. The holder of a note payable to bearer, may sue in a circuit court, if otherwise capable. *Bank of Kentucky v. Wister*, 2 Pet. 319 ; *Bonnafee v. Williams*, 3 How. 574 ; *White v. Vermont and Massachusetts Railroad Co.*, 21 Id. 575 ; *Bradford v. Jenks*, 2 McLean 130 ; *Halsted v. Lyon*, Id. 226 ; *Sackett v. Davis*, 3 Id. 101. And this, though the note be indorsed by the payee. *Varner v. West*, 1 Woods 493. So also, the circuit court has jurisdiction of a suit by the holder of a railroad bond, payable in blank. *White v. Vermont and Massachusetts Railroad Co.*, 21 How. 575. And by the holder of a coupon bond, payable to bearer. *Thoinson*

*v. Lee County*, 3 Wall. 327. In a suit by the indorsee of a promissory note, the jurisdiction is determined by the citizenship of the indorser at the time of the commencement of the action and not at the making of the indorsement. *Chamberlain v. Eckert*, 2 Biss. 126. But the plaintiff must show that the indorser is a citizen of a different state, though he indorsed solely for the accommodation of the maker. *Noell v. Mitchell*, 4 Id. 346. And he must allege that the citizenship of the parties through whom he claims title, is different from that of the defendant. *Morgan's Executor v. Gay*, 19 Wall. 81.

<sup>2</sup> *Union Bank v. Hyde*, *post*, p. 572 ; *Nicholls v. Webb*, 8 Wheat. 320 ; *Stephenson v. Dickson*, 24 Penn. St. 148.