

Statement of the case.

GARRISON v. UNITED STATES.

An amendment, not very clear in its terms, to an original government contract, was in this case interpreted against the interests of the government, the amendment having been suggested by one officer of the government, signed by another officer in behalf of the government, without its being signed by the contractor on the other side, and the interpretation which this court thus, and upon what it deemed a reasonable construction of the language of the amendment, gave to the amendment, having been that which the officer who suggested it had acted upon as the right one.

APPEAL from the Court of Claims; the facts as found by that court being thus:

The Secretary of War, by an order, approved by the President, of the date of September 1st, 1861, authorized General Butler to "raise, organize, arm, uniform, and equip," in the New England States, a force not exceeding six regiments, and his requisitions on the quartermaster's, ordnance, and other staff departments of the army, were to be obeyed, provided "the cost of such recruitment, armament, and equipment, did not exceed, *in the aggregate*, that of like troops now or *hereafter* raised for the service of the United States." Under this order, one C. K. Garrison entered, October 7th, 1861, into a written contract with General Butler, by which he, Garrison, agreed to deliver to the United States six thousand "Minie rifles of the *Liege* pattern, with sabre bayonets, and all appendages complete;" and the United States contracted and agreed "to pay for each of said rifles, as shall pass inspection, the sum of *twenty-seven dollars*, or *such less sum* as the Ordnance Department may have paid for guns like in quality or description, or contracted to pay for *to said Garrison*."

At the date of this agreement, Garrison had a contract then existing with the Ordnance Department, dated July 1st, 1861, for ten thousand *Liege* guns, at \$27 per gun, which had not then been performed. But he had not made any contract as yet for any other kind of gun.

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Before the time had elapsed for the delivery of the guns, to be delivered under his contract with General Butler, Major Strong, chief of ordnance of the New England Department, suggested that the *Enfield* rifle should be substituted for the *Liege* pattern; and this being agreed to, a memorandum, as follows, was indorsed on the original contract:

"It is agreed by the United States to accept from C. K. Garrison, the contractor, *the long Enfield rifles, with bayonets of the triangular pattern*, in place of the *sabre bayonets*, upon the value conditions as are herein specified.

"B. F. BUTLER,
"Maj. Gen'l Comd'g."

Under the contract as thus altered, six thousand muskets, which it was admitted conformed with the requirements of the engagement, were seasonably delivered, and two vouchers were given, with the approval of General Butler, to Garrison, by Major Strong, at \$27 per gun, the first dated November 20th, 1861, for 2800 guns, and the second the 11th of December following. The first one was paid in full. But on the voucher for the remaining 3200 guns, in consequence of orders received from the Secretary of War, no more than \$20 a gun was paid; Major Strong, however, certifying upon it, that the voucher, as made out (that is to say, with the sum of \$27 a gun charged), was "correct and just," "*the contract price being \$27 each gun.*"

At the date of the contract, the price of the sort of guns specified in the memorandum made by General Butler, and which Garrison furnished, was from \$20 to \$23 a gun. It did not appear, however, that the *Liege* gun had been purchased for less than \$27.

Upon the foregoing case the Court of Claims held:

First. That by the true construction of the contract and supplement, the United States were to pay to Garrison the same price the Ordnance Department had previously agreed to pay him for guns of like quality and description.

Second. That not having any such agreement with the Ordnance Department for guns of the quality or kind de-

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livered, he was entitled to such price for them as the Ordnance Department were paying for *similar* guns at or about the date of the contract or delivery of the guns.

From this decree Garrison appealed to this court. The case was submitted on briefs. *Mr. T. J. D. Fuller, for the appellant*, insisting that the only effect of this supplementary indorsement of General Butler was to substitute the Enfield for the Liege gun, at *the same price that was agreed to be paid for the latter*; *Mr. Hoar, Attorney-General*, for the government, maintaining, *contra*, that its effect was to accept the Enfield rifle at any sum less than \$27, for which the United States had purchased Enfield rifles, prior to the date of the contract, from any other person; General Butler's authority from the Secretary of War to contract having been limited to the prices which the government had paid for arms similar to those which he bought.

Mr. Justice MILLER delivered the opinion of the court.

The matter in issue is to be determined by a sound construction of the written contract.

It must be confessed that the language of the memorandum is not happy. To accept the Enfield rifle, in place of the sabre bayonet, "upon the value conditions as are herein specified," is not very clear, and at best but amounts to a reference to the original agreement for the price of the substituted gun.

We are inclined to the view of the contract claimed by plaintiff, for the following reasons:

1. The supplementary agreement is signed by General Butler, and not by plaintiff. Its doubtful expressions should, therefore, according to a well-known rule, be construed most strongly against the party who uses the language.

2. The change in the contract was made at the request of the ordnance officer of the government. It was, therefore, for the accommodation of defendant.

3. This construction was acted upon at the time by Major Strong, the officer at whose suggestion it was made, and who certified the account, and paid at that price for the first 2800

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guns, and would have paid the same price for the others, but was forbidden by the Secretary of War.

4. According to our construction of the original agreement, the alternative price, less than \$27, was the price of Liege guns, for which the government might have paid, or contracted to pay, *Garrison*, before the present contract. This view is confirmed by the fact, found by the court, that *Garrison* had a contract with the Ordnance Department, of July 1, 1861, for ten thousand Liege guns, at \$27 per gun, which had not then been performed. It seems reasonable that it was in reference to this contract with *Garrison*, already made by the department, the price of which was probably unknown to General Butler, that the provision was inserted by which he secured himself against paying more than the government had already paid for similar guns to the same party, and as *Garrison* knew what the price in that contract was, he had no objection to the provision.

If this view of the alternative clause of the original agreement be correct, then it could have no application to the substituted Enfield rifle, because *Garrison* had never received any pay, or contracted to receive pay, for such guns, with the Ordnance Department. The effect of this was to leave the reference of the subsequent indorsement to the original contract for the price, as limited to the \$27.

As we have already said that we believe this to have been the real intention of the parties, it should be carried into effect by the Court of Claims.

It is objected to this view that General Butler's authority, from the Secretary of War, to contract, was limited to the prices paid by the government for arms similar to those purchased by him, and that this court finds that Enfield rifles were then being purchased at from \$20 to \$23 per gun.

We do not so understand the order to General Butler. His order was to raise, arm, and equip, six thousand men, "provided the cost of such recruitment, armament, and equipment, does not exceed *in the aggregate* that of like troops now or *hereafter* raised for the service of the United States."

Our first observation is, that this must evidently have been

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merely directory to General Butler; for it could not have been supposed that he could contract with any person for arms, clothing, &c., at prices to be determined by what the government could buy them for afterwards.

2. General Butler was only required to bring the costs of recruiting, arming, and equipment, in the aggregate, within that of like troops raised for the service. This, of course, left him a discretion in contracting for each article he needed, provided the amount of all his contracts did not exceed the expense laid down by the rule.

The judgment of the Court of Claims is REVERSED, with instructions to the court below to enter a judgment for the plaintiff for the difference between \$20 and \$27 each for the 3200 guns described in the second voucher.

JAMES v. BANK.

Where there is no bill of exceptions, and nothing upon which error can be assigned, the regular practice is to affirm the judgments, not to dismiss.

In error to the Circuit Court for Louisiana.

The Bank of Mobile brought suit in the court below against one James, on bill of exchange. The record of the case, as sent here, contained nothing but the declaration; the plea of the general issue; the proof of protest of the bill of exchange, indorsed by the defendant, and notice to him of non-payment, and judgment of the court in favor of the plaintiff. There was no bill of exceptions, and nothing upon which error could be assigned.

A motion was now made *by Mr. P. Phillips, in behalf of the defendant in error*, to dismiss the case; an unreported order of dismissal, which was said to have been made at the last term on a similar case, being referred to.

Mr. Carlisle, contra.