

D. H. MITCHELL.

JANUARY 12, 1889.—Committed to the Committee of the Whole House and ordered to be printed.

Mr. MANSUE, from the Committee on Claims, submitted the following

REPORT:

[To accompany bill H. R. 2249.]

The Committee on Claims, to whom was referred the bill (H. R. 2249) for the relief of D. H. Mitchell, have had the same under consideration and report it back with the recommendation that it pass, with amendments.

David H. Mitchell, a resident of Leavenworth, Kans., was, prior to the year 1868, at divers times a contractor of the Federal Government, for the delivery of grain for the use of troops engaged upon our frontier. It would seem from a mass of papers submitted that Mr. Mitchell is a man of loose business habits and never kept his own accounts with the Government, but depended entirely upon the books kept and records made by the various officers of the Quartermaster's Department with whom he did business; and in this report all statements of grain furnished, except weights and the times when and places where delivered, are taken from the various reports made by the officers of the Government.

Upon inquiring of Mr. Mitchell as to why he kept no papers or accounts he stated that prior to the difficulties that led to this controversy he had always found the reports of the officers of the Quartermaster's Department correct and satisfactory to him, and that he had simply drifted into the habit of permitting them to do all the book-keeping.

Mr. Mitchell claims \$19,939.26 for corn delivered between November, 1868, and May, 1869.

The origin of this claim may fairly be said to grow out of a modification of a contract entered into by Mr. Mitchell with the Government of the United States dated November 9, 1868, for the delivery of 16,000 bushels of oats at Fort Harker, Kans., a copy of which contract may be seen in the appendix filed with this report.

During that winter General Sheridan was preparing for a campaign against the Indians of western Kansas, and was in need of large amounts of grain and forage, and his necessities were imperative. Owing to bad weather and bad roads, it became impossible for Mitchell to get oats transported to the railroad fast enough to supply the demands of the Government. Mitchell had at that time large amounts of corn stored at various points along the railroad. Lieutenant Cook was acting quartermaster as a substitute for Major Inman, who was at the time in the field with General Sheridan.

Lieutenant Cook, with the knowledge and approval of Major Inman authorized Mitchell to fill the said contract with corn in lieu of oats, a

the same rate per pound that he was receiving for oats, it being considered at that time and in that country that a pound of corn was worth as much as a pound of oats. Pursuant to this instruction, Mitchell shipped large amounts of corn to Fort Harker on the Union Pacific Railway.

In January, 1869, Mitchell met Major Inman, the quartermaster at Fort Harker, and was informed by said Inman that General Sheridan wished large amounts of corn to be furnished at Fort Harker for use in his then pending expedition against the Indians and authorized Mitchell to ship all the corn that he had to Fort Harker, and that the Government would pay for it at the same rate that he was then receiving for oats, pound for pound, which was at the price of 87 cents for each and every bushel of 32 pounds of oats delivered and accepted. Pursuant to said instructions of Lieutenant-Cook and Major Inman, Mitchell proceeded to furnish from various stations along the railroad a large amount of corn at Fort Harker, and delivered from Fairmount, Williamstown, Grantville, Leavenworth, and other stations thirty-three car-loads of corn, which were billed, under the uniform custom of the railroad in regard to shipping, and the price of car-loads of freight, at 18,000 pounds each, but from the evidence shown to your committee of Fred. Zimmerman, the forage-master of the United States, whose duty it was to receive and weigh all grain received by the Government at Fort Harker, also about one car-load additional, shipped in sacks at three different times with oats, your committee believe that said thirty-four cars contained in reality about 24,000 pounds to the car, making in all about 816,000 pounds of corn furnished by Mitchell to the Government at Fort Harker. The shipments of corn made by Mitchell as being in lieu of oats under the contract were disallowed by Quartermaster-General Easton on February 24, 1869, by special instructions from his headquarters at Fort Leavenworth, and Mitchell was required to fill out his contract with oats according to the terms of the written instrument, which Mitchell proceeded to do by furnishing 16,000 bushels of oats for which he afterwards received full pay. The corn that had been shipped to Fort Harker by Mitchell was consumed by the Government as fast as delivered. The entire amount of corn paid for by the Government was only 400,666 pounds, which was paid for by the Secretary of War, at the rate of \$1.25 per bushel, and it was then agreed by the Secretary of War that Mitchell might at any future time show what the corn had cost him, and he made protest against accepting \$1.25 per bushel as full compensation; whereupon it was agreed that if he could show that the corn had cost him more than \$1.25 per bushel of 56 pounds, he should be paid the excess of its cost, as well as a reasonable amount for profit and expense; and on this ground Mitchell claims the further sum of \$1,956.19.

The testimony appertaining to this claim is very voluminous and is mainly of record. The various statements of accounts rendered, financial exhibits, and partial statements of the Government from time to time seem to be conflicting and in almost inextricable confusion. There are many depositions, affidavits, and copied records enough to make a printed volume of 400 to 500 pages, and by reason of confusion in the purchase-books of the Government at Fort Harker and the mode and manner in which the items of purchase were recorded by Major Inman and his representatives for the time being, it is almost impossible to determine the exact amount of corn that was delivered. Your committee believe that the best mode to determine the amount that was delivered by Mr. Mitchell at Fort Harker is to take the num-

ber of car-loads shown to have been delivered by the railroad company for and on account of Mitchell to the Government authorities at Fort Harker. From the testimony of agents who are impartial and without any interest in the matter we believe that substantial justice can best be done by taking the estimate of the several car-loads at 24,000 pounds per car-load than in any other way.

Many of the difficulties environing this case grow out of the fact that Mr. Mitchell, for a time, sought to claim that the corn was delivered to the Government under a modification of the contract of November 9, 1860, which called for oats only.

The position of the Government may be stated in the language of a report made by Major-General Swayne to the Secretary of War, of date January 11, 1870, as follows :

That the agreement of the acting quartermaster to receive corn in lieu of oats, about the amount of which there is some doubt, was in no sense binding on the United States. The Court of Claims have repeatedly held that the law of general and special agents is applicable to superior and inferior agents in the matter of contracts in their relation to the United States and to the public. The special agent can not exceed the regulations of his principal, nor the inferior officer the regulations of his superior.

The foregoing is conclusive in its application to this case, says Major-General Swayne, and his report in its entirety was approved by the honorable Secretary of War.

Mr. Mitchell brought his suit in the Court of Claims to determine his rights in this matter, which suit was finally adjudicated in 188—. See vol. 19, Reports Court of Claims, p. 39, in which it was held as follows :

There is but a single question of law involved, and that arises upon these facts concisely stated. The contract expressly provided that it should be subject to the approval of both the commanding general of the Division of the Missouri and the commanding general of the Department of the Missouri. It was so approved and was also approved by General Easton, the superior officer of General Card. It was clearly the purpose of that provision to secure to the high commanding officers a supervision over the matter and to control or prevent the making of such a contract on the part of an inferior officer, if they or either of them saw fit to do so. When thus made the contract could not be afterwards altered by any officer inferior to those whose approval had been necessary in the first place to give it validity. They were the officers who were acting for the United States in giving the consent of the defendants to the terms of the contract, and none below them in authority had a right to change the terms of their agreement. And yet the post quartermaster at Fort Harker, who was but a receiving officer to take such oats as the contractor had agreed with his superior officer to deliver at that post, entered into an oral agreement with the claimant that he might deliver corn instead of oats at the same price per bushel of 32 pounds as he was to be paid for oats. Upon this oral agreement thus made the claimant relies as establishing the price to which he was entitled for all the corn delivered.

In the South Boston Iron Company's Case (18 C. Cls. R., 165), we held that this provision requires a formal written contract in every case to be signed by the parties at the end thereof, and that not even written correspondence containing proposals on the one side and acceptance on the other, separately signed by the respective parties, is sufficient to make a valid contract.

It will thus be seen that the decision of the Court of Claims, however thoroughgoing and valuable as to technical and legal considerations, by no means involves the justice of the claim as to any surplus over and above the 400,666 pounds of corn which alone is in controversy in this claim. The fact is patent that Mr. Mitchell, whether by due authority or not of the acting officers of the Government, in an emergency both of time and peril to our troops upon the frontier, obeyed their directions and did furnish a large amount of corn, which was received and used by the officers of the Government and, as your committee believes, has not yet been fully paid for. For whatever amount may yet be found due for the corn thus furnished and used by the Govern-

ment there can be no doubt that the dignity and honor of the Government alike demand that a fair compensation for all the corn so furnished should be paid, even at this date, to Mr. Mitchell.

Your committee therefore shall not attempt to discuss the question whether the adjudication made by the Government on this case in the Court of Claims was adequate or inadequate, or whether Quartermaster-General Easton in his findings and instructions to his subordinate officers to refuse to issue vouchers for it, as not being in compliance with the contract to deliver oats, is correct or incorrect; or whether the surplus delivery at Fort Hays, amounting to 65,100 pounds, on a contract for the delivery of 10,000 bushels of corn made the same day with the oats contract at Fort Harker, should be paid for at contract rate or not; but we are content with the position that the Government, having received and used Mr. Mitchell's corn, should in justice pay for the same, and this upon the doctrine of an implied assumpsit independent of any written contract. (Burchill's Case, 4 C. Cls. R., 549; Herfield's Case, 8 C. Cls. R., 213; Solomon's Case, 19 Wall., 17, and 9 C. Cls. R., 54.)

This claim has been prolific of litigation. Mr. Mitchell was indicted in the United States court of the district of Kansas under the charge of presenting fraudulent vouchers for corn delivered at Fort Harker, which it was alleged had already been paid for in the 400,666 pounds settled for by the Secretary of War at \$1.25 per bushel. Mr. Mitchell was convicted and sentenced to pay a fine of \$1,000. Afterwards, upon an elaborate investigation by the authorities at Washington and upon the advice of the Attorney-General, Mr. Mitchell was pardoned by the President of the United States and the \$1,000 fine which he had paid was refunded to him, the Government being fully satisfied from its own investigation that if there was anything in the conviction it was the result of a mere error in presenting a voucher for corn at a time antedating certain payments made to him by the Government, and it was a harmless mistake on the part of Mr. Mitchell, arising out of the fact, as stated by your committee at the beginning of this report, that he was an unlettered man, kept no accounts, and depended almost entirely upon the books, accounts, and records kept by the Government through its Quartermaster Department; it being practically conceded by the Government, by the finding of its own officers upon the investigation made by them, that there were other large amounts of corn received by the Government for which no payment had yet been made to Mr. Mitchell. It may be also said that in 1872 Major Inman, the quartermaster in charge, and under or with whom all this business was done, was tried and court-martialed by the Government on charges of embezzlement and irregularities in his book-keeping.

Inasmuch as, according to the custom prevailing with your committee, no interest will be allowed to Mr. Mitchell for the long period of time that has elapsed since the furnishing of this corn, your committee feels disposed to be fairly liberal in its estimates of the amounts furnished and of the price that was paid to him.

The hardest problem your committee have to solve in this case is the amount of corn delivered by Mr. Mitchell, and not yet paid for. It is admitted by Mr. Mitchell that he has been paid for 400,666 pounds, at \$1.25 per bushel. There are many conflicting and contradictory statements certified to your committee, and coming from the property returned of Maj. Henry Inman. In one place he states that the amount of corn received in the month of January, 1869, was 349,744 pounds. In another it is given as 331,000 pounds. In other places a less amount is given. In

some statements no return is shown for deliveries of corn in the months of February and March, 1869, but in other statements returns are given, not unfrequently conflicting returns. The telegrams sent from Fort Harker at this period by the subordinate officers to their superior officers at Fort Leavenworth exhibit many conflicts with the property returns taken from Captain Inman's purchase-books. Therefore your committee have decided to discard all statements emanating from the books and property returns of Major Inman and adopt the car-load method of arriving at the aggregate amount of grain shipped by Mitchell to Fort Harker.

We find from copies of bills of lading furnished by the Union Pacific Railroad that Mitchell shipped between November 21, 1868, and March 6, 1869, twenty-six car-loads and 360 bushels of corn. We also find that John A. Gaston, in his deposition taken at Deadwood, Dak., December 14, 1881, testifies twice that he shipped for Mr. Mitchell to Fort Harker, Kans., from Leavenworth, Kans., either seven or eight car-loads of corn, and reiterates the second time that he thinks this was before January 1, 1869. He further states that all his books and papers were destroyed by fire, and that he can not produce records relating to this matter, but gives his testimony solely from memory. He testifies that his residence was Leavenworth, Kans., and that he was engaged in the grain business there at the time. A careful examination of all the bills of lading referred to (twenty-six full car-loads and several partial car-loads) show that they relate to corn shipped from other points in Kansas and none of them embrace corn shipped from Leavenworth. For safety, taking seven car-loads, the least number testified to by Mr. Gaston, added to the twenty-six full car-loads, including also the 360 bushels shipped in three different cars with oats, making about one car-load, that Mr. Mitchell furnished thirty-four car-loads of corn in all.

It is within the knowledge of divers of your committee that, in common parlance, 400 bushels of corn, at 56 pounds to the bushel, constitute an ordinary car-load. This of itself would be 22,400; but we have the positive evidence of Mr. Zimmerman that he remembers that these cars averaged 24,000; and when we consider that the evidence shows great difficulty in getting cars to use on the Union Pacific Railway at that time, and the urgent press and necessity to ship it as rapidly as possible, we can see reasons that would induce heavy loading of the cars. In addition to this, we have this fact that Mr. Mitchell had shipped six car-loads of corn to Fort Hays on the same road, 70 miles farther out, and that he applied to Major Easton to buy this corn, which was in excess of a contract on Mr. Mitchell's part. Quartermaster-General Easton telegraphed back to take the same. This was on February 10, 1869. General Easton afterwards, on March 15, 1869, telegraphed back that when he agreed to receive six car-loads he meant at the rate of lading fixed by the railroad company, at 18,000 pounds—108,000 pounds for the six car-loads—and refused to authorize a voucher to be received for the quantity contained in the six cars over and above the 108,000. The said six cars actually weighing the amount of 173,600 pounds, which, divided by 6, shows that each car had about 29,000 pounds.

It is true that General Easton states in his letter that this is a larger amount than can be loaded on a car; yet, it would seem, from his own letter, that the real reason why he declined the extra amount was that the price of corn at that time had fallen and that he could obtain it at a less cost than taking it at the price of the contract entered into with Mr. Mitchell.

Again, Col. Rufus Saxton, deputy quartermaster-general, on November 19, 1877, in one of his reports in this case, states :

Regarding the average weight of car-loads of grain received at Fort Harker, I conclude from an examination of the items taken up that Forage-master Zimmerman must be in error as to what they averaged. His statement appears disproved by the fact that many entries to Mitchell's credit on the purchase-book show quantities of grain received (evidently car-loads, one, two, or more cars), which do not reach 18,000 pounds, many that fall short of 20,000 pounds, and a very few over 23,000 pounds (see lines 4, 5, 6, 7, 14, 15, 16, 17, and others). Many instances will be noticed (upon an examination of my abstract), which will show they did not average 24,000 pounds. I do not think they averaged over 20,000 pounds. They were billed as 18,000 pounds by the Kansas Pacific Railroad.

Here is a distinct admission on the part of an officer of the Government specially appointed to examine this claim, that 18,000 is not correct, and evidently he thinks "20,000 pounds would be much nearer." Also as corroborative of the view that 18,000 pounds was not an average weight for corn shipped, we quote from the evidence of F. C. Buckley, a Government contractor furnishing corn to the Government during this same period, to wit, 1868 and 1869 :

I was a Government contractor during the year 1868 and up to June, 1869. I hauled a great deal of grain during that time for the Government, and was familiar with the business. * * * At that time the cars were generally billed at 18,000 pounds and we were charged by the car, but we always put on what we could get on and got paid by the Government for what we had on the car; we frequently put on more sacks than the way-bill showed.

Also this extract from the evidence of Mr. Ege, station agent of the Union Pacific Railroad Company at Fort Harker during 1868 and 1869, to wit :

Eighteen thousand pounds was the usual billing weight, but in most all cases the actual weight was in excess of that amount.

And Major Inman in his evidence states as follows :

Q. 16. State whether or not you know of any grain being on hand on your return (i. e., from service in the field), or having been delivered in your absence to your department, the names of the deliverers unknown, and which had not been settled for by the Government?—A. I think there was; it was a large amount. I have an impression that it was.

And again—

At the date of the delivery of said voucher and previous thereto, Mr. Mitchell became persistent for a larger amount than his voucher called for.

This refers to voucher for December, 1868, and January and February, 1869, for 352,009 pounds corn, a part of the 400,066 afterwards paid for.

Again, Mr. Addison Jones, who in 1883 had charge of the freight records of the Union Pacific Railroad, testifies in his deposition, in reply to the question, "What was the true measure of the contents of a car at that time?"

The tariff book at that time accepted 18,000 pounds as a car-load. They often put as high as 26,000 and 29,000 pounds in a car.

Your committee is aware that this finding is in conflict with the report of Chief Quartermaster Saxon and others. Yet, we believe, under all the circumstances of the case, that it is the nearest approximation to the amount of corn actually delivered by Mr. Mitchell and used by the Government possible to make.

It now remains to determine what shall be allowed, per bushel, for this corn. Mr. Mitchell claims \$1.59 a bushel, on the basis that he should receive the same pay for it as for oats.

Quartermaster-General Easton was only willing to allow him \$1.01 per bushel. It will be observed, from the tenor of this report, that your committee declines to enforce, as legal, the understanding reached between Mr. Mitchell and Lieutenant Cook, as ratified by Major Inman, but puts the liability of the Government upon the simple ground of an assumpsit, and that the Government having used the corn, should pay its reasonable value at that time for the same. Under these circumstances, your committee believe that the price per bushel paid for 400,666 pounds of corn by the order of the honorable Secretary of War was just and correct; and the amount must be deducted from the total amount that may be found hereafter to be contained in the thirty-four car-loads; and under all the circumstances of this case, looking at it in a spirit of equity and justice for the Government and for Mr. Mitchell, we believe this to be a fair price, and therefore recommend that he be allowed \$1.25 per bushel. The claim then would stand as follows:

Thirty-four car-loads, at 24,000 pounds each, make the amount of 816,000 pounds; take from this 400,066 pounds, for which he has been paid, and there remains 415,334 pounds, or 6,416 bushels and 32 pounds, which, at \$1.25 per bushel, was worth \$9,260.85.

This aspect of the case disposes of the claim of Mr. Mitchell for \$1,956.19, which amount is not found in his favor.

Your committee also report adversely on the item \$1,323.16, which amount it is claimed by Mr. Mitchell was withheld by the Government on a later contract of his for wood, delivered at Fort Wallace, Kans., in A. D. 1875, as your committee do not find the preponderance of evidence in his favor to overturn the showing of the Government that he had been twice paid this sum, for the same corn, to wit, once as an independent payment for corn, and again, for same corn as a part of the 400,666 pounds paid for by order of the Secretary of War in January, 1870.

Your committee recommend that the bill be amended by inserting in the first blank in line 6 the words, "nine thousand two hundred and sixty and eighty-five one-hundred," and again amended by striking out the word "bushels," in said line 6, and substituting therefor the words "thirty-four car-loads," and again amend by striking out in line 7 the words "and ——— bushels of oats," and the other words "under contract;" and that it be further amended by striking out all that part of the bill remaining, commencing on line 12, with the words, "and the farther sum, &c."

APPENDIX.

COURT OF CLAIMS.

D. H. MITCHELL
vs.
THE UNITED STATES. } No. 11940.

This contract, made and entered into at Fort Leavenworth, Kansas, on this ninth day of November, in the year of our Lord one thousand eight hundred and sixty-eight, by and between B'v't Brig. Gen'l B. C. Card, ass't q'rm'r U. S. Army, acting chief quartermaster Department of the Missouri, for and on behalf of the United States of America, of the first part, and D. H. Mitchell, of the city and county of Leavenworth, State of Kansas, of the second part, witnesseth:

That the said D. H. Mitchell agrees to furnish and deliver at Hays City, Kansas, ten thousand (10,000) bushels old corn of the best quality, free from dirt, cobs, or other foreign matter, and securely sacked in good sacks; that he will deliver one-third ($\frac{1}{3}$) of the quantity contracted for on or before November eighteenth (18th), one-third ($\frac{1}{3}$) on or before November twenty-seventh (27th), and the remainder on or before December fifth (5th), 1868.

And the said party of the second part further agrees that the said corn shall be subject to the inspection, acceptance, or rejection of the quartermaster at Fort Hays, Kansas, or such person or persons as he may designate; and further, that if the corn presented for delivery under this contract shall be of an inferior character to what is hereinbefore stipulated to be furnished by the said party of the second part, the said party of the second part shall thereupon forthwith furnish other corn of the proper character in place thereof; and that if default shall be made by the said party of the second part in the time of the delivery of the said corn, or in any of the provisions of this contract, the said party of the first part shall have power to supply any deficiency that may exist by purchasing in open market, or in such manner as he may elect, and the said party of the second part shall be charged with the difference in cost.

And it is further hereby expressly stipulated and agreed by and between the parties to this contract, that if default shall be made as foresaid, or in any other way, the said party of the first part shall have power to retain from the sum hereinafter stipulated to be paid to the said party of the second part such amount as may be necessary to indemnify the said party of the first part in the premises and against all and any defects and deficiency in the execution of the terms of this contract by the said party of the second part.

The said party of the first part hereby agrees, for and on behalf of the United States of America, to pay or cause to be paid to the said party of the second part, in such funds as may be provided by the Government for that purpose, the sum of one dollar and sixty-nine cents (\$1.⁶⁹/₁₀₀) for each and every bushel of fifty-six (56) pounds of corn delivered and accepted in accordance with the terms of this contract, as follows, to wit: As often as the quantity of corn delivered and unpaid for amounts to two thousand (2,000) bushels or more, certified accounts therefor shall be issued by the quartermaster at Fort Harker, which shall be paid by the chief quartermaster Department of the Missouri as soon as he shall have funds for that purpose; except that payment for the first one thousand (1,000) bushels of corn delivered under this contract shall be deferred until the contract is filled: (Provided, however, that the said party of the first part shall have the power to retain any or all of the money, to be paid as aforesaid until the completion of this contract according to the true intent and meaning thereof.)

It is further expressly covenanted and agreed by and between the parties hereto that this contract is not assignable by the party of the second part; and, in case of

such assignment, the party of the first part shall have the option to regard the same as an abandonment thereof, and the said party of the second part, and his sureties, shall be held responsible for any loss or damage that may ensue to the said party of the first part by reason of such abandonment; and any sum or sums of money due or to become due the said party of the second part by the United States of America shall be held and applied to satisfy such damage.

Upon mutual agreement this contract may be changed, altered, modified, or abrogated in whole or in part.

This contract is subject to the approval of the commanding generals of the Department of the Missouri and Military Division of the Missouri.

It is expressly understood by and between the parties to this contract that no member of Congress shall be admitted to any share or part therein, or any benefit to arise therefrom.

In witness whereof the said parties have hereunto set their hands and seals, on the day and year first above written.

BENJ. C. CARD. [SEAL.]
B'v't Brig. Gen'l U. S. A., Acting Chief Q'rm'r Dep't Mo.
 D. H. MITCHELL. [SEAL.]

Witnesses:

O. C. SPOOR,
 CHARLES SPRINGER.

[Indorsements.]

[1119, H'dq'rs Dep't Mo., 68.]

HEADQUARTERS DEPARTMENT OF THE MO.,
Fort Leavenworth, Kas., November 19th, 1868.

Approved.

By command of Major-General Sheridan.
 (Stamp:) Received Nov. 19, 1868, Q. M. O. Dep't Mo.

W. C. EMBRY,
Brev. Lieut. Colonel U. S. A., Acting Ass't Adj't General.

HEADQUARTERS M. D. MISSOURI,
 OFFICE CHIEF Q'RMASER,
Saint Louis, Mo., Nov'r 23, 1868.

Approved.

L. C. EASTON,
Deputy Q'rm'r General U. S. A., Acting Chief Q'rm'r M. D. Missouri.
 By C. W. THOMAS,
B'v't Lieut. Col. and A. Q. M., U. S. A.

HEADQUARTERS M. D. MISSOURI,
Saint Louis, Mo., Nov'r 23, 1868.

Approved.

By command of Lieutenant-General Sherman.

W. A. NICHOLS,
Ass't Adj't General.

Bk. 13, W. 1417; Bk. 13, W. 1458.
 (Stamp:) Received Dec. 4, 1868, C. Q. M. O., Dep't Mo.

"D" C 1112. C. 11 Jan'y, '70. Contractor. Contract. B'v't Brig. Gen'l B. C. Card, U. S. A., Acting Chief Q'rm'r, Dep't Mo., with D. H. Mitchell, for the delivery of 10,000 bushels corn at Hay's City, Kansas, dated November 9, 1868; bond, \$6,000; sureties, Lucien Scott, D. W. Sowers, Leavenworth, Kansas. 588 M. (M. D. Mo.), 1868, 124-1023.

[Stamp:] Q'rm'r Gen's office. Received Jul. 5.

This contract, made and entered into at Fort Leavenworth, Kansas, on this ninth day of November, in the year of our Lord one thousand eight hundred and sixty-eight, by and between Bvt. Brig. Gen'l B. C. Card, ass't q'rm'r, U. S. Army, acting chief quartermaster, Department of the Missouri, for and on behalf of the United States of America, of the first part, and D. H. Mitchell, of the city and county of Leavenworth, State of Kansas, of the second part, witnesseth:

That the said D. H. Mitchell agrees to furnish and deliver to the quartermaster at Fort Harker, Kansas, sixteen thousand (16,000) bushels oats of the best quality, free

from dirt, chaff, or other foreign matter, and securely sacked in good sacks; that he will deliver one-third ($\frac{1}{3}$) of the quantity contracted for on or before November eighteenth (18th), one-third ($\frac{1}{3}$) on or before November twenty-seventh (27th), and the remainder on or before December fifth (5th), 1868.

And the said party of the second part further agrees that the said oats shall be subject to the inspection, acceptance, or rejection of the quartermaster at Fort Harker, Kansas, or such person or persons as he may designate; and further, that if the oats presented for delivery under this contract shall be of an inferior character to what is hereinbefore stipulated to be furnished by the said party of the second part, the said party of the second part shall thereupon forthwith furnish other oats of the proper character in place thereof; and that if default shall be made by the said party of the second part in the time of the delivery of the said oats, or in any of the provisions of this contract, the said party of the first part shall have power to supply any deficiency that may exist by purchasing in open market, or in such manner as he may elect, and the said party of the second part shall be charged with the difference in cost.

And it is further hereby expressly stipulated and agreed by and between the parties to this contract that if default shall be made, as aforesaid, or in any other way, the said party of the first part shall have power to retain from the sum hereinafter stipulated to be paid to the said party of the second part such amount as may be necessary to indemnify the said party of the first part in the premises, and against all and any defects and deficiencies in the execution of the terms of this contract by the said party of the second part.

The said party of the first part hereby agrees, for and on behalf of the United States of America, to pay or cause to be paid to the said party of the second part, in such funds as may be provided by the Government for that purpose, the sum of eighty-seven (87) cents for each and every bushel of thirty-two (32) pounds of oats delivered and accepted in accordance with the terms of this contract, as follows, to wit: As often as the quantity of oats delivered and unpaid for amounts to two thousand (2,000) bushels or more, certified accounts therefor shall be issued by the quartermaster at Fort Harker, which shall be paid by the chief quartermaster, Department of the Missouri, as soon as he shall have funds for that purpose, except that payment for the first two thousand (2,000) bushels of oats delivered under this contract shall be deferred until the contract is filled. (*Provided, however,* That the said party of the first part shall have the power to retain any or all of the money to be paid as aforesaid until the completion of this contract according to the true intent and meaning thereof.)

It is further expressly covenanted and agreed, by and between the parties hereto, that this contract is not assignable by the party of the second part; and, in case of such assignment, the party of the first part shall have the option to regard the same as an abandonment thereof; and the said party of the second part and his sureties shall be held responsible for any loss or damage that may ensue to the said party of the first part by reason of such abandonment; and any sum or sums of money due or to become due the said party of the second part by the United States of America shall be held and applied to satisfy such damages.

Upon mutual agreement this contract may be changed, altered, modified or abrogated in whole or in part.

This contract is subject to the approval of the commanding general of the Department of the Missouri and Military Division of the Missouri.

It is expressly understood by and between the parties to this contract, that no member of Congress shall be admitted to any share or part therein, or any benefit to arise therefrom.

In witness whereof the said parties have hereunto set their hands and seals on the day and year first above written.

BENJ. C. CARD, [SEAL.]
Bvt. Brig. Gen'l U. S. A., Acting Chief Q'r'm'r, Dep't Mo.
 D. H. MITCHELL. [SEAL.]

Witnesses:

O. C. SPOOR,
 CHARLES SPRINGER.

[Indorsements.]

[1119. H'dq'rs Dep't Mo. Co.]

11940.

HEADQUARTERS DEPARTMENT OF THE MO.,
Fort Leavenworth, Kas., November 19th, 1868.

Approved.

By command of Major-General Sheridan.

WM. EMBRY,
Brevet Lieut. Colonel U. S. A., Acting Ass't Adj't General.

[Stamp:] Received Nov. 20, 1868. Q. M. O. Dep't Mo.

HEADQUARTERS M. D. MISSOURI,
OFFICE CHIEF Q'RMASTER,
Saint Louis, Mo., Nov'r 23, 1868.

Approved.

L. C. EASTON,
Deputy Q'rm'r General U. S. A.
Acting Chief Q'rm'r, M. D. Missouri.
By C. W. THOMAS,
Bvt. Lieut. Col. and A. Q. M., U. S. A.

HEADQUARTERS M. D. MISSOURI,
Saint Louis, Mo., Nov'r 23, 1868.

Approved.
By command of Lieutenant-General Sherman.

W. A. NICHOLS,
Ass't Adj't General.

[Stamp:] Received Dec. 4, 1868. Q. M. O. Dep't Mo.
Filed May 15, 1878.
Rec'd., M. D. Mo., Nov'r 27, 1868.

"A." C. § 1111. C. 11 Jan'y, '70. Contractor. Contract. Bvt. Brig. Gen'l B. C. Card, U. S. A., acting chief q'rm'r, Dep't Mo., with D. H. Mitchell, for the delivery of 16,000 bushels oats at Fort Harker, Kansas, dated November 9, 1868. Bond, \$5,000. Sureties: Lucien Scott, D. W. Sowers, Leavenworth, Kans. 595M. (M. D., Mo.), 1868. 12-1403. 124-1023. Bk. 13, W. 1417. Bk. 13, W. 1458.

UNITED STATES OF AMERICA:

Before Gen. R. Saxton, chief q. m., Department of Missouri.

DAVID H. MITCHELL }
vs. }
THE UNITED STATES. }

Statement of claim.

David H. Mitchell, claimant, complains of the United States, and says that the Government is indebted to him in a large amount for corn furnished to the Government at Fort Harker, Kansas, between November 9th, 1868, and April 20th, 1869, as follows:

On the 9th day of November, 1868, Mitchell entered into a written contract with the Government to furnish to the Government, at Fort Harker, sixteen thousand (16,000) bushels of oats, at eighty-seven (87) cents per bushel, of thirty-two (32) pounds to the bushel, a copy of which said contract is hereto attached, marked Exhibit A, and made a part of this statement; that, in pursuance of this contract, Mitchell commenced to furnish said oats; that at the time a campaign was being carried on against the Indians, and the demands and necessities of the Government became imperative for an increased amount of forage; that, owing to the condition of the roads through the country, it was impossible for Mitchell to get oats transported to the railroad track fast enough to supply the increased demand of the Government; that Mitchell had at the time large amounts of corn stored at various points along the railroad line, and could easily procure other large amounts; that Captain Henry Inman was chief q. m. of the department, with headquarters at Fort Harker, but he himself was with the forces in the field, and his duties were being temporarily performed by Lieutenant Cook; that Lieutenant Cook instructed Mitchell to fill his said oat contract with corn, at the same rate per pound that he was receiving for oats, it being considered at that time that a pound of corn was worth as much as a pound of oats; that, in pursuance of such permission and instruction of said Lieutenant Cook, Mitchell proceeded to furnish a large amount of corn; that he shipped from Fairmount Station, on the Kansas Pacific Railroad, twelve (12) car-loads of corn; from Williamstown thirteen car-loads; from Grantsville two car-loads, as shown by the statement of S. F. Smith, auditor of the Kansas Pacific Railroad Company, which is hereto attached, marked Exhibit B, and made a part hereof; that three cars were shipped by one R. S. Griffith from Lawrence in his own name, but the same was shipped on account of Mitchell, and received by the Government at Fort Harker on account of Mitchell (see affidavit of R. S. Griffith, market Exhibit C, and affidavit of said Mitchell, marked Exhibit D); that one — Burnell shipped four car-loads of corn from Grantsville in his own name, but the same was shipped on account of said Mitchell, and was received by the Government at said Fort Harker on said

Mitchell's account (see affidavit of Mitchell, Exhibit D, and copy of telegram, marked Exhibit E, and made a part hereof); that said cars are marked in the statement of the auditor of the Kansas Pacific Railroad Company uniformly at eighteer thousand (18,000) pounds per car, but Mitchell says that each car contained a much greater number of pounds than that amount; that during the time said corn was being shipped and furnished one Fred. Zimmerman was forage master at Fort Harker, and it was part of his duty to weigh and receive said corn, and he did weigh and receive the same, and the cars averaged twenty-four thousand (24,000) pounds instead of eighteen thousand (18,000) pounds (see affidavit of said Fred. Zimmerman hereto attached, marked Exhibit F, and affidavit of Mitchell, Exhibit D); that the number of car-loads of corn furnished by said Mitchell during said time, as shown by the above-referred-to exhibits, was thirty-four (34), with an average weight of twenty-four thousand (24,000) pounds to the car, making in all eight hundred and sixteen thousand (816,000) pounds of corn furnished by Mitchell to the Government at Fort Harker, under the arrangement of said Lieutenant Cook, and all of said corn was received by the Government and used by it.

And Mitchell further says that he has received from the Government of the United States payment for four hundred thousand and six hundred and sixty-six (400,666) pounds of said corn and no more; that this payment was made at the rate \$1.25 per bushel of 56 lbs. This payment was made by Captain Thomas, January 9th, 1870. See copy of voucher hereto attached marked Exhibit I (I not herewith). But Mitchell further in this connection says, that by reason of a pencil memorandum appearing on the purchase books of said Captain Henry Inman it would seem that he, Mitchell, had received payment for forty-eight thousand six hundred and fifty-seven (48,657) pounds more of this corn taken according to said memorandum to fill his said oat contract, but Mitchell thinks and believes this is a mistake, by reason of the fact that from said purchase book and the facts hereinafter stated it appears that he, Mitchell, at the time had on hand at said Fort Harker a large amount of oats not paid for over and above the full amount of his said oat contract. Hence Mitchell says that all he has received pay for of said corn is as above stated, the amount of four hundred thousand six hundred and sixty-six (400,666) pounds paid for as aforesaid by said Captain Thomas. This leaves a balance unpaid for of 415,334 pounds of corn, which, under the arrangement made by Mitchell with Lieutenant Cook, was to be paid for at the rate of eighty-seven (87) cents per bushel of thirty-two (32) pounds. In bushels it would amount to 12,979³/₈, which at eighty-seven (87) cents per bushel would in money amount to the sum of eleven thousand two hundred and four and ⁹⁰/₁₀₀ (11,204.90) dollars, which sum Mitchell claims is due and owing to him.

Mitchell further says that if the Government is not bound by the said arrangement made by Lieutenant Cook, that still in estimating what should be paid to him for the corn it is just and equitable to take into consideration the cost of the corn to him at the time, and he alleges that he paid for said corn on the track, freight to Fort Harker included, on an average the sum of one dollar and forty-four cents per bushel of fifty-six (56) pounds, and that there remains unpaid for 7,416 bushels of fifty-six (56) pounds to the bushel which cost him in the aggregate on the railroad track the sum of ten thousand six hundred seventy-nine and ⁹⁰/₁₀₀ (10,679.⁹⁰/₁₀₀) dollars. In this sum is included the freight to Harker, but not Mitchell's personal expenses, and nothing for his time or for reasonable profit.

RECAPITULATION.

34 cars, 24,000 lbs. each	816,000
Paid for at \$1.25 per bushel of 56 lbs.....	400,666
Bal. not p'd for in lbs.....	415,334

Being, in bushels of 32 lbs. each, 12,879³/₈, at 87 cents per bushel, \$11,204.90.

According to Lieut. Cook's arrangement with Mitchell this last sum of \$11,204.90 is due to Mitchell for corn not p'd for.

In bushels of 56 lbs. each, this 415,334 lbs. of corn not paid for amounts to 7,416 bushels, which at cost price to Mitchell of \$1.44 per bush. am'ts to the sum of \$10,679.⁹⁰/₁₀₀. Add to this pay for the time of Mitchell, and his personal expenses and a very small am't for his profits, and the corn would be worth \$1.52¹/₂ per bush. of 56 lbs., which is the exact am't Cook agreed to pay, and would am't to the same as 87 cents per 32 lbs.

Second. And for a second and further claim against the Government, Mitchell alleges that, when Captain Thomas paid him for 400,666 pounds of corn, as stated in the first count in this petition, it was paid for at the rate of \$1.25 per bushel of 56 pounds, while by the arrangement and contract between Mitchell and the Government, as made with the said Lieut. Cook, he was to receive for the corn the sum of 87 cents per bushel of 32 pounds, or \$1.52¹/₂ per bushel of 56 pounds. And when the same was paid it was understood and agreed by the Secretary of War that Mitchell might at any future time show what the corn had cost him, and if it had cost him

more than \$1.25 per bushel of 56 pounds, that he should be paid the excess, including a reasonable amount for profits and expenses.

And Mitchell alleges that said corn, including freight, cost him \$1.44 per bushel of 56 pounds, and that a reasonable amount added thereto for expenses and reasonable profits, would make the corn worth, at the time, \$1.52½ per bushel of 56 pounds; and that the number of bushels of 56 pounds each included in the 400,636 pounds, was 7,153, which, at \$1.52½ per bushel, would amount to the sum of \$10,890.44, which is the amount Mitchell should have been paid, but he was only paid at the rate of \$1.25 per bushel, which amounted to the sum of \$8,941.25, leaving a balance due to Mitchell on said 400,666 pounds, of the sum of \$1,956.19; that said corn was worth the said sum of \$1.52½ and had cost Mitchell \$1.44 per bushel, exclusive of reasonable profits and his expense. (See affidavits of Mitchell, marked Exhibit D.)

Recapitulation of amt paid for by Capt. Thomas.

400,666 lbb. = 7,154½ bush. of 56 lbs., which was paid for at \$1.25 per bush., \$8,941.25. The same number of bushels at \$1.52½ per bush. w'd have amounted to \$10,891.96; which is the amount Mitchell should have rec'd under his arrang't with Lieut. Cook; or on the calculation of the actual costs of the corn, with an addition of a small amt. for expenses and profits. Deducting, then, the sum of \$8,941.25, the sum actually paid, from \$10,890.44, the sum actually due, and it leaves a balance due Mitchell, on the 400,666 lbs. partially paid for by Capt. Thomas, of \$1,959.19, which sum Mitchell claims.

Third. And for a third and further claim, Mitchell says that in 1875 he had a wood contract with the Government to furnish 650 cords of wood, at Ft. Wallace, Kansas, at \$17.00 per cord, and that he furnished the wood under the contract and something over, but that when the Government paid him for said wood it deducted from the amount coming to him, for the wood furnished, the sum of \$1,324.57, which sum he has never received; that, as he understands it, the deduction was made on the theory that when Capt. Thomas paid Mitchell for 400,666 lbs., he paid him for 48,657 lbs. more than was coming to him, and in settling the wood contract the Gov. deducted the sum of \$1,087.00, from the amt due for the wood, that being the amt that 48,657 lbs. of corn would amt. to, at \$1.25 per bush. of 56 lbs.; and the Gov. deducted the further sum of \$237.07 from the amt due on said wood contract, claiming that that sum had been overpaid to Mitchell, as follows: The pencil memorandum on Capt. Inman's purchase book indicated that 48,657 lbs. of the corn had been taken to fill the oat contract, and paid for at the rate of 87 cents per bushel of 32 lbs., or \$1.52½ per bush. of 56 lbs., being 27½ cents per bush. more than was allowed for the corn by Capt. Thomas. This 27½ cents excess so paid was deducted from the wood contract, as ab'v' stated, and amounted to the sum of \$237.07. Thus it will be seen that the Gov. deducted from the amount due on the wood contract, as above stated, the sum in the aggregate of \$1,324.57. Mitchell, therefore, claims that sum as the balance due him on the said wood contract. He further states that he is confident that the Gov. was mistaken in relation to his having rec'd any pay for the 48,657, and in the fact of any of the corn being taken to fill the oat contract; that he filled the oat contract with oats, and had a large bal. on hand not yet paid for, as hereinafter stated.

Fourth. And for a fourth and further claim against the Government, Mitchell says that during the years 1867, 1868, and 1869, he filled various and sundry contracts with Government for furnishing oats and corn at Fort Harker, Kansas, and that he furnished a large amount both of oats and corn that he has never received any pay for. That during all of said time Capt. Henry Inman was chief quartermaster of the department, with headquarters at Fort Harker, and that said Inman at all times when he was at said Fort Harker, kept a private book in which he caused to be entered all purchases made by him in behalf of the Government, and also of all payments made in such purchases. That said book was so kept until up to and including a portion of the month of October, 1868, at which time said Inman was called into the field on an Indian campaign, where he remained until in April, 1869. That during his absence said purchase book was not kept, but the same was attempted to be made up after his return from memoranda in the quartermaster's office, but that the business of the office had been conducted in such a manner during his absence that it was impossible to tell whether said book was rightly made up or not for the time of his absence. That the entries appearing in said book before the date he was called into the field were correctly made, and at the time of the purchase, and such purchases as were paid for were so marked in said book.

And Mitchell says that it appears by said book and by and from the return of said Inman made to the Department at Washington during the time, that at the time he, said Inman, went into the field there was a large amount due to said Mitchell from the Government for oats and corn that had never been paid for and the same has not been paid for yet.

And Mitchell further alleges that during the absence of said Inman in the field, he

furnished to the Government, in addition to the corn specified in the first count in this claim, a large amount of oats for which he never has received any pay. That the business of the department at Fort Harker was conducted in such a manner as for it to be impossible to tell what had been received, and from whom, but Mitchell says that the returns of said Inman made when he left, and before he left Fort Harker in the spring of 1869, show that there was a large amount of surplus forage on hand at said Harker that had never been paid for, and said Inman could not tell to whom it belonged nor to whom the Government was indebted for it. And Mitchell says that the same or a large portion of the same had been furnished by him, and that on account of the negligent manner in which the business had been conducted, he had not received credit for it, but that an inspection of said purchase book and of the returns of said Inman on file in the Department will show that this large surplus or a great portion thereof belonged to him. In this connection we call attention to the entry in Capt. Inman's purchase book under date of Sept. 30, 1868, of 168,000 lbs. of corn, and to the others entries of corn and oats for Sept. and Oct., 1868. This large amount does not appear to have ever been paid for.

Recapitulation of claim.

1st. Under the first count in the above petition and statement Mitchell claims payment for 415,334 lbs. of corn furnished in lieu of oats, under contract of Nov. 9th, 1868, at 87 cents per bushel of 32 lbs., or at \$1.52½ per bushel of 56 lbs., which amounts to \$11,204.90.

2nd. Under the second count he claims payment for balance due on the 400,666, partly paid for by Capt. Thomas, having been paid \$1.25 per bushel of 56 lbs., when he should have been paid \$1.52½. The 400,666 lbs. amounted to 7,154 bushels of 56 lbs. He received \$1.25 per bushel, being \$8,941.25. He should have received \$1.52½ per bushel of 56 lbs., which would have been \$10,890.44. The difference between these two sums is still due him, being the sum of \$1,959.19.

3rd. Under the third count he claims the amount still due him on his wood contract withheld for the reasons, as he understands it, stated in said count, being in the aggregate the sum of \$1,324.57.

4th. Under the fourth count he claims such sum as a thorough examination of the accounts, vouchers, books, and papers of Cap. Inman, and the files in Q'm. Off. at Ft. Smith, and in Washington City in the 3rd Auditor's and other proper offices, may show to be due to him on corn and oats not yet paid for.

5th. He further claims interest on all sums found to be due to him from the date the same should have been paid, at such rate as shall be equitable and just.

And Mitchell prays for a thorough and impartial investigation of all the matters referred to in the above petition, as he feels confident that great injustice has been done him in the premises; and he also feels that in a fair settlement with the Government there will be found due to him a large sum of money. He is ready and willing to assist in any and all investigations, and will to his utmost endeavor to furnish any and all testimony that may be called for. He refers to exhibits hereto attached, and especially to the affidavits of the jurors, which explains itself.

Hoping that the matter will receive prompt and careful attention, he now submits this his claim and statement.

D. H. MITCHELL.

JO. W. TAYLOR, *Att'y.*

EXHIBIT D.

STATE OF KANSAS, *Leavenworth County, ss:*

David H. Mitchell, being first duly sworn, deposes and says that he is the claimant named in the above and foregoing statement and claim against the Government of the U. S., and that the matters and things in statement contained are true, as far as they are stated of his own knowledge, and that that portion thereof stated on information and belief he believes to be true. Affiant further says that he has shipped large amounts of freight of various kinds on R. R., and that it is the custom to put in the cars 2,000 to 4,000 lbs. more freight than the amount allowed by the R. R. Co.; that he personally superintended shipping a large amount of the corn and oats in the above claim referred to, and that he believes that the cars he loaded contained on an average 24,000 lbs. and upwards. Affiant further says that he shipped and had shipped, as he believes, 34 car-loads of corn on said contract of Nov. 9, '68, and that the same was shipped as stated in the above statement. Affiant further says that the corn cost him \$1.44 per bushel, as above stated, without allowing him anything for his time and personal responsibility and trouble, and that the arrangement with

Lieut. Cook was that he was to receive for the corn \$1.52 per bushell of 56 lbs., and that the corn was worth that sum when the same was delivered at Ft. Harker. Affiant further says that Capt. Thomas only paid him at the rate of \$1.25 per bushell for the 400,666 lbs. he paid for, and his right to receive the balance, to wit, the difference bet. \$1.25 and \$1.52 was left open, and he claims said balance. Affiant further says that this claim is honestly made, believing that it is just, and that Gov. is indebted to him as above stated; that the whole matter was pretty well ventilated in the trial of the case of the U. S. Gov. *vs.* David H. Mitchell, in the U. S. dist't c't at Topeka, and the affidavits of the jurors, herewith submitted, recites the facts in relation thereto. Affiant further says that he has been financially ruined by these contracts and the delay in getting his money on the same, and that he now submits this claim, hoping that the Gov'm't will do him simple justice.

D. H. MITCHELL.

Subscribed in my presence and sworn to before me this 30th day of Oct., 1877.

[SEAL.]

J. M. NIEHAUS,
Notary Public.

H. Rep. 1—34

B.—Statement showing No. and initial of cars, etc., in service of grain shipments from various stations on Kans. Pacific Railway to Fort Harker, ac. of D. H. Mitchell, 1868-1869.

Date.	M'n'f'lst.	No. of car.	Initial of car.	From—	Consigner.	%	Consignee.	Description.	
								Articles.	Weight.
1868.									
Nov. 21	22	1434	K. P.	Perry.....	Griffith & D.....		Lient. Cook.....	145 sacks oats.....	Lbs. 18,000
Dec. 23	36	1441	"	".....	R. S. G.....	D. H. Mitchell	Q. M.....	156 do.....	18,000
" 31	44	1207	"	".....	do.....	do	Lient. Cook.....	150 do.....	18,000
" 17	2	1391	"	Fairmount.....	D. H. Mitchell.....		A. Q. M.....	119 } sacks corn.....	18,000
" 18	3	1200	"	".....	do.....		do	165 do.....	18,000
" 24	5	1376	"	".....	do.....		do	165 do.....	18,000
" 23	2	1360	"	Williamstown.....	do.....		Capt. Kendall.....	165 s'ks shell'd do.....	18,000
" 29	4	1348	"	".....	do.....		Q. M.....	165 " " " ".....	18,000
1869.									
Jan'y 19	56	1443	"	Grant's.....	do.....		do	170 " " " ".....	18,000
" "	57	1254	"	".....	do.....		do	170 " " " ".....	18,000
" 11	3	1354	"	Williamstown.....	do.....		do	160 " " " ".....	18,000
" 11	4	1383	"	".....	do.....		do	160 " " " ".....	18,000
" 11	6	1388	"	".....	do.....		do	160 " " " ".....	18,000
" 15	6	1310	"	".....	do.....		do	160 " " " ".....	18,000
" "	7	1320	"	".....	do.....		do	160 " " " ".....	18,000
" 20	9	1420	"	".....	do.....		do	160 " " " ".....	18,000
" 23	11	1432	"	".....	do.....		do	160 " " " ".....	18,000
" 23	12	1315	"	".....	do.....		do	160 " " " ".....	18,000
" 5	3	1363	"	Fairmount.....	do.....		do	147 " " " ".....	18,000
" 11	6	1325	"	".....	do.....		do	165 " " " " & 30 sacks corn.....	18,000
" 12	7	1232	"	".....	do.....		do	165 " " " ".....	18,000
" 13	8	1245	"	".....	do.....		do	165 " " " ".....	18,000
" 24	10	1374	"	".....	do.....		do	165 " " " ".....	18,000
" 22	11	1436	"	".....	do.....		do	165 " " " ".....	18,000
" 25	12	1361	"	".....	do.....		do	165 " " " ".....	18,000
" 18	9	1375	"	".....	do.....		do	165 " " " ".....	18,000
Feb'y 2	2	1429	"	Williamstown.....	do.....		do	160 " " " ".....	18,000
" 6	3	1343	"	".....	do.....		do	160 " " " ".....	18,000
" 10	4	1201	"	".....	do.....		do	160 " " " ".....	18,000
" 1	1	1354	"	Fairmount.....	do.....		do	165 " " " ".....	18,000
" 2	2	1243	"	".....	do.....		do	165 " " " ".....	18,000

D. H. MITCHELL.

Personally appeared S. T. Smith, who being duly sworn, says that he is the auditor of the Kansas Pacific Railway C., and that the foregoing statement is true and correct to the best of knowledge and belief.

S. T. SMITH.

Subscribed and sworn to before me this 1st day of Dec., 1876.

[SEAL.]

JOHN W. GRIFFITH,
Notary Public.

Cont. dated May 1st, 1874; expires May 1, 1878.

W. D., Q. M. G. OFFICE,
Washington, April 28, 1877.

True copy.

HENRY C. HODGES,
Dep. Q. M. Gen'l, U. S. A.

(Indorsed:) Exhibit B. No. 2. Of cars shipt by D. H. Mitchell. 1039, War Dept., 2, 1877. 4-206, Qr. Mr. Gen'l Office. Received Feb. 10, 1877, with 3-185, Q. M. G. O., 1875; 694-1875.

EXHIBIT F.

STATE OF KANSAS, *Leavenworth County, ss:*

Fred. Zimmerman, being duly sworn, deposes and says that he was employed in the quartermaster department at Fort Harker, Kansas, from July, 1867, until the middle of November, 1868, and from the middle of December, 1868, until some time in February, 1869, and assisted in weighing and receiving the grain at said post during that time; was acting as forage master from October 10, 1868, to the middle of November of 1868, and from the middle of December, 1868, until some time in February, 1869, gave his personal attention to the weighing and receiving grain at the forage yard at said post; that the cars containing grain averaged 2,400 lbs. in weight per car.

FRED. ZIMMERMAN.

Sworn to before me and subscribed in my presence this 5th day of December, A. D. 1876.

[SEAL.]

H. R. PENDERY,
Notary Public.

W. D., Q. M. G. OFFICE,
Washington, April 28, 1877.

A true copy.

HENRY C. HODGES,
Dep. Q. M. Gen'l, U. S. A.

(Indorsed:) *In re.* D. H. Mitchell. N. 1039. War Dep't, 4, 1877. Affidavit of Fred. Zimmerman. 2-206. Q'r M'r Gen'l's Office. Received Feb. 10th, 1877, with 6-185. Q. M. G. O., 1877, & 694-1875,

STATE OF KANSAS, *Ellsworth Co., ss:*

Henry Inman, being first duly sworn, deposes and says that during the fall of 1868 and winter of 1868 and 1869 and spring of 1869 he was an officer in the U. S. Army, of the rank of brev't lieutenant, colonel and captain, and assistant quarter master, and chief quartermaster of the district of the Upper Arkansas, with headquarters at Fort Harker, Kansas; that during the fall of 1868 he was called into the field to accompany General Sheridan on the Indian expedition of 1868 and 1869, and remained absent from Ft. Harker during nearly all the time from October, 1868, until April, 1869; that he knows one David H. Mitchell who was then, and still is a resident of Leavenworth City, Kansas, and that during the month of November, 1868, and on the

9th day of the month, said Mitchell entered into a contract to furnish to the Government at Fort Harker sixteen thousand bushels of oats, at 87 cents per bushel. A copy of which said contract is hereto attached, marked Exhibit A, and made a part hereof. That in pursuance of said contract, said Mitchell furnished a large quantity of oats, but, as affiant is informed and believes, owing to the state of the roads, and his inability to get his oats to the R. R. track as fast as the exigencies of the Government demanded, an arrangement was entered into between him and Lieut. L. W. Cook, who was, during affiant's absence, acting in his stead, to the effect that said Mitchell was to fill his said oat contract with corn, and was to receive pay for the same at the same rate per pound as he was getting for oats under his said contract; that in pursuance of this arrangement, said Mitchell furnished corn, as is shown by my purchase-book, as follows: Dec. 31st, 1868, 41,870 lbs.; Jan'y 31, 1869, 283,221* lbs.; Feb. 27th, 1869, 20,918 lbs., or a total of 400,666 lbs. of corn; that a forage receipt was given to said Mitchell for said amount by Gen. Thompson, who was at that time forage-master at said post. That afterwards affiant made out a voucher for the amount of corn delivered by said Mitchell during said time, under said contract, and in said voucher deducted 48,657 lbs., leaving a balance of 352,009 lbs., which amount he inserted in the voucher, a copy of which is hereto attached, marked D. That the reason he deducted the 48,657 lbs. was, because Mitchell was paid for that amount of the corn furnished as oats—that is, 48,657 lbs. was taken of the corn furnished and considered oats—leaving a balance of 352,009 of corn. Mitchell was paid for this last amount by Capt. Thomas, at Washington, D. C., on Jan'y 12, 1870, as affiant is informed. Affiant further says that this corn was furnished during affiant's absence, and he has no means of knowing the exact amount of corn furnished by said Mitchell; that the figures above were taken from his "purchase-book," a private book kept by him, in which, when he was present, attending to the duties of his office in person, he caused to be entered a memoranda of all purchases made by him, on behalf of the Government, and of all property furnished to the Government from all sources of purchase; but that during his absence in the field, as above stated, said book was not kept at all, but that after his return, in the spring of 1869, and about the 1st of April, 1869, he commenced to attempt to straighten his accounts, and caused said purchase-book to be made up, and the same was made up at that time, and after all the corn and oats had been furnished by Mitchell, from memorandums and reports found in affiant's office, and filed there by the forage-master, as affiant supposed; but affiant says that his accounts were kept so negligently, and such irregularities occurred during his absence, as to make it impossible for him ever to get them straightened up in any satisfactory manner, and that he can not to-day tell anywhere near how they do stand; that it is quite possible said Mitchell may have furnished large amounts of corn that do not appear in said purchase-book; the memoranda and reports of the receipt of which, with weight, may have been lost or misplaced, and affiant does not think said purchase-book is entitled to credit as being proof that said Mitchell furnished no more corn than the amount therein shown. Affiant further says that he was present at the trial of the case of the U. S. vs. said David H. Mitchell, at Topeka, in April last, and heard all of the evidence in the case, and that after hearing the evidence and ascertaining the number of cars shipped by said Mitchell to said Harker, during said time, and having thought the matter carefully over since, he is of the opinion that said Mitchell did furnish a large amount more corn than the 400,666 above named; and affiant is confirmed in this belief, and his belief almost made certain by the following fact, to wit: That Abstract "A" of one of his monthly reports for the spring of 1869, shows a large amount of corn fed out by the Government, and received from some person unknown to him; affiant can not state the exact amount, but it was a very large amount, and the abstract will be found in his reports for, probably, the month of April, 1869, in the 3rd Auditor's Office. At the time, affiant could not tell to whom it belonged, and has now good reason to believe that it may belong to said Mitchell. The amount, as affiant remembers it, was from six to nine thousand dollars' worth; but affiant can not state nearer. Affiant further says that during the whole of said time, the exigencies of the Government demanded a large amount of forage, and that all of the corn and oats furnished by said Mitchell was fed to Gov't animals, as shown by affiant's paper. Affiant further says that after said Mitchell had furnished the corn, Col. Easton refused to pay for it as oats, and compelled said Mitchell to fill his contract with oats, which he did, except 48,657 lbs., which said amount was made up of corn, as above stated. Affiant further says that Exhibit "B," hereto attached, is an abstract from affiant's said purchase-book, and shows all of the corn and oats delivered by said Mitchell, at said Harker, at the various times therein stated, as the same appears on said book, and that the forage receipt for 400,666 lbs., and the voucher for 352,009

* This delivery was, as shown by purchase-book 331,878, out of which is deducted, as hereinafter stated, 48,657.

lbs., each comprise the same deliveries, and were each made for the said book, as above stated. And affiant has never given said Mitchell any other or further voucher for corn delivered during said time.

HENRY INMAN.

Subscribed in my presence, and sworn to before me, this 7th day of July, A. D. 1876.
[SEAL.]

IRA E. LLOYD,
Notary Public, Ellsworth County, State of Kansas.

W. D., Q'R M'R GEN'S OFFICE,
Washington, April 28, 1877.

True copy.

HENRY C. HODGES,
Dep. Q. M. Gen'l, U. S. A.

EXHIBIT B.

Purchases on account of the United States by Brevet Major Inman, A. Q. M., U. S. A., at Fort Leavenworth, Kansas.

Date of purchase.	From whom purchased.	Articles.	Price.		Amount.		Remarks.	
			Dolls.	Cts.	Dolls.	Cts.		
1867.								
Sept. 30th	D. H. Mitchell	7000 bushels corn	1	67	10521	00	Contract dated Sept. 17th, '67, for 15000 bus.; 10% retained.	
Oct. 24 "	D. H. Mitchell	3000 bushels corn	1	67	4509	00	Contract incomplete; 10% retained.	
" 31 "	D. H. Mitchell	153738 lbs. corn	1	67	3589	43	Contract.	
Nov. 6 "	D. H. Mitchell	20295 " "	1	67	605	22	Contract incomplete.	
" 7 "	"	36880 " "	1	67	1099	81	"	
" 19 "	D. H. Mitchell	14575 " "	1	67	434	64	"	
" 21 "	D. H. Mitchell	20175 " "	1	67	601	64	"	
" 23 "	D. H. Mitchell	8023 " "	1	67	239	25	Do.	
" 24 "	"	20250 " "	1	67	603	88	Do.	
" 27 "	D. H. Mitchell	20335 " "	1	67	606	41	Contract.	
" 29 "	"	5720 " "	1	67	170	57	Completing contract for 15000 bushels.	
Dec. 18 "	D. H. Mitchell	22570 " "	1	59	640	82	Contract for 15000 bushels.	
	D. H. Mitchell	38530 " "	1	59	1093	97	Contract.	
	D. H. Mitchell	22315 " "	Bus. 1	59	633	58	"	
	D. H. Mitchell	43300 " "	Bus. 1	59	1229	41	"	
	D. H. Mitchell	203970 " "	1	59	5791	29	"	
	D. H. Mitchell	101140 " "	1	59	2871	65	"	
	D. H. Mitchell	10000 " "	1	59	283	93	"	
	D. H. Mitchell	1716 " "	1	59	48	72	"	
	"	28970 " oats						
1868.								
Jan'y 16 "	D. H. Mitchell	38570 " corn	1	59	1095	11	Contract.	
" 18 "	D. H. Mitchell	42190 " "	1	59	1197	89	"	
" 21 "	D. H. Mitchell	110882 " "	1	59	3148	25	"	
Feb'y 3 "	D. H. Mitchell	8172 " "	Bus. 1	59	232	02	"	
" 5 "	"	6512 " "	"	1	184	90	"	
March 27 "	D. H. Mitchell	28970 " " per bus	1	59	822	54	On contract.	
Sept. 2 "	D. H. Mitchell	54766 pounds corn, 977. 54	1	28	1251	75		
" 25 "	D. H. Mitchell	21240 lbs. oats			65	431	43	On contract Aug. 17.
" 30 "	D. H. Mitchell	20480 " "			65	416	00	" " " "
" " "	do	168000 " corn, 3000 bus.	1	28	3840	00	" " " "	
November 1	D. H. Mitchell	396 1/2 bush. oats			65	257	57	" " " " Aug. 17, f'r 1700 bu. new corn (cont. complete).

November 25	D. H. Mitchell	19580 lbs. oats, 611 ³ / ₄ bush	87	532	33	On contract Nov. 9, 16000 bush.
December 31	D. H. Mitchell	36100 lbs. " 1128 ³ / ₄ "	87	961	47	" " " Nov. 9, f'r 16000 bush.
" 30	D. H. Mitchell	41870 " corn, 747 ³ / ₄ "				
1869.						
January 31	D. H. Mitchell	55654 " oats, 1739 ³ / ₄ "	87	1513	09	On contract Nov. 9, f'r 16000 bush.
" 30	" " "	331878 " corn,				Less 48057 lbs. used to fill oat contract of Nov. 9.
Feb'y 27	D. H. Mitchell	26918 " corn, 480 ³ / ₄ "	87	7375	95	On contract, Nov. 9, 1868, f'r 16000 bush.
March 31	D. H. Mitchell	289690 " oats, 9052 ³ / ₄ "	1	59	26	
	D. H. Mitchell	28970 " corn, 517 ³ / ₄ "				

True copy.

W. D., Q. M. G. OFFICE,
Washington, April 28, 1877.

HENRY C. HODGES,
Dep. Q. M. Gen'l, U. S. A.

The United States to D. H. Mitchell, Dr.

Date of purchase.		Dolls.	Cts.
1868. Dec'r 30th.	For 747 ³ / ₈ bushels corn (41879 lbs.).....		
1869. Jan'y 30 "	" 5057 ³ / ₈ " " (283221 lbs.).....		
Febr'y 27	" 480 ³ / ₈ " " (26918).....		
	Purchased on account of Nov. 9, 1868.....		

I certify that the above account is correct and just, and that the articles have been accounted for on my property return for the months of Dec'r, 1868, and Jan'y and Feb'y, 1869.

HENRY INMAN,
Bvt. Lieut. Col. and Ass't Quartermaster.

Received at _____, the _____ of _____, 186-, _____, _____, quartermaster United States Army, the sum of _____ dollars and _____ cents, in full of the above account.

D. H. MITCHELL.

(Signed in duplicate:)

W. D., Q. M. G. OFFICE,
Washington, April 28th, 1877.

True copy.

HENRY C. HODGES,
Dep. Q. M. Gen'l, U. S. A.

(Indorsed :) No. 3. Mr. D. H. Mitchell. Voucher 1039. War Dep't. 1877. With 5-185. Q. M. G. O., 1877. 694. 1875.

THE STATE OF KANSAS, Leavenworth County, ss :

We, the undersigned, do hereby make oath, and do under oath say, that we were jurors in the trial of the case of the United States against David H. Mitchell, tried before the district court of the United States for the district of Kansas, for the April term, A. D. 1876; that it was shown in that case that the said David H. Mitchell had delivered under contract and orders from the proper military authority at Fort Harker, during the winter of 1868-'9, a large quantity of corn, for which there did not appear any evidence of payment or satisfaction, to wit: There was evidence tending to show that 792,000 lbs. of corn were delivered by Mr. Mitchell during said months of November and December, 1868, and January and February, 1869, and there was no evidence produced on the trial of the payment of any amount over 400,666 lbs. of corn; and the undersigned further say that the verdict in the case was based on the fact that the claim (for presenting and swearing to which Mitchell was indicted and tried) set forth the exact items for which he was previously paid, and which were included in the payment for the 400,666 lbs. voucher or claim, and the verdict in this case was based on this fact, and not on any evidence that the Government had paid him for all the corn which the evidence showed that he had delivered to the United States at Fort Harker.

The undersigned further say that there was evidence admitted by the Government tending to prove that Mitchell delivered the entire amount heretofore specified, to wit, 792,000 lbs., the evidence showing payment for 400,666 lbs., and if the difference between these two amounts has not been paid for, we believe, under the evidence, that Mitchell has yet a just claim for that amount. We desire to be understood plainly in our statements, that the result of the trial came from the fact that the claim was for vouchers already paid, and not from the fact that the Government was not indebted to him, for we believe, as before stated, that the evidence shows the Government indebted to Mitchell for the difference between 792,000 lbs. and 400,666 lbs., which would be 391,334 lbs., less 48,657, which was shown to have been paid in the oats contract and voucher. This would leave the net difference 342,677 lbs., and for this amount, to wit, 342,677 lbs. of corn, Mitchell has, according to the evidence, a valid claim against the Government. There was no evidence introduced on the trial tending to show any payment to Mitchell for this amount; whether it has been paid or not the undersigned do not pretend to know or say, but if not paid, Mitchell, according to the evidence, is entitled to payment therefor.

Again we desire to say, to avoid misunderstanding, that the jury did not decide by their verdict that Mitchell had no just claim against the Government, but only that he was not entitled to payment for the items specified in his voucher, and for the presentation of which he had doubtless violated the law.

C. REASONER, *Foreman Jury.*
JOHN H. STRINGFELLOW.

Subscribed in my presence and sworn to before me by C. Reasoner and John H. Stringfellow, this 3d day of May, A. D. 1876.
[SEAL.]

J. L. BERRY,
Notary Public.
CHESTER THOMAS.
DENNIS JONES.

Subscribed in my presence and sworn to before me by Dennis Jones, this 12th day of May, A. D. 1876.
[SEAL.]

HAMILTON ELLIS,
Notary Public.

STATE OF KANSAS, *Wyandotte County, ss :*

Personally appeared before me, a notary public within and for said county and State, Phillip Knoblock, whose name is subscribed to the foregoing affidavit, and who, being first duly sworn according to law, deposes and says that the affidavit thereto subscribed is true according to his best knowledge and belief.

PHILIP KNOBLOCK.

Subscribed and sworn to before me, this 26th day of May, A. D. 1876.
[SEAL.]

W. J. BUCHUN,
Notary Public.

Subscribed in my presence and sworn to before me by J. A. Fligor, this 26th day of May, A. D. 1876.
[SEAL.]

A. J. CAMPBELL,
*Justice of the Peace of Delaware Township,
Wyandotte County, State of Kansas.*
J. A. FLIGOR.

Subscribed in my presence and sworn to before me by M. H. Brown, this 27th day of May, A. D. 1876.
[SEAL.]

W. M. RICE,
Notary Public.
F. W. WILLARD.

Subscribed in my presence and sworn to before me by F. W. Willard, this 29th day of May, 1876.
[SEAL.]

HAMILTON ELLIS,
Notary Public.

Subscribed in my presence and sworn to before me by A. D. Stone, this 6th day of June, A. D. 1876.

CHARLES SHEDD,
Notary Public.

W. D., Q. M. G. OFFICE,
Washington, April 28th, 1877.

True copy.

HENRY C. HODGES,
Dep. Q. M. Gen'l, U. S. A.

(Indorsed:) No. 1. 1039. War Dep't, 1. 1877. Q'r M'r Gen'l's Office. Received Feb. 10th, 1877. 5-206. With 2-185. Q. M. G. O., 1877, & 694-1875. Statement of the jury.

STATE OF KANSAS, *Leavenworth County, ss :*

We, the undersigned, do make oath and say that we were jurors in the trial of the case of the United States against David H. Mitchell, tried before the district court of the United States for the district of Kansas, for the April term, A. D. 1876;

that since the said trial we have read the papers duly certified to by Lot M. Morrill, Secretary of the Treasury of the United States, dated the 27th day of July, A. D. 1876, with the seal attached, and say, had the same been produced and read on the trial of said cause, we would have given a different verdict, and we would have found the defendant "not guilty."

We give this statement freely and cheerfully, with a view that Mr. Mitchell may obtain executive clemency from the President of United States, which we believe he is justly entitled to.

JOHN H. STRINGFELLOW, *M. D.*

Subscribed and sworn to before me, this 9th day of December, A. D. 1876.

[SEAL.]

PETER S. NOBLE,
Notary Public.

STATE OF KANSAS, *Shawnee County, ss :*

W. G. Souther, being duly sworn, says that he was one of the jurors in the case of the United States vs. D. H. Mitchell at the April term of the U. S. district court, A. D. 1876, and that the question of account between said Mitchell and the United States was not considered by the jury; that he has since examined certain vouchers and statements furnished to said Mitchell from the Auditor's Office at Washington, and says that such vouchers if presented to the jury at the time of trial would have caused in affiant's mind a different view of the case, and have led him to give a different verdict.

G. W. SOUTHER.

Sworn to this 11th day of December, 1876, before me.

[SEAL.]

ELIAS SHULL,
Notary Public, Shawnee Co., Kan.

I concur in the above statement, having also been a juror in the case, after reading the same.

[SEAL.]

CHESTER THOMAS.

ELIAS SHULL,
Notary Public, Shawnee Co., Kan.

The original of the above is on file in the office of the Att'y Gen'l among the papers of the application of Mitchell for his pardon.

W. D., Q. M. G. OFFICE,
Washington, April 23th, 1877.

True copy.

HENRY C. HODGES,
Dep. Q. M. Gen'l, U. S. A.

(Indorsed:) War Dep't, 5-1877. Second affidavit of jury. Q'm'r Gen's Office, Received Feb. 10th, 1877. With 7-185. Q. M. G. O., 1877 & 694-1875.

(Indorsed:) D, 4831. C. Q'm'r Dep't Mo. Received Nov. 7, 1877, October 30, 1877. 6-1629. Q'm'r Gen's Office. Received Dec. 4, 1877. With 9-621. Q. M. G. O., 1878. D. H. Mitchell, of Leavenworth, Kan. 2179. Petition and statement relative to amount due him for corn furnished the Q'm'r Dep't at Fort Harker, K's, during the years of 1868-'69. 11940. Filed May 15, 1878. J. R.

Purchases on account of the United States by Brevet Major Henry Inman, A. Q. M., U. S. A., at

Page of Pur. Book.	Date of purchase.	From whom purchased.	Articles.	Price.		Amount.		Remarks.
				Dolls.	Cts.	Dolls.	Cts.	
1	1867. Sept. 30th	D. H. Mitchell..... D	7,000 bushels corn.....	1	67	10,521	00	Contract dated Sept. 17th, '67, for 15,000 bus., 10 % retained. Vou.
1	Oct. 24th	D. H. Mitchell	3,000 bushels corn.....	1	67	4,509	00	Contract incomplete, 10 % retained. Vou.
1	Oct. 31st	D. H. Mitchell	133,738 lb. corn.....	1	67	3,589	43	Contract, vou.
2	Nov. 6th	D. H. Mitchell	20,295 lbs. corn.....	1	67	605	22	Contract incomplete. D. vou.
2	" 7th	"	36,880 " ".....	1	67	1,099	81	" " D. vou.
2	" 19	D. H. Mitchell	14,575 lbs. corn.....	1	67	434	64	Contract, D. vou.
2	" 21st	D. H. Mitchell	20,175 lbs. corn.....	1	67	601	64	Contract, D. vou.
2	" 23	D. H. Mitchell	8,023 lbs. corn.....	1	67	239	25	do. D. vou.
2	" 24	do	20,250 lbs. corn.....	1	67	603	88	do. D. vou.
3	Nov. 27th	D. H. Mitchell	20,335 lbs. corn.....	1	67	605	41	Contract, D. vou.
3	" 29	"	5,720 " ".....	1	67	170	57	Completing contract for 15,000 bushels, D. vou.
4	Dec. 18	D. H. Mitchell	22,570 lbs. corn.....	1	59	640	82	Contract for 15,000 bushels, vou.
4	" 19	D. H. Mitchell	38,530 lbs. corn.....	1	59	1,093	97	Contract, vou.
4	" 20	D. H. Mitchell	22,315 " " bus.....	1	59	653	58	" vou.
4	" 21	D. H. Mitchell	43,300 lbs. corn, bus.....	1	59	1,229	41	Contract, vou.
4	" 26	D. H. Mitchell	203,970 " ".....	1	59	5,791	29	" " 100,000 in error. Vou.
5	" 27	D. H. Mitchell	101,140 lbs. corn.....	1	59	2,871	65	Contract, vou.
5	" 28	D. H. Mitchell	10,000 " ".....	1	50	283	93	" (oats). Vou.
5	" 31	D. H. Mitchell	1,716 lbs. corn.....	1	59	48	72	Contract.
5	" "	"	28,970 lbs. oats.....					In excess of corn contract.
6	1868. Jan'y 16	D. H. Mitchell	38,570 lbs. corn.....	1	59	1,095	11	Contract, D. vou.
6	" 18	D. H. Mitchell	42,190 lbs. corn.....	1	59	1,197	89	Contract, A. vou.
6	" 21	D. H. Mitchell	110,882 lbs. corn.....	1	59	3,148	25	Contract, D. vou.
7	" 30	D. H. Mitchell	21,220 lbs. corn.....	1	59	602	49	Contracts, D. vou.
7	" 31	"	129,180 " ".....	1	59	3,667	78	" " D. vou.
8	Feb'y 2nd	D. H. Mitchell	8,172 " corn, bus.....	1	59	232	02	Contract, D. vou.
8	" 5th	"	6,612 " ".....	1	59	184	90	" " D. vou.
8	" 8	D. H. Mitchell	10,763 " corn, bus.....	1	59	305	59	Contract, D. vou.
9	March 27	D. H. Mitchell	28,970 " corn, per bus.....	1	59	822	54	On contracts, A. vou.
15	Sept. 2nd	D. H. Mitchell	54,766 pounds corn, 977.54.....	1	28	1,251	75	D.
15	" 25	D. H. Mitchell	21,240 lbs. oats.....		65	431	43	On contract, Aug. 17. Cert'd vou. No. 19, given. D.
15	" 30	D. H. Mitchell	20,480 " oats.....		65	416	00	" " Aug. 17. Cert'd vou. No. 19, given. D.
15	" "	do	168,000 " corn, 3,000 bush.....	1	28	3,840	00	" " D.
17	Nov. 1	D. H. Mitchell	896 $\frac{3}{4}$ bush. oats.....		65	257	57	On contract, Aug. 17, fr. 1,700 bush. Gen. Card. (contract complete), cert'd vou., No. 19, D.
17	" 25	D. H. Mitchell	19,580 lbs. oats, 611 $\frac{3}{4}$ bush.....	87		532	33	" " Nov. 9, 16,000 bush. Gen. Card. Cert'd vou. No. 17, given. D.

D. H. MITCHELL.

Purchases on account of the United States by Brevet Major Henry Inman, A. Q. M., U. S. A., at—Continued.

Page of Pur- Book.	Date of pur- chase.	From whom purchased.	Articles.	Price.		Amount.		Remarks.
				Dolls.	Cts.	Dolls.	Cts.	
18	Dec. 31	D. H. Mitchell	36,100 lbs. oats, 1,128 $\frac{1}{2}$ bush		87	981	47	On contract, Nov. 9, fr. 16,000 bush. Cert'd von. No. 17, given. D.
18	" 30	D. H. Mitchell	41,870 " corn, 747 $\frac{3}{8}$ bu					Cert. von. No. 44. D.
24		D. H. Mitchell	28,970 " " 517 $\frac{1}{8}$ bu	1	59	822	36	Cert'd von. No. 54. D.
24		"	54,766 " " 977 $\frac{3}{8}$ "	1	59	1,554	96	" " " 54. D.
19	1869. Jan'y 31	D. H. Mitchell	55,654 lbs. oats, 1,739 $\frac{1}{2}$ bush		87	1,513	09	On contract, Nov. 9, 1868, fr. 16,000 bush. Cert'd von. No. 17, given. D.
19	" 30	D. H. Mitchell	331,878 lbs. corn, 5,926 $\frac{2}{3}$					Less 48,657 lbs. used to fill contract of Nov. 9. (to be deducted, if the % is paid or made up. Cert. von. No. 44.
20	Feb'y 27	D. H. Mitchell	26,918 " corn, 480 $\frac{2}{3}$					Cert. von. No. 44.
21	March 31	D. H. Mitchell	289,690 lbs. oats, 9,052 $\frac{2}{3}$ bush		87	7,875	95	On contract, Nov. 9, 1868, fr. 16,000 bush. Cert'd von. No. 17, given. D.
22	April 17	D. H. Mitchell	62,319 " oats, 1,947 $\frac{1}{8}$ bu		87	1,694	30	On contract, Nov. 9, fr 16,000 bu. Cert. von. No. 43. D.
22		"	48,657 " corn as oats, 1,520 $\frac{1}{2}$		87	1,322	86	" " " " " " " " Contract filled. Cert. von. No. 43. D.

I hereby certified that I have personally made a comparison of the foregoing paper with the original record in the Book of Purchases of Captain Henry Inman, late A. Q. M., U. S. A., and find that this is a true and correct extract from the said Book of Purchases.

[SEAL.]

W. M. PINKSTON,
Notary Public.

Certificate of Secretary of State to official character as notary on file in offices of Quartermaster-General and Third Auditor Treasury Department.

(Indorsed:) E. Q'm'r Gen's Office, received Dec. 4, 1877. 2-1627 with 10-621. Q. M. G. O., 1878. Certified extract from "Purchase Book" of Capt. Henry Inman, late A. Q. M. 2179. War Dep't, 7, 1877. 11940. Filed May 15, 1878.

LEAVENWORTH CITY, *January 19th, 1878.*

The Hon. the SECRETARY OF WAR,
Washington, D. C.:

DEAR SIR: I submitted my claim for corn furnished at Ft. Harker, Kansas, to the Government in 1867-'68 and '69, to the Secretary of War February 5th, 1877, and requesting said Secretary to send the matters and things in said claim contained to Gen. R. Saxton, chief quartermaster, Fort Leavenworth, Kansas, to report and investigate the same. That in pursuance of said request the Secretary of War referred the matter to said Saxton. General Saxton afterwards made a report and statement and forwarded the same *the same* to the Quartermaster-General at Washington. Before forwarding said report and statement he refused to let me see and inspect the same, and has and still does so refuse to let me see the same, or furnish me a copy of the said report and statement, or inform me of the contents of the same. I do not know what the said report and statement contains, and would most respectfully ask that General R. Saxton be requested and instr'cted to furnish me a copy of the same, at his earliest convenience, so that if I should deem it necessary to offer any further evidence or proof in reference to the matter, that I might have an opportunity so to do.

Please find enclosed letter of Gen. R. Saxton, which will explain itself.

I am, sir, very respectfully, yours, &c.,

DAVID H. MITCHELL.

(Indorsed:) 835. War Department. Received Jan. 23, 1878. With 621. Q. M. G. O., 1878. 167. M. C. Qr Mr Gen's Office. Received Jan. 29, 1878. Leavenworth, Kans., January 16, 1878. David H. Mitchell requests that he may be furnished with a copy report made by Gen. R. Saxton, dep. qm'r gen'l, in the matter of his claim for grain alleged to have been delivered at Fort Harker, Kansas, in 1867, '68 & '69. One enc. Q. M. Gen'l. With 2179. W. D. 1877. 3619-1877. T-75--11940. Filed May 15, 1878.

LEAVENWORTH, KANSAS, *Feb'y 18th, 1878.*

The Hon. SEC. OF WAR,
Washington, D. C.:

I have the honor to invite attention to my letter of last month, asking for a copy of the report of the investigation of my case for grain furnished at Fort Harker during the years of 1868 & 1869, made by Gen'l Rufus Saxton, chief qm'r Dept. of Mo., in pursuance to your orders. The copies asked for have not been received, and I would respectfully request that the copies asked for may be furnished as soon as practicable, being very anxious to settle up this business.

I am, very respectfully,

DAVID H. MITCHELL.

(Indorsed:) 2005. War Department. Received Feb. 21, 1878. 361. Q'm'r Gen's Office. Received Feb. 25, 1878. With 35-621. Q. M. G. O. 1878. Leavenworth, Ks., February 18, 1878. David H. Mitchell renews his request for copy of report of Genl. Rufus Saxton, chief quartermaster, Dept. of Mo., made in the matter of the investigation of his case rel. to furnishing grain at Fort Harker during years 1868-'69. Q. M. Gen'l. With 2179-1877. 11940. Filed May 15, 1878.

WAR DEPARTMENT,
Washington City, April, 1878.

Mr. DAVID H. MITCHELL,
Leavenworth City, Kansas:

SIR: In answer to your letter of January 19 and February 18, requesting a copy of Lieut. Col. Rufus Saxton's report upon your claim for forage alleged to have been delivered under contract at Fort Harker, Kansas, in the years 1867, 1868, and 1869, and not paid for, I am directed by the Secretary of War to inform you that he has approved a recommendation of the Quartermaster-General that no copy of the report in question should be furnished, but that the claim be rejected.

It is believed that the proper tribunal before which a claim for payment for forage alleged to have been delivered ten years ago should have been prosecuted was the Court of Claims, and that now Congress only can properly be asked to entertain it in the absence of any special legal provision and appropriation for auditing and settling such a claim by executive officers.

Very respectfully,

HENRY GOODFELLOW,
Judge-Advocate.

(Indorsed:) 11940. 5029. War Dep't, 1878. Filed May 15, 1878.

WAR DEPARTMENT,
QUARTERMASTER-GENERAL'S OFFICE,
Washington, D. C., March 29, 1878.

To the honorable the SECRETARY OF WAR:

SIR: I have the honor to return the papers in the claim of D. H. Mitchell for forage alleged by him to have been delivered under contracts at Ft. Harker, Kansas, in the years 1867, 1868, and 1869, and not, as alleged by him, paid for. He asks for copy of the report of an investigation of this case ordered by the Secretary of War, March 19th, 1877.

The report of Lt. Col. R. Saxton, dep. q'm'r gen'l, U. S. A., chief quartermaster Department of the Missouri, who made the investigation, is herewith.

I recommend that he be not furnished with a copy of the report in question, and that the case be dismissed.

1st. He does not come with clean hands. It is on the record that he has been already once detected, indicted, tried; and convicted of fraud in attempting to obtain double payments upon account of this forage business at Fort Harker; and that he did obtain such double payments which were detected in the investigation of his attempted fraud above referred to, the amount of which was recovered to the United States by withholding it from money due him under a contract for wood at Ft. Wallace, Kas. (made before the discovery of this fraud), in accordance with opinion of the Second Comptroller, concurred in by the Secretary of War.

2nd. The records searched by Col. Saxton are in part those of Capt. Inman, who appears to have made affidavit in Mitchell's favor. General Court-Martial Order No. 19, W. D., A. G. O. of 1872, announcing the cashiering of Capt. Inman, will show that he is not a competent witness against the United States in these transactions, and that entries in his records, in which Col. Saxton finds errors, are not conclusive evidence against the United States.

3rd. The officers of the United States should scarce furnish to this convicted criminal, whose claims and charges against the United States have been judicially found to be unreliable, evidence on which to make new claims. One overpayment made to him was made on an order from a Secretary of War whom he succeeded in deceiving.

4th. There is no appropriation at the disposal of the War Department out of which the money which he claims could be paid, even were it proved that any was due.

5th. The proper tribunal before which to prosecute a claim for payment for forage alleged to have been delivered ten years ago is the Court of Claims, or Congress itself, in the absence of any special legal provision and appropriation for auditing and settling such a claim by executive officers.

Very respectfully, your obedient servant,

M. C. MEIGS,
Quartermaster-General, Bvt Maj. Gen'l, U. S. A.

405. Q. M. G. O., 1877. 1627. Q. M. G. O. 1877; 167 Q. M. G. O. 1878; 361 Q. M. G. O. 1878; 493, 1042, 1076, and 1403. Q. M. G. O. 1876; and 185, and 206 Q. M. G. O. 1877, accompanying Cl. "Q" 134--1875. 31 enclosures.

(Indorsed:) Washington, March 29, 1878. 2179. War Dep't 9, 1877. 621. 8. The Quartermaster-General, U. S. Army. Returns papers in the claim of D. H. Mitchell,

with report of investigation of Col. Saxton C. Q. M. Dep't Mo. & other papers in the case. Recommends dismissal of case; also that Mitchell be not furnished copy of the report of Col. Saxton. T-75. File with 361 Q. M. G. O. 1878. 11940. Filed May 15, 1878.

WAR DEPARTMENT,
April 3d, 1878.

The recommendation of the Quartermaster-General is approved.

GEO. W. McCRARY,
Secretary of War.

33 enc's.

WASHINGTON, D. C., May 8th, 1878.

Hon. GEO. W. McCRARY,
Sec'y of War :

DEAR SIR: In the matter of my claim for payment for grain, furnishing the Government at Fort Harker, Kansas, in 1868 and '9, I most respectfully request that you give the same most careful consideration, with the view of coming to a conclusion as to the amount now due me, and the prompt payment of the same. The grain furnished by me, under my contract with the Government, was under great difficulties, and at a time when prices were high; at the same time I was furnishing corn at Fort Harker I was engaged in furnishing large quantities of forage at Fort Hayes, Fort Riley, and Fort Leavenworth, and also furnishing beef for the Army, then on the plains, between Fort Harker and Denver. I was also engaged in furnishing supplies to the Osage Indians in southern Kansas, through the Commissary Dept. of the Army. I trusted in all cases to the good faith of the Government in the matter of receiving these supplies, and I feel that I ought not to suffer for any neglect of the officers at Fort Harker, where the grain was delivered for which I now ask payment. In the consideration of my case, I ask your attention to the following facts:

1st. All the corn furnished by me at Fort Harker was shipped to that post via the Kansas Pacific Railroad.

2d. It is shown by the bills of lading in the office of the auditor of the said railroad co. that thirty-three car-loads of corn were shipped by me to the quartermaster at Fort Harker during the fall and winter of 1868 and '9.

3d. It is further shown by the testimony of Mr. Griffith, of Lawrence, Kan., that one car-load of corn was shipped to Fort Harker by him intended for me, and put in on my contract.

4th. A Mr. Burnell, at Grantville, Kan., ship'ed in his own name intended for me, and put in on my contract, two or three car-loads of corn. Mr. Burnell left Kansas some years ago, and I have been unable to find him and obtain his testimony. I am confident that telegraphic or other correspondence between the quartermaster then at Fort Harker and Fort Leavenworth will show that this corn was sent to Fort Harker by Mr. Burnell. I paid Mr. Burnell for the corn. It was received by the quartermaster on my contract, and the books of the officers at Fort Harker ought to show this fact.

5th. When I entered into the contract of November 9th, 1868, I had on hand at Fort Harker about 168,000 lbs. of grain, which I had shipped to that post in excess of the amount necessary to fill a previous contract. This grain was put in on my contract of November 9th, 1868. I have already suffered on account of delay and misunderstanding of the facts in this case, and I earnestly ask that you order this claim to be paid, for such amount as may be found to be justly due me. The amount is shown in the papers already submitted. I am now in Washington for the purpose of prosecuting this claim, and would respectfully ask the opportunity of appearing before you, or any officer of your Department, with the view of stating personally all the facts in my possession and necessary to a full consideration of all the equities of the case. I earnestly urge that you favorably consider this case, as I can not well afford to pay the large expense of prosecuting the same in the Court of Claims, where at least one-fourth of the amount would be absorbed by attorneys' fees, and payment be made only after a long delay. I am, with great respect,

Your most obedient servant,

D. H. MITCHELL.

WASHINGTON, D. C.,
414 6th street, Feb'y 2, '77.

To the honorable the SECT'Y OF WAR, City :

SIR: I have the honor to state that during the years 1868 and 1869 I delivered to the Quartermaster's Department, U. S. Army, at Fort Harker, Ks. (during the time Capt. Henry Inman, A. Q. M., was on duty at that station), a large quantity of oats

and corn. I think there is due me payment for about four hundred and fifty thousand (450,000) pounds of grain so delivered.

In the spring of 1876 I was tried at Topeka, Kansas, convicted, and fined \$1,000.00 on the charge of presenting a fraudulent claim against the U. S. for a part of said grain.

Since that time I have shown by satisfactory evidence that my claim is a just one and have received from the President of the United States a pardon for the alleged offense. The papers in the case are now on file in the office of the Attorney-General of the U. S. in this city.

I would respectfully request that you will cause my claim to be thoroughly investigated at an early date, to the end that I may be paid for the grain actually furnished by me.

In this connection I would state that in receiving a payment in May, 1876, on my contract for wood furnished the Q. M. Dept. at Fort Wallace, Ks., Lieut. Col. R. Saxton, deputy-q'm'r-gen'l at Fort Leavenworth, Ks., deducted from one of my vouchers about \$1,320 for an alleged overpayment for a portion of the grain delivered by me at Fort Harker.

Of the amount of grain actually delivered by me the hon. the Sec'y of War, in January, 1870, caused me to be paid for 400,666 pounds of corn, but at a lower rate than that agreed upon by the receiving officer at the time of its delivery. In directing such payment he stated that the matter of the price of the corn would be left open for further investigation.

Very respectfully, your ob't servant,

D. H. MITCHELL.

(Indorsed:) 980. War Dep't, 1, 1877. 185. Q'm'r Gen.'s Office. M. C. Received Feb. 6, 1877. "Q" 133.

STATE OF KANSAS, *Leavenworth County, ss:*

Fred. Zimmerman, being duly sworn, deposes and says that he was employed in the quartermaster department at F't Harker, Kansas, from July, 1867, until the middle of November, 1868, and from the middle of December, 1868, until some time in February, 1869, and assisted in weighing and receiving the grain at said post during that time. Was acting as forage-master from October 10th, 1868, to the middle of November, 1868, and from the middle of December, 1868, until some time in February, 1869. Gave his personal attention to the weighing and receiving grain at the forage yard at said post; that the cars containing grain averaged 24,000 lbs. in weight per car.

FRED. ZIMMERMAN.

Sworn to before me and subscribed in my presence this 5th day of December, A. D. 1876.

[SEAL.]

H. P. PENDERY,
Notary Public.

(Indorsed:) In re D. H. Mitchell, N. 4. Affidavit of Fred. Zimmerman. 1039, War Dep't, 4, 1877. 2-206, Q'r M'r Gen.'s Office. Received Feb. 10, 1877. With 6-185, Q. M. G. O., 1877, and 694, 1875. With 30-621, Q. M. G. O., 1878. Cls. "Q," 134, 1876.

Report upon the claim of D. H. Mitchell.

WAR DEPARTMENT,
January 11, 1870.

Claimant asks to be paid for 400,666 pounds of corn at the rate of \$1.52½ per bushel of fifty-six pounds.

Claimant on the 9th of November, 1868, at Leavenworth, Kansas, contracted with Bvt. Brig. Genl. B. C. Card, chief quartermaster Department of the Missouri, to deliver at Fort Harker, on the Kansas Pacific Railroad, within four weeks from the date of his contract, sixteen thousand bushel of oats of the best quality, in sacks. He was to receive for the same 87 cents per bushel of 32 pounds.

It appears in evidence that claimant after delivering about 3,500 bushels of oats under his contract, in lieu of the 12,500 bushels of oats which remained to be delivered, did in fact deliver an equal weight of corn, being 400,666 pounds, or about 7,100 bushels.

This change was permitted by the acting depot quartermaster, who appears to have been temporarily on duty, and the corn was in fact received and consumed.

What had been done came to the knowledge of the chief quartermaster at Fort Leavenworth, by letter of March 19th, '69, from the depot quartermaster at Fort Harker, disclosing the inconvenience occasioned at that post by want of oats.

The transaction was at once repudiated by the chief quartermaster, Gen. Easton, who directed that Mr. Mitchell be notified that the corn delivered by him would be returned to him on demand at Fort Harker, from the corn then in store, and meanwhile would be held at his risk. Gen. Easton adds that he had previously refused his assent to the delivery of corn in lieu of oats to Mr. Mitchell, and that Mr. Mitchell had, on several occasions, when he had contracts at higher prices, delivered quantities in excess of his stipulations.

Gen. Easton, however, directed that Mr. Mitchell might, if he choose, be paid at the rate of \$1.00 per bushel for the corn he had improperly delivered.

Various communications afterwards passed between the parties without definite result, except that the corn was not returned to Mr. Mitchell.

It appears, however, from these letters that the claimant sets up that his agreement with the depot quartermaster was to receive corn pound for pound in lieu of oats, which would bring the price of a bushel of corn of 56 pounds up to \$1.52½ cents, at which rate claimant asked to be paid.

Also, from an original contract now filed, that claimant on the same day that he contracted with Gen. Card to deliver oats at Fort Harker, contracted also with Gen. Card to deliver corn at Fort Hayes during the same period at \$1.69 per bushel. The freight charge on corn from Fort Harker to Fort Hayes was 17½ cents per bushel, which would make the contract price at Fort Harker \$1.51½ cents per bushel.

Also, from the correspondence referred to, that the rate of \$1.00 per bushel was derived from a contract effected some time previously for delivery of corn at Fort Hayes at \$1.18½ per bushel.

Also, that at the time claimant delivered the corn, other corn was being delivered at Fort Harker under contracts made subsequent to claimant's contract for oats, at a cost to the United States of \$1.23 and \$1.27 per bushel.

Also, that the corn last referred to was contracted for during a temporary reduction of rates by railroad to Fort Harker.

Also, that by reason of this difference the corn delivered by the claimant cost him \$1.35 per bushel, besides his labor and personal expense.

On the 6th of January, 1869, a letter of Hon. Sidney Clarke, of Kansas, to the Secretary of War, in relation to this case, was referred to the Quartermaster-General for immediate report.

That officer returns copies of the correspondence above cited, and under all the circumstances of the case recommends that Mr. Mitchell be paid an average of the two prices which the Government was paying for corn delivered at Fort Harker at the time that Mr. M. delivered his, which would be \$1.27 per bushel, but that Mr. Mitchell be first required to deliver at the contract price the oats he failed originally to deliver.

This last the claimant represents that he has done, of which there is some evidence among the papers filed.

In relation to this case it is considered :

1. That the agreement of the acting quartermaster to receive corn in lieu of oats (about the extent of which there is some doubt), was in no sense binding on the United States.

The Court of Claims have repeatedly held that the law of general and special agents is applicable to superior and inferior agents, in the matter of contracts, in their relations to the United States and the public. The special agent can not exceed the regulations of his principal, nor the inferior officer the regulations of his superior. (Stevens' case, 2nd C. Cls., 101. Emery and Blake's case, 4 C. Cls., 401.)

The above is conclusive in its application here. Claimant had made a contract at department headquarters from which he sought to depart. Railroad and telegraph communication with department headquarters were fully open. If, as he states, he omitted to use these, and accepted the consent of a subordinate, the violation of his contract was at his own risk entirely. If, as Gen. Easton states, he applied and was refused, the aspect is decidedly more serious.

2. The tender of payment at a given rate, with the alternative of receiving back the corn, and claimant's failure to demand the corn, puts any payment beyond that rate on purely equitable grounds.

In this connection claimant urges that it was habitual for contractors to make substitutions of one grain for another in deliveries, and without complaints; that bad roads made it difficult for him to bring in oats for delivery; and that he did not know that any wrong was done or that exception would be made, and that the rate of payment asked will not more than make him good.

To all which the reply would seem to be that whatever discretion may be exercised in sanctioning a variation from the written contract on account of custom or the circumstances of the case can be not only better, but in view of precedent more safely exercised upon the ground by one acquainted with the facts than here. A cus-

tom such as claimant cites may have shown clearly the necessity of an example; and the inconvenience which arose in this case may have dictated its selection.

Claimant, however, states that General Easton finally consented to pay him the cost price under other contracts at the fort, and as this tallies with the view of the Quartermaster-General it is recommended that it be allowed.

On the further representation of Mr. Clarke and the contractor that this decision involves peculiar hardship, it is considered that the payment herein recommended should be without prejudice to evidence showing a right of the contractor to an increased allowance and the assent of Gen. Easton to the same.

WAGER SWAYNE,
Col., & Bvt. Maj. Gen'l, U. S. A.

Approved.

WM. W. BELKNAP,
Sec'y of War.

Respectfully referred to the Quartermaster-General, who will pay the contractor for the corn mentioned herein at one dollar and twenty-five cents per bushel.

WM. W. BELKNAP,
Secretary of War.

WAR DEPARTMENT, January 12, '70.

(Indorsed:) 14-1403. Q'r M'r Gen.'s Office. Received Jul. 5, 1876. B. B. 25-546. C. 11, Jan., 1870. W. D. B'k 13, W. 1458. Decision Bk. 9, page 97.

EXHIBIT W. M. P., No. 11.

ASST.—, April 26, 1869.

Bvt. Major-General L. C. EASTON,
Chief Qr. Mr. Dept. Mo., Fort Leavenworth, Kans.:

GENERAL: I have the honor to state, in reply to your communication of July 16, '68, that Mr. D. H. Mitchell, in delivering grain on his contract dated November 30, '67, shipped to this post upwards of 100,000 pounds of corn in excess of his contract.

A part of this grain was afterwards transferred by Mitchell to Mr. H. L. Newman, and at the commencement of hostilities last fall Mitchell had stored here, subject to his order, 54,776 pds. corn.

At that time I was ordered to ship a large quantity of grain to Fort Dodge, and not having sufficient on hand to meet the demand, the amount above stated (54,776 pds.) was used in addition to what I had on hand.

I am, general, very respectfully, your obt. servt.,

Bvt. Maj. & A. Q. M., U. S. A.

EXHIBIT W. M. P., No. 12.

OFFICE ASST. Q.R. MR.,
Fort Harker, Ks., April 29, 1869.

Bvt. Maj. Gen. L. C. EASTON,
Chief Qr. Mr. Dep. Mo., Fort Leavenworth, Ks.

GENERAL: Referring to your communication of 15 inst., I have the honor to state that the forage master at this post report that the corn received from Mr. Mitchell in lieu of oats (contract Nov. 9) was *entirely* consumed by the public animals fed here during my absence. I enclose his certificate to that effect.

I am, general, very respectfully, your obt. servt.,

HENRY INMAN,
Bvt. Maj. & A. Q. M., U. S. A.

EXHIBIT W. M. P., No. 26.

[Telegram.]

FORT LEAVENWORTH, M'ch 9, 1869.

Lieut. D. MCINTOSH, A. A. Q. M.,
Fort Harker:

Mitchell must finish the delivery of sixteen thousand (16,000) bushels oats under his contract of November ninth. I have informed him that the deliveries of corn he has made will not be considered as applicable to the fulfillment of his contract for oats.

L. C. EASTON,
C. Q. M.

EXHIBIT W. M. P., No. 31.

LEAVENWORTH, Dec. 19th, 1868.

General EASTON:

DEAR SIR: I received your notice of being behind on my contract of the 9th. I am doing everything in my power to get the contract filled, and will continue to do so until it is filled, which, I think, will be in a few days. The roads are so bad it is almost impossible to haul to the line of the railroad.

Respectfully, yours,

D. H. MITCHELL.

EXHIBIT W. M. P., No. 32.

LEAVENWORTH, May 4th, 1869.

Maj. General L. C. EASTON:

DEAR SIR: If you would prefer to give the corn back they used at Fort Harker, you need not pay freight on it, as I do not want it there. I will take it here, and allow me the freight I paid. General, if they had not fed the grain, I think they would not be able to show any such amount of corn. There was some parties said they would bust me up on that contract, but, general, I feel well satisfied you will do me justice in the case; if you do wish to keep the corn, you can pay me when it will suit you.

I am, very respectfully, your obedient servant,

D. H. MITCHELL.

EXHIBIT W. M. P., No. 46.

ASST. QR. MR. OFFICE,
Fort Harker, Ks., April 26, 1869.

Bvt. Maj. Gen'l L. C. EASTON,

C. Q. M. Dept. Mo., Fort Leav'th, Ks.:

GENERAL: I have the honor to state, in reply to your communication of July 16, '68, that D. H. Mitchell, in delivering grain on his contract, dated Nov. 30, '67, shipped by (?) this post upwards of 100,000 pounds of corn in excess of his contract.

A part of this grain was afterwards transferred by Mitchell to Mr. H. L. Newman, and at the commencement of hostilities last fall Mitchell had stored here, subject to his order, 54,776 $\frac{1}{2}$ corn.

At that time I was ordered to ship a large quantity of grain to Fort Dodge, and not having sufficient on hand to meet the demand, the amount above stated (54,776 $\frac{1}{2}$) was used in addition to what I had on hand.

I am, general, very respectfully, your obd't serv't,

HENRY INMAN,
Bvt. Maj. and A. Q. M., U. S. A.

Respectfully returned. Major Inman will issue a voucher to D. H. Mitchell for all the corn received by him from Mr. Mitchell in excess of the contracts of the latter, at the contract price, provided the corn was old corn, as advertised and contracted for. If it was new corn, then issue a voucher at the price of the next contract made after that of November 30, 1867. Justice to the Government demands that the date at which this surplus delivery was made by Mr. Mitchell should be taken into account in fixing the price.

In addition to a receipt for 54,776 $\frac{1}{2}$ corn, Mr. Mitchell presented at this office one for some 25,000 $\frac{1}{2}$, dated, I believe, in September, 1868. Both receipts were returned to him. Attach this (original) to the voucher issued.

L. C. EASTON,
Deputy Qr. Mr. Gen'l, C. Q. M.

MAY 3, 1879.

EXHIBIT W. M. P., No. 47.

Respectfully returned to Major Inman. The instructions in my endorsement of the 3d inst. were given under a misapprehension of the facts.

It now appears from the enclosed voucher and from his letter that Major Inman did not receive the corn until Dec'r 1, 1868, although it was stored at Fort Harker

H. Rep. 3685—3

prior to that time "subject to Mr. Mitchell's order" and I suppose for his convenience. At the time it was accepted by Major Inman, which time appears from these vouchers to have been December 1, 1868, the Government was paying for corn at Harker \$1.29 per bush. (I take the price of contract made nearest to that time.) My recollection also that the receipt for the smaller quantity (517 bush.) which Mr. Mitchell exhibited here was dated September, 1868. Corn delivered at that time should not be paid for at the price prevailing in Nov'r, 1867. I wish a settlement made which will be just to the Government and to Mr. Mitchell. If the corn was not received by Major Inman until Dec. 1, 1868, and the Government was not responsible to Mr. Mitchell for it until that time, then I do not think that a rate higher than the Government was paying at that time should be allowed Mr. Mitchell.

Such complications will be avoided if in future grain delivered without authority is not received into Government buildings.

L. C. EASTON,
D. Q. M. G., C. Q. M.

MAY 12, 1869.

[Court of Claims. No. 11940. D. H. Mitchell v. The United States.]

The deposition of Addison Jones, for claimant, taken at Omaha, Nebr., on the 23d day of February, A. D. 1883.

Claimant's counsel, N. J. Burnham; defendants' counsel, F. H. Howe.

First general interrogatory on the part of the commissioner. State your name, age, occupation, place of residence the past year; whether you have any, and what interest in the claim in controversy, and whether you are related to the claimant.

Answer. Addison Jones; age, 38; I have charge of the freight records of the Union Pacific Railroad Company; residence, Omaha, Nebr.; I have no interest in the claim in controversy, and am not related to the claimant.

Being further interrogated by N. J. Burnham, esq., on behalf of the claimant, the witness says:

I have in my possession and under my charge as an officer of the Union Pacific Railway Company the press-letter copies and written copies of the original way-bills of certain cars of grain shipped from various points in Kansas to Fort Harker, Kans., during the fall and winter of 1868-'69 and the spring of 1869 for the account of D. H. Mitchell.

Question 1. State what the paper is I hand you.

(Objected to as incompetent, immaterial, and irrelevant.)

Answer. This is a true copy of the original way-bill number 22, from Perry, Kans., to Fort Harker, Kans., for 145 sacks of oats, Griffith & D. consignor.

(The paper is offered in evidence and hereto attached, marked Exhibit A. S. No. 1.)

(The paper offered in evidence objected to as incompetent and immaterial.)

Question 2. What are the papers I now hand you?

(Same objection.)

Answer. Forty-four copies of way-bills from various stations to Fort Harker, commencing with December 17, 1868, and ending with April 13, 1869, as follows:

Question 3. Please describe them by dates and contents.

(Same objection.)

Answer. 1st. December 17, 1868: 119 sacks oats, 20 sacks corn.

2d. December 18, 1868: 165 sacks corn.

3d. December 23, 1868: 155 sacks oats.

4th. December 23, 1868: 165 sacks shelled corn.

5th. December 24, 1868: 47 sacks oats, 94 sacks corn.

6th. December 24, 1868: 165 sacks corn.

7th. December 29, 1868: 165 sacks shelled corn.

8th. December 31, 1868: 150 sacks oats.

9th. January 5, 1869: 147 sacks oats.

10th. January 11, 1869: ——— sacks oats and 30 sacks corn.

11th. January 11, 1869: 160 sacks shelled corn, No. 4, car No. 1383.

12th. January 11, 1869: 160 sacks shelled corn, No. 5, car No. 1388.

13th. January 11, 1869: 160 sacks shelled corn, No. 3, car 1354.

14th. January 12, 1869: 165 sacks corn.

15th. January 13, 1869: 165 sacks corn.

16th. January 15, 1869: 160 sacks shelled corn, No. 6, car 1310.

17th. January 15, 1869: 160 sacks shelled corn, No. 7, car 1320.

18th. January 18, 1869: 165 sacks corn.

19th. January 19, 1869: 170 sacks corn, No. 56, car 1443.

20th. January 19, 1869: 170 sacks corn, No. 57, car 1254.

- 21st. January 20, 1869: 160 sacks shelled corn.
 22d. January 21, 1869: 165 sacks corn.
 23d. January 22, 1869: 165 sacks corn.
 24th. January 23, 1869: 160 sacks shelled corn, No. 11, car 1432.
 25th. January 23, 1869: 160 sacks shelled corn, No. 12, car 1315.
 26th. January 25, 1869: 165 sacks corn.
 27th. February 1, 1869: 165 sacks corn.
 28th. February 2, 1869: 165 sacks corn.
 29th. February 8, 1869: 160 sacks shelled corn.
 30th. February 10, 1869: 160 sacks shelled corn.
 31st. February 20, 1869: 160 sacks shelled corn.
 32d. March 4, 1869: 1 car oats (150 sacks).
 33d. March 6, 1869: 155 sacks oats, No. 23, car 1303.
 34th. March 6, 1869: 153 sacks oats.
 35th. March 6, 1869: 1 car corn, in sacks.
 36th. March 6, 1869: 155 sacks oats, No. 22, car 1367.
 37th. March 6, 1869: 155 sacks oats, No. 24, car 1239.
 38th. March 8, 1869: 160 sacks oats.
 39th. March 11, 1869: 41 sacks oats.
 40th. March 17, 1869: 1 car oats, in sacks.
 41st. March 18, 1869: 1 car oats, in sacks.
 42d. March 23, 1869: 150 sacks oats.
 43d. April 9, 1869: 145 sacks oats.
 44th. April 13, 1869: 147 sacks oats.

The above papers are here offered in evidence by the complainant's counsel, and are marked respectively from A. S. No. 2 to A. S. No. 45, inclusive.

(The papers above offered in evidence are objected to by defendants' counsel as incompetent and irrelevant and immaterial.)

Question 4. Do you know that these are all the way-bills the company have of this description?

Answer. No, sir; there may be some more. But these are all I have been able to find.

Question 5. Do you know that any have been lost?

Answer. No, sir; I do not.

Question 6. What was the true measure of the contents of a car at that time?

Answer. The tariff book at that time accepted 18,000 pounds as a car-load. They often put as high as 26,000 and 29,000 pounds in a car.

Question 7. If shipments as aforesaid had not been delivered to consignee at Fort Harker, would the way-bills, copies of which are herein introduced and numbered, indicate the fact; that is, would the originals?

Answer. The originals would indicate the fact as a matter of course; also the copies, which I have in my office, of which the above are copies.

Question 8. What has become of the original way-bills?

Answer. It is reported that Fort Harker was struck by lightning, I think in 1870, and that all the original way-bills of which these are copies were destroyed by fire at that time.

Question 9. Among the way-bills handed the notary I do not find shipments of four car-loads of grain from Fort Leavenworth to Fort Harker. If any such shipments were made on account of Mitchell by General B. C. Card, would not the way-bills show that fact?

(Objected to as leading.)

Answer. They should be in my possession. In my investigations so far I have failed to find any such bills.

Question 10. What has been done with the original way-bills of which these are copies, and other way-bills of this character?

(Objected to as incompetent, irrelevant, immaterial.)

Answer. The original press or written copies way-bills were all supposed to have been sent by S. T. Smith, an official of the Kansas Pacific Road, to M. H. Goble, freight auditor of the Union Pacific Railroad, late in 1879, and were turned over to me to be filed, and since I have had them I have moved them twice. The first time I took them out of the boxes and filed them on the shelving in the general office. I had some men help me. Some may have been lost or misplaced then. These bills of November and December, 1868, January and February, 1869, did not come in their proper place, but when I received them they were in a stray box, not marked or labeled. In 1882, late in the fall, by order of Mr. Goble, I moved them from the office in Farnum street, with a lot of other records, to the shop, there to be stored. I was about three weeks in this last move, and I had several men helping me. The bills were delivered to me at the shop in very bad shape. The distance they were moved was from a half to three-quarters of a mile, I think. They were hauled in company wagons, with rubber bands and strings around them. Some had rubberbands and some had strings. The

men who helped move were laborers in the employ of the road. The bills that I have got are now in the record-room in the shops. The bills which I speak of were tied up in bundles; that is, the bills of November, December, January, and February, and each month in a separate bundle, and had the appearance of having been handled by some one for some purpose.

(Defendants' counsel objects to the whole answer as incompetent, irrelevant, and immaterial.)

Cross-examination by F. H. Howe, esq., defendants' counsel:

Question 1. State what the paper I hand you is.

Answer. It is a press copy of way-bill No. 239, from Lawrence to Harker, March 23, 1869.

Question 2. Look at Exhibit A. S. No. 43, and state whether it is the copy which you have testified as being made of the paper last handed you.

Answer. It is, with the exception of the printed matter and the certificate signed by the freight auditor.

(The paper is offered in evidence by the defendants' counsel, and a copy is attached to this deposition, marked Exhibit A.)

Question 3. State whether all of the original papers testified about by you in your examination-in-chief are not all substantially in the same form; that is, with the printing and the certificate left out.

Answer. They are.

Question 4. Then I understand you to say that the original papers about which you have been testifying are press-letter copies of the original way-bills to which they relate.

Answer. Some are press-letter copies, and some are written. Sometimes it was not convenient to take press copies, but way-bills were made in duplicate form.

Question 5. Have you the original way-bills that were sent to Harker with the goods?

Answer. I have not.

Question 6. What became of them?

Answer. It is reported that Fort Harker, I think in 1870, was struck by lightning, and that these originals were burned.

Question 7. You are unable, then, to produce the originals?

Answer. I am.

Question 8. Would the originals in the ordinary course of business show the receipt of goods by the consignee, if they had been received by him?

Answer. They should.

Question 9. Do the press copies or written copies about which you have testified show the receipt by the consignee?

Answer. They do not.

Question 10. Have you any record in your office showing the receipt of the goods specified in the way-bills about which you have testified?

Answer. To the best of my knowledge, I have not.

Question 11. How did you come to produce these exhibits before this commission?

Answer. I was ordered here by the court, and the copies of those way-bills were ordered by D. M. Sells, chief clerk of the freight auditor's office.

Question 12. What court?

Answer. I don't know; this court.

Question 13. Did you get any subpoena?

Answer. I did not.

Question 14. What papers did Mr. Sells tell you to produce?

Answer. The press copies or written copies about which I have testified.

Question 15. Did he confine you to those?

Answer. No. He told me to produce all the records in my possession for grain shipped for D. H. Mitchell to Fort Harker in November and December, 1868, and January and February, 1869, first; and the last note that Mr. Mitchell wrote to him for additional copies, I think, run into May, 1869. And these I was also ordered to produce.

Question 16. Have you produced them all?

Answer. All that I have been able to find. There may have been some grain shipped by Mr. Mitchell to Fort Harker, bills for which I have not been able to find.

Question 17. Have you made a pretty careful search?

Answer. I have made a very careful search. Yet I may have missed some bills; I do not know.

Question 18. Do you think you have?

Answer. No.

Question 19. Did you ever hear of any of these bills being lost during the various changes about which you have testified? I refer to these bills in which Mr. Mitchell is interested.

Answer. No.

Re-examination:

Question 1. I find that in a telegram sent by the acting depot quartermaster, Donald McIntosh—a telegram from Fort Harker, of March 9, 1869, to General L. C. Easton—that Mitchell had shipped eight car-loads of oats and three car-loads of corn. If this were correct, would you not have the way-bills for them?

Answer. I should have them; that is, the press copy.

Question 2. Have you got them; if not, what has become of them?

Answer. If I have not got them I do not know what has become of them.

Question 3. Do you not know that they have been lost?

Answer. No, sir.

Question 4. Have you made any search for them?

Answer. I do not know whether I have searched for them or not. I do not know what the station is. Out of about ninety stations under the management of the Kansas Pacific then, I have looked at eight or ten; that is, the stations I looked over at direction of Mr. Sells.

Question 5. Did you look over the Leavenworth station?

Answer. I think I did, and failed to find any shipments for Mr. Mitchell.

Recross-examination:

Question 1. Do you know how it happened that your attention was particularly directed to these eight or ten stations by Mr. Sells?

Answer. I think that Mr. Gannett, the auditor, had received a communication—from whom, I do not remember. It was referred to Mr. Goble, who ordered me, through Sells, the chief clerk, to produce the papers.

Question 2. Was your attention directed to those eight or ten stations by the claimant?

Answer. Yes.

Question 3. Have you examined as to all the stations to which your attention was directed by Mr. Mitchell?

Answer. Yes; I have examined all the bills in my possession as to the stations to which Mr. Mitchell or any one else has called my attention.

Last general question by the commissioner. Do you know any other matter relative to the claim in question? If you do, state it.

Answer. Nothing.

The witness here states that he can not produce the original press copies and written copies about which he has testified and permit them to be attached to this deposition, because the Union Pacific Company requires them to be retained as a part of their records.

ADDISON JONES.

Subscribed in my presence and sworn to before me this 23d day of February, 1883.

ALBERT SWENGTANDER,
Notary Public.

No. 1.—A. S.

UNION PACIFIC RAILWAY COMPANY, FREIGHT AUDITING DEPARTMENT.

Copy of billing.

Freight from Perry to Fort Harker; No. car, 1438; initial, —; consignor, Griffith & D.; consignee, Lieut. Cook; destination, Ft. Harker, Kans.

Date W. B.	No. W. B.	No. p/k/g'a.	Articles.	Weight.	Rate.	Back charges.	Local charges.	Total charges.
1868 Nov. 21..	22	145	S'ks oats	18,000	75	.....	135.00	135.00

M. H. GOBLE,
Freight Auditor.
Per F. WINNING.

OMAHA, NEB., July 13, 1881.

D. H. MITCHELL.

No. 2.—A. S.

F. A. 1.

LOCAL WAY-BILL NO. 2.

UNION PACIFIC RAILWAY, E. D.

Car No. 1391; initial,—.

Local way-bill of freight forwarded from Fairmount to Ft. Harker, date Dec. 17, 1868

Consignor.	Consignee and destination.	Packages.	Description.	Weight.	Rate.	Back charges.	Local charges.	Prepaid.
D. H. Mitchell	A. Q. M., Ft. Harker.	119	Sacks oats.					
		20	Sacks corn	18,000	88	.....	.....	158.40

A true copy of the original way-bill.

M. H. GOBLE,
Freight Auditor.

No. 3.—A. S.

F. A. 1.

LOCAL WAY-BILL NO. 3.

UNION PACIFIC RAILWAY, E. D.

Car No. 1200; initial,—.

Local way-bill of freight forwarded from Fairmount to Fort Harker, date Dec. 18, 1868.

Consignor.	Consignee and destination.	Packages.	Description.	Weight.	Rate.	Back charges.	Local charges.	Prepaid.
D. H. Mitchell. . .	A. Q. M., Ft. Harker.	165	Sacks corn	18,000	88	.....	.....	158.40

A true copy of the original way-bill.

M. H. GOBLE,
Freight Auditor.

D. H. MITCHELL.

39

No. 4.—A. S.

F. A. 1.

LOCAL WAY-BILL No. 36.

UNION PACIFIC RAILWAY, E. D.

Car No. 1441 ; initial, —.

Local way-bill of freight forwarded from Perry to Fort Harker, date Dec. 23, 1863.

Consignor.	Consignee and destination.	Packages.	Description.	Weight.	Rate.	Back charges.	Local charges.	Prepaid.
R. S. Griffith for D. H. Mitchell.	Q. M. Ft. Harker, Kans.	155	Sk's oats.....	18,000	75	.....	135.00	.....

A true copy of the original way-bill.

M. H. GOBLE,
Freight Auditor.

(In pencil): See letter of Inman to Griffith, Jan'y 27, 1869. This car contains 19,500 lbs.

No. 5.—A. S.

F. A. 1.

LOCAL WAY-BILL No. 2.

UNION PACIFIC RAILWAY, E. D.

Car No. 1360 ; initial, —.

Local way-bill of freight forwarded from Williamston to Ft. Harker, date Dec. 23, 1863.

Consignor.	Consignee and destination.	Packages.	Description.	Weight.	Rate.	Back charges.	Local charges.	Prepaid.
D. H. Mitchell.....	Capt. Kimball, %D. A. M.	165	Sacks shelled corn.	18,000	112	.....	203.40	.....

A true copy of the original way-bill.

M. H. GOBLE,
Freight Auditor.

D. H. MITCHELL.

No. 6.—A. S.

F. A. 1.

LOCAL WAY-BILL No. 142.

UNION PACIFIC RAILWAY, E. D.

Car No. (1525, obscure); initial.

Local way-bill of freight forwarded from Lawrence to Harker, date Dec. 24, 1868.

Consignor.	Consignee and destination.	Packages.	Description.	Weight.	Rate.	Back charges.	Local charges.	Prepaid.
W. & M.	{ A. Q. M., Fort Harker.	{ 46 } { 94 }	{ Sacks oats } { " corn } { Shippers' count }	18,000	80	.....	.....	144.00

A true copy of the original impression way-bill.

M. H. GOBLE,
Freight Auditor.

No. 7.—A. S.

F. A. 1.

LOCAL WAY-BILL No. 5.

UNION PACIFIC RAILWAY, E. D.

Car No. 1376; initial, —.

Local way-bill of freight forwarded from Fairmount to Fort Harker, date Dec. 24, 1868.

Consignor.	Consignee and destination.	Packages.	Description.	Weight.	Rate.	Back charges.	Local charges.	Prepaid.
D. H. Mitchell	A. Q. M., Ft. Harker.	165	Sacks corn	18,000	88	.....	.....	158.40

A true copy of the original way-bill.

M. H. GOBLE,
Freight Auditor.

D. H. MITCHELL.

No. 8.—A. S.

F. A. 1.

LOCAL WAY-BILL NO. 4.

UNION PACIFIC RAILWAY, E. D.

Car No. 1348; initial, —.

Local way-bill of freight forwarded from Williamstown to Fort Harker, date Dec. 29, 1868.

Consignor.	Consignee and destination.	Packages.	Description.	Weight.	Rate.	Back charges.	Local charges.	Prepaid.
D. H. Mitchell	Quartermaster, Fort Harker.	165	Sacks shelled corn.	18,000	76	.....	136.80	.....

A true copy of the original way-bill.

M. H. GOBLE,
Freight Auditor.

No. 9.—A. S.

F. A. 1.

LOCAL WAY-BILL NO. 44.

UNION PACIFIC RAILWAY, E. D.

Car No. 1207; initial, —.

Local way-bill of freight forwarded from Perry to Fort Harker, date Dec. 31, 1868.

Consignor.	Consignee and destination.	Packages.	Description.	Weight.	Rate.	Back charges.	Local charges.	Prepaid.
R. S. Griffith for D. H. Mitchell	Lieut Cook, Q. M., Fort Harker.	150	S'ks oats.....	18,000	75	.....	135.00	.....

A true copy of the original way-bill.

M. H. GOBLE,
Freight Auditor.

(In pencil :) See letter of Inman to R. S. Griffith, of Jan'y 27, '69; says this car contains 20,110 lbs.

D. H. MITCHELL.

No. 10.—A. S.

F. A. 1.

LOCAL WAY-BILL No. 3.

UNION PACIFIC RAILWAY, E. D.

Car No. 1363; initial, —.

Local way-bill of freight forwarded from Fairmount to Fort Harker, date Jan'y 5, 1869.

Consignor.	Consignee and destination.	Packages.	Description.	Weight.	Rate.	Back charges.	Local charges.	Prepaid.
D. H. Mitchell	A. Q. M., Fort Harker.	147	Sacks oats	18,000	88	Paid.		154.40

A true copy of the original way-bill.

M. H. GOBLE,
Freight Auditor.

No. 11.—A. S.

F. A. 1.

LOCAL WAY-BILL No. 6.

UNION PACIFIC RAILWAY.

Car No. 1325; initial, —.

Local way-bill of freight forwarded from Fairmount to Fort Harker, date January 11, 1869.

Consignor.	Consignee and destination.	Packages.	Description.	Weight.	Rate.	Back charges.	Local charges.	Prepaid.
D. H. Mitchell	A. Q. M., Ft. Harker.	.....	Sacks oats					
		30	Sacks corn	18,000	88			158.40

A true copy of the original way-bill.

M. H. GOBLE,
Freight Auditor.

No. 12.—A. S.

F. A. 1.

LOCAL WAY-BILL No. 4.

UNION PACIFIC RAILWAY, E. D.

Car No. 1383; initial, —.

Local way-bill of freight forwarded from Williamstown to Ft. Harker, date Jan'y 11, 1869.

Consignor.	Consignee and destination.	Packages.	Description.	Weight.	Rate.	Back charges.	Local charges.	Prepaid.
D. H. Mitchell	A. Q. M., Ft. Harker.	160	Sks. shelled corn..	18,000	76	.....	136.80	.....

A true copy of the original way-bill.

M. H. GOBLE,
Freight Auditor.

No. 13.—A. S.

F. A. 1.

LOCAL WAY-BILL No. 5.

UNION PACIFIC RAILWAY, E. D.

Car No. 1388; initial, —.

Local way-bill of freight forwarded from Williamstown to Ft. Harker, date Jan'y 11th, 1869.

Consignor.	Consignee and destination.	Packages.	Description.	Weight.	Rate.	Back charges.	Local charges.	Prepaid.
D. H. Mitchell	A. Q. M., Ft. Harker.	160	Sks. shelled corn..	18,000	76	.....	136.80	.....

A true copy of the original way-bill.

M. H. GOBLE,
Freight Auditor.

D. H. MITCHELL.

No. 14.—A. S.

F. A. 1.

LOCAL WAY-BILL No. 3.

UNION PACIFIC RAILWAY, E. D.

Car No. 1354; initial, —.

Local way-bill of freight forwarded from Williamstown to Ft. Harker, date Jan'y 11th, 1869.

Consignor.	Consignee and destination.	Packages.	Description.	Weight.	Rate.	Back charges.	Local charges.	Prepaid.
D. H. Mitchell	A. Q. M., Ft. Harker.	160	Sks. shelled corn..	18,000	76	.....	136.80	.....

A true copy of the original way-bill.

M. H. GOBLE,
Freight Auditor.

No. 15.—A. S.

F. A. 1.

LOCAL WAY-BILL No. 7.

UNION PACIFIC RAILWAY, E. D.

Car No. 1232; initial, —.

Local way-bill of freight forwarded from Fairmount to Ft. Harker, date Jan'y 12, 1869.

Consignor.	Consignee and destination.	Packages.	Description.	Weight.	Rate.	Back charges.	Local charges.	Prepaid.
D. H. Mitchell	A. Q. M., Ft. Harker.	165	Sacks corn.....	1,800	88	.....	.....	158.40

A true copy of the original way-bill.

M. H. GOBLE,
Freight Auditor.

No. 16.—A. S.

F. A. 1.

LOCAL WAY-BILL No. 8.

UNION PACIFIC RAILWAY, E. D.

Car No. 1245; initial, —.

Local way-bill of freight forwarded from Fairmount to Ft. Harker, date Jan'y 13, 1869.

Consignor.	Consignee and destination.	Packages.	Description.	Weight.	Rate.	Back charges.	Local charges.	Prepaid.
D. H. Mitchell	A. Q. M., Ft. Harker.	165	Sacks corn.....	18,000	88	.....	.....	158.40

A true copy of the original way-bill.

M. H. GOBLE,
Freight Auditor.

No. 17.—A. S.

F. A. 1.

LOCAL WAY-BILL No. 6.

UNION PACIFIC RAILWAY, E. D.

Car No. 1310; initial, —.

Local way-bill of freight forwarded from Williamstown to Ft. Harker, date Jan'y 15th, 1869.

Consignor.	Consignee and destination.	Packages.	Description.	Weight.	Rate.	Back charges.	Local charges.	Prepaid.
D. H. Mitchell	A. Q. M., Ft. Harker.	160	Sks. shelled corn..	18,000	76	.....	136.80	.....

A true copy of the original way-bill.

M. H. GOBLE,
Freight Auditor.

D. H. MITCHELL.

No. 18.—A. S.

F. A. 1.

LOCAL WAY-BILL No. 7.

UNION PACIFIC RAILWAY, E. D.

Car No. 1320; initial, —.

Local way-bill of freight forwarded from Williamstown to Ft. Harker, date January 15th, 1869.

Consignor.	Consignee and destination.	Packages.	Description.	Weight.	Rate.	Back charges.	Local charges.	Prepaid.
D. H. Mitchell	A. Q. M., Ft. Harker.	160	Sks. shelled corn..	18,000	76	.....	136.80	.....

A true copy of the original way-bill.

M. H. GOBLE,
Freight Auditor.

No. 19.—A. S.

F. A. 1.

LOCAL WAY-BILL No. 9.

UNION PACIFIC RAILWAY, E. D.

Car No. 1375; initial, —.

Local way-bill of freight forwarded from Fairmount to Fort Harker, date Jan'y 18, 1869.

Consignor.	Consignee and destination.	Packages.	Description.	Weight.	Rate.	Back charges.	Local charges.	Prepaid.
D. H. Mitchell	A. Q. M., Ft. Harker.	165	Sacks corn.....	18,000	88	.....	.....	158.40

A true copy of the original way-bill.

M. H. GOBLE,
Freight Auditor.

D. H. MITCHELL.

47

No. 20.—A. S.

F. A. 1.

LOCAL WAY-BILL No. 56.

UNION PACIFIC RAILWAY, E. D.

Car No. 1443; initial, —.

Local way-bill of freight forwarded from Grant's to Fort Harker, date Jan'y 19th, 1869.

Consignor.	Consignee and destination.	Packages.	Description.	Weight.	Rate.	Back charges.	Local charges.	Prepaid.
D. H. Mitchell.....	Qr. Mr., Ft. Harker.	170	Sacks corn.....	18,000	73	.....	131.40	.....

A true copy of the original way-bill.

M. H. GOBLE,
Freight Auditor.

No. 21.—A. S.

F. A. 1.

LOCAL WAY-BILL No. 57.

UNION PACIFIC RAILWAY, E. D.

Car No. 1254; initial, —.

Local way-bill of freight forwarded from Grant's to Fort Harker, date Jan'y 19th, 1869.

Consignor.	Consignee and destination.	Packages.	Description.	Weight.	Rate.	Back charges.	Local charges.	Prepaid.
D. H. Mitchell.....	Qr. Mr., Ft. Harker.	170	Sacks of corn.....	18,000	73	.....	131.40	.....

A true copy of the original way-bill.

M. H. GOBLE,
Freight Auditor.

D. H. MITCHELL.

No. 22.—A. S.

F. A. 1.

LOCAL WAY-BILL No. 9.

UNION PACIFIC RAILWAY, E. D.

Car No. 1421; initial, —.

Local way-bill of freight forwarded from Williamstown to Ft. Harker, date Jan'y 20th, 1869.

Consignor.	Consignee and destination.	Packages.	Description.	Weight.	Rate.	Back charges.	Local charges.	Prepaid.
D. H. Mitchell.....	A. Q. M., Ft. Harker.	160	Sacks shelled corn.	18,000	76	.....	136.80	.....

A true copy of the original way-bill.

M. H. GOBLE,
Freight Auditor.

No. 23.—A. S.

F. A. 1.

LOCAL WAY-BILL No. 10.

UNION PACIFIC RAILWAY, E. D.

Car No. 1374; initial, —.

Local way-bill of freight forwarded from Fairmount to Ft. Harker, date Jan'y 21st, 1869.

Consignor.	Consignee and destination.	Packages.	Description.	Weight.	Rate.	Back charges.	Local charges.	Prepaid.
D. H. Mitchell	A. Q. M., Ft. Harker:	165	Sacks corn.....	18,000	88	.....	.....	158.40

A true copy of the original way-bill.

M. H. GOBLE,
Freight Auditor.

D. H. MITCHELL.

49

No. 24.—A. S.

F. A. 1.

LOCAL WAY-BILL No. 11.

UNION PACIFIC RAILWAY, E. D.

Car No. 1426; initial, —.

Local way-bill of freight forwarded from Fairmount to Ft. Harker, date Jan'y 22, 1869.

Consignor.	Consignee and destination.	Packages.	Description.	Weight.	Rate.	Back charges.	Local charges.	Prepaid.
D. H. Mitchell	A. Q. M., Ft. Harker.	165	Sacks corn.....	18,000	88	....	.....	158.40

A true copy of the original way-bill.

M. H. GOBLE,
Freight Auditor.

No. 25.—A. S.

F. A. 1.

LOCAL WAY-BILL No. 11.

UNION PACIFIC RAILWAY, E. D.

Car No. 1492; initial, —.

Local way-bill of freight forwarded from Williamstown to Fort Harker, date Jan'y 23rd, 1869.

Consignor.	Consignee and destination.	Packages.	Description.	Weight.	Rate.	Back charges.	Local charges.	Prepaid.
D. H. Mitchell	A. Q. M., Ft. Harker.	160	Sacks shelled corn.	18,000	76	....	136.80	.....

A true copy of the original way-bill.

M. H. GOBLE,
Freight Auditor.

H. Rep. 3685—4

D. H. MITCHELL.

No. 26.—A. S.

F. A. 1.

LOCAL WAY-BILL No. 12.

UNION PACIFIC RAILWAY, E. D.

Car No. 1315; initial, —.

Local way-bill of freight forwarded from Williamstown to Fort Harker, date Jan'y 23rd, 1869.

Consignor.	Consignee and destination.	Packages.	Description.	Weight.	Rate.	Back charges.	Local charges.	Prepaid.
D. H. Mitchell	A. Q. M., Fort Harker	160	Sacks shelled corn.	18,000	76	.....	136.80	.....

A true copy of the original way-bill.

M. H. GOBLE,
Freight Auditor.

No. 27.—A. S.

F. A. 1.

LOCAL WAY-BILL No. 12.

UNION PACIFIC RAILWAY, E. D.

Car No. 1361; initial, —.

Local way bill of freight forwarded from Fairmount to Ft. Harker, date Jan'y 25, 1869

Consignor.	Consignee and destination.	Packages.	Description.	Weight.	Rate.	Back charges.	Local charges.	Prepaid.
D. H. Mitchell	A. Q. M., Ft. Harker.	165	Sacks corn.....	18,000	88	.....	.....	158.40

A true copy of the original way-bill.

M. H. GOBLE,
Freight Auditor.

D. H. MITCHELL.

51

No. 23.—A. S.

F. A. 1.

LOCAL WAY-BILL No. 1.

UNION PACIFIC RAILWAY, E. D.

Car No. 1354; initial, —.

Local way-bill of freight forwarded from Fairmount to Ft. Harker, date Feb. 1, 1869.

Consignor.	Consignee and destination.	Packages.	Description.	Weight.	Rate.	Back charges.	Local charges.	Prepaid.
D. H. Mitchell	A. Q. M., Fort Harker.	160	Sacks corn.....	18,000	88	.....	.....	158.40

A true copy of the original way-bill.

M. H. GOBLE,
Freight Auditor.

No. 29.—A. S.

F. A. 1.

LOCAL WAY-BILL No. 2.

UNION PACIFIC RAILWAY, E. D.

Car No. 1234; initial, —.

Local way-bill of freight forwarded from Fairmount to Fort Harker, date Feb. 2, 1869.

Consignor.	Consignee and destination.	Packages.	Description.	Weight.	Rate.	Back charges.	Local charges.	Prepaid.
D. H. Mitchell	A. Q. M., Fort Harker.	165	Sacks corn.....	18,090	88	.....	.....	158.40

A true copy of the original way-bill.

M. H. GOBLE,
Freight Auditor.

D. H. MITCHELL.

No. 30.—A. S.

F. A. 1.

LOCAL WAY-BILL No. 3.

UNION PACIFIC RAILWAY, E. D.

Car No. 1343; initial, —.

Local way-bill of freight forwarded from Williamstown to Fort Harker, date Feb. 8, 1869.

Consignor.	Consignee and destination.	Packages.	Description.	Weight.	Rate.	Back charges.	Local charges.	Prepaid.
D. H. M.	A. Q. M., Fort Harker.	160	Sacks shelled corn.	18,000	76	.....	136.80	.....

A true copy of the original way-bill.

H. M. GOBLE,
Freight Auditor.

No. 31.—A. S.

F. A. 1.

LOCAL WAY-BILL No. 4.

UNION PACIFIC RAILWAY, E. D.

Car No. 1201; initial, —.

Local way-bill of freight forwarded from Williamstown to Fort Harker, date Feb. 10, 1869.

Consignor.	Consignee and destination.	Packages.	Description.	Weight.	Rate.	Back charges.	Local charges.	Prepaid.
D. H. M.	A. Q. M., Fort Harker, Kansas.	160	Sacks shelled corn	18,000	76	.....	136.80	.....

A true copy of the original way-bill.

M. H. GOBLE,
Freight Auditor.

No. 32.—A. S.

F. A. 1.

LOCAL WAY-BILL No. 2.

UNION PACIFIC RAILWAY, E. D.

Car No. 1429; initial, —.

Local way-bill of freight forwarded from Williamstown to Fort Harker, date Feb. 20, 1869.

Consignor.	Consignee and destination.	Packages.	Description.	Weight.	Rate.	Back charges.	Local charges.	Prepaid.
D. H. M.	A. Q. M., Fort Harker.	160	Sacks shelled corn	18,000	76	.....	136.80	.....

A true copy of the original way-bill.

M. H. GOBLE,
Freight Auditor.

No. 33.—A. S.

F. A. 1.

LOCAL WAY-BILL No. 49.

UNION PACIFIC RAILWAY, E. D.

Car No. 144; initial, —.

Local way-bill of freight forwarded from Lawrence to Harker, date M'ch 4, 1869.

Consignor.	Consignee and destination.	Packages.	Description.	Weight.	Rate.	Back charges.	Local charges.	Prepaid.
Wetherell	A. Q. M., Harker....	1	Car oats (150 sax)	18,000	80	.....	144.00	.....

A true copy of the original impression way-bill on file in the freight auditor's office, Union Pacific Ry.

M. H. GOBLE,
Freight Auditor.

D. H. MITCHELL.

No. 34.—A. S.

F. A. 1.

LOCAL WAY-BILL No. 23.

UNION PACIFIC RAILWAY, E. D.

Car No. 1303 ; initial, —.

Local way-bill of freight forwarded from Topeka to Harker, date M'ch 6, 1869.

Consignor.	Consignee and destination.	Packages.	Description.	Weight.	Rate.	Back charges.	Local charges.	Prepaid.
D. H. Mitchell	Maj. Inman, Ft. Harker.	155	Sax oats.....	18,000	59	.....	106.20	.....

A true copy of the original impression way-bill on file in the freight auditor's office, Union Pacific Ry.

M. H. GOBLE,
Freight Auditor.

No. 35.—A. S.

F. A. 1.

LOCAL WAY-BILL No. 25.

UNION PACIFIC RAILWAY, E. D.

Car No. 1322 ; initial, —.

Local way-bill of freight forwarded from Topeka to Harker, date M'ch 6, 1869.

Consignor.	Consignee and destination.	Packages.	Description.	Weight.	Rate.	Back charges.	Local charges.	Prepaid.
D. H. Mitchell	Maj. Inman, Ft. Harker.	153	Sax oats.....	18,000	59	.....	106.20	.....

A true copy of the original impression way-bill on file in the freight auditor's office, Union Pacific Ry.

M. H. GOBLE,
Freight Auditor.

No. 36.—A. S.

F. A. 1.

LOCAL WAY-BILL No. 65.

UNION PACIFIC RAILWAY, E. D.

Car No. 1235; initial, —.

Local way-bill of freight forwarded from Lawrence to Harker, date M'ch 6, 1869.

Consignor.	Consignee and destination.	Packages.	Description.	Weight.	Rate.	Back charges.	Local charges.	Prepaid.
Schweitzer	Major Inman, $\frac{3}{8}$ D. H. Mitchell, Harker.	1	Car corn in sax, shippers' count.	18,000	70	.....	126.00	.....

A true copy of the original impression way-bill on file in the freight auditor's office,
Union Pacific R'y.

H. M. GOBLE,
Freight Auditor

No. 37.—A. S.

F. A. 1.

LOCAL WAY-BILL No. 22.

UNION PACIFIC RAILWAY, E. D.

Car No. 1367; initial, —.

Local way-bill of freight forwarded from Topeka to Harker, date M'ch 6, 1869.

Consignor.	Consignee and destination.	Packages.	Description.	Weight.	Rate.	Back charges.	Local charges.	Prepaid.
D. H. Mitchell	Maj. Inman, Ft. Har- ker.	155	Sax oats.....	18,000	59	.....	100.20	.....

A true copy of the original impression way-bill on file in the freight auditor's office,
Union Pacific Ry.

M. H. GOBLE,
Freight Auditor.

D. H. MITCHELL.

No. 38.—A. S.

F. A. 1.

LOCAL WAY-BILL NO. 24.

UNION PACIFIC RAILWAY, E. D.

Car No. 1239; initial, —.

Local way-bill of freight forwarded from Topeka to Harker, date M'ch 6, 1869.

Consignor.	Consignee and destination.	Packages.	Description.	Weight.	Rate.	Back charges.	Local charges.	Prepaid.
D. H. Mitchell	Major Inman, Ft. Harker.	155	Sax oats.....	18,000	59	.....	106.20	.....

A true copy of the original impression way-bill on file in the freight auditor's office, Union Pacific Ry.

M. H. GOBLE,
Freight Auditor.

No. 39.—A. S.

F. A. 1.

LOCAL WAY-BILL NO. 74.

UNION PACIFIC RAILWAY, E. D.

Car No. 1215; initial, —.

Local way-bill of freight forwarded from Lawrence to Harker, date M'ch 8, 1869.

Consignor.	Consignee and destination.	Packages.	Description.	Weight.	Rate.	Back charges.	Local charges.	Prepaid.
Wetherell	A. Q. M., Harker ...	160	Sax oats, shipper's count.	18,000	70	.....	126.00	.....

A true copy of the original impression way-bill on file in the freight auditor's office, Union Pacific Ry.

M. H. GOBLE,
Freight Auditor.

No. 40.—A. S.

F. A. 1.

LOCAL WAY-BILL No. 109.

UNION PACIFIC RAILWAY, E. D.

Car No. 1331; initial, —.

Local way-bill of freight forwarded from Lawrence to Harker, date M'ch 11, 1869.

Consignor.	Consignee and destination.	Packages.	Description.	Weight.	Rate.	Back charges.*	Local charges.	Prepaid.
Wetherell	A. Q. M., Harker ...	41	Sax oats, shipper's count. East end of car.	4,670	113	.....	52.77	.....

* Order of gen'l supt.

A true copy of the original impression way-bill on file in the freight auditor's office, Union Pacific Ry.

M. H. GOBLE,
Freight Auditor.

No. 41.—A. S.

F. A. 1.

LOCAL WAY-BILL No. 167.

UNION PACIFIC RAILWAY, E. D.

Car No. 1304; initial, —.

Local way-bill of freight forwarded from Lawrence to Harker, date M'ch 17, 1869.

Consignor.	Consignee and destination,	Packages.	Description.	Weight.	Rate.	Back charges.	Local charges.	Prepaid.
Schweitzer	Major Inman, Harker; $\frac{3}{4}$ D.H. Mitchell.	1	Car oats in sax, shipper's count.	18,000	70	.....	126.00	.....

A true copy of the original impression way-bill on file in the freight auditor's office, Union Pacific Ry.

M. H. GOBLE,
Freight Auditor.

D. H. MITCHELL.

No. 42.—A. S.

F. A. 1.

LOCAL WAY-BILL No. 192.

UNION PACIFIC RAILWAY, E. D.

Car No. 1387; initial, —.

Local way-bill of freight forwarded from Lawrence to Harker, date M'ch 18, 1869.

Consignor.	Consignee and destination.	Packages.	Description.	Weight.	Rate.	Back charges.	Local charges.	Prepaid.
Schweitzer	Maj. Inman, Harker; % D.H. Mitchell.	1	Car oats in sax, shipper's count.	18,000	78	.....	131.40	.....

A true copy of the original impression way-bill on file in the freight auditor's office, Union Pacific Ry.

M. H. GOBLE,
Freight Auditor.

No. 43.—A. S.

F. A. 701.

LOCAL WAY-BILL No. 239.

UNION PACIFIC RAILWAY.

Car No. 1228; initial, —.

Local way-bill of freight forwarded from Lawrence to Harker, date March 23, 1869.

Consignor.	Consignee and destination.	Packages.	Description.	Weight.	Rate.	Back charges.	Local charges.	Prepaid.
W. & M.....	A. Q. M., Harker....	150	{Sacks oats, ship-} {pers' counts. }	18,000	{78} {50}	.....	133.38	.....

I certify that the foregoing is a true copy of the original tissue copy of the way-bill on file in this office.

JNO. G. TAYLOR,
Freight Auditor.
By D. AUBRAY,
Chief Clerk.

(Stamped:) Union Pacific Ry., freight auditor's office, Omaha, Nebraska, Feb. 22, 1863.

D. H. MITCHELL.

59

No. 44.—A. S.

F. A. 1.

LOCAL WAY-BILL No. 15.

UNION PACIFIC RAILWAY, E. D.

Car No. — ; initial —.

Local way-bill of freight forwarded from Wanmego to Fort Harker, date April 9, 1869.

Consignor.	Consignee and destination.	Packages.	Description.	Weight.	Rate.	Back charges.	Local charges.	Prepaid.
D. H. M.....	Maj. Inman, Harker.	145	Sacks oats..... Less 5 per ct.....	18,000	59	.....	.....	106.20 5.31
							Paid..	100.89

A true copy of the original way-bill on file in the freight auditor's office, Union Pacific Ry.

M. H. GOBLE,

No. 45.—A. S.

F. A. 1.

LOCAL WAY-BILL No. 20.

UNION PACIFIC RAILWAY, E. D.

Car No. — ; initial —.

Local way-bill of freight forwarded from Wanmego to Harker, date April 13, 1869.

Consignor.	Consignee and destination.	Packages.	Description.	Weight.	Rate.	Back charges.	Local charges.	Prepaid.
D. H. M.....	Maj. Inman, A. Q. M., Harker.	147	Sks. oats..... Less 5%.....	18,000	59	.....	.....	106.20 5.31
							Paid..	100.89

A true copy of the original way-bill on file in the freight auditor's office, Union Pacific Ry.

M. H. GOBLE,
Freight Auditor.

EXHIBIT W.—A. S.

239			Lawrence	Harker Mch 23 ^r .9
	1228			
W and M	A Q M	130 sacks oats	18000 ⁷⁸ / _{1c}	
	Harker	shippers count		13338 13338

The deposition of F. C. Bulkley, for claimant, taken at Leavenworth, Kans., on the 19th day of February, A. D. 1883.

Claimant's counsel, W. C. Hook ; defendants' counsel, F. H. Howe.

First general interrogatory by the commissioner. State your name, occupation, age, place of residence the past year ; whether you have any, and if any what, interest, direct or indirect, in the claim which is the subject of inquiry ; and whether, and in what degree, you are related to the claimant.

Answer. F. C. Bulkley ; age, 50 years ; occupation during the last year, farmer ; Leavenworth, Kansas ; have no interest in the claim, and am not related to the claimant.

And being further examined by claimant's counsel, witness says :

I was a Government contractor during the year 1868, and up to June, 1869. I hauled a great deal of grain during that time for the Government, and was familiar with the business. All the corn I ever furnished the Government was in gunnies.

Question 1. State as near as you can the average weight of sacks filled with corn for the Government, as above mentioned, during the time that you have specified, at Fort Leavenworth, or any other place within the State of Kansas or Indian Territory, at which corn was furnished during such time.

(Objected to by Government's counsel, that no foundation has been laid to show that the witness is competent to answer the question.)

Answer. The sacks would average from 120 to 140 pounds, owing to the way they were filled.

Question 2. State, if you know, the average capacity of sacks in use at the time above specified—in use by the trade—for supplying shelled corn to the Government.

(Same objection.)

Answer. I do know ; from 120 to 150 pounds. I have shipped and sold a great deal of corn during that year, and know it from the average I received from the Government and other parties. I furnished corn to the Government at different times from 1862 to 1873, and during that time the sacks in use were of the same capacity as before mentioned.

Question 3. State whether or not during any of the years above mentioned you shipped any corn upon any railway for the Government ; and, if so, state if you recollect the number of pounds that the company limited to the car, and state what you know as to the manner in which way-bills were made out, and whether they were generally correct as to the number of sacks and pounds.

(Objected to as incompetent and irrelevant.)

Answer. I can only answer as to the shipments made by myself. At that time the cars were generally billed at 18,000 pounds, and we were charged by the car, but we always put on what we could get on, and got paid by the Government for what we had on the car. We frequently put on more sacks than the way-bill showed.

Cross-examination :

Being interrogated by the Government counsel, the witness says :

The capacity of sacks spoken of in my direct examination refers to shell corn. If ear corn was packed in the same sack you could not get more than 70 pounds in a sack. The testimony I have given relates to my own experience. I have no knowledge of any corn delivered to the Government by the claimant.

Redirect :

Of any corn other than shelled corn being delivered to the Government in gunny sacks I have no knowledge.

F. C. BULKLEY.

Subscribed and sworn to before me this 19th day of February, A. D. 1883.

W. M. PINKSTON,
Notary Public.

The deposition of Owen Duffy, for claimant, taken at Leavenworth, Kans., on the 19th day of February, A. D. 1883.

Claimant's counsel, W. C. Hook; defendant's counsel, F. H. Howe.

First general interrogatory by the commissioner. State your name, occupation, age, place of residence the past year; whether you have any, and if any what, interest, direct or indirect, in the claim which is the subject of inquiry; and whether and in what degree you are related to the claimant.

Answer. My name is Owen Duffy; age is 47 years; occupation, woolen business and handling grain; reside at Leavenworth, Kans.; have no interest in the claim, and am not related to the claimant.

Being examined by W. C. Hook, esq., counsel for claimant:

I have been in the grain business since 1867. I have shipped grain to the Government and private parties, and to the markets. I have had contracts with the Government for furnishing shelled corn during the years stated.

Question 1. State, if you know, the average capacity of sacks used by the Government and by private persons for shelled corn during the time that you were in the grain business.

(Objected to by the Government's counsel, because the witness has not been shown to be competent to answer the question.)

Answer. I do not know. By refreshing my memory from looking over my books, I find that in the month of March, 1870, I shipped fourteen cars of corn to Saint Louis, containing 3,967 sacks, which netted 10,824 bushels and 30 pounds of corn, which appears to make about 150 pounds of corn to the sack. It was shipped to J. W. Booth & Son, of Saint Louis. I think the sacks used in this shipment were the gunny sacks in use at that time. I think there can be no doubt about it, as I do not know of any other kind of sack being in use at that time, nor for two or three years prior thereto—I mean sacks for shipping corn. There might have been a three-bushel sack in use at that time, but I do not know that it was in general use.

(The whole of the above testimony is objected to by the Government counsel as being incompetent and irrelevant, and as not tending to prove the question at issue.)

Cross-examination:

Witness being examined by Government counsel:

In 1868 and 1869 the sacks in use would hold 150 pounds, if filled as stated in the shipment above referred to. The last I have seen, according to my book, is about 126 pounds to the sack. If it was ear corn these sacks would contain about half of the weight stated above, but I never heard of any being shipped that way to the Government.

OWEN DUFFY.

Subscribed and sworn to before me this 19th day of February, A. D. 1883.

W. M. PINKSTON,
Notary Public.

[Court of Claims. No. 11940. D. H. Mitchell v. The United States.]

Deposition of Fred Zimmerman, for claimant, taken at Leavenworth, Kans., on the 14th day of December, A. D. 1880.

Claimant appeared on his own behalf; defendant's counsel, R. A. Orbison.

First general interrogatory by the commissioner. Please to state your name, your occupation, your age, your place of residence the past year; whether you have any, and if any what interest, direct or indirect, in the claim which is the subject of inquiry; and whether and in what degree you are related to the claimant.

Answer. My name is Fred Zimmerman; my occupation is United States internal-revenue ganger; my age is forty years; my place of residence the past year is Leavenworth City, Kans.; I have no interest whatever in the claim which is the subject of inquiry; I am no relation whatsoever to the claimant.

Being interrogated by DAVID H. MITCHELL, the claimant, the witness says:

Question 1. State where you were in the winter of 1868-69.

Answer. I was at Fort Harker, Kans.

Question 2. State what capacity you were acting in at Fort Harker.

Answer. I was a forage-master.

Question 3. I'll get you to state if you knew of D. H. Mitchell shipping corn to Fort Harker that winter.

Answer. I did.

Question 4. State, if you know, the average weight of the cars shipped there by D. H. Mitchell, during the winter of 1868-'69.

Answer. I don't remember whether Mr. Mitchell was the only contractor that delivered there or not, consequently I don't know whether they were his cars or the other party's cars, if any other party was there. The cars that were received there about that time—the weight of the grain that was received in those cars—was about 24,000 pounds, on an average, per car-load.

Question 5. State if you have any recollection of car-loads of corn that were shipped that winter weighing 28,000 and 29,000 pounds.

Answer. I don't recollect of any cars weighing 28,000 or 29,000 pounds, but I do recollect of one car-load of either corn or oats weighing 27,800 pounds.

Question 6. State, if you know, how many cars of corn were shipped there that winter by D. H. Mitchell.

Answer. I don't know.

Question 7. What became of the books that you kept as forage-master during the winter of 1868-'69, at Fort Harker, Kans. ?

Answer. I turned them over to my successor, Green M. Thompson.

Question 8. Do you know whether or not there was a large amount of corn and oats shipped to Fort Harker the winter of 1868-'69 ?

Answer. I know there was a large amount of grain at Fort Harker that winter. Some of it was taken from the cars and stored there, and other was taken directly from the cars and loaded on wagons, taken to the forage-yard, weighed, and distributed from there to other posts.

Question 9. Was Fort Harker a distributing point for other frontier posts that winter ?

Answer. It was, in the first part and middle of the winter of 1868-'69.

Cross-examination :

Being cross-examined by R. A. Orbison, esq., for the United States, the witness says :

Cross-question 1. How far was Fort Harker from the railroad station ?

Answer. The fort itself was very near a quarter of a mile, and the forage-yard very near three-quarters of a mile.

Cross-question 2. Did you see the grain unloaded from the cars shipped by D. H. Mitchell, during the winter of 1868-'69 ?

Answer. I did not.

Cross-question 3. Where did your duties require you to be at that time ?

Answer. At the forage-yard, hay-yard, and wood-yard.

Cross-question 4. How was the grain transported from the cars to the forage-yard ?

Answer. If you refer to the grain that was to be stored in the forage-yard, it was hauled in Government teams.

Cross-question 5. How was that transported which was not stored at the forage-yard ?

Answer. Part of it was hauled up from the depot to the forage-yard by Government teams and weighed there at the scales, and reloaded in contractors' wagons, and part of it—the contractors' wagons—were first weighed at the scales, driven down to the depot, loaded, and reweighed at the scales, to ascertain the weight of the grain.

Cross-question 6. Did you see any of the cars containing the grain weighed, or did you see the grain weighed as it came out of the cars ?

Answer. No ; I weighed the grain at the scales at the forage-yard myself.

Cross-question 7. How was the corn which Mr. Mitchell shipped received that winter ?

Answer. The corn that was received at the forage-yard at Fort Harker that winter was shelled, and received in gunny sacks.

Cross-question 8. Is it not a fact that those gunny sacks contained about two bushels and a peck of corn ?

Answer. The sacks contained all the way from 118 to 155 pounds of corn, but the average was 127, 128, or 129 pounds. I speak in general terms ; this does not refer particularly to the winter of 1868-'69.

Cross-question 9. Did not the corn received during the winter of 1868-'69, from Mr. Mitchell, average about the same weight per sack as you have stated in your last answer ?

Answer. To my recollection they were heavier.

Cross-question 10. Do you not know that those cars containing the corn that Mr. Mitchell shipped during the winter of 1868-'69, on the Kansas Pacific Railway to Fort Harker, were billed at 18,000 pounds.

Answer. I do not.

Cross-question 11. How can you recollect at this date that those cars that were re-

ceived twelve years ago from Mr. Mitchell or any one else at Fort Harker averaged 24,000 pounds?

Answer. It is my general recollection.

Cross-question 12. Can you state the number of sacks of corn that were received from any one car during that winter?

Answer. I can not.

Cross-question 13. Can you state the average number of sacks per car received that winter?

Answer. I can not.

Cross-question 14. State briefly how the accounts of corn and oats received were kept by you and to whom you accounted.

Answer. I kept a book in which I kept an account of grain received and issued daily, and I made a daily report of grain received and issued to the quartermaster or acting quartermaster at Fort Harker, who, during the winter of 1868-'69, were Maj. Henry Inman, Lieut. L. W. Cook, Capt. John F. Rogers, United States military store-keeper; and I think Lieutenant Mackintosh, I think, of the Seventh Cavalry.

Cross question 15. When did you leave Fort Harker?

Answer. I think February or March, 1869.

Redirect examination:

On redirect examination by the claimant, the witness says:

Redirect question 1. State if you haven't heard this matter spoken of ever since the winter of 1868-'69.

Answer. I think it was 1872 or 1873 that the matter came prominently before me.

Recross-examination:

Recross-question 1. Were you not absent from Fort Harker from the middle of November, 1868, to the middle of December, 1868?

Answer. Under Lieut. I. W. Cook's administration, I was away a week, ten, or fourteen days, but just when it was I don't know, and how long.

Recross-question 2. Did you not make an affidavit on the 5th of December, 1876, before H. R. Pendery, that you were absent from Fort Harker from the middle of November, 1868, to the middle of December, 1868?

Answer. I do not recollect, but the pay rolls at Fort Leavenworth, Kansas, will show exactly the time I was away.

(Paper marked "A, Henry Wollman, notary public," shown witness.)

Recross-question 3. Is the signature Fred Zimmerman on this paper yours?

Answer. Yes.

Second general interrogatory by the commissioner. Do you know of any other matter relative to the claim in question? If you do, state it.

Answer. I don't know anything else.

FRED. ZIMMERMAN.

Sworn to and subscribed before me this 14th day of December, A. D. 1880.

[SEAL.]

HENRY WOLLMAN,

Notary Public, Commissioner.

Deposition of John A. Gaston, for claimant, taken at Deadwood, Dakota Territory, on the 14th day of December, A. D. 1881.

Claimant's counsel, A. R. Z. Dawson; defendants' counsel, A. J. Plowman.

And thereupon the said John A. Gaston was examined by the counsel for the claimant and, in answer to interrogatories, testified as follows:

Question 1. State your name, age, residence, and occupation.

Answer. John A. Gaston; am forty-seven years old; reside at Deadwood, Dak., and am a broker by occupation.

Question 2. State where you resided and what business you were engaged in during the fall of 1868, and the winter of 1868 and 1869.

Answer. I resided in Leavenworth, Kans., and was engaged in the grain and produce business.

Question 3. State whether or not you shipped any corn from Leavenworth, Kans., to the quartermaster at Fort Harker, Kansas, during that time.

(This question is objected to upon the ground of immateriality.)

Answer. I did.

Question 4. State for whom you shipped such corn.

Answer. For David H. Mitchell.

Question 5. State as near as you can the number of car-loads shipped and the time when shipped.

Answer. In answer to this I must rely solely upon memory, as all my books and paper were destroyed by fire. I should judge, however, that I shipped seven or eight car-loads, and I think it was in December, 1868. I think it was before January 1 of 1869.

Question 6. State whether or not David H. Mitchell paid you for such corn, and state whether or not you received pay therefor from the United States Government or any other person than David H. Mitchell.

Answer. Yes, sir; David H. Mitchell paid me. No one else ever paid me for it; the Government never paid me.

Question 7. State if you can what price per bushel said Mitchell paid you for said corn.

Answer. I will say, as near as I can recollect, about 85 cents; it was about that; it may have been more than that; that was for corn shelled, sacked, and on board the cars.

Question 8. State what, if any, interest, direct or indirect, you have in the claim which is the subject of inquiry, and whether you are related to the claimant, David H. Mitchell; and, if so, in what degree.

Answer. I have no interest in the claim whatever; there is no relation between the claimant, David H. Mitchell, and myself; this was purely a business transaction between us.

Question 9. State whether you know of any other matter relative to the claim in question; and, if so, state it.

Answer. No, sir; I do not.

The said witness was then cross-examined by the special counsel for the United States and, in answer to interrogatories, testified as follows:

Cross-question 1. State the exact times you shipped corn to the quartermaster at Fort Harker, in the State of Kansas.

Answer. I can not give the days, for the reason, as I have stated, that my books and papers were burned up.

Cross-question 2. Can you state the month positively?

Answer. I think it was in December, 1868.

Cross-question 3. State who was the quartermaster at Fort Harker, Kansas, at that time.

Answer. I do not know his name. We always shipped to the quartermaster.

Cross-question 4. By what railroad did you ship this corn?

Answer. The Kansas Pacific.

Cross-question 5. Did you ship the corn in sacks or in bulk?

Answer. In sacks and shelled.

Cross-question 6. How many bushels in a sack?

Answer. As near as I can recollect there was 2½ bushels.

Cross-question 7. How many sacks to the car-load?

Answer. Don't remember.

Cross-question 8. Are you positive as to the number of car-loads you shipped?

Answer. No, sir; as I said before, I think there were seven or eight.

Cross-question 9. Might it not have been less than seven?

Answer. No, sir; I think that if it is anything it was more.

Cross-question 10. If the books of the Kansas Pacific Railroad showed that you had only shipped five car-loads, what would you say as to your memory being correct?

Answer. I think the books of the railroad company ought to show, but I think I am correct.

Cross-question 11. Where was this corn shipped from?

Answer. The most of it was shipped from Leavenworth. I think I shipped a couple of car loads from Fairmount, but as to this I am not positive.

Cross-question 12. How many did you ship from Leavenworth?

Answer. I think seven or eight.

Cross-question 13. Are you positive you shipped this amount from Leavenworth, Kans.?

Answer. No, sir, I am not; but this is correct to the best of my belief.

Cross-question 14. Do you rely entirely upon your memory in making this statement?

Answer. Yes, sir; I have nothing else to go by.

(The attorney for the claimant here states that as the attorney for the defendant has stated to the witness that the railroad statements show no corn shipped from Leavenworth by the witness, that the witness's reply to this statement is in answer to a question and should be here incorporated, which is as follows: I state positively that I did ship corn to quartermaster at Fort Harker, Kans.)

Defendant objects to this statement of counsel as being improper, and should be brought out by him in rebuttal—not being an answer to any question by defendant's counsel.)

Cross-question 15. What did you say Mitchell paid you per bushel for this corn?

Answer. Well, as near as I can remember, it was 85 cents. It might have been 90.
 Cross-question 16. Do you state this upon your own knowledge or upon information recently acquired from others?

Answer. It must have been from a message I received. I want it understood that this man I telegraphed to has nothing whatever to do with the case.

Cross-question 17. Isn't it a fact that you sold some of this corn to Mitchell, the claimant, for 60 cents per bushel?

Answer. I think not, sir. That was less than I could buy it for.

Cross-question 18. Are you positive you did not?

Answer. No, sir; I don't think I did. I am not positive of anything except that I shipped corn from Leavenworth.

Cross-question 19. How many bushels of corn did you ship to the quartermaster at Fort Harker, Kans., for the claimant, Mitchell, during the winter of 1868 and 1869? Give me the total number of bushels.

Answer. I don't know.

Cross-question 20. State the total amount of money paid to you by Mitchell for the corn shipped by you for him to the said quartermaster.

Answer. I don't know.

Cross-question 21. How long have you known the claimant, Mitchell?

Answer. About twenty-four years.

Cross-question 22. Do you know whether or not he has been convicted of fraud in presenting this claim for payment by the Government?

Answer. No, sir; I know nothing about it.

Cross-question 23. How long were you in the grain business in Leavenworth, Kans., and during what years?

Answer. I should judge it was about six months. That was in 1868 and 1869, to the best of my belief.

Cross-question 24. Did you ever ship any oats for the claimant during this time?

Answer. I don't think I did.

Cross-question 25. Might not some of these car-loads of grain you shipped have been oats—those you shipped to Mitchell?

Answer. I don't think they were.

Cross-question 26. Was there at this time, and is there now, any friendship existing between you and the claimant?

Answer. Nothing but what may be called a "business friendship."

Cross-question 27. Have you not sent telegrams to get information in his behalf in support of this claim?

Answer. No, sir; not in his behalf.

Cross-question 28. Did you not telegraph to Leavenworth, Kans., yesterday to ascertain the price of corn there during 1868 and 1869, the time you were in the grain business there?

Answer. I telegraphed to ascertain the price of corn in 1868.

Cross-question 29. Do not you base the price (85 cents) to which you testified above upon the answer to your telegram?

Answer. I relied both upon my own recollection and the information in the telegram.

Cross-question 30. Could you have fixed the price at 85 cents without the information you got in the telegram?

Answer. I don't think I could.

Cross-question 31. Have you not employed counsel for the claimant in this examination?

Answer. Mr. Washabaugh, the clerk of the court, came to me and told me to get an attorney to ask these questions.

The examination by counsel being concluded, the witness, in compliance with the rule of the court requiring him to state whether he knows of any other matter relative to the claim in question, and if he does to state it, says that he does not.

JOHN A. GASTON.

Subscribed and sworn to before me, December 14, 1881.

FRANK J. WASHABAUGH,
 United States Commissioner.

Deposition of J. H. Stringfellow, for claimant, taken at Saint Joseph, Mo.

Claimant appeared in his own behalf; defendants' counsel, Silas Woodson.

First general interrogatory by the notary public. Please state your name, your occupation, your age, your place of residence the past year; whether you have any, and, if any, what, interest, direct or indirect, in the claim which is the subject of inquiry, and whether, and in what degree, you are related to the claimant.

Answer. My name is John H. Stringfellow; I am a physician; my age is sixty-two years; I have resided in the city of Saint Joseph, in the State of Missouri, during the past year; I have no interest, direct or indirect, in the claim which is the subject of this inquiry, and I am in no degree related to the claimant, D. H. Mitchell.

Being interrogated by D. H. MITCHELL, the claimant, for himself, the witness says:

Question 1 (by claimant). Where did you reside in the year 1876?

Answer. In the city of Atchison, in the State of Kansas.

Question 2. I'll get you to state if you was one of the jury at the April term of the United States district court held at the city of Topeka, in the State of Kansas, in the year 1876.

Answer. I was one of the petit jury of the United States district court at the city of Topeka, in the State of Kansas, at the April term of said court in the year 1876.

Question 3. I'll get you to state if you sat in the case as a juror in the case of the United States against D. H. Mitchell, which was tried at that term.

Answer. I did.

Question 4. What was the nature of the charge in that case?

Answer. Upon an indictment for presenting a fraudulent claim against the United States.

Question 5, 6. I'll ask the doctor to state, if he recollects, on what evidence the jury found the verdict of guilty against the defendant.

(Counsel for the United States objects to the witness answering the question because it is immaterial and irrelevant to any issue involved in the trial, that being a criminal case and this being a civil case.)

Answer. I do not recollect all the evidence that was introduced, but their verdict was based on testimony showing that the defendant had presented a claim for payment of certain corn which had previously been paid for by the Government.

Question 7. I'll get you to state if that verdict of the jury was on the evidence introduced from the books as kept by the Government at Fort Harker.

(Objected to on the part of counsel for the Government, because it is not competent for the witness to state what evidence is shown by the books kept by the Government, and because it is not competent for the witness to detail the whole or any part of the evidence given on the trial at Topeka, and because the question is leading.)

Answer. My verdict was based on the fact that it was shown in the testimony that the amount claimed in the voucher presented by Mitchell for payment had been previously paid for by the Government in another voucher taken up by the Government for the same identical grain, but it was not intended by that verdict to state that the Government was not indebted to the defendant, Mitchell, for an amount of grain greatly in excess of the amount asked for by the fraudulent voucher; and that it was proven, and not denied by the Government, that said Mitchell had delivered an amount of corn equal to nearly 400,000 pounds, for which he had received no payment from the Government.

(Counsel on the part of the Government objects to the answer to question 7, because it is not responsive to the question and states a great many irrelevant and immaterial matters.)

Question 8. You may state if the Government on that trial claimed to have paid on contract of November 9, 1868, for more than 400,666 pounds of corn.

(Objected to on part of counsel for the Government because incompetent and illegal.)

Answer. The Government only proved upon that trial payment to Mitchell for 400,666 pounds of corn under that contract.

Question 9. I'll get you to state what months in 1868 and 1869 that 400,666 pounds of corn was delivered to the Government.

Answer. It was in November and December, 1868, and January and February, 1869, to the best of my recollection.

Question 10. I'll get you to state if the evidence shown by D. H. Mitchell didn't show, during those same months of 1868 and 1869 a much larger amount than the books of the Government.

(Objected to by counsel for the Government because the question is leading, calls for hearsay evidence, and that which is wholly immaterial and irrelevant.)

Answer. It was proven to the satisfaction of the jury that during those months of November and December, 1868, and January and February, 1869, said Mitchell delivered to the Government at Fort Harker 792,000 pounds of corn, while the quartermaster's books at Fort Harker, which were in evidence, only showed a credit to Mitchell for the receipt of 400,666 pounds of corn.

Question 11. I'll get you to state if that amount included any corn delivered during the month of March, 1869.

Answer. My recollection is that it did not.

Question 12. I'll get you to state if the verdict of the jury was not for asking pay

for corn delivered on the same dates that it appeared had been paid for, and not that the jury decided the Government was not indebted to claimant for a large amount of grain furnished the Government.

(Objected to by counsel for the Government because it is leading and irrelevant, and because the witness has no right to explain or speak of the intention of the jury as indicated by their verdict.)

Answer. I will state, in answer to that question, that during President Grant's administration and subsequent to Mitchell's conviction, I made an affidavit, when the facts were all fresh in my memory, and I am of the same opinion still, that the verdict of that jury was for the reason that a demand was made upon the Government for payment the second time for grain already paid for by them, and not that he still did not have a valid claim against the Government for the amount of nearly 400,000 pounds still unpaid for by the Government and due said Mitchell. The affidavit referred to is printed on pages 82 and 83 of what purports to be the printed evidence in this case, and the proceedings therein, in the words and figures following, to wit:

THE STATE OF KANSAS, *Leavenworth County, ss:*

We, the undersigned, do hereby make oath, and do under oath say that we were jurors in the trial of the case of the United States against David H. Mitchell, tried before the district court of the United States for the district of Kansas for the April term, 1876; that it was shown in that case that the said David H. Mitchell had delivered under contract and orders from the proper military authority at Fort Harker, during the winter of 1868-'69, a large quantity of corn, for which there did not appear any evidence tending to show that 792,000 pounds of corn were delivered by Mr. Mitchell during said months of November and December, 1868, and January and February, 1869; and that there was no evidence produced on the trial of the payment of any amount over 400,666 pounds of corn; and the undersigned further say that the verdict in the case was based on the fact that the claim (for presenting and swearing to which Mitchell was indicted and tried) set forth the exact items for which he was previously paid, and which were included in the payment for the 400,666-pounds voucher or claim, and the verdict in this case was based on this fact, and not on any evidence that the Government had paid him for all the corn which the evidence showed that he had delivered to the United States at Fort Harker.

The undersigned further say that there was evidence admitted by the Government tending to prove that Mitchell delivered the entire amount hereinbefore specified, to wit, 792,000 pounds, the evidence showing payment for 400,666 pounds, and if the difference between these two amounts has not been paid for we believe, under the evidence, that Mitchell has yet a just claim for that amount. We desire to be understood plainly in our statements that the result of the trial came from the fact that the claim was for vouchers already paid, and not from the fact that the Government was not indebted to him, for we believe, as before stated, that the evidence shows the Government indebted to Mitchell for the difference between 792,000 pounds and 400,666 pounds, which would be 391,334 pounds, less 48,657, which was shown to have been paid in the oats contract and voucher. This would leave the net difference 342,677 pounds, and for this amount, to wit, 342,677 pounds of corn Mitchell has, according to the evidence, a valid claim against the Government. There was no evidence introduced on the trial tending to show any payment to Mitchell for this amount. Whether it has been paid or not the undersigned do not pretend to know or say; but if not paid, Mitchell, according to the evidence, is entitled to payment therefor. Again, we desire to say, to avoid misunderstanding, that the jury did not decide by their verdict that Mitchell had no just claim against the Government, but only that he was not entitled to payment for the items specified in his voucher, and for the presentation of which he had doubtless violated the law.

C. REASONER,
Foreman Jury.
JOHN H. STRINGFELLOW.

Subscribed in my presence and sworn to before me by C. Reasoner and John H. Stringfellow this 3d day of May, A. D. 1876.

[SEAL.]

J. S. BERRY,
Notary Public.

(Counsel for the Government objects to the answer to question 12 because the evidence therein is illegal, incompetent, hearsay, and irrelevant.)

Question 13. Now I'll get you to state if you made an affidavit on the 9th day of December, 1876.

Answer. Yes.

Question 14. I'll get you to state the contents of that affidavit.

(Counsel for the Government objects to question 14 because it is illegal, irrelevant, and asking him to state the contents of a document that is not before him.)

Answer. The said affidavit is printed in what purports to be a copy of the printed evidence in this case on page 92, and is in the words and figures following, to wit, which I believe to be the exact language used by me in said affidavit:

STATE OF KANSAS, *Leavenworth County, ss:*

We, the undersigned, do make oath and say that we were jurors in the trial of the case of the United States against David H. Mitchell, tried before the district court of the United States for the district of Kansas, for the April term, 1876; that since the said trial we have read the papers duly certified to by Lot M. Morrill, Secretary of the Treasury of the United States, dated 27th day of July, 1876, with the seal attached, and say had the same been produced and read on the trial of said cause we would have given a different verdict, and we would have found the defendant not guilty. We give this statement freely and cheerfully, with a view that Mr. Mitchell may obtain Executive clemency from the President of the United States, which he is justly entitled to.

JOHN H. STRINGFELLOW, M. D.

Subscribed and sworn to before me this 9th day of December, A. D. 1876.

[SEAL.]

PETER S. NOBLE,
Notary Public.

Question 15. I see here in your affidavit of November 9, 1876, you stated, after the trial, after seeing papers certified to by Lot M. Morrill, Secretary of the Treasury of the United States, dated July 27, 1876, with the seal attached, you state that had the same been produced on the day of the trial you would have given a different verdict, and found the defendant not guilty. I'll get you to state what there was in that certified paper, certified to by Morrill, Secretary of the Treasury, that caused you to change your opinion.

(Objected to by counsel for the Government because the evidence sought is illegal, is not applicable to any issue involved in this case, and is wholly irrelevant to the points at issue between the parties.)

Answer. I hardly know how to answer that question. I have not seen those papers from that day to this, and I can only suppose that the papers alluded to in that affidavit contained some facts in connection with the delivery of grain by Mitchell at Fort Harker that tended to show or did show that the voucher alleged to be fraudulent and upon which he was convicted was for a valid delivery of grain not accounted for by the quartermaster.

Question 16. After looking over all reports and telegrams from Major Inman to General Easton, chief quartermaster of the Department of the Mississippi, if you would give much credit to Henry Inman's private books of purchase that was introduced at trial as evidence.

(Objected to by counsel for the Government because it is uncertain and indefinite, and also irrelevant and incompetent evidence.)

Answer. I will answer by stating that at the trial, and subsequently from reading Major Inman's deposition touching this case, that during the time when this corn was being delivered, from November, 1868, to February, 1869, inclusive, the officers in charge of the Government depot at Fort Harker being changed very frequently, Major Inman being absent in the field with General Sheridan, the books were so loosely kept as to have been entirely unreliable as evidence, as was shown by the testimony in the case at the trial, and subsequently by Major Inman's affidavit.

Being cross-examined by SILAS WOODSON, counsel for the Government, the witness says:

(Not having time to complete the taking of the evidence, an account of the close of the day, the further taking of this deposition was continued to February 9, 1882, at nine o'clock a. m.)

[SEAL.]

JOHN M. STEWART,
Notary Public.

FEBRUARY 9, 1882.

Met pursuant to adjournment. The cross-examination of John H. Stringfellow, witness, being commenced on the part of Silas Woodson, counsel for the Government, the witness says:

Question 1. State if the claimant, D. H. Mitchell, to your personal knowledge, ever delivered any corn or oats, in November and December, 1868, and January and February, 1869, for the benefit of the Army of the United States at Fort Harker or elsewhere.

Answer. I never saw any such delivery personally.

Question 2. In your deposition yesterday, upon your examination-in-chief, when you spoke of corn having been delivered by him, did you or not speak from information derived from others, and not from personal knowledge?

Answer. I spoke from facts testified to by witnesses in the case of the Government against Mitchell at the April term of the United States district court, held at Topeka in 1876, for presenting a fraudulent claim against the United States, I being one of the jurors in the case, and not from any personal knowledge that I had from the facts in the case.

Question 3. Were you at Fort Harker in the fall or winter of 1868, or winter or spring of 1869?

Answer. I was not.

Question 4. When you spoke yesterday in your examination-in-chief of the frequent change in officers in the United States Army at Fort Harker, and the manner in which the books were kept there by Acting Quartermaster Major Inman and others, did you speak from personal knowledge or information derived from others?

Answer. I spoke from the testimony of Major Inman himself and other employes of the Government at that post during said time given in the trial at Topeka, above referred to, and not from personal knowledge.

Question 5. Did you have any conversation with Major Inman, or any other officer stationed at Fort Harker, respecting the corn claimed to have been delivered by Mitchell to the Government at Fort Harker? If so, state when and where and what was said.

Answer. I never had any conversation with any officer of the Government in connection with this matter, unless it was as a juror when questioning the said persons upon the trial against said Mitchell. To the best of my recollection, I never spoke to any officer of the Government on this subject outside of the trial; all that I heard was in open court on the trial above referred to. And further this deponent saith not. Second general interrogatory by the notary public. Do you know of any other matter relative to the claim in question? If so you do, state it.

Answer to second general interrogatory by the notary public. I do not.

JOHN H. STRINGFELLOW.

Subscribed and sworn to before me this 9th day of February, 1882.

[SEAL.]

JOHN M. STEWART,
Notary Public.

Deposition of H. Wingfield, for claimant, taken at Lawrence, Kans., on the 27th day of January, A. D. 1882.

Claimant appeared on his own behalf; defendants' counsel, John Hutchins.

H. WINGFIELD, being duly sworn, deposes as follows:

Question 1. Please to state your name, your occupation, your age, your place of residence the past year; whether you have any, and, if any, what, interest direct or indirect in the claim which is the subject of inquiry, and whether and in what degree you are related to the claimant.

Answer. My name is O. H. Wingfield; my age is forty-four; occupation, a laborer; my place of residence is Williamstown, Kans.; I have no interest in this claim; I am not related in any degree to the claimant.

Being interrogated by claimant, witness says:

Question 2. State where you lived in the fall and spring and winter of 1868 and 1869.

Answer. I lived in Williamstown, Kans.

Question 3. State what you were engaged in at that time.

Answer. Shelling corn.

Question 4. For whom were you shelling corn?

Answer. For this claimant.

Question 5. What did you get per bushel for shelling corn that winter?

(Objected by defendant on the ground that it is immaterial and incompetent, not tending to prove the value of the corn.)

Answer. I shelled and loaded for 4½ cents per bushel.

Question 6. State, if you know, about how many sacks of corn were put in a car.

Answer. I think about 175 to the car.

Question 7. State about the average weight of the sacks.

Answer. We calculated to get in about 2½ bushels to the sack. I couldn't say whether I did or not, but that was what I got pay for.

Question 7½. To the best of your recollection, do you think the sacks would have averaged 2½ bushels to the sack?

(Objected to by counsel for defendant on the ground that the witness should be required to give his knowledge, and not what he thinks.)

Answer. I expect they would; I think so.

Question 8. I would ask you, Mr. Wingfield, if we did not weigh, to start out with, some of those sacks?

Answer. We did.

Question 9. I want you to state if I did not pay you about the average weight of the sacks that we weighed?

(Objected to by the counsel for defendant on the ground that the answer sought is immaterial and irrelevant.)

Answer. Well, I stated before I was paid for 2½ bushels to the sack.

Question 10. Did you get pay for about what the average weight of the sacks was that we weighed?

(Objected to by counsel for defendant as immaterial and irrelevant; it makes no difference what the witness was paid for his services. Such evidence is incompetent as even tending to prove either the quantity or value of the corn.)

Answer. Yes, sir; what sacks we weighed then averaged about 2½ bushels to the sack, and he afterward paid me at that rate.

Question 11. You may state what I paid for corn there that winter, if you know, per bushel.

(Objected to by defendants' counsel as immaterial and incompetent, the market value should be given, and not what the defendant paid.)

Answer. Well, from 75 to 77½ per bushel is what the men said they got.

Question 12. State if that was as cheap as corn could be bought at that time and place in any quantity.

(Objected to as immaterial and incompetent.)

Answer. That was what it was bought at at that place. I can say nothing more about the price.

Question 13. I would ask you if you did not see my clerks pay for corn up there that winter at the rate of from 75 cents to 77½ cents per bushel in the ear?

(Objected to by defendant's counsel: First, because it is a leading question; second, because it calls for immaterial and irrelevant testimony; third, because the testimony called for is incompetent to prove the value of corn, the actual market value should be given.)

Answer. I see them pay money for corn, they said, at the rates of 75 cents and 77½ cents per bushel.

Question 14. I see the papers reported corn sold in Lawrence during that winter of 1868 and '69 for less money than what I paid up there. State, if you know, whether there were any buyers for any quantity of corn buying corn in Lawrence during that time.

(Objected to by counsel for the defendant on the ground that the inquiry is wholly immaterial.)

Answer. I do not know whether there was or not.

Question 15. State, if you know, if a man had been here and was compelled to have a large amount of corn on short notice if he could have got it for any less than what it sold for at Williamstown?

(Objected to by counsel for defendant as immaterial and irrelevant; the evidence called for is incompetent, not tending to prove value.)

Answer. I wouldn't have supposed he could.

Being cross-examined by JOHN HUTCHINGS, on behalf of the United States, witness says:

Question 16. Where do you now reside?

Answer. Williamstown, Kans.

Question 17. How far is Williamstown from Lawrence?

Answer. Ten miles, I believe, from Lawrence.

Question 18. Have you resided in Williamstown ever since 1868 and '69?

Answer. No, sir; not all the time.

Question 19. What business were you engaged in in the winter of 1868 and '69 besides shelling corn for claimant?

Answer. I was working around at daily labor until I commenced that job.

Question 20. All the shelling you did was for the claimant, Mr. Mitchell, was it not?

(Objected to by claimant as immaterial whether he shelled for any one else or not.)

Answer. Yes, sir.

Question 21. How long were you shelling?

Answer. About four months; four or five months.

Question 22. All you know about what was paid for the corn was what Mr. Mitchell's clerks told you, was it not?

Answer. Well, what them and the men that sold told me.

Question 23. You had no other information except what you got from them?

Answer. No.

Question 24. You bought none of the corn, did you?

Answer. No, sir.

Question 25. How was the corn that was purchased there brought in ?

Answer. Brought in by wagon in the ear.

Question 26. Was it bought by weight ?

Answer. Yes, sir ; it was weighed in the wagon.

Question 27. Do you know how many pounds were counted as a bushel of your own knowledge ?

Answer. All I know is from what corn would weigh ; they said they got so much per bushel, and weighed it.

Question 28. You don't know when they figured up the weight how many pounds were counted as a bushel, do you ?

Answer. I never took any notice.

Question 29. You say that some of the sacks were weighed after they were filled with corn ?

Answer. Yes, sir.

Question 30. Who weighed them ?

Answer. Myself and one of the clerks.

Question 31. Who took the weight from the scale ?

Answer. The clerk.

Question 32. How many sacks did you weigh ?

Answer. Nine ; three at a time.

Question 33. Were those all that you ever helped weigh out of the whole lot ?

Answer. Yes, sir.

Question 34. Did you know of any others being weighed at that place ?

Answer. No, sir.

Question 35. Who figured up the number of pounds in the weight of these nine sacks ?

Answer. The clerk figured and I watched him.

Question 36. Did you keep any memorandum of the weight of those sacks ?

Answer. I kept none no more than in my head, and shelled the balance accordingly.

Question 37. What do you mean by shelling the balance accordingly ?

Answer. That I averaged the balance by what they weighed.

Question 38. Do you know where Fort Harker is ?

(Objected to by claimant as immaterial.)

Answer. I have never been there ; I have an idea where it is.

Question 39. What direction is it from Williamstown where you shelled the corn ?

Answer. West ; I suppose that was the way the trains was headed and went out.

Question 40. Is Fort Harker nearer to Williamstown than it is to Lawrence ?

Answer. Yes, sir ; about 10 miles.

Question 41. What railroad is Fort Harker on ?

Answer. Kansas Pacific ; now called the Union Pacific.

Question 42. Lawrence and Williamstown are both on the same road, are they not ?

Answer. Yes, sir.

Question 43. You stated that you thought the number of sacks put in a car to be about 175. Did you keep any memorandum of the number of sacks loaded in each car ?

Answer. I kept none, only in my head.

Question 44. Who helped load these cars ?

Answer. Different ones I had hired.

Question 45. Did you hire the men to help load the corn ?

Answer. Yes, sir.

Question 46. Did you always help load every car ?

Answer. Yes, sir.

Question 47. How many men did you have hired ?

Answer. I generally had about three men and a boy.

Question 48. Did they frequently load sacks into the car while you were doing something else ?

Answer. No, sir.

Being interrogated by claimant, witness says :

Question 50. You stated that you and the clerk weighed 9 sacks of corn in the start. Do you think that those 9 sacks were a fair average of all the sacks that you shelled and shipped that winter to Fort Harker for claimant ?

(Objected to by counsel for defendant as immaterial and incompetent.)

Answer. I think they were a fair average.

Question 51. You stated that you and the clerk weighed those 9 sacks, and the clerk figured the weight of them, and that you looked on and saw him figure the weight of the sacks. Did the clerk figure correctly ?

After an adjournment of an hour the witness replied to the last above question.

(Objected to by defendant's counsel as immaterial.)

Answer. Yes, sir.

Question 52. The balance of the corn that you shelled and sacked that was consigned

to the quartermaster at Fort Harker would have averaged as much as the nine sacks that were weighed by you and the clerk, would it not?

(Objected to by defendant's attorney, because the question calls for mere opinion of the witness as to the weight of the corn; he has already stated that he did not weigh it.)

Answer. We supposed so, we took it that way, as I said before.

Question 53. I would ask you, then, if the sacks that were shipped after the weighing of the nine sacks were as large as the nine sacks that you weighed, and if they were as well filled as the nine sacks.

Answer. They were as large and as well filled.

Being re-cross-examined by JOHN HUTCHINGS for the United States, witness says:

Question 54. How do you know that the clerk figured up the weight of the nine sacks correctly?

Answer. I watched him figure.

Question 55. Did you figure it all over after him?

Answer. No, sir; I didn't take a pencil and figure.

Question 56. In what months was that corn principally brought in there?

Answer. I think they began to bring it in about November, and continued till the first of March.

Question 57. When was the most of it brought in?

Answer. I had all I could shell the most of the time; the largest portion was brought in the first two months.

Question by the officer. Do you know of any other matter relative to the claim in question?

Answer. No, sir.

his
O. H. + WINGFIELD.
mark

Witnessed by—

GEO. J. BARKER.

Subscribed and sworn to before me this 27th day of January, A. D. 1882.

[SEAL.]

SOLON T. WILLIAMS,
Notary Public.

Deposition of George A. Ege, for claimant, taken at Topeka, Kans., on the 25th day of January, A. D. 1882.

Claimant appeared in his own behalf; defendant's counsel, Charles B. Smith.

GEORGE A. EGE, having been produced as a witness on behalf of the claimant, was by me sworn, before any question was put to him, to tell the truth, the whole truth, and nothing but the truth, in relation to the said cause; and thereupon deposed and said that his name is George A. Ege; that his occupation is that of a clerk; that he is thirty-nine years of age; that his place of residence is Topeka, Kans.; that he has no interest, direct, or indirect in the claim which is the subject of inquiry in said cause; and that he is not related to the claimant.

And thereupon the said George A. Ege was examined by the claimant, and in answer to interrogatories testified as follows:

Question 1. State, Mr. Ege, where you were during the winter of 1868 and '69, and the spring of 1869.

Answer. At Fort Harker, Kans.

Question 2. State what you were engaged in at Fort Harker during that time.

Answer. Agent for the Kansas Pacific Railroad.

Question 3. You may state what your duties were while you were there.

(Objected to by counsel for United States as incompetent, irrelevant, and immaterial.)

Answer. General duties of freight and ticket agent for the corporation.

Question 4. State if it was your duty to inform the officers at Fort Harker when there was a car-load of grain received there for the Government.

(Objected to by counsel for United States, same reason as above.)

Answer. It was.

Question 5. Did you so inform the officers when there was grain received?

(Objected to by counsel for United States, same reason as above.)

Answer. Yes, sir.

Question 6. You may state, Mr. Ege, if the officers of the Government did receive the grain received consigned to the quartermaster.

(Objected to by counsel for United States, same as above.)

Answer. They did.

Question 7. You may state, Mr. Ege, if you know, how many acting quartermasters there were at Fort Harker during the winter of 1868 and '69 and the spring of 1869.

Answer. I do not recollect.

Question 8. I would ask you, Mr. Ege, if you recollect if there were more than one ?

Answer. There was.

Question 9. I will get you to state, if you know, in what manner the business was conducted on the part of the Government at Fort Harker during that time.

(Objected to by counsel for the United States as incompetent, irrelevant, and immaterial.)

Answer. I do, as far as the receipt and delivery of freight was concerned. Upon receipt of freight from the Government it was the rule of the company to notify the quartermaster, through his receiving and shipping clerk, of the arrival of such freight; the shipping clerk then received the freight on the part of the Government, and sent it to the destination ordered by the quartermaster; in some cases it was directed to the forage yard, and in others he would load it directly into wagons to be transported to distant posts or forts; in some cases the freight was not unloaded at Fort Harker, but would be reshipped to points west on the line of the road.

Question 10. I will get you to state if there was not teams sent to the cars and loaded up with grain to be sent to other points and not go to the forage yards to be weighed.

(Objected to by counsel for the United States as leading.)

Answer. My recollection is there was grain loaded for shipment by wagons to frontier posts without having been weighed at the forage yard.

Question 11. I would like you, Mr. Ege, to state in what manner the Government officials conducted their business at Fort Harker during the winter of 1868 and '69.

(Objected to by counsel for the United States as irrelevant, incompetent, and immaterial.)

Answer. I can not give a detailed statement.

Question 12. State, if you know from your knowledge, if the business was conducted in a proper or loose manner.

(Objected to by counsel for the United States for reasons as above.)

Answer. I should judge in a rather loose manner.

Question 13. I will ask you, Mr. Ege, if all the cars shipped to Fort Harker during the time you were there weighed exactly 18,000 pounds ?

Answer. Eighteen thousand pounds was the usual billing weight, but in most all cases the actual weight was in excess of that weight.

Question 14. The bills show just so many sacks to the car. State if that represents the exact number of sacks in a car.

Answer. Not in all cases.

Question 15. State, Mr. Ege, if you know, how often the general freight office of the Union Pacific or the Kansas Pacific then has been moved up to the present time.

Answer. It has been moved twice; from Lawrence to Kansas City, and from Kansas City to Omaha.

General question. State if you know of any other matter relative to the claim in question; and, if you do, state it.

Answer. I do not.

GEO. A. EGE.

I, W. A. S. Bird, a notary public in and for Shawnee County, Kansas, certify that at the time and place aforesaid George A. Ege, a witness on behalf of the claimant in the above-entitled cause, was by me sworn, before any question was put to him, to tell the truth, the whole truth, and nothing but the truth relative to said cause, and that his answers were taken down in my presence and his deposition as above set forth was read over to and signed by him before me at the time and place aforesaid.

In witness whereof I have hereunto set my hand and notarial seal this 25th day of January, A. D. 1882.

[SEAL.]

W. A. S. BIRD,
Notary Public.

Deposition of Col. Henry Inman, for claimant, taken at Topeka, Kans., on the 5th day of December, A. D. 1881.

Claimant's counsel, A. B. Jetmore; defendant's counsel, R. A. Orbison.

HENRY INMAN, having been produced as a witness on behalf of the claimant, was by me duly sworn, before any question was put to him, to tell the truth, the whole truth, and nothing but the truth, relative to the said cause; and thereupon deposed and said that his name is Henry Inman; that his occupation is that of a journalist;

that he is forty-four years of age; that his place of residence is Ellsworth, Kans.; that he has no interest, direct or indirect, in the claim which is the subject of inquiry in said cause, and that he is not related to the claimant. And thereupon the said Henry Inman was examined by the counsel for the claimant and, in answer to interrogatories, testified as follows:

Question 1. State what position you held on April 2, 1869, in the Army of the United States, and, if an officer, how long you held the office, and when it terminated.

Answer. I was captain and assistant quartermaster in the United States Army, and held said position from March, 1864. I was stationed at Fort Harker, Kans., and left there in May or June, 1869, I think.

Question 2. State when you went to Fort Harker.

Answer. I took charge at Fort Harker about September 15, 1867.

Question 3. State if you wrote a letter of date April 2, 1869 (a copy of which is marked Exhibit A and presented to witness), and made a part of this deposition.

Answer. To the best of my recollection, I did.

Question 4. State if you wrote letter of date April 19, 1869 (a copy of which is marked Exhibit B and presented to witness), and made a part of this deposition.

Answer. To the best of my recollection, I did.

Question 5. State if you wrote letter of date April 29, 1869 (a copy of which is marked Exhibit C and presented to witness), and made a part of this deposition.

Answer. To the best of my recollection, I did.

Question 6. State if you wrote letter of date April 17, 1869 (a copy of which is marked Exhibit D and presented to witness), and made a part of this deposition.

Answer. To the best of my recollection, I did.

Question 7. State if you were absent from the fort during the time so stationed there; and, if so, when and how long?

Answer. I was absent in the field with General Sheridan from about October 20, 1868, to about the 1st of April, 1869, in service against the hostile Indians.

Question 8. State whether or not during the time you were stationed at Fort Harker, D. H. Mitchell, the claimant, furnished the Government corn and oats, and if so, state all you know about the same.

Answer. D. H. Mitchell and others frequently furnished corn and oats as Government contractors. To the best of my recollection and belief, on the 9th day of November, 1868, and from a copy of my affidavit of date July 7, 1876, which is now before me, which I believe to be correct, the data for which were taken from the data in my purchase book, the said Mitchell entered into a contract to furnish the Government 16,000 bushels of oats at 87 cents per bushel, but as I was informed and believe—[Counsel of the United States objects to the witness giving any hearsay testimony]—the said Mitchell could not and did not, in consequence of the condition of the roads, furnish the oats as rapidly as the exigencies of the Government demanded. Therefore, Lieut. L. Wesley Cook, who was acting for me during my absence in the quartermaster's department, permitted said Mitchell to fill his oat contract with corn, and was to receive for pay the same rate per pound that he was getting for oats, and it appears from my purchase book that he did at the following dates, namely, December 31, 1868, January 21, 1869, February 27, 1869, 400,666 pounds of corn. The receipt for this delivery was given to Mr. Mitchell by Green Thompson, who was forage-master at Harker at the time, from which receipt a voucher was given to Mr. Mitchell for 352,009 pounds of corn. The balance of 48,657 pounds, which made up the aggregate of 400,666 pounds, was deducted, having been paid for, leaving a balance of 352,009 pounds, said Mitchell having been paid for said amount of 48,657 pounds by Captain Thomas, of Washington, as I am informed.

Question 9. When you speak of having been informed, in your last answer, as to the amount of corn furnished by claimant, state from whom you received that information.

Answer. From Lieutenant Cook, who acted for me, from the forage-master's report, from the chief clerk, from the reports of the shipping clerks, and from the reports of the clerks in charge of the property department.

Question 10. State whether or not you kept a purchase book, a private memorandum, in which you keep the receipt of grain of your department.

Answer. I did. What I mean by private book is one which was not required by the Government, as only the official blanks furnished by the various departments are the required official papers kept for the Government. This book, however, together with many other books, so-called private, was subject to inspection by the proper officers of the Government.

Question 11. State whether or not that purchase book was kept up for you during your absence, and if not, what you did on your return by way of perfecting the same?

Answer. I think it was not, but was made up after my return, from memoranda in the office which had aggregated in my absence.

Question 12. State whether or not that purchase book, of your own knowledge,

contained the deliveries of all the corn and oats furnished from time to time by the claimant to the Government in your department.

Answer. Substantially correct up to the time of my departure; after that I know nothing about it, positively.

Question 13. In your answer to your eighth question, you state that the claimant Mitchell furnished the Government in December, January, and February the aggregate amount of 400,666 pounds of corn; do you know from your own knowledge that is the total amount that the claimant furnished the Government on his contract of November 9, 1868.

Answer. I don't know; I don't know anything about it. I was not there.

Question 14. State what was the condition of the official papers in your department on your return to Fort Harker on the 1st of April, 1869, and how many officers were concerned in keeping the same in your absence.

Answer. They were partly made up and partly not. Three officers, I think, acted during my absence. Condition of papers was very much mixed; they were not kept as they should have been, and not as they would have been had I been at the post.

Question 15. State what was the condition of the accounts in your department on your return with reference to irregularities and negligence, and whether or not that they were satisfactorily regulated and arranged.

Answer. On my return I found that gross irregularities had obtained in my whole department, and negligence seemed to have been the rule. The papers were made up from memoranda in the office; I don't know whether they were positively correct or not, they were not satisfactory to me.

Question 16. State whether or not you know of any grain being on hand on your return or having been delivered in your absence to your department, the names of the deliverers unknown, and which had not been settled for by the Government.

Answer. I think there was—it was a large amount. I have an impression that it was.

[At this point the taking of this deposition was, by consent of the parties, adjourned, to be continued at 1.15 o'clock p. m. at the same place.]

Question 17. State if you were acquainted with Donald McIntosh in March, 1869; and, if so, state what official position he held, if any, at Fort Harker, Kansas.

Answer. He was lieutenant in the Seventh United States Cavalry, and acting for me as depot quartermaster at that date, having relieved Lieutenant Cook temporarily or permanently, I don't know which.

Question 18. Now, in a telegram of March, 1869, to General L. C. Easton, dated at Fort Harker, March 9, 1869, said McIntosh informed said Easton that the claimant Mitchell had shipped eight car-loads of oats and three of corn, and asking for information what he should do with the same, of which the following is a true copy, which is marked Exhibit E, and presented to the witness: State if any portion of the grain named in said telegram was included in the amount of corn furnished by said Mitchell of dates December the 31st, 1868, January 21, 1869, February 27, 1869, of a total amount 400,666 pounds of corn, was included in said amount.

Answer. I don't know—inferentially (which is only an opinion), based upon the fact that the telegram is dated subsequent to the alleged reception of the 400,666 pounds of corn, that it was not included in the same.

Question 19. State if the accounts in your department were correctly kept, and the date of that telegram is true; if any portion of the grain referred to in said telegram was included in the 400,666 pounds by you testified to.

Answer. If the accounts were correctly kept, and the 400,666 pounds of corn was received on the date specified, and the corn was received to which the telegram refers, it was not included in the 400,666 pounds.

Question 20. State if you were at Fort Harker on the 17th day of April, 1869.

Answer. I think I was.

Question 21. In speaking of the 400,666 pounds of corn having been delivered to the Government by the claimant, you stated that 48,657 pounds thereof was considered as oats and taken in lieu thereof; state if you have any personal knowledge of that fact.

Answer. I have none. I was absent when it is alleged to have occurred.

Question 22. I see from the report of R. Saxton, of date November 19, 1877, and the abstract filed therewith, that he finds from your report, for the month of January, 1869, that you credit the claimant Mitchell with 283,221 pounds of corn; now, state what was the true amount by you reported for said month.

(Objected to by counsel of United States, for the reason that the abstract referred to does not show the fact as stated in the question.)

Answer. From a paper which I hold in my hand, purporting to be voucher No. 14 to Abstract N to the property report for the month of January, 1869, there appears to have been 349,744 pounds of corn received from D. H. Mitchell, in lieu of oats, on a contract for the delivery of 16,000 bushels of oats.

(Instrument referred to by witness marked Exhibit F, and made a part of this deposition.)

Question 23. Mr. R. Saxton, in his report of date November 19, 1877, used the following language in reference to your making affidavit for the claimant; "Mention in this connection may be made of the fact that Captain Inman acknowledged in court of having been paid by Mitchell to make an affidavit in support of his claim (for the presentation of which Mitchell was on trial); and I should hesitate for this reason to give much credence to his affidavit, which is attached to this claim." Now, sir, state, in connection with that, whether or not, ever Mr. Mitchell paid, or attempted to pay, you to make said affidavit in any other way than what the facts warranted.

Answer. It is as false as it is malicious in the sense which General Saxton intends to convey.

Question 24. Judge-Advocate Henry Goodfellow, in his communication of date January 18, 1876, referring to an investigation had by the Quartermaster-General of date December 17, 1875, claims that in the said report made by said Quartermaster-General uses the following language: "Captain Inman informs this office, through Mr. Sprigg, that he would not have made his affidavit of December 29, 1874, which is among these papers, had he known that Mr. Mitchell had been paid for this corn; at the time of making said affidavit he was totally unaware that Mitchell had ever been paid anything for it." Now, state if you ever authorized, through Mr. Sprigg or otherwise, any such statement, or ever made any such statement.

Answer. There appears to have been an investigation by the Quartermaster's Department, at which I was not present, in some correspondence between the department and Mr. Sprigg. I did not make that statement to Mr. Sprigg; and if at any subsequent time to Mr. Mitchell's trial I should have been asked, I could have made the same answer. I made the affidavit from the books upon the theory that the claim had not been paid, whereas Mr. Mitchell's trial developed that Mr. Mitchell had received payment, and then I stated to Mr. Sprigg that if I had known it at the time I would not have made it.

Question 25. From your last answer, state whether or not we are to understand that you mean that there is nothing due the claimant Mitchell from the Government for grain furnished?

Answer. I do not say that; I do not know; there may be and there may not.

The said witness was then cross-examined by the counsel for the United States, and in answer to cross-interrogatories testifies as follows:

Cross-question 1. On what railroad is Fort Harker situate?

Answer. On the Kansas branch of the Union Pacific (formerly known as the Kansas Pacific).

Cross-question 2. How far is it from Lawrence?

Answer. About 183 miles.

Cross-question 3. Prior to October 20, 1868, did claimant have any contracts for furnishing corn or oats at Fort Harker?

Answer. I believe he had.

Cross-question 4. Were you acquainted with claimant prior to October 2, 1868; and, if so, how long?

Answer. I presume I made his acquaintance the first time a little more than a year prior to that date.

Cross-question 5. From the time you became acquainted with claimant until June, 1869, were your relations with him friendly?

Answer. I presume they were, as with other contractors.

Cross-question 6. In your answer to question No. 8 of your direct examination, did you make your statement from your recollection or from the copy of your affidavit of 7th of July, 1876, handed you by claimant's attorney.

Answer. Wholly from the said affidavit, presupposing that it was a true copy of my affidavit, sworn to at said date, which I know to be correct, having been taken from my books, provided said books were correct, or, in other words, made from my predecessors and clerks at Fort Harker, presented to me as a correct record.

Cross-question 7. Had you personal knowledge of any arrangement made by Lieutenant Cook with claimant to take corn instead of oats?

Answer. No absolute, positive, personal knowledge.

Cross-question 8. If there was any such arrangement made, was it not made when you were absent from Fort Harker and in the field?

Answer. Yes, sir.

Cross-question 9. State what usual proceedings were had by the forage masters and your clerks upon the receipt of grain from contractors.

Answer. There was a thorough system of checks and counterchecks, and the method of procedure of forage was as follows: The corn or oats or other grain were received by the receiving clerk at the depot, weighed, transported by wagons to the office of the forage master, where it was again weighed and stored, and every morning reports were made from both offices to my office, entered into books and verified, and was only fed out or delivered for transportation to other posts upon a proper requisition, the order of the issuance of which was signed by me,

Cross-question 10. When forage was received and weighed by the forage master, would he not give the contractor or his agent a receipt for the amount so received?

Answer. Yes.

Cross-question 11. When you returned from the field on the 1st of April, 1869, had not books or papers been kept by the acting assistant quartermaster who had charge during your absence showing the amounts of forage received from contractors?

Answer. Yes; after a fashion.

Cross-question 12. While you were absent in the field were not the monthly reports and the abstracts accompanying them for December, 1868, January and February, 1869, made up by the clerks and acting assistant quartermasters in charge?

Answer. No, sir; for the reason that the operations in the field and the business transacted at the fort were but one series of papers; the whole five months' report were made up after I returned from the field.

Cross-question 13. In your affidavit of July 7, 1876, found on pages 86, 87, 88, 89, 90, 91, of papers received from the War Department, you have an extract copy, on page 89, of your purchase book; please look at this copy and state when the entries from December 31, 1868, to March 3, 1869, were made.

Answer. Some of the entries referred to in the said purchase book were made during my absence, and others after my return; in another sense this book, so far as its dates and entries are concerned, was filled from memoranda to complete the record.

Cross-question 14. Were the memoranda which you referred to the reports of the forage master?

Answer. They were made up principally, so far as Fort Harker was concerned, from the morning reports of the forage master, if I recollect aright.

Cross-question 15. What three officers acted as quartermaster during your absence?

Answer. Lieutenants Cook and McIntosh, of the Third Infantry and Seventh Cavalry, respectively, and Captain Rogers, military storekeeper, U. S. A., I think.

Cross-question 16. You have stated that a large amount of corn was received at Fort Harker without invoice, from parties unknown, and unsettled for by the Government. When was this corn received?

Answer. It must have been received during my absence.

Cross-question 17. If it was received during your absence, did you account for it on your monthly return?

Answer. It was so accounted for.

Cross-question 18. If it was so accounted for, upon what abstract did you take it up?

Answer. Abstract N.

Cross-question 19. If such corn was received, would it not appear on your abstract N from October, 1868, to April, 1869?

Answer. It should appear there if ever accounted for.

Cross-question 20. Look at abstract N, from December, 1868, found on page 58 of papers received from the War Department, and voucher No. 4, on page preceding, and state if that does not show a large amount of corn received without invoice and credited in the vouchers to contractors.

Answer. In this instance it does.

Cross-question 21. Look at abstract N, for January, 1869, found on page 60 of papers received from the War Department, and voucher No. 4, on page preceding, and state if that does not show a large amount of corn received without invoice and credited in the voucher to claimant.

Answer. Yes, sir; to a larger amount than the other.

Cross-question 22. When was abstract N, for January, 1869, made up by you?

Answer. My judgment is that it was made up after April 1, 1869.

Cross-question 23. Look at abstract N, for February, 1869, on the page following that of January, 1869, and state when that abstract was made by you.

Answer. My judgment is that it was made after April 1, 1869.

Cross-question 24. Were the abstracts for those two months and the other months while you were in the field made up at the same time?

Answer. In refreshing my memory from papers handed to me as true copies, I think I am certain they were.

Cross-question 25. Look at copy of voucher No. 12, on page 91, annexed to your affidavit, July 7, 1876, and state whether or not you gave the original voucher to claimant; if so, when?

Answer. I did, and after April 1, 1869.

Cross-question 26. Where did you get the number of pounds of corn from, with the dates of purchase?

Answer. From my purchase book, based upon returns from the forage master, or receipts certified to by the forage master to the contractor.

Cross-question 27. Look at your abstracts N, for December, 1868, January and February, 1869, above referred to, and state how much corn is shown by them to have been delivered by claimant.

Answer. Three hundred and forty-nine thousand seven hundred and forty-four pounds.

Cross-question 28. How many pounds of corn did you give him credit with in your voucher for December, 1868, and January and February, 1869?

Answer. Three hundred and fifty-two thousand and nine pounds.

Cross-question 29. Can you account for the discrepancy between the 352,009 pounds, as contained in the voucher, and 349,744 pounds, as shown by abstract N, for January, 1869?

Answer. I can not now, except it may be a clerical error.

Cross-question 30. Look at the copy of extract from your purchase book, on page 89, annexed to copy of your affidavit of July 7, 1876, and state what corn, as is shown to have been received therein, was certified to Mitchell in voucher on page 91.

Answer. December 30, 41,870 pounds; January 30, 331,878 pounds, less 48,657 pounds need to fill out oat contract of November 9, making 283,221 pounds; February 27, 1869, 26,918 pounds.

At this point the taking of this deposition was, by consent of the parties, adjourned, to be continued at 7 o'clock p. m., at the same place.

Cross-question 31. Please explain the entry in your purchase book of January, 1869 D. H. Mitchell, 331,878 pounds of corn, less 48,657 pounds used to fill out contract of November 9; and why was the 48,657 pounds deducted?

Answer. Because it appears from the copy of what purports to be the official record of the controversy of Mitchell's claim that this 48,657 pounds had been paid for as oats by General Easton, all of which transaction, so far as the oats and corn is concerned, based upon the statement of Lieutenant Cook that he permitted Mr. Mitchell to turn in corn in lieu of oats.

Cross-question 32. At the time you gave claimant the voucher for the 352,009 pounds of corn, after April 1, 1869, did he claim that there was any amount due him for corn delivered which was not included in that voucher?

Answer. My recollection is that he was not perfectly satisfied at that time, but was not persistent in claiming a large amount until a long time after.

(Question and answer objected to by counsel for claimant as irrelevant and incompetent to cross-examination.)

Cross-question 33. At the time you gave that voucher did claimant produce receipts of the forage master showing that he had delivered more corn than the amount for which the voucher was given?

(Objected to by counsel for claimant as being incompetent and irrelevant to cross-examination.)

Answer. My impression is that he did not, because it would have been my duty to investigate it then and there. My impression is that he did not.

(Objected to by counsel for claimant to all that portion of the answer after the word "duty" in the answer, because it is not germane to the question.)

Cross-question 34. While you were stationed at Fort Harker, was it not customary for claimant, when he had contracts for forage, to ship to that point more forage than was necessary to fill his various contracts?

Answer. I can't say that it was a custom, but it was done several times by Mr. Mitchell and other contractors.

Cross-question 35. Did he ever ship corn to Fort Harker which you refused to receive?

Answer. There was a case of that kind once, but I don't know whether it was Mr. Mitchell or somebody else.

Cross-question 36. Did he not, on his contract of November 30, 1867, ship upwards of 100,000 pounds of corn in excess of his contract, a part of which was afterward transferred by him to Mr. H. L. Newman?

(Objected to by counsel for claimant as incompetent and irrelevant as cross-examination.)

Answer. It appears from what purports to be a copy of a letter written by myself to General Easton, dated April 26, 1869, that he did ship to Fort Harker upwards of 100,000 pounds of corn in excess of his contract; but a part of this was transferred by Mitchell to Newman, and at the commencement of Indian hostilities had stored at Fort Harker subject to his order, 54,776 pounds.

Cross-question 37. Was this 54,776 pounds of corn afterwards received from Mitchell and paid for?

(Objected to by counsel for claimant as incompetent and irrelevant cross-examination.)

Answer. It appears from what purports to be a record of the case that it was, and I now remember that it was received.

Cross-question 38. Had not this corn been lying at Fort Harker a long time prior to its reception by you?

(Same objection by claimant as above.)

Answer. About four months, if I recollect aright.

Cross-question 39. Look at a copy of a certified copy of your purchase book, pages 119, 120, and 121 of papers received from the War Department, and state what was the date of the purchase of the 54,776 pounds of corn.

(Objected to by counsel for claimant same as above.)

Answer. It appears to have been some time in December, 1868, but purchase book shows no date.

Cross-question 40. Did you give claimant a voucher for this corn?

(Objected to by claimant's counsel same as above.)

Answer. From the record it appears that I did.

Cross-question 41. Does it appear from the record that in the voucher which you gave for this corn another amount was included; if so, what additional amount was included?

(Objected to by claimant for the reasons as given above.)

Answer. Yes; 28,970 pounds.

Cross-question 42. Look at copy of certified copy of purchase book referred to above and state whether it shows a receipt of this 28,970 pounds; if so, what is the date of the purchase?

(Objected to by claimant as above.)

Answer. The copy purports a receipt; it does not appear from what purports to be a copy of a certified copy of the purchase book that there is any date noted; but upon what purports to be a certified copy of the voucher it is dated December 1, 1868.

Cross-question 43. Did the claimant get you to make an affidavit in support of his claim before the War Department on the 29th day of December, 1874?

Answer. I can't recollect the date, but I made such an affidavit for him.

Cross-question 44. Look at pages 25 and 28 of papers received from the War Department and state whether or not that is a copy of an affidavit made by you at that time.

(Objected to by claimant because of reasons above stated.)

Answer. It seems to be a correct copy as near as I can recollect.

Cross-question 45. State how you happened to make that affidavit.

(Objected to for reasons as above.)

Answer. Because Mr. Mitchell told me he had not been paid the amount that was due him for grain delivered at Fort Harker.

Cross-question 46. Had he told you that Captain Thomas had paid him on the 12th of January, 1870, \$8,943.44 for 400,666 pounds of corn, or 7,154 $\frac{1}{2}$ bushels, for corn accounted for on your property returns made while stationed at Fort Harker, would you have made that affidavit?

Answer. He told me that the Government had not paid him for grain delivered at Fort Harker, and upon that belief I gave him that affidavit. If I had known that Mr. Mitchell had already received the amount contemplated in the voucher to which my affidavit specifically refers, I would not have given him that affidavit.

Cross-question 46 $\frac{1}{2}$. Did you give claimant another affidavit on the 7th of July, 1876?

Answer. Yes.

Cross-question 47. Look at pages 86, 87, and 88 of papers received from the War Department, and state whether or not that is a copy of your affidavit.

Answer. I have stated that it appears to be correct.

Cross-question 48. In that affidavit you state that abstract M of one of your monthly reports of the spring of 1869 shows a large amount of corn paid out by the Government, and received from some person unknown to you; what is your recollection as to the time when that corn was received?

Answer. If received at all, it was received while I was in the field, prior to April 1, 1869. The facts stated in that affidavit are based purely upon my recollection, not having any written data of the same in my possession.

Cross-question 49. After your return from the field, on April 1, 1869, did you not prepare your monthly reports, with the abstracts accompanying them, from October, 1868, up to April 1, 1869, from data and memoranda kept by your clerks, and the acting assistant quartermasters who were in charge during your absence?

Answer. Yes; and also from data of operations in the field?

Cross-question 50. Will not the abstracts accompanying your reports from October, 1868 to April 1, 1869, show all the facts in relation to the receipt of forage of which you are cognizant of at the time they were made?

Answer. They do, or rather they should.

Cross-question 51. You have stated in your affidavit of July 7, 1876, the large amount of corn received of some person unknown would probably be found on your abstract N, for the month of April, 1869. If it should appear upon examination of that abstract that only 20,000 pounds were taken up during that month, would you, or not, say that your recollection was at fault when you made that affidavit?

Answer. If that should turn out to be the case, it would show that the error of

recollection was a grievous one, and the premises upon which my memory was based were wrong, unless the fact should appear on some other abstract; then it would be an error of date.

Cross-question 52. Do not the copies of abstracts N, for December, 1868, and January, 1869, show large amounts of corn received which are explained by the accompanying vouchers?

(Objected to by claimant's counsel as incompetent and irrelevant as a cross-examination and a repetition.)

Answer. Yes, sir; they do.

Cross-question 53. May not these abstracts contain the amounts of corn which you stated in your affidavits would probably be found on the abstract N, for April, 1869?

(Objected to for same reason as above.)

Answer. Within the domain of possibility, yes; but to probability, in my opinion, no.

Cross-question 54. From the fact that in making up your abstracts N, for December, 1868, January and February, 1869, that you returned the 349,744 pounds of corn in your abstract N, for January, while a copy of your purchase book shows that this amount was received during the months of December, January, and February, does it not seem probable that all corn received from Mitchell after December 1st, while you were in the field, was accounted for on the abstract N, for January?

Answer. I admit its possibility, but can not conscientiously say positively, without access and reference to my purchase book, or a true copy of the same, including all the periods covered by the time under discussion.

At this point the taking of this deposition was, by consent of the parties, adjourned to be continued at 9 o'clock a. m., on December 6, at the same place.

Deposition of Henry Inman resumed according to adjournment, at the time and place fixed, the same parties present as aforesaid.

Cross-question 55. State why the price of the corn was not inserted in the voucher given by you to claimant for the 352,009 pounds of corn?

Answer. Because the price was in controversy between myself and General Easton. As I had no authority to pay it, it was left an open question for those who did.

And thereupon said Henry Inman was re-examined by counsel for claimant.

Redirect question 1. In your answer to your tenth interrogatory on cross-examination you were asked the question by counsel "if the forage master did not give a receipt to contractors for forage furnished." Now, state if you have any knowledge of receipts given to Mr. Mitchell for the grain he furnished the Government.

Answer. It is impossible at this late date to state positively from personal knowledge all the little details in the routine of the business. I do now recollect that he did.

Redirect question 2. State if you know of your own knowledge of any receipts having been given to Mr. Mitchell for grain furnished by him to the Government during your absence in the field.

Answer. I am in utter ignorance of details of that character during my absence.

Redirect question 3. In your answer to the eleventh interrogatory on your cross-examination you were asked by counsel if you did not find on your return on the 1st of April, 1869, that books and papers had been kept during your absence showing amounts of forage received from contractors, and your answer was "Yes, after a fashion." Now, what do you mean by after a fashion?

Answer. I mean loosely, irregularly, and not with that discriminating care I should have exercised myself.

Redirect question 4. In your affidavit of date 7th day of July, 1876, you state that your accounts were kept so negligently and such irregularities occurred during your absence as to make it impossible for you ever to get them straightened up in any satisfactory manner, and that you could not then tell anywhere near how they do stand; that it is quite possible that said Mitchell may have furnished large amounts of corn that do not appear in said purchase book; that the memoranda and reports of the receipts of which, with weights, may have been lost or misplaced; and that you did not think said purchase book is entitled to credit as being proof that said Mitchell furnished no more corn than the amount therein shown. Now, state if that is still your opinion of the facts in the premises.

Answer. So far as possibility is implied in the question, I am of the same opinion, but it applies to other contractors as well as to Mr. Mitchell.

Redirect question 5. What do you say as to the irregularities in the accounts kept and in the purchase-book above referred to?

Answer. In this particular my opinion has not been changed one iota.

Redirect question 6. In your answers to interrogatories 13 and 14 on your cross-examination you stated that your purchase-book was made up from memoranda, which memoranda were made up from forage masters' report. Now, state if said reports constituted a part of the accounts and proceedings kept in your absence, referred to above in my question 4.

Answer. Yes; the whole time of my absence was included.

Redirect question 7. In your answer to interrogatory 26 in your cross-examination

you said, voucher No. 12, on page 91 of the papers of the War Department, that you gave the original to the claimant. Now, state what personal knowledge, if any, you have of the fact.

Answer. My memory of the occurrence at this time, the facts having been brought to my notice at the time of my first affidavit, and still further fortified by what purport to be true copies of the papers in the transaction in the records in this examination, are positive proof to my mind, as near as anything may be, and that my personal knowledge is complete.

Redirect question 8. State, as nearly as you can, the date that you issued said voucher No. 12, and whether it was so issued after April, 1869.

Answer. I can not state the date at all; but it was after April, 1869; in fact, after October 19, 1869.

Redirect question 9. In said voucher you recite, "purchased on contract November 9, 1868." State what you mean by that recitation, and whether there was a contract for corn of that date by Mitchell.

Answer. It was for corn received; while, in fact, said corn was delivered in lieu of oats, on a contract dated November 9, 1868, having been authorized by L. W. Cook, who acted for me in my absence.

Redirect question 10. Was said Mitchell present at the time, or did you send to him said voucher No. 12?

Answer. I sent it to him by mail.

Redirect question 11. In your answer to question 32 of your cross-examination, in referring to said voucher No. 12, in speaking of the claims of Mitchell against the Government, you said: "My recollection is that he was not perfectly satisfied at that time, but was not persistent in claiming a larger amount until a long time after." State what explanation you have to give of that answer.

Answer. When I answered that interrogatory yesterday I was strongly under the impression that the vouchers had been delivered to Mr. Mitchell before my departure from Harker, which was effected a few weeks after my return from the field, but to-day, in examining the record from the War Department, I find conclusively that the vouchers were not delivered to Mr. Mitchell until some six months after the date first impressed upon my mind; and at the date of the delivery of said voucher, and previous thereto, Mr. Mitchell became persistent for a larger amount than the voucher called for.

Redirect question 12. In your answer to question No. 55 of your cross-examination you say the reason you did not insert the price for the corn in said voucher No. 12, that there was a controversy between General Easton and yourself with reference to the price to be paid therefor; state the nature of that controversy.

Answer. It grew out of the fact that General Easton would not admit the legitimacy of the substitution of the corn for oats.

Redirect question 13. State whether or not said corn to be substituted for said oats would for the Government have suffered any injury or loss.

Answer. No injury whatever, in my judgment.

Redirect question 14. State how long you had served or been connected with the Quartermaster's Department of the Army.

Answer. At that time, more or less on duty in the Quartermaster's Department for fifteen years.

Redirect question 15. State whether or not this was the only instance where corn was taken in lieu of oats on contracts of this kind.

Answer. This was not an isolated instance; it had been done before and probably since.

Redirect question 16. From your examination of the abstract of the papers from the War Department, state whether or not, from the best of your judgment and belief, they contain full and complete copy of your purchase-book by you made up covering the time in which the claimant had been delivering grain to the department under your charge.

Answer. They do not.

Redirect question 17. State whether these abstracts, as submitted to you from the War Department, contained the record of any grain furnished by unknown parties, and not accounted for by the Government.

Answer. They do not, as a whole.

Redirect question 18. In your affidavit you state that you were present at the trial of the United States against David H. Mitchell at Topeka in April, 1876, and heard all the evidence in the case, and that after hearing the evidence and ascertaining the number of cars shipped by David H. Mitchell to said Harker during said time, and having thought the matter over since that, you were of the opinion that said Mitchell did furnish a large amount more of corn than the 400,666 pounds; now state what you have to state about that fact now.

(Objected to by counsel of the United States on the ground that counsel is asking for an opinion of witness.)

Answer. If at the present moment the same evidence in relation to this matter were presented to me as it was at that time and to the jury by the defense on that trial, without any controversion, I should be inclined to admit the possibility of the alleged fact.

Redirect question 19. In said affidavit you state that in your reports for the spring of 1869 there is shown a large amount of corn that was fed out by the Government and received from some person unknown to you; that you could not state the exact amount; that at the time you could not tell to whom it belonged, but that you had good reason to believe that it may have belonged to said Mitchell; the amount as you then remembered it was from \$600,000 to \$900,000 worth. Now, sir, state what you have to say about said facts.

Answer. At the time I made the affidavit under consideration, I was fully impressed from memory that the statements contained therein were true, and that my papers or records, upon examination, would bear out this statement; but upon reviewing the copies of the records from Washington I am staggered, because there is a paper contained therein that comports with my statements only partially, but destroys the main fact. The paper I refer to is voucher No. 4 to abstract N, of December, 1868. I am compelled, therefore, to state that this paper may have been true. The one upon which I based my belief, or that there may still exist a paper, not shown here, that does carry out the fact, and only an examination of the whole record will determine the truth of the matter.

At this point the taking of this deposition was, by consent of the parties, adjourned to meet at 1.30 o'clock p. m. at the same place.

Deposition of Henry Inman resumed according to adjournment at the time and place fixed; the same parties present as aforesaid.

The said witness was then recross-examined by counsel for the United States, and, in answer to interrogatories, testified as follows:

Recross-question 1. You stated in your affidavit July 7, 1876, that a forged receipt was given to claimant by Green Thompson, forage master at Fort Harker, for 400,666 pounds of corn delivered in December, 1868, and January and February, 1869. State whether or not that is a fact of your own knowledge.

Answer. I think I can state positively that it is.

Recross-question 2. Was not the voucher for the 352,009 made out by you in April, 1869?

Answer. Yes, sir; to the best of my recollection it was.

Recross-question 3. How do you know that it was made out in April, 1869?

Answer. My memory is refreshed by what purports to be a letter written by myself to General Easton, containing the fact embodied in the question.

Recross-question 4. What is the date of that letter?

Answer. April 17, 1869.

Recross-question 5. In that letter, what do you call the voucher?

Answer. "My certified account in duplicate No. 44."

Recross-question 6. Did you ever show claimant that voucher prior to leaving Fort Harker in the summer of 1869?

Answer. Of course. I can not state positively, but have no doubt that he did.

(Objected to by claimant's counsel as the opinion of witness.)

Recross-question 7. If claimant had furnished more than 400,666 pounds of corn during your absence in the field, would you not have reported the fact to General Easton on April 2, 1869, when you informed him of the receipt of the above amount?

(Objected to by counsel for claimant because the same is not relevant to recross-examination and is repetition.)

Answer. I can not state positively that I should have done so in that particular letter, because it was the custom to confine letters to one subject; this has only reference to November 9, 1868, but I think I should have done so in another.

Recross-question 8. Do you not know that at that time that claimant had no other contract for furnishing forage at Fort Harker, except that of November 9, for furnishing oats?

(Objected to by counsel for claimant for the reasons above given.)

Answer. I think the record will sustain that fact so far as the date of April 2 is concerned.

Recross-question 9. Do you say that it would not be a loss to the Government to pay the same price per pound for corn as for oats, making the cost of corn per bushel \$1.52 when corn could be bought for \$1.25?

Answer. As a question of simple mathematics it would, but when the practical results of an important Indian war is at stake money value does not enter as a factor. As a question of utility, it was better in the field than oats would have been for horses, in my judgment.

Question. Do you know of any other matter relative to the claim in question? and, if so, state it.

Answer. No.

HENRY INMAN.

Deposition of Sidney Clarke, for claimant, taken at Topeka, Kans., on the 5th day of December, A. D. 1881.

Claimant's counsel, A. B. Jutmore; defendant's counsel, R. A. Orbison.

The witness deposed that his name is Sidney Clarke; that his occupation is that of a lawyer; that he is forty-nine years of age; that his place of residence is Lawrence, Kans.; that he has no interest, direct or indirect, in the claim which is the subject of inquiry in said cause, and that he is not related to the claimant.

And thereupon the said Sidney Clarke was examined by the counsel for the claimant, and, in answer to interrogatories, testified as follows:

Question 1. State if you were present in Washington, D. C., in January, 1870, when the claimant, Mitchell, received payment from the Government for grain furnished at Fort Harker; and, if so, what did you do in the premises by way of securing said payment?

Answer. I was a member of Congress from Kansas in 1870. Some time in the latter part of December, 1869, or 1st of January, 1870, Mr. Mitchell came to Washington and called upon me, and asked me to assist him in collecting a claim which he held against the Government for supplying forage or grain at Fort Harker. He said to me in substance that some difference had arisen between the officers at the fort and General Easton in regard to prompt payment for the forage supplied, and that, as he was engaged in filling his various contracts he then had with the Government, he needed the money to carry out his obligations.

After consulting about the matter I went with him to the Secretary of War, and presented in his behalf a letter, of which the following is a copy:

UNITED STATES SENATE CHAMBER,
Washington, D. C., Jan. 6th, 1870

TO THE SEC'Y OF WAR:

In behalf of one of my constituents, Mr. D. H. Mitchell, of Leavenworth, Kansas, I have the honor to submit the following statement of facts, and to ask for your decision thereon: On the 19th of November, 1868, he made a contract with Gen'l B. C. Card, acting chief Q. M. at Fort Leavenworth, to furnish at Fort Harker 16,000 bushels of oats, as per contract herewith enclosed, marked A. After the delivery of about 111,000 lbs. of oats, the acting quartermaster at Fort Harker, Lt. Cook, signified his willingness to receive corn in lieu of oats on the aforesaid contract, and did receive 400,666 lbs., as shown by the receipt of the forage master, herewith enclosed, marked B, which was used by the Government at that post, and accounted for, as shown by letter of Quartermaster-General, marked C. The understanding with Lt. Cook was that he should receive the same number of lbs. of corn in lieu of the same number of lbs. of oats, and he did so. This would make the price of the corn \$1.52½ cents per bushel, which Mr. Mitchell now claims. It will be seen by a contract of the same date (marked D) that he was receiving \$1.69 cents per bushel for corn delivered at Fort Hayes, which is seventeen and one-quarter (17¼) cents more than the price claimed for the corn delivered at Harker, with only about 16 cents difference in the freight per bushel.

There is no question about the delivery of this corn, the number of pounds, and its use to the Government,

Mr. Mitchell asks to be paid \$1.52½ cents for the corn. Gen'l Easton offered to pay \$1.27 cents per bushel, which is much less than the cost of the same. I think Mr. Mitchell's claim is right, and I ask that you direct that he be paid. He has waited for his money for about one year, with loss of interest, while there is no complaint against him as a contractor, having furnished many supplies to the Government for the last five years. I earnestly urge prompt action in this case.

Respectfully, yours,

SIDNEY CLARKE, M. C.,
Kansas.

W. A. S. BIRD.

The Secretary took the matter under immediate consideration; referred the letter to the proper officers, and in the course of a few days the claim was paid in part, the rate being fixed at \$1.25 per bushel for the corn.

Question 2. State what occurred at the time between yourself and the Secretary of War with reference to the price per bushel to be paid and any other forage furnished the Government by said Mitchell.

Answer. My recollection is that there was a question about the price of said corn per bushel. I find by referring to my letter, now before me, that Mr. Mitchell claimed \$1.52½ per bushel, and that General Easton offered to pay \$1.27 per bushel. We discussed this question of price with the Secretary, and in the payment of the claim the

rate of \$1.25 per bushel was fixed, with the understanding, however, that its acceptance by Mitchell should not prejudice any future claim for increased allowance, and this is substantially recited in the last paragraph of the report of General Swayne, of date January 11, 1870, made on said claim to the Secretary of War.

Question 3. State what was said by Mr. Mitchell, if anything, at the time, about any other or further claim for additional grain furnished the Government at Fort Harker.

Answer. I cannot state the exact language used; but I distinctly remember that Mr. Mitchell stated in substance that he had additional claims against the Government for large amount of forage furnished same at Fort Harker about same time. It is my impression that this fact was mentioned incidentally in our conversation with the Secretary of War. I am confident that it was understood in said conversation that the payment of the claim in hand was not to prejudice in any way any other or additional claim.

The witness was then cross-examined by the counsel for the United States, and, in answer to interrogatories, testified as follows:

Cross-question 1. At the time claimant represented to the Secretary of War, what evidence was presented by Mr. Mitchell of his claims?

Answer. I have no very distinct recollection as to the form of papers presented. I think they are all referred to in my letter to the Secretary, included in this deposition.

Cross-question 2. Look at certificate of G. M. Thompson, forage master, dated April 29, 1869, indorsed B, found on page 46 of papers secured from War Department, and state whether or not that is a copy of the receipt of the forage master which you presented to the Secretary of War with your letter of July 6, 1870.

Answer. As the voucher of pounds stated of the corn corresponds with the exact number of pounds for which Mr. Mitchell was paid at that time, it is undoubtedly a copy of the receipt of the forage master, marked B, inclosed in my letter.

Cross-question 3. At the time you presented this claim to the War Department did the claimant show you a voucher given to him by Maj. Henry Inman for 352,009 pounds of corn delivered by claimant during the month of December, 1868, and January and February, 1869, to said Inman?

Answer. I have no recollection that he did so. It has been so long since that it is impossible for me to recollect the form of the papers which I then presented.

Cross-question 4. If he did show this voucher to you, was it presented by you on the 6th day of July, 1870, to Secretary of War in support of his claim?

Answer. I have no recollection of seeing or presenting any such voucher. My belief is that all the papers I presented to the War Department were numbered in my letter making application above set out.

General question. Do you know of any other matter relative to the claim in question? and, if so, state it.

Answer. No.

SIDNEY CLARKE.

STATE OF KANSAS,
County of Shawnee, ss :

I, W. A. S. Bird, a notary public in and for said county and State aforesaid, hereby certify that at the times and place aforesaid, Henry Inman and Sidney Clarke, witnesses on behalf of the claimant in the above-entitled cause, were by me sworn, before any question was put to them, to tell the truth, the whole truth, and nothing but the truth, relative to the said cause; and that the answers of each of said witnesses were taken down by me, and the deposition of each of them, as above set forth, was read over by them and signed by them, before me, at the time and place aforesaid.

In witness whereof I have hereunto set my hand and notary seal this 6th day of December, A. D. 1881.

[SEAL.]

W. A. S. BIRD,
Notary Public.

EXHIBIT A.

DEPOT QUARTERMASTER'S OFFICE,
Fort Harker, Kan., April 2a, 1869

Bvt. Major-General L. C. EASTON,
Chief Qr'm'r Dept. Mo. :

GENERAL: I have the honor to inform you that D. H. Mitchell delivered at this depot 400,666 pounds of corn in lieu of oats, called for by his contract of Nov. 9, 1868.

A portion of this corn was used during my absence, and as the amount now on hand

at this post is insufficient to enable me to return to Mr. Mitchell the full amount delivered by him, I respectfully request instructions in the matter.

If it is concluded to keep the corn remaining, please notify me of the rate per bushel to be allowed Mr. Mitchell in settlement of the same.

Very respectfully, your ob't serv't,

HENRY INMAN,
Bvt. Maj. & A. Q. M., U. S. A., Depot Q'rm'r.

EXHIBIT B.

OFFICE ASS'T Q'RM'R,
Fort Harker, Kansas, April 19, 1869.

Bvt. Maj. General L. C. EASTON,
Chief Q'rm'r Dept. Mo., Fort Leavenworth, Kansas :

GENERAL: Referring to your communication of the 13th inst., I have the honor to state that the 400,666 lbs. corn delivered at this point by Mr. Mitchell was all consumed during my absence in the field; that Mr. H. L. Newman has delivered here 382,000 lbs. corn, of which quantity 236,280 lbs. remain now on hand and might be turned over to Mr. Mitchell in part payment, leaving 164,386 lbs. to be paid for in cash; but as there is a constant demand for corn at this post, I would respectfully suggest that the entire quantity delivered by Mr. Mitchell be purchased at market rates prevalent at date of delivery.

I am, general, your ob't serv't,

HENRY INMAN,
Bt. Major & A. Q. M., U. S. A.

H. 527, '69.

(Indorsed:) E. No. 669. Bk. 82, R 156.

EXHIBIT C.

OFFICE ASS'T Q'RM'R,
Fort Harker, Ka's, April 29, 1869.

Bvt. Maj. Gen. L. C. EASTON,
Chief Q'rm'r Dep. Mo., Fort Leavenworth, K's :

GENERAL: Referring to your communication of 15th inst., I have the honor to state that the forage master at this post reports that the corn received from Mr. Mitchell in lieu of oats (contract Nov. 9) was entirely consumed by the public animals fed here during my absence. I enclose his certificate to that effect.

I am, general, very respectfully, your ob't serv't,

HENRY INMAN,
Bvt. Maj. & A. Q. M., U. S. A.

L. B. I., 232, 1 encl.

(Indorsed:) C. 11, Jan'y, '70, 8. 1403. Q'rm'r Gen's Office. Received July 5, 1876. Mk. 13, W. 2417; Uk. 13, W. 1458. 124-1023.

EXHIBIT D.

OFFICE ASS'T QUARTERMASTER,
Fort Harker, K's, April 17, 1869.

Bt. Maj. Gen'l. L. C. EASTON,
Chief Q'rm'r Dept. Mo.:

GENERAL: I have the honor to transmit herewith my certified account in duplicate No. 44, in favor of Mr. D. H. Mitchell for the amount of corn delivered at this depot, viz. 400,666 lbs., as reported by my communication of April 2.

Please notify me of the price you may conclude to allow Mr. M., so that I may properly enter the transaction on my books.

Very respectfully, &c.,

HENRY INMAN,
Bt. Major & A. Q. M., U. S. A.

(Indorsed:) 11940. Filed May 15, 1878. With 51-1403 (Q. M. G. O.), 1876. 464 (Q. M. G. O.), 1875.

H. Rep. 3685—7

D. H. MITCHELL.

EXHIBIT E.

[Telegram.]

FORT HARKER, *March 9th, 1869.*

To Gen'l L. C. EASTON:

Mitchell has shipped eight (8) car-loads of oats and three (3) of corn.
He has no contract here that I am aware of.
Shall I receive it?

DONALD MCINTOSH,
Lt. & A. D. Q. M.

U. 129, '69.

(Indorsed:) E. No. 669, B'k 82, R. 156.