

LORENZO N. CLARKE.

APRIL 25, 1840.

Read, and laid upon the table.

Mr. RUSSELL, from the Committee of Claims, submitted the following

REPORT:

*The Committee of Claims, having had under consideration the petition of Lorenzo N. Clarke, who claims compensation for losses sustained by him on two several contracts to furnish supplies for the emigrating Indians in 1834, make the following report:*

On the 30th day of October, 1834, the petitioner entered into two several contracts with the Government to supply rations, &c., for the Indians who were about to emigrate to their contemplated home west of the Mississippi. By these contracts, the petitioner was required to supply "all rations, more or less, for Indians, as well as corn," &c., which should be required between the 10th day of November, 1834, and the 1st day of April, 1835, at given stations. "All risk and expense attending the furnishing and delivery of the rations, as well as the distribution and issuing thereof," were to be borne by the said Clarke. And the United States were to be responsible for no accident arising under, or growing out of, said agreement. (See contract annexed.)

It has ever been desired by our white population contiguous to Indian tribes, that the Indians should be induced to emigrate to regions more congenial to their habits, and remote from the white inhabitants; and as the settlement of the whites approached that of the Indians, every reasonable exertion has been made on the part of the United States to accomplish an object so highly beneficial to both races. Previous to the date of these agreements, treaties were entered into with several of the Indian tribes, by which they agreed to remove to the west of the Mississippi within a given period. To carry out the object of these treaties, the contracts in question were entered into; but inasmuch as it was not known what number would emigrate, the contracts required the petitioner to furnish rations, &c., for such as should emigrate between the periods above stated, whether the number should be "more or less;" the number of rations, &c., to be furnished depending entirely upon the number who should emigrate. Neither party to the contract knowing what that number would be, the fond expectation was then indulged, that most if not all the tribes would be induced to emigrate. But this fondly cherished hope was not realized; few could be prevailed on to change their location for one in the remote west, notwithstanding the treaty stipulations.

The contractor for furnishing the supplies was no doubt disappointed, and the contracts may not have been profitable; but yet he has received from the Government payment for the supplies he furnished to such as did emigrate, which was to the extent wanted for the occasion. There was no

guaranty on the part of the Government that a given number should emigrate; but whatever number should emigrate, whether "more or less," they were to be furnished by the petitioner according to the contract. The petitioner alleges that he has sustained heavy losses, in consequence of the limited number of Indians who emigrated, and claims that the Government should indemnify him for such losses. However his losses are to be regretted, and more especially the cause which he alleges produced them, yet the committee apprehend they must be borne by himself. His claim consists of the following items:

*United States Indian Department,*

*To Lorenzo N. Clarke, contractor. Dr.*

To furnish Creek Indians with rations on their route west from Rock Roe to Fort Gibson, under contract with Captain Jacob Brown, of Little Rock, Arkansas—

1st. <i>At Dardanelles.</i> —Damages on 600 bushels of corn ready for delivery at the place, and not taken by Government, per contract	\$450 00
2d. <i>At John Williamson's</i> —Damages on 200 bushels of corn that was not taken, per contract	150 00
Damages on 300 pounds of pork, in the place of beef that was not taken	120 00
3d. <i>At Shoal creek (John Craven's.)</i> —Damages on 800 bushels of corn, that I lost by the Indians not coming	600 00
Six sacks of salt partly lost to me	30 00
	\$1,350 00

This claim is predicated upon the idea that these contracts are to be disregarded in consequence of the failure of the Indians to emigrate to the number expected. This is altogether erroneous. The contracts are clear and explicit. Such number as emigrated, whether "more or less," were to be supplied; contingencies over which neither of the parties to the contract had a control, it was anticipated, might occur, by which the number might be increased or diminished; hence the phraseology of the contract.

The time when the emigration would commence was also uncertain; and supplies were to be furnished to meet the necessities of the service. The object of the contract was to secure these supplies when the occasion should arise for their use, and when reasonable notice to the contractor would enable him to procure them. It was not intended by these contracts to require the delivery of rations, &c., at the several stations, on the 10th of November, 1834, and to continue them at the respective stations until the 1st of April, 1835, sufficient to supply the whole tribes whom it was hoped would emigrate. The number of emigrants, and the time when their emigration would commence, were contingencies contemplated; and when they were overcome, and the number and time ascertained, notice to the contractor, a reasonable time beforehand, to enable him to procure and furnish the supplies, would have been necessary before he could have been considered in default. It was not, therefore, necessary for the contractor to accumulate large quantities at the several stations; and, indeed, he could not do it, with safety to himself and the public, until he should be advised of the time when, and the extent of supplies, wanted. If, from the accumu-

lation of supplies at these stations, losses have occurred, it was the effect of too hasty movement on the part of the contractor, for which the Government cannot be held responsible.

If, as the committee apprehend, the contracts are clear and explicit, the question is, Shall they prevail, and each party be held to observe their obligations; or shall they be disregarded, in consequence of any peculiarity attending their execution? If these contracts are to be disregarded, considerations of consistency and uniformity may well be urged for disregarding other contracts connected with the public service, upon every pretence of loss or injury, whether real or imaginary, in behalf of other contractors. The extent of exactions which might be made on the public Treasury from such a practice, would not only expose the Government to great perplexity, but to loss and imposition.

The petitioner, in this case, may have sustained losses arising out of these contracts; and if they were the only cases in which the principle was involved, the committee might be disposed to give them a more favorable consideration. But when it is recollected that the daily transactions of the Government necessarily lead to contracts with private individuals, involving every variety of business incident to the various departments of Government, to an almost incalculable amount—such as contracts for carrying the mail throughout the various States in the Union; contracts for supplying the army and navy; for the manufacture of arms and ordnance; for the construction of marine hospitals; for the construction of military roads; for building fortifications; for the construction of light-houses; and for the various improvements which are now in progress, and which are so many nurseries for wealth and enterprise in every portion of our country—would all be open for adjustment upon principles entirely different from those which governed the parties at the time the contracts were made, if the contracts in this case are to be opened or disregarded, the only safe course for the Government is to require a rigid observance of contracts. This has been its policy hitherto; and, in the estimation of the committee, should not now be departed from. With these views, the committee offer, for the consideration of the House, the following resolution:

*Resolved*, That the prayer of the petitioner ought not to be granted.

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*Articles of agreement, made on the thirtieth day of October, eighteen hundred and thirty-four, between Captain J. Brown, United States army, principal disbursing agent for the removal and subsistence of Indians, of the one part, and L. N. Clarke, of the other part.*

This agreement witnesseth, that the said Captain J. Brown, as aforesaid, for and on behalf of the United States of America; and the said L. N. Clarke, for himself, his heirs, executors, and administrators, have mutually agreed, and by these presents do mutually covenant and agree to and with each other, in manner following, to wit:

1st. That the said L. N. Clarke hath covenanted to and with the said Captain J. Brown, agent as aforesaid, to deliver to him, the said Brown, or to such other agent or agents of the United States as shall have charge of the Indian emigrants, at the time and at the place hereinafter named, all rations, more or less, for Indians, as well as corn for team horses and oxen, and for

pack-horses ; and, also, fresh beef for the drivers of teams that shall be required by said Brown, or any agent or agents as aforesaid, at *Dardanelles ferry*, both banks of the Arkansas river, at the aforesaid ferry, *from the 10th day of November, 1834, to the 1st day of April, 1835.* The ration for the Indians to consist of *one pound of fresh beef, three-fourths of a quart of corn,* and at the rate of *four quarts of salt* for each one hundred rations ; and to each driver of a team one pound of fresh beef. The ration of forage to consist of eight quarts of corn for each work horse or ox employed in the teams ; and for each horse employed as a pack-horse, four quarts of corn. All deliveries of corn and salt must be made by measure, and at the rate of thirty-two quarts, dry measure, to the bushel. The component parts of the ration, as above specified, must be of good quality, and delivered in good order. All risk and expense attending the furnishing and delivery of the rations, as well as the distribution and issuing thereof, must be borne by the said L. N. Clarke, contractor. All issuing of rations must be made by direction, and under the inspection, of the agent having charge of the emigrants, to whom the same will be delivered.

2d. That, for and in consideration of the foregoing, the said Captain J. Brown, principal disbursing agent as aforesaid, for and on behalf of the United States aforesaid, agrees to pay to the said L. N. Clarke, for each and every Indian ration, delivered as aforesaid, four cents five mills ; and at the rate of forty-three cents per bushel for corn delivered to work horses and oxen, and to pack-horses ; and three cents per pound for the fresh beef delivered to teamsters. Payments for same to be made at Little Rock, Arkansas Territory. For all deliveries made prior to the 20th day of December next, payments will be made between that date and the close of said month ; and for all subsequent deliveries, at the expiration of this agreement, if the agent is then in funds ; if not, then as soon thereafter as funds shall be received for that purpose.

3d. That, in case of failure or deficiency of quantity or quality of the rations to be delivered as above stipulated, then the agent or agents of the United States shall have power to supply such deficiency by purchase ; and the said L. N. Clarke hereby agrees to remunerate the United States for any increase of expenditure consequent thereon.

4th. That the United States will be responsible for no accidents arising under, or growing out of, the foregoing stipulations.

In witness whereof, the parties have hereunto placed their hands and seals the day and date above written.

J. BROWN, *Capt. U. S. A.,*  
*Principal disbursing agent Indian removal.*  
 L. N. CLARKE. [L. s.]

Witness :

J. H. REED.

Know all men by these presents, that we, L. N. Clarke and John Tittsworth, of Johnson county, and E. B. Alston, of same county and Territory of Arkansas, are held and firmly bound to the United States of America in the sum of five hundred dollars, lawful money of the United States ; for which payment, well and truly to be made, we bind ourselves, and each of us, our, and each of our heirs, executors, and administrators, for and in the whole, jointly and severally, firmly by these presents.

Sealed with our seals, dated the thirtieth day of October, in the year of our Lord eighteen hundred and thirty-four.

The condition of this obligation is such, that if the abovebounden L. N. Clarke, John Titsworth, and E. B. Alston, their heirs, executors, or administrators, or any of them, shall and do in all things well and truly observe, perform, fulfil, accomplish, and keep all and singular the covenants, conditions, and agreements, whatsoever, which on the part of the said L. N. Clarke, his heirs, executors, or administrators, are, or ought to be observed, performed, fulfilled, accomplished, and kept, comprised or mentioned in certain articles of agreement or contract bearing date thirtieth day of October, one thousand eight hundred and thirty-four, between Jacob Brown, captain in the army of the United States, and principal disbursing agent for the removal of Indians, and the said L. N. Clarke, concerning the furnishing and delivery of rations to emigrating Indians, and corn and beef according to the true intent and meaning of the said articles of agreement or contract; then the above obligation to be void, otherwise to remain in full force and virtue.

L. N. CLARKE, [L. s.]  
JOHN TITSWORTH, [L. s.]  
E. B. ALSTON. [L. s.]

In presence of

J. H. REED.

*United States Indian Department*

*To Lorenzo N. Clarke, contractor, Dr.*

To furnish Creek Indians with rations, on their route west, from Rock Roe to Fort Gibson, under contract with Captain Jacob Brown, of Little Rock, Arkansas:

1st. <i>At Dardanelles.</i> —Damages on 600 bushels of corn ready for delivery at the place, and not taken by Government per contract	\$450 00
2d. <i>At John Williamson's.</i> —Damages on 200 bushels of corn that was not taken per contract	150 00
Damages on 3,000 pounds of pork in the place of beef that was not taken	120 00
3d. <i>At Shoal Creek, (John Craven's.)</i> —Damages on 800 bushels of corn that I lost by the Indians not coming	600 00
Six sacks of salt partly lost to me	30 00
	\$1,350 00

*To the honorable members of Congress:*

SIRS: You will perceive from the above statement, that I have sustained great loss by being a contractor to furnish the Creek Indians with rations on their route from Rock Roe to Fort Gibson, west. By referring to Captain Jacob Brown's letters to the Indian Department, you will find that I was one of the contractors; and it is his opinion, from his intimate knowledge of the circumstances, that I was considerably injured. You will find, upon examination, the affidavits of good men accompanying this letter and account. The character of these deponents can easily be established by

my friends in Congress from this State. And, gentlemen, after you have examined the letters of Captain Jacob Brown, with the corroborating evidence herewith transmitted, I hope your honorable body cannot fail in allowing my claim for damages.

I have the honor to be, your obedient, humble servant,

LORENZO N. CLARKE.

NOVEMBER 16, 1836.

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EMIGRATION OF INDIANS.

OFFICE COM. GEN. OF SUBSISTENCE,  
March 17, 1836.

COLONEL: I return the papers forwarded to you by Mr. Lorenzo N. Clarke, in support of a supposed claim of his under a contract made with Captain J. Brown for furnishing emigrating Creek Indians, on the road from Rock Roe to Fort Smith. Mr. Clarke has no doubt met with some loss, in consequence of the Indians not emigrating; but there is no power short of Congress to grant relief in the case. The Government had every reason to believe the Indians would emigrate at the period they invited proposals and made contracts, and all the necessary arrangements for their transportation and subsistence on the route.

By the enclosed copy of a letter from Captain Brown, and my reply, you will perceive the only practicable relief the department could extend to those contracts was promptly rendered by Captain Brown, and as promptly approved by this department.

I have the honor to be, most respectfully, your obedient servant,

GEO. GIBSON,

*Commissary General of Subsistence.*

Colonel AMBROSE H. SEVIER,

*House of Representatives U. S.*

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*Extract from a letter from Captain Jacob Brown to the Commissary General of Subsistence, dated Little Rock, Arkansas Territory, May 2, 1835.*

“Early after it was known that the Creeks had refused to emigrate last fall, and to appease the feelings of the numerous disappointed contractors on the routes of emigration, I addressed them severally, and offered them the privilege of supplying any and all Indians with subsistence to the 30th September next, that should emigrate by land, taking the routes of present stands; and all the contractors for stands south of Mrs. Black’s have consented to furnish, some at the rates of the contracts, others by receiving a small increase on the contract prices of the ration and corn; none of which, however, will make the ration complete cost over 6 cents; and corn 75 cents per bushel, for team-horses, and oxen, pack-ponies, &c.

“I am satisfied that contractors for the last two years have met with very considerable losses, arising from the failure of Indians to emigrate; and the late failure has been more disastrous to them than any of the preceding ones. The fact is, the last year’s contracts on the routes of emigration went into the hands of farmers, and such, in a new and unsettled country,

have but little wealth, and still less resources. Hence, when it happens that they incur expenditures in the prosecution of any enterprise depending on the successful result as a means of remuneration, and to meet the debts incurred for its execution, and they fail, they are most generally broken up.

“Last fall, contractors were induced to make large preparations from some very indiscreet publications at Memphis, in relation to the movements of the Creeks; and as it was known that Memphis was the headquarters of the western emigrating agents, they took it for granted that the published notices of “the arrival of six thousand Creeks at Pigeon Roost, and that that body would reach Memphis between the 20th and 25th of November,” were warnings to them to be prepared with subsistence to receive that number of emigrants, agreeably to the tenor of their contracts. Hence it was that eleven contractors supplying twenty-five stands (some of them 20 miles from corn supplies) were at once put in motion; the whole population on the route were rallied, and put in employ—some building cribs, others hauling corn, collecting and herding beeves, &c. As soon as this was known, I had published and sent to contractors contra statements; but before my communication could reach them, the injury was done. They had gathered and were involved in the purchase of ample supplies for six thousand emigrants, teams, packhorses, &c., the number announced in the Memphis paper as actually being on the march.

“The loss and disappointment on such an occurrence can easily be imagined. I felt, most sincerely, the condition of this state of things. Numerous complaints, petitions, and appeals, were made to me for relief, and to which I could not turn a deaf ear. The contracts barred every avenue to claim for damages. One source of favor only remained; and that was, as above stated, to offer to them the privilege of supplying *all* emigrants to the 30th September next. This has in some measure appeased their feelings. A notice, however, for proposals to furnish supplies, at this time, unless quantity, and time of delivery were specified, would not, in my opinion, produce a single offer at prices that could be accepted; besides, it would have a tendency to produce combinations, which might materially affect the pecuniary interest of the Government in obtaining future supplies.

“It is due to myself here to state, what I am satisfied is the fact, that there is no want of confidence on the part of the people, in regard to the course that has been or will be pursued by this office; and, in relation to the late contractors, I believe I am most fully exonerated from any agency or blame connected with their losses. But they say (and very truly) that they have been greatly deceived by indiscreet rumors and reports in relation to the movements of emigrants east of the Mississippi; and they feel that there should be some guaranty—some share of risk on the part of Government in future contracts.”

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*Extract from a letter from Major J. H. Hook, acting Commissary General of Subsistence, to Captain Jacob Brown, principal disbursing agent, Little Rock, Arkansas Territory, dated May 27, 1835.*

“Allusion is made by you to indiscreet publications in a Memphis paper, as the source of great loss to the contractors for supplying the emigrant Creeks of last season. It is gratifying to learn that those who suffered

from the deception are satisfied with your course. It is hoped that no agency in the publications has been traced to any one then having a connexion with the emigration of Indians. The concessions which you have made to those disappointed contractors meet, therefore, with approval; and, it is believed, are fortified by considerations of good policy as well as liberality. But as the Seminoles will not remove until next January, would it be expected by the individuals alluded to that their privilege should be extended beyond the time specified, in which they are allowed to furnish Indian supplies, so as to embrace those Indians? As this privilege embraces all emigrants who may remove to the 30th September next, it may possibly enable them to supply the Creeks, who, it is expected, will go over in considerable bodies by that time. In this case, the expediency may be doubted of any extension of the time; but, if any is given, it should not go beyond December. In all this, it will be well to have the transaction authentically made, and properly understood, so that no difficulty may hereafter arise."

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This is to certify that, early in February last, (1836,) L. N. Clark, Esq., one of the securities in a contract made with John G. Jouett for supplying the Seminole emigrants in their new country with subsistence, called on me at Little Rock, and desired some information in relation to the removal of those Indians from Florida, and whether it was probable they would reach their new country as early as was contemplated at the time the contract was made. The object of the inquiry was, he said, to limit the deposit of subsistence to the number and time the emigrants should arrive in their country; for at that time he and the other security (Mr. Sadler) had cribbed, at the depot near the mouth of the Canadian, a considerable quantity of corn, and were then purchasing and hauling several thousand bushels, under the expectation that they should be called upon in the course of thirty or forty days to make large issues. But recent rumors had induced the belief that few, if any, would emigrate, and the securities were at a loss to know what would be the proper course for them to pursue in relation to making further deposits of the corn part of the ration, &c. Their object was to fulfil the contract promptly, as well as to guard as much as possible against any loss that might accrue from a failure of the Indians to emigrate. In reply to the inquiry, of which the foregoing is the substance, I advised Mr. Clarke to leave off sending corn to the new Seminole country at that time—at least, not to deposit more than three thousand bushels, until something more positive should be known in relation to the removal of those Indians; that whatever emigration might take place, the earliest information should be given during the continuance of the contract.

J. BROWN, *Captain U. S. A.,*

*Military disbursing agent Indian removal.*

CHOCTAW AGENCY, December 29, 1836.

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This is to certify that L. N. Clarke was road contractor under Captain J. Brown, principal disbursing agent, &c. for furnishing the Choctaw Indians with rations on their route west, in the fall and winter of 1834; and that



the said L. N. Clarke, contractor, some time in November of said year, purchased from me some six hundred bushels of corn, which I delivered on both banks of the Arkansas river, at the Dardenelles, or more properly the place where the military road now crosses said river, for the express purpose, as was stipulated between L. N. Clarke, contractor, and myself, of furnishing said Choctaw Indians with the corn part of the ration; and that the said Choctaw Indians, to my personal knowledge, at any time called for no part of said corn delivered as before stated; thereby injuring the said L. N. Clarke, contractor, to a considerable amount. The deponent further saith not.

JOHN J. HORTON.

Sworn and subscribed to before me, an acting justice of the peace within and for Johnson county, Arkansas Territory, this 14th day of October, A. D. 1835.

GEORGE JAMISON,  
*Justice of the Peace.*

This is to certify that Lorenzo N. Clarke was road contractor, under Captain J. Brown, principal disbursing agent, &c., for furnishing the Creek Indians with rations on their route west, in the fall and winter of 1834 and 1835; and that the said L. N. Clarke, contractor, had, at the stand of John Williamson, all the corn, pork, and salt, to make the issue to Captain Page's company of Creek Indians, which he failed to call for, after notifying me, as the agent for the said Clarke, to have all things ready by the time he would reach the stand, which I did; and, after all this being done at his request, the captain did not call to get the provisions, which, I think, was treating the contractor badly, and resulted greatly to the injury of L. N. Clarke, who had been at considerable trouble and expense in preparing the necessary arrangements for the convenience of Captain Page.

The deponent further saith not:

JOHN W. PATRICK.

TERRITORY OF ARKANSAS, }  
County of Pulaski, } ss.

Personally appeared before me, Charles E. Rice, an acting justice of the peace in and for the county of Pulaski, and Territory of Arkansas, John W. Patrick, who swore to the deposition or certificate above written, and subscribed his name thereto, in my presence, on this 26th day of October, A. D. 1835.

CHARLES E. RICE, *J. P.*

TERRITORY OF ARKANSAS, }  
Johnson county, Clarke township, } ss.

This is to certify, that some time in the month of November, 1834, Lorenzo N. Clarke purchased six or eight hundred bushels of corn from me, for the purpose of supplying the Creek Indians with rations, on the military road leading from Little Rock, A. T., to Fort Smith, A. T.; the said L. N. Clarke being the contractor under an advertisement for letting out contracts

signed by Captain J. Brown, disbursing agent, &c. ; and the deponent further saith, that the said Creek Indians did not, at any time, come along said military road, nor demand their rations; thereby injuring the said Lorenzo N. Clarke, contractor, to a considerable extent.

The deponent further saith not.

JOHN CRAVEN.

Sworn and subscribed to before me, a justice of the peace within and for Clarke township, in Johnson county, A. T., this 7th day of September, A. D. 1835.

GEORGE JAMISON, J. P.

Sworn and subscribed to before me, an acting justice of the peace within and for Johnson county, Arkansas Territory, this 11th day of October, A. D. 1835.

This is to certify that Lorenzo N. Clarke was told contractor under special contract, furnished disbursements, &c. for furnishing the Creek Indians with rations on their route west in the fall and winter of 1831 and 1832; and that the said L. N. Clarke, contractor, had at the time of John W. Patrick's coming all the same rations and sent to make the same to Captain Patrick's company of Creek Indians, which he failed to call for after notifying me as to account for the said failure to have all hands ready by the time he would reach the camp which he did; and after all the hands had at his request to the captain did not call for the rations which I thought was owing to the contractor daily, and resulted finally to the injury of L. N. Clarke, who had been an considerable number and expense in preparing the necessary arrangements for the convenience of Captain Patrick's company.

JOHN W. PATRICK

Personals appeared before me Charles E. Rice an acting justice of the peace in and for the county of Polk, and Territory of Arkansas, John W. Patrick, who swore to the deposition or certificate above written, and subscribed his name thereto, in my presence, on the 20th day of October, A. D. 1835.

CHARLES E. RICE, J. P.

This is to certify that some time in the month of November, 1834, Lorenzo N. Clarke purchased six or eight hundred bushels of corn from me for the purpose of supplying the Creek Indians with rations on the military road leading from Little Rock, A. T., to Fort Smith, A. T.; the said L. N. Clarke being the contractor under an advertisement for letting out contracts