

1-14-1840

## Report : Petition of Reps. of J. Piatt

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IN SENATE OF THE UNITED STATES.

JANUARY 14, 1840.

Ordered to be printed.

Mr. HUBBARD submitted the following

REPORT :

*The Committee of Claims, to whom was referred the petition of the legal representatives of John H. Piatt, together with the papers relating to the same, report :*

That they have had the same under consideration, and have examined into the history and facts of the case with due attention, and which they beg leave to present with their conclusions on the same.

On the 26th of January, 1814, the late John H. Piatt, of Cincinnati, Ohio, entered into a written contract with Hon. John Armstrong, then Secretary at War, to supply all the United States troops in Ohio, Kentucky, and the territory of Michigan with rations, upon conditions therein named, for the term of one year, beginning on the 1st day of June, 1814. It was also stipulated in the contract, that all supplies should be delivered at the posts where they should be required, *without expense to the United States*; and, also, that Mr. Piatt should render his account to the accountant of the Department of War for settlement at least once in every three months.

Mr. Piatt complied with the terms of the contract so far as the furnishing of supplies, we believe to the satisfaction of the Government; and for losses which he alleges to have sustained thereby, he many years since petitioned Congress for remuneration. The grounds upon which he founded his claim were three: 1st, the depreciation in value of the money furnished him by Government; 2d, the failure of Government to make advances, which he alleges he had a right to demand, and in consequence of which failure, he was subjected to damages on protested bills; 3d, on "assurances" given him by Mr. Monroe, then acting Secretary at War, that he should be indemnified from losses on account of the rise of provisions above the contract price.

The proofs that he furnished in support of these claims, were vague and indefinite, but they were sufficient to induce Congress to pass an act approved May 8, 1820, as follows:

*Be it enacted by the Senate and House of Representatives of the United States of America, in Congress assembled, That the proper accounting officers of the Treasury Department, be and they hereby are authorized and required to settle the accounts of John H. Piatt, including his accounts for transportation, on just and equitable principles, giving all due weight and consideration to the settlements and allowances already made, and to*

the assurances and decisions of the War Department; *Provided*, that the sum allowed under the same assurances shall not exceed the amount now claimed by the United States, and for which, suits have been commenced against the said John H. Piatt.

In July, 1816, a settlement of the accounts of said Piatt was had, and a balance found due from him to the United States of \$48,230 77, for which the abovenamed suit was instituted; and on a re-examination of his accounts under the above act, it was discovered a double credit had been allowed him of the further sum of \$12,855 37, making a total indebtedness to the United States of \$61,086 14.

Under the authority, and in compliance with the above act, the accounts of Mr. Piatt were re-examined, both by the Third Auditor and the Second Comptroller. These officers came to different conclusions, and differed materially in their allowances; the Third Auditor reporting a sum to be allowed Mr. Piatt of about \$26,000, leaving still due from him to the United States, \$34,705, while the Comptroller awarded as due to him the sum of \$63,620 48, besides what was to be allowed him under the "assurances" of Mr. Monroe, which were limited in the proviso of the act to Mr. Piatt's indebtedness to the United States. The Comptroller being the superior officer, gave Mr. Piatt an official certificate that this amount was due him. No appropriation, however, was made by the act for the payment of any sum to said Piatt, and from the *proviso* and tenor of the act, it seems very evident that Congress did not contemplate any sum to be paid him, but considered that full and ample justice would be done him by an allowance equal to his indebtedness to the United States. By an act, however, of May 24, 1824, Congress sanctioned the allowance of the Comptroller, and paid the legal representatives of Mr. Piatt the sum of \$63,620 48, he having died in the intermediate time.

This was thought at the time to be all that Mr. Piatt was entitled to on the most liberal principles of justice and equity, and it is not pretended now that there is any thing due except on the "assurances" said to have been given by Mr. Monroe, and on which he has already been allowed more than \$61,000.

On the subject of these "assurances" the proof is very slight and indefinite, whether *any* were ever made intending to cover the difference between the contract price of rations and what they might have cost the Government had he failed to perform his contract.

There is no dispute but what Mr. Piatt was in this city in December, 1814, and that he had some conversation with Mr. Monroe upon the subject of the contract, and funds to carry it into effect. Judge McLane says that Mr. Monroe told Mr. Piatt "to go on with the contract and furnish supplies and that he should have justice done him, or should not be injured, or words to that effect." There is some other testimony furnished to the effect that Mr. Piatt *said* that he had received assurances that would induce him to go on with the contract.

On the other hand, there is no memorandum or evidence of any such "assurance" to be found in the office of Secretary at War; and Mr. Secretary Crawford informed a committee of the Senate in 1820, that Mr. Monroe had no recollection of any such "assurance" as claimed by Mr. Piatt. Mr. Tench Ringgold, who was the immediate agent of Mr. Monroe at the time the "assurances" are said to have been given, and who was present at all the interviews between Mr. Monroe and Mr. Piatt in December, 1814, is

of opinion that Mr. Monroe could have intended nothing more by his *assurance* than that he should be indemnified against losses for premiums, damages on protested bills, &c. Mr. Piatt himself, in a letter from Washington to one of his agents, dated January 10, 1815, says nothing of the assurance of the Secretary at War, but says he shall rely solely on the liberality of Government for any losses he may sustain. Furthermore, Mr. Piatt, when settling his accounts at the Treasury, in 1816, laid before Mr. Crawford a memorial from himself to the Secretary at War, dated in May, 1815, when he claimed for all rations issued by him to Indians and to the distressed inhabitants of Michigan Territory, a sum equal to what they had cost him, as he was not bound by his contract to issue such rations. It is almost an irresistible inference that when he addressed this memorial to the Secretary at War, about five months only after the *assurances* were said to have been given, that he did not in the least rely on any such assurances as he afterward claimed remuneration upon, for losses in an unfortunate speculation. No written assurance of indemnity is pretended to have been given or even asked for, and it seems singular that a man of such correct business habits as Mr. Piatt is represented to have been, should not have asked for some evidence in a matter of so much consequence to himself, more definite and certain than the memories, and more permanent than the lives of one or two individuals.

The complaint of Mr. Piatt was that Government had not furnished him with the necessary funds to carry on the contract, and he was here for the purpose of procuring money which was furnished him at the time in amount to his satisfaction, and it is almost beyond the possibility of a doubt but that whatever *assurances* may have been given him at that time by the Secretary at War, they related solely to this subject:

But it is said that Government having failed to honor the drafts of Mr. Piatt, they had broken the contract on their part, and so Mr. Piatt had a right to consider it as rescinded on his. With all due deference to the opinions of those who have come to this conclusion, we believe that such is not the fact. We find no evidence that Government had so failed on their part. No time is specified for payment in the contract, nor is there any stipulation whatever for advances, but it is stipulated that the contractor shall render an account to the accountant of the Department of War at least once in three months, and it would not be an unreasonable construction to suppose that the payment of all arrearages on the rendering such an account would be an ample fulfilment of the contract on the part of the Government. No such account appears to have been rendered, and before the contractor can abandon the contract on account of non-performance on the part of the Government, he must show that he has fulfilled every antecedent obligation and requirement on his part. This he had not done, and therefore was not legally discharged from the performance of his engagements.

It has been urged in favor of this claim, that had Mr. Piatt abandoned his contract, it must have cost the Government a much larger sum to have procured the supplies than his contract price, and therefore he was entitled in equity to a remuneration. It is also said that, having secured, for the purposes of the contract, nearly all the surplus supplies in those parts of the country, he might have exacted his own terms of the Government, and thus have realized large profits. Your committee, believing that he was neither legally or equitably discharged from his obligation, cannot

admit that he is entitled to any reward for not violating them, and then take advantage of his own wrong. That the contract may not have proved to Mr. Piatt so profitable a speculation as he anticipated, is possible; but the principle cannot be sanctioned for a moment that Government is obligated in law or equity to make good all losses that contractors may suffer, or the profits their hopes had anticipated.

The representatives of Mr. Piatt claim the difference between the contract price of the rations, and what it *might*, or probably would, have cost the Government to have procured them, had he refused, in December, 1814, to furnish the supplies in pursuance of said contract.

Admitting the "assurances" of the Secretary at War in the fullest extent claimed, which is, that "he should not be injured," there would be no justice in settling the claim on such a basis. It is admitted, that under a contract with Government, and furnished to a great extent with their funds, he had monopolized nearly all the surplus provisions in those parts; but it cannot be conceded that he should be permitted to take advantage of that fact, and exact from Government not what they had actually cost him, but what it might or would have cost to procure them, when no preparations had been made for that purpose, because they had relied upon him, and could not suppose any provisions for procuring and forwarding supplies were necessary. Had they not relied on Mr. Piatt, they doubtless might and would have found others who would have contracted perhaps on as favorable terms as he did, and so not subject themselves to this extra expense. We have seen no evidence what the amount of his actual loss was, if any. There is some vague testimony that, had Mr. Piatt refused to furnish the rations after he had monopolized the supplies, and the favorable season for transportation was over, that they would have cost twice the contract price; though, even this is more conjecture than any thing else, and is not such evidence as any accounting officer would be justified in admitting.

This extra cost of rations arose more from difficulty of transportation at that season of the year, the depth of winter, than on the rise of provisions: it being, in many instances, three or four times the original cost of the article. Mr. Piatt is not entitled to any such profit. The utmost he could have a right to claim under the most liberal construction of the alleged *assurance*, would be what the supplies actually cost him over and above the contract price, and we have seen no evidence but what he has been allowed all this difference.

Owing to the alleged depreciation in the currency, he was allowed, in his settlement with the department, upward of \$8,000 for premiums for negotiating bills, &c.; and for failure of advances he was also allowed \$21,000 as damages on protested drafts on Government, though he never paid any damages, nor were any ever exacted.

On the settlement of his account at the Treasury in 1816, he was found indebted \$48,230 77.

On a re-examination of his accounts under the act of May 8, 1820, a double credit was found to the amount of \$12,855 37, making Mr. Piatt in arrear, \$61,086 14.

The Third Auditor allowed him a credit under that act of \$26,277 99, and the Comptroller a balance due him of \$63,620 48, over and above the \$61,086 14 due from Mr. Piatt to the United States, which has been paid to his legal representatives. And your committee are of opinion that liberal

justice has been done to Mr. Piatt and his representatives, and that they are not entitled either in law or equity to any further allowance. They therefore submit the following resolution :

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

NOTE.—The various documents relating to this case have all been printed in the public documents of 1820, 1823, 1824, and 1834.