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William A. Duer

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WILLIAM A. DUER.

JANUARY 27, 1846.

Read, and laid upon the table.

Mr. J. A. ROCKWELL, of Connecticut, from the Committee of Claims, made the following

REPORT :

The Committee of Claims, to whom was referred the petition of William A. Duer, of the city of New York, administrator of William Duer, late of said city, deceased, have examined the evidence, and written argument of the claimant in relation to his claim, and report as follows:

The claim of the petitioner is for the sum of \$10,987 22, omitted to be credited on a statement of his account made by the Treasury of the United States in 1794, under his contract with the department, and entered into in the name of Theodosius Fowler in 1790, to be executed in 1791.

And the further sum of \$36,000, omitted to be credited to him on the statement of his account (claimed to be *ex parte*) made out under his contract with the War Department, entered into in 1791, being the value of 720 pack-horses purchased by him for the use of the army in 1791, by order of Gen. St. Clair; which sums, if placed to his credit, will leave an aggregate amount due him of \$35,107 11.

The petitioner presents also his claim in the form of an account, as follows:

“ United States to William Duer, contractor in fact under the Treasury contract.

To amount of supplies furnished and issued to the army under his contract with the Treasury Department up to 14th of August, 1791, calculated from the vouchers and receipts returned to the department up to the above date, by the Auditor of the Treasury, embracing his estimate of losses by the defeat of the army - \$72,909 03.

To amount of difference between the estimate of the loss of the contractor in vouchers and provisions; from the 14th August to the 31st December, made *ex parte* by the Auditor of the Treasury, being \$38,706 35.

And the estimate made on the spot, and on oath, by Matthew Earnest and J. Hunt, superintendents of transportation and

issues, embracing vouchers and receipts for provisions issued to the army, captured by the enemy or left at Fort Washington for the same period, viz: from the 14th August to 31st December, and stating at the same time that no other method could be fallen upon to do justice to the contractor, than to take the whole amount of provisions received by them for said period, making allowance for wastage and issuing; and which they agree in saying amounts to \$49,693 57, making a difference of \$10,987 22 -	10,987 22
	<hr/>
	83,896 25
By amount of moneys advanced to the contractor on the treasury contract, in all exclusive of the \$13,453 29 in property transferred to this contract as before stated (see account) -	70,255 03
	<hr/>
Balance due on treasury contract -	<u>\$13,641 22</u>
<i>United States to William Duer, under his contract with the War Department.</i>	
To amount of cost of 720 horses, purchased for the army by order of Gen. St. Clair, at \$50 each, as proved by I. Ludlow	36,000 00
To amount of supplies furnished to the Quartermaster's department, and credited on the books of the War Department -	5,447 09
	<hr/>
	41,447 09
By amount of money advanced by the War Department for furnishing supplies to the Quartermaster's department of the army -	\$5,437 91
By amount charged on the books of the War Department for money advanced on taking up the protested bills drawn by I. Ludlow on Wm. Duer -	13,453 29
By 40 horses, said by I. Ludlow, in his deposition, to have been sold for, and on account of, the contractor; which, if chargeable to him at all, after the fatigues of the march, could not have been sold for much, yet, as no price is fixed, they may be estimated at half the original price, of \$50 each, making -	1,000 00
	<hr/>
	19,891 20
Leaving a balance due to the contractor on the contract, of	21,555 89
Add the balance found due to the contractor on the treasury contract, as above -	13,641 22
	<hr/>
And the aggregate amount found due on both -	<u>\$35,197 11"</u>

The evidence presented by the petitioner in proof of the facts set forth in his petition is, 1st. A copy of an account from the Treasury Department of the United States with Theodosius Fowler, dated November 25, 1794, and finally closed and balanced in pursuance of an act of Congress,

August 5, 1802, a copy of which is hereto appended, and constitutes a part of this report. 2d. A report of a Select Committee of the House of Representatives, on the petition of Theodosius Fowler, on the 25th March, 1802. 3d. A report of a Select Committee of the House of Representatives appointed on the 9th March, 1792, to inquire into the causes of the failure of the expedition under Gen. St. Clair, made 15th February, 1793. 4th. The depositions of William A. Duer, William Popham, and Sampson M. Isaacks. 5th. The instructions of the Secretary of War to Gen. St. Clair, 21st March, 1791. These embrace all the proofs offered by the petitioner. The deposition of Wm. A. Duer is to the effect that Wm. Duer deceased the 7th May, 1799, intestate and insolvent, leaving a widow and eight children, all the children at the time minors; that administration was not taken out on his estate until the 14th March, 1836—that the administration was taken out on account of information received, that certain unclaimed dividends and interest on public stock and loan office certificates were standing to the credit of the intestate in the books of the Treasury Department of the United States, and at the time knew nothing of any other claim; that subsequently, on examining a copy of the "American State Papers," he for the first time saw the report of the committee above referred to, in the year 1802, and determined to petition Congress on the subject. The certificate of Major William Popham, which is not sworn to, nor taken in the form of a deposition, but proved by Wm. Duer's deposition to have been required by him, is to the effect that he knew Col. Wm. Duer, deceased; that he had been largely engaged in speculations, and possessed great pecuniary resources for some years before and up to the time of his failure; and until his failure he was looked upon as a man of very considerable wealth.

Sampson M. Isaacks, in his deposition, states that at the age of fourteen he was taken into the employ of Col. Duer as a clerk in his office, and was well acquainted with the fact that, down to the time of his failure in 1792 or 1793, (he thinks the latter year,) his credit was very great, and his pecuniary resources very large.

A most serious objection to this claim arises from its very ancient character. After the expiration of more than half a century from the time of the transaction, the claim is first made that any such sum or any sum is due by the United States to William Duer or his representatives. There are but very few cases in which a claim so ancient, for the first time presented, would be allowed, even upon very strong proofs of the justice and legality of the claim. Although there is no rule in analogy to legal proceedings which will operate strictly and without exception as a statute of limitations, yet the principle of such statutes is applicable to claims when the government is a party, as well as between individuals; and although it is not, perhaps, impossible that a claim which, for the first time, is made at the end of fifty years for compensation for property, or to correct an error in an account, should be entertained, yet such cases must be exceedingly rare; and must be sustained by most irresistible proof.

The proof in this case is not at all of that character, and, in the judgment of the committee, fails entirely to make out any just claim upon the government for any sum whatever. In the first place, it is unsupported by any accounts of the late William Duer, or any original vouchers whatever in proof of the claim; nor is there any attempt to account for the absence of these evidences of the claim of Wm. Duer. The proof is, that he was a man in extensive business operations and ample pecuniary means, and so continued for two years at least after the time for closing his contract with the

government. The presumption, certainly is, that he must have kept regular books of accounts, and have preserved the vouchers evidencing the expenditure of money. If it is said that in the long course of years the books and accounts must have been mislaid and lost, it certainly furnishes no reason for allowing such a claim, but a very strong one against opening so old a transaction. It is stated, indeed, not *proved*, that for a portion of the time, from the 1st October to the 4th November, a little more than one month, the papers pertaining to the supplies of the army in pursuance of the contract were taken by the enemy and destroyed; but, if this were so, it furnishes no reason why the general books of accounts and other vouchers should not be presented.

But in addition to the absence of proof on the part of petitioner, the account of the United States exhibited by him does not sustain the claim which is made.

It should be here observed that the claim of the petitioner is, that Theodosius Fowler was merely the nominal contractor with the government, and that the real party in the transaction with the government was William Duer; that the contract of Fowler was assigned to Mr. Duer, and that the government recognised the assignment and treated with Mr. Duer as the real party in the transaction. So far as there is any evidence on this subject, such appears to be the fact, and is assumed to be so by the committee; and that Mr. Duer stood precisely in the place, entitled to all the benefits and subject to all the liabilities, of Mr. Fowler.

The account of the United States with Theodosius Fowler, appended hereto, (not in form, but in fact, with Mr. Duer,) stated on the 28th November, 1794, shows a balance, as due by Mr. Fowler, of \$10,799 29.

It is said that an important error has intervened in stating this account; that it was an *ex parte* statement of the account, made out by the Treasury Department, without the knowledge or assent of Mr. Duer; and that this fact, and the errors in the account, are shown by the report of the committee in 1802.

The item in this account, which is said to be incorrect, is as follows:

“To the army while on its march, from the 1st October to the 4th November, the day of the engagement with the Indians. The returns for this period are represented to have been lost. An estimate of the issues has been made, and they are computed agreeably to said estimate.

No. 127: 93,107 rations complete, at $\frac{1}{8}$ - - - - \$14,198 81 $\frac{1}{2}$

Lôsses at the camp at Great Miami and at Fort Hamilton in

October, per certificates Nos. 104 and 105:

392 rations of bread, at $5\frac{1}{4}$ - - - - \$23 86

416 rations of whiskey, at $3\frac{1}{4}$ - - - - 16 16

40 12

On the defeat of the army on the 4th November, being either taken or destroyed by the enemy, as per estimate No. 128:

33,780 lbs. flour, at $5\frac{1}{8}$ - - - - \$2,064 30

37,120 lbs. beef, at $5\frac{1}{8}$ - - - - 2,165 30

33,600 rations of salt, at $\frac{1}{4}$ of $\frac{1}{10}$ - - - - 93 30

4,323 00

1,279 $\frac{1}{2}$ complete rations returned by sundry officers in the campaign, settled and paid by order of General St. Clair, at $15\frac{1}{8}$ - - - -

216 72 $\frac{1}{2}$

The claim is, that there should have been allowed, in addition to the above, for losses, &c. at that time, the sum of \$10,987 22.

It by no means appears that this was an arbitrary statement made ex parte by the Treasury Department; the account, on its face, would seem to indicate the contrary, and that it was probably on the representation of the party in interest, and with his concurrence; that it was made. This portion of the account, as will appear by a reference to it, was stated on the 18th November, 1794, and on the 28th of the same month, among other credits, is

“ For this sum short calculated on 93,107 rations, at 15 $\frac{1}{2}$, as per estimate
No. 127 - - - - - \$1,577 59 ”

In addition to evidence derived from the inspection of the account itself, the presumption is very strong that, during the two years succeeding the time of the termination of the contract, the party really in interest must have fully known and understood the situation of his accounts at the department. And it is surely not to be supposed, during all that period, that he furnished no statements of his own claims or estimates of his losses during the period of about one month embraced in the estimated amount; but that he not only relied upon the department to make out at hazard estimates of the property lost or destroyed, or the rations furnished, but that he was ignorant of what they had done, and in no way assented to any estimate.

In relation to the other claim for the value of seven hundred and twenty pack-horses, there is no evidence whatever, except in the reports of committees, (to which the committee will refer hereafter,) to sustain this claim. No account, or voucher, or paper of any kind in support of the claim, is presented. If books of accounts showing these transactions exist, they are not produced; and if lost, their loss is not proved. And the same and stronger presumption exists against this claim, that one of so large an amount, and (if well founded) which could have been so readily sustained at the time by proof, should not at once have been urged by Mr. Duer, and paid to him by the government of the United States. The fact that nothing of that kind appears; that he, in active business, with a full knowledge of all the facts, should never have urged this claim, is almost conclusive evidence against its validity, when brought forward after so long a time by his representative.

But the petitioner relies with great confidence on the documentary proof, as he considers it, furnished by the reports of two committees, and the instructions from the Secretary of War, General Knox, to General St. Clair, in the year 1791.

His main reliance, however, is on a report of a committee on the petition of Theodosius Fowler, in the year 1802, to the House of Representatives, not only to repel the presumptions above stated, but to sustain the claim.

This report is not a report of the Committee of Claims, as stated in the petition, but of a select committee of the House of Representatives, consisting of three members, of which Mr. Elmendorf was chairman. From the report, it appears that the petition of Mr. Fowler was to open an account which had been balanced at the Treasury Department ex parte, as he claimed, and showing a balance against him in favor of the United States, of \$, and to correct the errors which had intervened. In order to relieve himself from any liability, he claimed that the contract of the

United States with himself through the Treasury Department, although nominally with him, was really with William Duer, and that Mr. Duer was regarded by the government, and treated as the real party, and all the business was really transacted with him; that the contract was assigned with the assent and approbation of the United States, and himself in effect relieved therefrom, and Mr. Duer assumed as the real party in interest; but if such were not the fact, and he was not relieved, that there was still nothing due, as there had been transferred to his account, from an account with Mr. Duer entered into by the War Department, a charge of \$13,453 29 for which he was not liable, and, in addition, that there was nothing due by Mr. Duer himself to the United States, but that there was really a balance due from the government to him. In these proceedings, Mr. Duer was in no way directly interested. The petition, the report, and, indeed, all the proceedings before Congress, were entirely between Mr. Fowler and the United States, and Mr. Duer's representatives in no way assented to be bound, nor were they bound, by the report of the committee or the action of Congress. Under these circumstances, the petitioner still claims not only that the main facts necessary to sustain the report in the case of Mr. Fowler, but that the facts incidentally referred to, and extracts from documents the originals of which are said to be lost or destroyed, and references to depositions of individuals which are not produced, are to be all taken as evidence in this case. Such is not the opinion of the committee. There may certainly be cases in which, on the loss of a paper, the report of a committee of the House of Representatives at a previous term, furnishing a copy of that paper, whether it be an account or a contract, provided it be the *entire* account or contract, may be, by a very liberal course of proceeding, admitted in evidence; but such is not this case. And the committee cannot admit that the report of a former committee, and that too a select committee, between other parties in relation to questions, whether directly at issue or not, giving the *results* to which the committee arrive, making references to depositions not produced, and *extracts* from contracts and accounts not in existence, can be entitled to be admitted at all as *evidence* to prove those *results* to be correct, or the *facts* proved in the depositions or the contracts or accounts referred to.

As, without this report of the select committee, the petitioner would be without the proof essential to sustain this claim, the committee might rest here upon grounds which they consider conclusive against the claim; but as this may not be the view of others, they will examine the two items in the light of the evidence presented by the report. And first in relation to the large item of seven hundred and twenty pack-horses, for which he claims to have received no compensation, and for which he claims the sum of \$36,000.

The whole statement on this subject, presented in the report of the committee, is as follows:

"The committee find it stated in the beforementioned report, (which will be hereafter referred to,) as a further elucidation of this transaction, that a warrant of \$15,000 was issued by the Secretary of War, in favor of Joseph Howell, acting paymaster general, which sum was by him allowed to William Duer or his agents, on account of the War Department generally."

"In William Duer's account with the Secretary of War, under his own contract on the books of the War Department, we find the first three items

to be for moneys advanced him for provisions and supplies to be furnished in the quartermaster's department; and the residue of the charges are for bills of exchange drawn by Israel Ludlow as agent of William Duer, in favor of Joseph Howell, protested by William Duer."

These last mentioned charges, which are transferred from the war contract of Duer to the treasury contract of Fowler, it is stated on this subject that the commander-in-chief directed Israel Ludlow, as agent of the contractor, to purchase six or seven hundred pack-horses for the use of the army on their march, and to draw bills on Mr. Duer, the acting contractor, for payment, which bills were endorsed by the commander-in-chief, to the amount of about \$17,000, were protested by the contractor, and paid at the treasury. By the testimony of Israel Ludlow, which the petitioner has obtained under a commission issued out of and returned to the circuit court, (a copy whereof accompanies this report,) it appears that he had purchased seven hundred and twenty horses on account of William Duer, at the request of General St. Clair, with this stipulation on the part of the general, that, should there be any difficulty in the execution of the purchase, he would pledge the public for the fulfilment of any engagements the public might enter into on account of the contractor; that he believes about forty horses were found after the expedition under General St. Clair, and sold for and on account of the contractor; the residue of the horses he understood and believes were lost by the fatigues of the service and the capture of the Indians. From this testimony, the amount of the expenditure in the purchase of these horses, at fifty dollars a head, would be \$36,000, which exceeds the balance which the contractor was found in arrear on the war contract, being \$13,453 29, and the amount of protested bills together, being also \$13,453 29, and comprising an aggregate of about \$27,000, in an amount not less than \$9,906 58, as a balance due from the War Department to William Duer, instead of a balance of \$13,453 29 due from William Duer to the War Department. That the price of these horses falls upon the government, from their being lost in the service and captured by the enemy, and is justly chargeable to the account of Theodosius Fowler, is apparent from the contract. But your committee, from the evidence, deem it unquestionable that these horses were purchased for the quartermaster's department, and all moneys advanced by the Secretary of War were advanced to William Duer on his personal responsibility and accountability; and if a balance was due to William Duer, that balance could not be chargeable to Theodosius Fowler, and that, as before stated, there is probable ground for a belief, that if the accounts with the Secretary of War were fairly settled according to the evidence which is afforded by the testimony of Israel Ludlow, the result would be the ascertainment of a balance of about \$10,000 due to William Duer on that contract, instead of a balance of \$13,453 29 against him, and which sum is charged against the said Theodosius Fowler as aforesaid.

The report referred to in the above report was a report of a select committee of the House of Representatives on the "causes of the failure of the expedition against the Indians in 1791, under the command of Major General St. Clair," communicated February 15, 1793, being a supplementary report. By this report it appears that, "on the 6th March, 1791, a contract was entered into by William Duer with the Secretary of War for supplying the troops with provisions until their arrival at Fort Pitt, and at Fort Pitt;" but in relation to the provisions of this contract nothing appears, and the petitioner does not present the contract, but supposes it to be lost.

The only other proof presented in support of this claim is a brief extract from the instructions to General St. Clair by the Secretary of War on the 21st March, 1791, as follows: "The horses, therefore, that you may require for such objects, may not exceed the number of —. As you will probably want them for several months, it will be more economical to purchase than to hire them, and after the expedition to sell them again.

"At the termination of the expedition, you will direct the quartermaster to sell the horses, excepting such a small number as you shall consider as indispensable for the communication of the posts."

This presents the entire amount of proof relied upon by the petitioner. Papers are referred to as accompanying that report, but no such papers are to be found in the Clerk's office or elsewhere.

In the first place, it does not appear from this proof that there was any contract by William Duer to furnish the pack-horses. The only contract referred to was "for supplying the troops with provisions until their arrival at Fort Pitt, and at Fort Pitt." Nor does it appear that Mr. Israel Ludlow was authorized by Mr. Duer to purchase the horses on his account; indeed, it would appear that he was *not* so authorized, from the fact that he, although proved to be a man in large operations, and possessing ample means, allowed the drafts to be protested; that the purchase was made at the request of Gen. St. Clair, and when the bills were protested, they were paid by the government. Still less is there any proof or presumption that at any time any sum was paid by Mr. Duer for these horses, or any other horses. The only proof in relation to this large item was a deposition of Israel Ludlow, under a commission from the circuit court, (for what purpose taken does not appear,) which, although a *copy*, purporting to be appended to the report of the committee in 1802, is not, nor the copy, presented or to be found. His testimony, too, is of the most vague and indefinite character; "he *believes* about forty horses were found," &c.; "the residue of the horses, *he understood and believes*, were lost," &c.

There is, therefore, an entire failure of proof in relation to this very important item of the claim.

It is claimed, indeed, that if drafts were drawn on Mr. Duer by his agent, Mr. Ludlow, for these horses, and from any cause these drafts were protested, and charged to Mr. Duer as having been paid by the government, either Mr. Duer should be entitled to payment from the government for the horses, or the account should be corrected, and the amount charged for the protested drafts should be deducted. This is undoubtedly true in relation to any *such* drafts. But there is no evidence showing that any such charge was ever made to Mr. Duer for protested drafts on this account. The amount of the protested drafts was \$17,000 on this account of the pack-horses, which, by a strange error, is stated by the committee, afterwards, to be \$13,453 29. Some remarks of that committee seem to proceed on the ground that that sum was charged to Mr. Duer as the amount of the protested drafts; but the statement is a very loose one, and without any proof, they having adopted the precise amount of the items from the war account of Mr. Duer, transferred to the treasury account of T. Fowler, as the amount.

By referring to the account from the Treasury Department with Theodosius Fowler, a copy of which is appended to this report, it does appear that there were various drafts drawn by Ludlow on Mr. Duer from the 15th December, 1791, to the 9th May, 1792, and discharged by the Secretary of

War, amounting to the sum of \$13,453 29 ; but these were for sums advanced on account of his contract, and do not appear to have had any reference whatever to the pack-horses. So that there is no proof, or presumption from any evidence before the committee, that any such charge was ever made against Mr. Duer. The committee in that case decided that this sum was improperly transferred from the war contract of Mr. Duer to the treasury contract of Mr. Fowler. If this sum, which is improperly stated to be the *balance* of Mr. Duer's account with the War Department, is restored to the debit of Mr. Duer in that account, we know not how that account will stand, as the account is not before us ; but the presumption certainly is, that it would leave a balance at least as great as this account itself against Mr. Duer.

It would seem unnecessary, if the view thus far taken is correct, to examine the remaining claim of the petitioner, as nothing would be due him on the statement of the claims but a balance due from him to the government. But as this claim, as well as the other, is urged by the petitioner with undoubted sincerity and good faith, the committee will say a few words on this point also.

The committee have already, in the previous part of this report, examined this claim for an omission to credit by the government to Mr. Duer the sum of \$10,987 22, presenting such considerations as were suggested on the face of the claim itself. The proof of the petitioner does not at all repel the strong presumptions against the claim. The only evidence is from the select committee's report of 1802. From that and the account hereto appended, it appears that an item of \$15,776 40 was credited to Mr. Fowler for supplies furnished between the 1st October and the 4th November, and \$4,323 for supplies which fell into the hands of the enemy. The report then proceeds to say, (and *this is all the proof on this subject*,) " In order to prove that these credits were not equal to the actual supplies which were lost, and which, according to the contract, exclusively fall upon the United States, your committee have had recourse to the evidence filed in the Treasury ; by the affidavits of Matthew Earnest, the superintendent of transportation and issues of provisions, then with the army, and of Abijah Hunt, the assistant superintendent of transportation and issues—the former taken on the 3d May, 1792, before Hillary Barker, esq., one of the aldermen of the city of Philadelphia ; and the latter taken on the 8th December, 1791, before William McMullen, esq., a magistrate of Hamilton county, in the territory northwest of the river Ohio—agreeing in a statement of the actual supplies which had been received by them at the army from the contractor between the 14th August and the 20th November, and stating, at the same time, that the abstracts for the issues in the month of October, together with a considerable quantity of provisions, not ascertainable, together with the receipts and other papers belonging to the contractors, fell into the hands of the enemy, and that provisions were issued promiscuously to the soldiery on the retreat, and that upwards of twenty thousand rations of provisions remained at Fort Washington at the expiration of William Duer's contract ; stating also that no other method can be fallen upon to do justice to the contractor than to take the whole amount of provisions forwarded from Fort Washington, allowing for wastage and issuing.

" Your committee do not know by whom these affidavits have been procured and deposited in the office of the Register of the Treasury ; they believe them to be the best and most satisfactory evidence which perhaps at

that time existed, or could now be obtained. Admitting the contractor entitled to the credit thus established, it will be found, from the statement annexed, which comprehends all the supplies furnished in the gross from the 14th of August, by the contractor, and which has reduced those supplies into rations, and ascertains the amount in dollars, according to the terms of the contract, which statement your committee believe to be accurate—it proves, as the result, that the contractor is thus entitled to a credit from the 14th August until the 31st December, to the amount of \$49,693 57; when, by the Treasury account, he is only credited for the same period, the sum of \$38,706 25, making a deficit of credit of \$10,987 22, which is \$187 93 more than the balance as stated and claimed by the Treasury. Admitting this credit, therefore, to the contractor, which seems reasonable and just, it would appear that the Treasury, instead of having a claim of \$10,799 29, are thus in arrear to the contractor \$187 93." (*See House Report No. 129, 1st session 7th Congress.*)

Thus it appears that the only proofs before that committee to sustain this claim were the affidavits of Matthew Earnest and Abijah Hunt, taken in 1791 and 1792; but the committee did not know by whom these affidavits had been procured and deposited in the office of the Register of the Treasury. It was the most vague and uncertain kind of proof, and it would appear quite insufficient to sustain the inferences of that committee. In this case we have not the affidavits, or copies of them—they were taken we know not for what purpose, or under what circumstances; they were, it seems by the Treasury Department, deemed at the time insufficient to produce any change in the account of Mr. Fowler or Mr. Duer, in relation to these items, and certainly very little additional force is given to this proof by the very untenable inferences deduced by the select committee in 1802. The committee can but consider this claim of the petitioner as actually unsupported by proof in a case in which, from the lapse of time and attending circumstances, the highest proof is required. But, in addition to this, there are other objections to these claims, which are fully stated by the Third Auditor of the Treasury, in a communication, addressed on the 13th February, 1845, to Hon. Mr. Vance, then the chairman of this committee.

The committee recommend that the prayer of the petitioner be denied, and the accompanying resolution be adopted.

Resolved by the Senate and House of Representatives of the United States of America in Congress assembled, That the prayer of the petition of William A. Duer, administrator of William Duer, deceased, be denied.

TREASURY DEPARTMENT,
Third Auditor's Office, 13th February, 1845.

SIR: Complying with your request to furnish any information obtainable by me, together with any personal knowledge I may have of the claim of William Duer, an army contractor in 1790, and my views of the case as it was left in 1791-'2 and in 1802, I have the honor to say that I have no personal knowledge on the subject, but that, pursuing the suggestion of the committee, I have sought such information of this large, ancient, obscure, and involved claim, as was accessible, and which I now proceed to detail.

I applied to the Solicitor of the Treasury, who has charge of suits in which the United States is a party, or interested, to furnish such informa-

tion in regard to the suits against Mr. Duer, to which the committee allude, and submit all that could be procured by that officer.

It appears by an old docket, now in the Solicitor's office, of suits instituted by the Comptroller who then had charge of this business, that on the 12th of March, 1792, a suit in the circuit court of the United States for the district of New York was ordered against William Duer, but the nature of the suit, or the amount claimed, is not stated in the docket. In the margin, however, there is this note—"Dead and insolvent many years since." There is no doubt that this is the same suit, copies of the pleadings in which were obtained by the Solicitor, and are herewith submitted. That officer, at my request, wrote to the district attorney of New York, for such copies, and any information in regard to the suit which could be obtained; and the copies furnished, and the letter of the district attorney, with that of the Solicitor, communicate that information. The state of that case is this:

"It appears by the declaration in case of the United States vs. William Duer, filed by Richard Harrison, then United States district attorney, on the 8th of April, 1793, in the circuit court of the United States for the district of New York, that the United States delivered to said Duer, on the 7th of April, 1788, a quantity of indents of interest for the debt of the United States, amounting to \$203,150, which he promised to apply to the use of the United States, and account for when requested. The declaration avers that he did not so apply and account. The declaration contains, also, the common money counts.

"To this declaration, a plea and notice of set-off were filed by said Duer in person, on the 26th of April, 1793. He pleaded the general issue, and for a further plea, that on the 1st of April, 1793, he did well and faithfully apply to the use of the United States, and account with them for all said indents of interest; and to support his plea, he gave notice that he should give in evidence that the United States were, first, indebted to him for indents of interest, amounting to \$300,000, applied to their use by him, at their request. Second, that the United States were indebted to him in the further sum of \$300,000, for money laid out and expended by him for supplies for the troops of the United States then in the western territory, by virtue of a contract made in 1790, between Alexander Hamilton, then Secretary of the Treasury, and Theodosius Fowler, and by the latter assigned to said Duer. Third, that the United States were indebted to him in the further sum of \$300,000, for money laid out and expended by him for purchasing provisions, &c., for the army of the United States, pursuant to a contract dated March 26th, 1791, between said Duer and Henry Knox, then Secretary of War. Then follow the common money counts.

"On the 7th of October, 1793, Mr. Harrison, then United States attorney, filed a declaration against said Duer, in the same court, in which it is averred that on the 11th of September, 1789, the United States delivered to him 'certain warrants of the said United States of America, drawn for new emission money of different States, and certain sums of new emission money, to wit: new emission money of the State of New York, and warrants for new emission money of the States of Maryland and Virginia,' amounting to \$36,773 72, which he, the said Duer, promised to apply to the use of the United States, and to account for. The declaration avers that he did not apply and account. There are also the common money counts. To this declaration no plea was filed.

"It appears by the letters from the office of the United States attorney of the district of New York, of the 31st of January and 1st February, 1842, that no judgment appears on record against Mr. Duer, and that there is no entry or order, in any of the court minutes or books, which affords any information beyond that disclosed by the above described pleadings; and that the registers of Mr. Harrison, now in possession of his family, contain no entry whatever in them of any suit of the United States vs. said Duer."

It also appears by a letter dated on the 18th of April, 1836, from the then Solicitor of the Treasury to the then Secretary of the Treasury, (a copy of which is also furnished,) that a proposition had been made on the 15th of that instant, by the attorney of the administrator of William Duer, deceased, to deposite to the credit of the Treasurer of the United States the sum of \$300, in the discharge of the balance which stands charged upon the books of the Treasury against decedent, provided he be allowed to receive the dividends due on the stocks issued in his name. From that letter it appears that the balance was of long standing; that all the records and files relating to it had been destroyed, but that it was a balance due previous to 1799, on account of advances made to Mr. Duer by the War Department.

It appears, also, that the amount of dividends on stock issued in the name of William Duer was about \$3,000, and that the then Solicitor advised that the proper method of settling these outstanding balances is to deduct the balance standing against Mr. Duer on the books of the Treasury, from the amount of the dividends on the stock in his name, and to pay over the balance to Mr. Duer's legal representatives. I am not informed how, if at all, this business was closed.

In a transaction so much involved, so obscure and ancient, I give my views, as requested by the committee, with some distrust, but with confidence in the principles which govern in the judicial determination of stale claims. These principles are so well settled, that I need only refer to them as being perfectly within the knowledge of the committee. They govern in the adjudication of all stale or ancient demands, and are the basis of statutes of limitation, and the foundation on which, in equity as well as at law, there is a presumption, sometimes equivalent to a positive bar, and not unfrequently, with attending circumstances, of sufficient force to defeat such demands when the time, although long, is less than sufficient to amount to a bar. These statutes, which are called statutes of repose, and the analogous presumption against stale demands, have been devised to protect against the loss of evidence which, in the case of a recent demand, is generally at hand to ascertain the truth of the case.

Keeping these principles in view, I refer, in connexion with the lapse of time, to the fact that suit was brought, as stated, against Mr. Duer, so long ago as 1792, for a very large sum of money, and that in that suit he set up in his plea of set-off the very claims which are now, after so long a period, preferred against the United States. It appears that this suit was not prosecuted by the United States, for the reason disclosed by the entry on the margin of the record of the Comptroller—the insolvency and death of the defendant. It is also evident that the defendant did not, after filing his plea of set off, press, as he might have done, for a trial of the case. If he had a valid demand against the United States, it is difficult to account for his omission to press it when the evidence of the transaction, then recent, was fresh and accessible. Take this, in connexion with the fact that

the evidence of these transactions, which once existed in the Treasury Department, has been destroyed either by time or the conflagration of the Treasury building, and it seems to me that, with the lapse of time, an answer is furnished to the claim, which cannot be overcome.

Nor is the fact that in 1836, as appears by the letter of Solicitor Maxcy, that a small claim was made on the Treasury Department by the same estate, without suggesting the existence of that now made, without some weight, in my view of this question, although it may be that the force of it would be insufficient, if explained, and it stood alone.

This is my view of the claim, which the committee has asked me to give, and which, with the papers referred to, are respectfully submitted.

With great respect, your most obedient servant,
PETER HAGNER, *Auditor*.

HON. JOSEPH VANCE,
Chairman Committee of Claims, House of Representatives.

DR. *Theodosius Fowler, under contract with the Secretary of the Treas-*

To warrants for the following advances made him on account of his contract, viz :

No. 946.	March 22d, 1791, favor of Joseph Howell, his assignee, for	- -	\$10,000
1004.	April 7th, 1791, favor of Wm. Duer, his agent	- -	15,000
1036.	April 25th, 1791, favor of Wm. Duer	- -	15,000
1063.	May 9th, 1791, favor of J. Broussor, attorney for Wm. Duer	- -	20,000
1179.	July 13th, 1791, for	- -	10,000
2820.	May 30th, 1793, favor of George Bickham, assignee of John Duncan, for a bill drawn by Israel Ludlow, agent to Wm. Duer, assignee of T. Fowler, on said Duer, for	- -	2,553

\$70,255 03

To Joseph Howell, acting paymaster general, for the following sums advanced on account of his contract, being for bills of exchange drawn by I. Ludlow, agent to his assignee, Wm. Duer, and discharged on warrants of the Secretary of War, viz :

December 5th, 1791	- -	- \$3,856 47
March 12th, 1792	- -	- 1,107 33
" 17th, "	- -	- 5,693 98
" do. "	- -	- 356 00
" do. "	- -	- 360 33
" do. "	- -	- 133 33
" do. "	- -	- 994 16
May 8th, "	- -	- 464 84
" do. "	- -	- 186 81
" 9th, "	- -	- 130 00
" do. "	- -	- 170 04

13,453 29

Continued

\$83,708 32

ury of 28th October, 1790, his account with the United States.

Cr.

By amount of rations issued to the army at the undermentioned posts, and on its march, from the 1st of January to the 31st of December following, under contract with the Secretary of the Treasury of 28th October, 1790, as per general abstract and returns herewith, viz:

At Fort Franklin, as per returns No. 1 to 14:

11,182 rations complete, at $8\frac{1}{2}$	-	-	\$1,056 17
2,286 do extra of whiskey, at $1\frac{1}{2}$	-	-	44 40 $\frac{1}{2}$
Issues to Indians	-	-	60 63

\$1,161 20 $\frac{1}{2}$

At Fort Pitt, from April to December, per returns No. 15 to 29:

58,975 $\frac{1}{2}$ rations complete, at $4\frac{1}{2}$	-	-	3,112 51 $\frac{1}{2}$
3,600 do extra of whiskey, at $\frac{1}{8}$	-	-	40 00
Issues to Indians	-	-	16 09

3,168 60 $\frac{1}{2}$

Betwixt Fort Pitt and Wheeling, from March to 13th August, per returns 30 to 33:

4,273 rations	-	-	at $5\frac{7}{8}$	278 83 $\frac{1}{2}$
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At Indian Wheeling and Fish Creek, from June to July, per returns 124 to 126:

4,421 rations	-	-	at $5\frac{7}{8}$	288 53 $\frac{1}{2}$
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Betwixt Fort Pitt and Muskingum, per return No. 34, in August and September:

422 rations Fort Pitt to Fort McIntosh, at 6	-	-	29 12
3,119 do Fort McIntosh to Muskingum, $5\frac{7}{8}$	-	-	203 54 $\frac{1}{2}$
820 do extra of whiskey, at $\frac{1}{8}$	-	-	9 10

240 76 $\frac{1}{2}$

At Muskingum, per returns 39 to 48:

19,070 rations complete, at $5\frac{7}{8}$	-	-	1,244 76 $\frac{1}{2}$
296 do extra of flour, at $\frac{1}{10}$	-	-	6 52
168 do extra meal, at $2\frac{1}{2}$	-	-	4 60
3,104 $\frac{1}{2}$ do extra whiskey, at 1	-	-	34 44 $\frac{1}{2}$
100 do extra salt, at $\frac{1}{4}$ of $\frac{3}{8}$	-	-	9 $\frac{1}{2}$

1,290 62

At Muskingum, from June to August, per returns Nos. 106 and 107:

9,292 rations issued to militia, at $5\frac{7}{8}$	-	-	606 50 $\frac{1}{2}$
500 do extra of whiskey, at 1	-	-	5 50

612 10 $\frac{1}{2}$

Betwixt Fort McIntosh and Muskingum, from June 14 to August 8, per returns 114 to 118:

15,611 rations complete, at $5\frac{7}{8}$	-	-	1,019 04 $\frac{1}{2}$
707 do extra of whiskey, at 1	-	-	7 77

1,026 81 $\frac{1}{2}$

with the United States—Continued.

CR.

Betwixt Fort Pitt and Venango, between the months of May and November, per returns 108 to 113:		
15,418 rations, at $8\frac{1}{2}$ -	-	\$1,438 58
32 do extra of whiskey, at $1\frac{5}{8}$ -	-	56
		<hr/> \$1,431 24
Issues to Indians, &c., at Venango, from July to December, per return 123 -		185 17
At Gallipolis, from June 11th to September 4th, per returns 49 and 50: 8,061 rations at $\frac{7}{8}$ -		626 87
At Post Vincennes, per returns 71 to 83:		
28,327 $\frac{1}{2}$ rations complete, at $13\frac{1}{4}$ -	-	4,249 11 $\frac{2}{3}$
1,369 do extra of bread, at $4\frac{2}{3}$ -	-	64 58 $\frac{2}{3}$
539 $\frac{1}{2}$ do extra whiskey, say beef, at $5\frac{2}{3}$ -	-	31 42 $\frac{2}{3}$
6,801 do extra whiskey, at 3 -	-	226 63
		<hr/> 4,571 84 $\frac{1}{3}$
At various small posts, per returns 84 to 94:		
9,087 rations, at $15\frac{5}{8}$ -	-	1,540 07 $\frac{2}{3}$
Per returns 119 to 122 -	-	322 45 $\frac{2}{3}$
		<hr/> 1,862 52 $\frac{1}{3}$
Betwixt Fort Pitt and Fort Washington, in Aug- ust, September, and October, per returns 35 to 48:		
21,402 $\frac{1}{2}$ rations complete, at $6\frac{5}{8}$ -	-	1,605 16 $\frac{7}{8}$
4,550 do extra of whiskey, at 1 -	-	50 50
1,600 do extra salt, at $\frac{1}{2}$ of $\frac{3}{8}$ of $\frac{1}{8}$ -	-	1 60
		<hr/> 1,657 36 $\frac{1}{2}$
At the rapids of the Ohio, from January to Decem- ber, per returns from 62 to 70:		
14,638 rations complete, at $6\frac{5}{8}$ -	-	1,097 76 $\frac{1}{8}$
1,698 do extra of whiskey, at 1 -	-	18 78
Issues to Indians -	-	88 08 $\frac{5}{8}$
		<hr/> 1,204 73 $\frac{1}{2}$
At Fort Washington, from January to December, per returns 51 to 61:		
182,145 rations complete, at $6\frac{5}{8}$ -	-	13,660 78 $\frac{5}{8}$
10,988 do extra of bread, at $2\frac{2}{3}$ -	-	289 86 $\frac{1}{3}$
11,839 do extra of meat, at 3 -	-	394 57
16,142 do extra of whiskey, at 1 -	-	179 32
5,021 do extra of salt, at $\frac{1}{2}$ of $\frac{3}{8}$ of $\frac{1}{8}$ -	-	5 20 $\frac{5}{8}$
200 do extra of soap, do -	-	18 $\frac{5}{8}$
		<hr/> 14,530 23 $\frac{1}{2}$
Betwixt Fort Washington and the Miami Village, per returns 95 to 101, viz: In camp on Mill Creek and Great Miami, in August and Sep- tember; at Fort Hamilton from October 4th to December, and at Fort Jefferson from Oct. 24th to December 31st:		
107,903 $\frac{1}{2}$ rations complete, at $15\frac{2}{3}$ -	-	18,283 54 $\frac{1}{3}$
125 do extra of bread, at $5\frac{1}{4}$ -	-	7 57 $\frac{1}{4}$

DR.

Theodosius Fowler's account

	Amount brought over - \$83,708 32
	\$83,708 32

with the United States—Continued.

CR.

1,514 rations extra of whiskey, at $3\frac{1}{8}$ - -	\$58 79	18,350 11
To the army while on its march, from the 1st October to the 4th November, the day of the engagement with the Indians. The returns for this period are represented to have been lost; an estimate of the issues has been made, and are computed, agreeably to said estimate, No. 127, at		
93,107 rations complete, at $15\frac{1}{2}$ - -	-	14,198 81 $\frac{1}{2}$
Losses at the camp at Great Miami, and at Fort Hamilton, in October, per certificates Nos. 104 and 105:		
392 rations of bread, at $5\frac{1}{4}$ - -	23 86	
416 do of whiskey, at $3\frac{1}{8}$ - -	16 16	
		40 12
On the defeat of the army on the 4th of November, being either taken or destroyed by the enemy, as per estimate No. 128:		
33,780 lbs. flour, at $5\frac{1}{4}$ - -	2,064 30	
37,120 lbs. beef, at $5\frac{1}{2}$ - -	2,165 30	
33,600 rations of salt, at $\frac{1}{4}$ of $\frac{1}{16}$ - -	93 30	
		4,323 00
1,279 $\frac{1}{2}$ complete rations, returned by sundry officers on the campaign, settled and paid by order of Gen. St. Clair, at $15\frac{1}{2}$ - -	-	216 72 $\frac{1}{2}$
		71,267 38
By balance due from Theodosius Fowler - -	-	12,440 94
		83,708 32

TREASURY DEPARTMENT,
Auditor's Office, November 18, 1794.

Examined by George Nixon, and stated by Ezekiel Freeman.

To balance as stated in the within account, brought over	-	\$12,440 94
From which deduct the following sums, viz :		
For 1,000 rations, at $6\frac{3}{8}$, short charged, as per returns from No. 62 to 72	-	\$75 00
For 39 rations of meat, at $\frac{3}{10}$, short charged, as per returns from No. 51 to 61	-	1 27
For this sum short calculated on 93,107 rations, at $15\frac{3}{8}$, as per estimate No. 127	-	1,577 59
		<u>1,653 86</u>
		10,787 08
To which add, overcharged 367 rations whiskey, at $\frac{3}{10}$, as per returns from 71 to 83	-	12 21
Balance due from Theodosius Fowler	-	<u>\$10,799 29</u>

TREASURY DEPARTMENT,
Comptroller's Office, November 28, 1794.

Examined by Jno. Laub.

Theodosius Fowler, late contractor for supplying the troops of the north and southwest frontiers, in account current with the United States.

DR.

CR.

To balance due on settlement of his accounts, per report No. 6139 \$10,799 29

By subsistence of the army for this sum, placed to his credit for the purpose of closing his contract, in pursuance of act of Congress, passed on the 29th April, 1802, entitled "An act for the relief of Theodosius Fowler,"
\$10,799 29

AUDITOR'S OFFICE, August 5, 1802.

P. FERRALL.

COMPTROLLER'S OFFICE, August 7, 1802.

AND. ROSS.

TREASURY DEPARTMENT,
Register's Office, January 23, 1845.

I certify the within to be a true transcript of the original on file in this office.

T. L. SMITH,
Register.

WAR DEPARTMENT, *January 17, 1846.*

SIR: In answer to your letter of the 12th instant, relative to a contract of William Duer with this department about the year 1790 or 1791, I have to state that all the records of the War Department were burnt in the fall of 1800, just after the government removed to this city. As there is a possibility the contract you refer to may have been with the accounts of the Treasury, I have transmitted your letter to the Third Auditor, where further information may be obtained.

Very respectfully, your obedient servant,

W. L. MARCY,
Secretary of War.

HON. JOHN A. ROCKWELL,
House of Representatives.

TREASURY DEPARTMENT,
Third Auditor's Office, January 19, 1846.

SIR: I have the honor to inform you that your letter to the Secretary of War of the 12th instant, in relation to a claim of the representatives of William Duer, now under investigation by the Committee of Claims, has been referred to this office. You state that the transaction out of which the account arose occurred about the year 1790 or 1791, and that it is desirable to have a copy of his account with the War Department, and also a copy of the contract between the department and Mr. Duer.

A similar application is found to have been made in February, 1845, by the honorable Joseph Vance, chairman of the Committee of Claims, House of Representatives, requesting me to furnish any information obtainable by me, together with any personal knowledge I may have of the claim. On that occasion I had the honor to inform Mr. Vance that I had no personal knowledge on the subject; and the records of this office furnish none. But, pursuing the suggestion of the committee, I sought such information of this ancient claim as was to me accessible, and gave to Mr. Vance a detail of some considerable length of the facts and information obtained through the office of the Solicitor of the Treasury, and of my views of the transaction, as requested by the committee.

This communication, I presume, will be found on the files of the committee; if not, a copy, if required, will be furnished, or an application to the Solicitor of the Treasury may possibly be productive of more satisfactory information on the subject.

I have the honor to be, very respectfully, your obedient servant,
PETER HAGNER, *Auditor.*

HON. JOHN A. ROCKWELL,
House of Representatives.

At the request of the agent of the petitioner, and in justice to him, as the claim is one of large amount, the committee append to this report the argument of the agent of the claimant.

Argument of the agent of the petitioner.

The memorialist, as administrator of William Duer, late of the State of New York, deceased, claims of the United States the sum of \$10,987 22, omitted to be credited on an *ex parte* statement of his account, made by the Treasury Department in 1794, under his contract with that department, and entered into in the name of Theodosius Fowler in 1790, to be executed in 1791. And the further sum of \$36,000, omitted to be credited to him on the *ex parte* statement of his account made out under his contract with the War Department, entered into in 1791, being the value of 720 pack-horses purchased by him for the use of the army in 1791, by order of General St. Clair. These sums, when placed to his credit on these two contracts, as they should have been, will leave an aggregate amount due him, agreeably to the statements of the Treasury and War Departments, of \$35,197 11.

These claims of the memorialist rest for their support upon the facts and evidence incidentally developed by the inquiries and investigations of the select committee appointed by the House of Representatives on the 9th day of March, 1792, to inquire into the causes of the failure of the expedition under General St. Clair—upon the letter of the Secretary of War, addressed to William Duer, dated the 25th of February, 1791—the letter of the Secretary of the Treasury to William Duer, as assignee of Theodosius Fowler, in a certain contract made by him—and on the report of the Committee of Claims of the House of Representatives in favor of releasing Theodosius Fowler from all responsibility on account of said contract. But, as the legitimate duty and object of these committees was directed to other matters than an investigation of the claim of the petitioner, it will be necessary, in order to give a true history of this case, to transcribe such parts of these reports as have a direct bearing on, or contain evidence (obtained and perpetuated therein) in support of any or all the items of this claim.

From the report of the Committee of Claims before mentioned, (see *American State Papers*, No. 129, vol. Claims,) it appears that Theodosius Fowler, of the city of New York, "made a contract with the Secretary of the Treasury, dated the 28th day of October, 1790, to supply and issue as many rations of bread or flour, beef or pork, salt, vinegar, soap and candles, at certain fixed prices per ration, as should be required for the army of the United States on the frontiers, from the first day of January, 1791, to the first of January, 1792."

That "he states he was only the nominal contractor with the Treasury for and on account of William Duer, and that it was so understood at the Treasury when he made the contract; that he was in no way personally interested in the agency or profits, that he never has furnished any supplies, nor drawn any money from the Treasury in consequence thereof; but on the contrary, William Duer supplied the army and drew all the advances made by the Treasury, and negotiated the whole of that concern exclusively and independently of him; and that he knows nothing in relation thereto, except what information he has lately obtained of those transactions from the public accounts and documents."

That committee further observe, that they "have satisfactory evidence, from the concurrent statement of both parties, that such contract was enter-

ed into, as before stated, accompanied with a bond with two sureties, for the due performance on the part of the contractor, copies of which accompany their report.

"In this contract will be found the following clauses, which, in the view your committee have taken of the subject, are the most material: 'That all losses sustained by the depredations of the enemy, or by means of the troops of the United States, shall be paid for at the component prices of the article captured or destroyed, on the depositions of two or more creditable characters, and the certificate of a commissioned officer ascertaining the circumstances of the loss, and the amount of the articles for which compensation is claimed. That, upon the requisite security being entered into, there shall be immediately advanced and paid to the said Theodosius Fowler, his heirs, executors, or administrators, \$10,000, on account of the rations to be furnished. That on the day of January next there shall also be advanced and paid by the United States to the said Theodosius Fowler, his heirs, executors, or administrators, the further sum of \$10,000 on the account aforesaid; and that if any balance shall, on the settlement of the accounts of the said Theodosius Fowler, his heirs, executors, or administrators, be found due to him or them, for or by reason of the rations which shall be supplied pursuant to this agreement, the same shall be immediately paid, and that no unnecessary delay on the part of the officers of the United States shall be given to the settlement of the accounts of the said T. Fowler, his heirs, executors, or administrators.'"

This contract was transferred by Theodosius Fowler, in fact and in interest, to William Duer, of the city of New York, as will appear by the following extract from the report of the select committee before mentioned. They say: "Upon an examination of all the papers furnished by the executive department relative thereto, of sundry papers and accounts furnished by the Treasury and War Departments, with explanations of the same by the heads of these departments in person, upon the testimony of witnesses upon oath, and written remarks of General St. Clair," and as the result of these inquiries, they detail in relation to this contract the following important facts: "That on the 3d day of January, 1791, the contract entered into by Theodosius Fowler was wholly transferred from the said Theodosius Fowler; that a copy of the transfer was lodged in the office of the Secretary of the Treasury; that by letter from the Secretary of War, addressed to William Duer, bearing date the 25th of February, 1791, it appears he was considered the contractor. That no correspondence appears subsequently to that time to have taken place between Theodosius Fowler and either the Treasury or War Department. That the Secretary of War, who alone appears to have been the agent on the part of the United States in all things relating to the contract, has always corresponded with William Duer, as the contractor, and his correspondence commences at a date prior to that of the copy of the assignment lodged in the Treasury; that upon this assignment having taken place, the Secretary of the Treasury agreed by letter to make the advances required by William Duer, as assignee of T. Fowler, and that all warrants issued from the Treasury for the purposes of this contract were issued to him." (*See American State Papers, Vol. 1, No. 9, Military Affairs.*)

That committee further report: "In the view which that committee [the select committee] formed of this case, there can be no doubt but that they considered all the public responsibility to attach to William Duer, and that T. Fowler was in no way implicated.

"In addition to this, your committee observe that Theodosius Fowler, in his answer, taken on oath, to the bill filed against him in the suit of the United States on this subject, states that 'the terms of the contract were adjusted by William Duer; that he was not to have any interest or agency in it, although the principal mentioned in it; and believes it was well understood by the officers of the Treasury, or at least those who were principals; and that he had personally no interest in the contract.'" That committee further report, "that the vouchers and regular evidences of the contractor for supplies furnished between the first day of October and the defeat of General St. Clair's army by the Indians, which happened on the 4th day of November, fell into the hands of the enemy, and that it is true, as stated, that William Duer was imprisoned by his creditors for large demands about the year 1793, which imprisonment continued until his death in the spring of 1799." And again: "That no balance has been struck or settlement of accounts taken place by the mutual act of the contracting parties; but that the Auditor of the Treasury, on the 20th November, 1794, reported partly upon the accounts and vouchers, or other evidences, *then in the treasury*, and partly upon *estimates of his own calculation, where regular vouchers were wanting*. A balance appeared to be due to the United States, to the amount of \$12,440 94, which, on the 20th of November, was re-examined by the Comptroller of the Treasury, who reported an additional credit of \$1,641 65 to be due to the contractor, and reduced the public claim to the sum of \$10,799 29, a copy of which account accompanies this report," and is among the papers.

For the recovery of this supposed balance of T. Fowler, the merely nominal contractor, suit was instituted by the United States, as before stated, September 5, 1800, in the circuit court of the district of New York; and in his answer before mentioned to the bill in chancery, he further avers that "the balance stated was not struck between the contracting parties, but stated *ex parte* by the Treasury Department, upon the credit and vouchers returned to the Treasury for supplies delivered, on the one hand, and the Treasury, for charges and advances on account of that contract, on the other hand; that if admitted to a re-examination of that account, he can demonstrate that *more credit* is due to the contractor; and that that contract is not justly chargeable for all the moneys with which it is debited," and therefore prays to be relieved from all accountability on account of this contract.

The Committee of Claims, before mentioned, in examining this subject, say: "Other circumstances important to the true development of the petitioner's case impel the committee further to report, that the aggregate amount of charges for advances to William Duer, in the annexed account, is \$83,708 32, and of credits \$72,708 29. Amongst his credits appears an item of \$15,776 40, for the supplies furnished between the 1st of October and the 4th of November, the day of the defeat, calculated from an estimate, without any vouchers, and stating that the vouchers of the contractor for that period, upon the defeat of the army, were lost. There appears another item of \$4,323, also credited on estimate for supplies which, on the defeat of the army, fell into the hands of the enemy. In order to prove that these credits are not equal to the actual supplies which were lost, and which, according to the *contract, exclusively fell upon the United States*, your committee have had recourse to the evidence filed in the Treasury by the affidavits of Matthew Earnest, the superintendent of transportation and issues of provisions, then in the army, and of Abijah Hunt, assistant of

transportation and issues—the former taken on the 3d of May, 1792, before Hillary Barker, esquire, one of the aldermen of the city of Philadelphia, and the latter taken on the 8th December, 1791, before William McMullen, esq., a magistrate of Hamilton county, in the territory northwest of the river Ohio—*agreeing in a statement of the actual supplies which had been received by them at the army from the contractor* between the 14th of August and the 20th of November; and stating, at the same time, that the abstracts for the issues in the month of October, together with a considerable quantity of provisions, (not ascertainable,) together with the receipts and other papers belonging to the contractor, fell into the hands of the enemy, and that provisions were issued promiscuously to the soldiery on the retreat; and that upwards of twenty thousand rations of provisions remained at Fort Washington at the expiration of William Duer's contract; stating, also, that no other method can be fallen upon to do justice to the contractor than to take the whole amount of provisions forwarded from Fort Washington, allowing for wastage and issuing."

That committee further report that they "do not know when these affidavits have been procured, and deposited in the office of the Register of the Treasury; they believe them to be the best and most satisfactory evidence which, perhaps, at that time existed, or could now be obtained. Admitting the contractor entitled to the credit thus established, it will be found, from the statement annexed, which comprehends all the supplies furnished in the gross from the 14th of August by the contractor, and which has reduced those supplies into rations, and ascertains the amount in dollars, according to the terms of the contract, which statement your committee believe to be accurate—it proves, as the result, that the contractor is thus entitled to a credit from the 14th of August until the 31st of December, to the amount of \$49,693 57, when, by the Treasury account, he is only credited for the same period the sum of \$38,706 35—making a deficit of credit of \$10,987 22, which is more than the balance as stated and claimed by the Treasury. Admitting this credit, therefore, to the contractor, which seems reasonable and just, it would appear that the Treasury, instead of having a claim of \$10,799 29, are thus in arrear to the contractor \$187 93."

That committee further report that "your committee have also found it important to investigate the *accuracy* of the charges which have been placed to the account of the contract entered into by T. Fowler, into which they were necessarily drawn from the face of it. They find him made debtor to Joseph Howell, acting paymaster general, for the amount of \$13,453 29, advanced on account of his contract, being for bills of exchange drawn by Israel Ludlow, agent to William Duer, on the said Duer, and discharged on warrants of the Secretary of War. All these bills except the first, which is dated the 5th of December, 1791, are drawn in the year 1792. The contract expired on the 31st of December, 1791." This sum, then, having no relation to this contract, (as hereinafter explained,) should be deducted from the amount of charges on the Treasury account by the United States against that contract, which would leave the balance due the contractor under said contract increased from \$187 93 to \$13,641 22; and which is the true balance due the contractor, agreeably to the admissions on the face of the Treasury account, and the indisputable evidence collected and perpetuated in the reports of said committees.

And in relation to the war contract, the said Committee of Claims goes on to say: "In the report of the committee before alluded to, [the select

committee,] your committee find it stated that, 'on the 6th of March, 1791, William Duer entered into a contract with the Secretary of War for supplying the troops with provisions until their arrival at Fort Pitt; that a bond was at the same time entered into by him for the due execution of the said contract, in the penalty of \$4,000, without any security whatsoever; and that, under this contract, on the 23d of March, \$15,000 were advanced to him.' In having recourse to the accounts of William Duer under this contract with the Secretary of War, it is found that William Duer there stands charged for advances to the amount of \$18,900 38; that he is credited to the amount of \$5,447 09, and that on the 12th of August, 1793, an ex parte balance was stated by the War Department against William Duer of \$13,453 29, opposite to which is the following entry: 'The residue hereof, being \$13,453 29, is to be carried to the credit [debit, it should be] of T. Fowler, on account of his contract with the Secretary of the Treasury of the 28th October, 1790, for drafts of Israel Ludlow, agent of William Duer, assignee of T. Fowler;' a copy of which account accompanies this report, which entry explains the principles upon which the transfer was made.

"To which your committee would observe, that, had T. Fowler himself made a settlement with the Treasury before the 12th of August, 1793, he would, on the very face of his account, as stated by the Treasury, have been a creditor to the amount of \$2,454, instead of a debtor, by means of this transfer of said balance, to the amount of \$10,799 29."

That committee further report: "Your committee find it stated in the before-mentioned report, 'that a warrant for \$15,000 was issued by the Secretary of War in favor of Joseph Howell, acting paymaster general, which sum was by him advanced to William Duer or his agent, on account of the War Department generally.' In William Duer's account with the Secretary of War under his own contract, on the books of the War Department, *we find the first three* items to be for money advanced to him for provisions and supplies to be furnished in the quartermaster's department; and the residue of the charges are bills of exchange, drawn by Israel Ludlow as an agent of William Duer, in favor of Joseph Howell, protested by William Duer. These last-mentioned charges are those which are transferred from the war contract of William Duer to the treasury contract of T. Fowler." But in the second report of the select committee, (No. 9, vol. 1, American State Papers, Military Affairs,) which was made for the purpose of correcting some errors in the first report, they say: "It appears from documents received by the committee since their report, that the sum of \$15,000 was not advanced to William Duer on account of the last-mentioned contract on the 23d March. The committee were led into this mistake by a document received from the Treasury representing the fact as stated in the original report, which document is still before the committee. The true state of this transaction, as recently stated, appears as follows: A warrant issued in favor of Joseph Howell for the sum of \$15,000, for the use of the War Department generally, and not for William Duer, as stated in the account rendered by the Treasury; of which sum were advanced to William Duer, on the 26th of March, \$4,000; on the 8th of May following, were paid to James Smith, contracting agent for William Duer, \$1,000; and between the 21st and 23d of July, were paid to J. Kean, another agent for Mr. Duer, \$437 91: making the whole sum advanced on the last mentioned contract \$5,437 91. The residue of

the \$15,000 is suggested to have been applied to the use of the War Department generally."

From these extracts and evidence then before the committees above mentioned, it is clear that this item was not only erroneously transferred from the war to the treasury contract, but erroneously charged to the war contract, as it should not have been charged to the contractor on any account, having been expended in the service of the War Department.

That committee further report: "In the before-mentioned report it is stated that 'the commander-in-chief directed Israel Ludlow, as agent of the contractor, to purchase six or seven hundred pack-horses for the use of the army on their march; and to draw bills on William Duer, the acting contractor, for payment; which bills were endorsed by the commander in chief to the amount of \$17,000, were protested by the contractor, and paid at the treasury.'"

In relation to these bills, the Secretary of War, in his letter to General St. Clair, dated December 2, 1791, (see American State Papers, vol. 1, Indian Affairs,) says: "The bills which Mr. Ludlow drew, for the pack-horses, have been protested by Mr. Duer, he stating that Mr. Ludlow had no authority from him for the purpose, and that he made another arrangement for the purchase of the said horses. The affair has been stated to the Secretary of the Treasury, and the business will be adjusted by the Comptroller upon proper principles."

"By the testimony of Israel Ludlow, which the petitioner has obtained under a commission issued out of, and returned to, the circuit court, a copy whereof accompanies this report, it appears that 'he had purchased seven hundred and twenty horses on account of William Duer, at the request of General St. Clair, with this stipulation, (on the part of the general,) that should there be any difficulty in the execution of the purchase, he would pledge the public for the fulfilment of any engagement said Ludlow might enter into on account of the contractor; that he believes about forty horses were found after the expedition under General St. Clair, and sold for and on account of the contractor; the residue of the horses he understood and believes were lost by the fatigue of the service and the capture of the Indians.' From this testimony, the amount of the expenditure in the purchase of horses at \$50 a head would be \$36,000, which exceeds the balance which the contractor was found in arrears on the war contract, (being \$13,453 29,) and the amount of protested bills together, (being also \$13,453 29,) and composing an aggregate of about \$27,000, in an amount not less than \$9,906 58, as a balance due from the War Department to William Duer, instead of a balance of \$13,453 29 due from William Duer to the War Department. That the price of these horses falls upon the government, from their being lost in the service and captured by the enemy, (if justly chargeable to the account of T. Fowler,) is apparent from the contract. But your committee, from the evidence, deem it unquestionable that these horses were purchased for the quartermaster's department, and all moneys advanced by the Secretary of War were advanced to William Duer, on his personal responsibility and accountability, and if a balance was due by William Duer, that balance could not be chargeable to T. Fowler; and, as before stated, there is probable ground for a belief that if the accounts of the Secretary of War were fairly settled, according to the evidence which is afforded by the testimony of Israel Ludlow, the result would be the ascertainment of a balance of about \$10,000 due to William

Duer on that contract, instead of a balance of \$13,453 29 against him, which sum is charged against the said T. Fowler as aforesaid; which inquiry your committee do not deem it important to pursue. So that, in every view in which this subject has presented itself to your committee, they are constrained to be of opinion that no responsibility for any claim set up by the government on account of his said contract attaches to him; that he ought to be exonerated, and the suit against him withdrawn." The following resolutions were therefore reported and adopted:

"*Resolved by the Senate and House of Representatives of the United States of America in Congress assembled,* That the claim of the United States against Theodosius Fowler, for money advanced and paid on account of his contract with the Secretary of the Treasury, dated 28th October, 1790, be and is hereby extinguished.

"*Resolved,* That the suit commenced against the said T. Fowler in the circuit court of the district of New York for a claim on account of the said contract ought to be no further prosecuted, and that the Comptroller of the Treasury be, and he is hereby, authorized and required to cause the same to be withdrawn."

From the resolutions reported by the committee and passed by Congress, it is manifest that the committee, in the investigation of T. Fowler's case, in 1802, became satisfied, from the evidence contained in the foregoing extracts, of two things: one of which was, that T. Fowler, in whose name the treasury contract was made, was in no way accountable as principal to the United States for its fulfilment, that contract having been intended for the sole use and benefit of William Duer, with the knowledge and approbation of the proper officers of government; and the other was, that if the accounts of William Duer had been audited and settled agreeably to the evidence submitted to them, and the items established thereby as justly due passed to the credit of the contractor, there would have been a large balance found due and standing to his credit on each of his contracts.

The calculation made in the last extract from the report of said Committee of Claims shows them to be of opinion that even if the rejected item of \$13,453 29, added to the other item of the same precise amount; said to have been paid for taking up the protested bills of Israel Ludlow drawn on William Duer for the purchase of horses, and charged to the contractor, was to be admitted to the credit of the United States, under the war contract, on account of the purchase of these horses, making, as above stated, the aggregate amount of \$27,000, advanced to him on that account, still there would be left to the contractor a balance of \$10,000 due him on that contract, if the sum of \$36,000 paid for the horses purchased by him (as appears by the deposition of I. Ludlow) under the orders of the general-in-chief, and recognised and approved by the Secretary of War in his letter above quoted, had been passed to his credit on the books of the War Department; and would, in that event, by adding the two balances together, leave an amount of \$23,644 still due to him as contractor by the United States. And it is not easy to discover any just principle in auditing accounts that would justify the accounting officers of the government in charging the contractor with money advanced to assist him in the purchase of these horses, and then refuse or neglect to credit him with the cost of the horses when purchased and delivered, as these were, to the order of the commander-in-chief for the use of the army.

Had the Committee of Claims before mentioned been directed to inves-

igate the claims or accounts of William Duer as contractor, instead of T. Fowler, it is manifest, from the incidental examination given to them by the committee, under the treasury as well as war contract, that they would have been stated by that committee as follows: •

United States to W. Duer, contractor in fact under the Treasury contract.

To amount of supplies furnished and issued to the army under his contract with the Treasury Department up to 14th of August, 1791, calculated from the vouchers and receipts returned to the department up to the above date, by the Auditor of the Treasury, embracing his estimate of losses by the defeat of the army - - - 72,909 03

To amount of difference between the estimate of the loss of the contractor in vouchers and provisions from the 14th August to the 31st December, made ex parte by the Auditor of the Treasury, being - - - 38,706 35

And the estimate made on the spot and on oath by Matthew Earnest and J. Hunt, superintendents of transportation and issues, embracing vouchers and receipts for provisions issued to the army, captured by the enemy, or left at Fort Washington for the same period, viz: from the 14th August to the 31st December, and stating at the same time that no other method could be fallen upon to do justice to the contractor than to take the whole amount of provisions received by them for said period, making allowance for wastage and issuing, and which they agree in saying amounts to - - - 49,693 57

Making a difference of - - - - 10,987 22

83,896 25

By amount of moneys advanced to the contractor on the treasury contract, in all, exclusive of the \$13,453 29 improperly transferred to this contract, as before stated (see account) - - - - 70,255 03

Balance due on treasury contract - - - - \$13,641 22

United States to W. Duer, under his contract with the War Department.

To amount of cost of 720 horses, purchased for the army by order of General St. Clair, at \$50 each, as proved by I. Ludlow - 36,000 00

To amount of supplies furnished to the quartermaster's department, and credited on the books of the War Department 5,447 09

41,447 09

By amount of moneys advanced by the War Department for furnishing supplies to the quartermaster's department of the army - - - - 5,437 91

By amount charged on the books of the War Department for moneys advanced in taking up the protested bills drawn by I. Ludlow on W. Duer - - - - -	13,453 29
By 40 horses, said by I. Ludlow in his deposition to have been sold for and on account of the contractor, which, (if chargeable to him at all,) after the fatigues of the march, could not have sold for much; yet, as no price is fixed, they may be estimated at half the original price of \$50 each, making -	1,000 00
	<hr/> 19,891 20
Leaving a balance due to the contractor on this contract of -	21,555 89
Add the balance found due to the contractor on the treasury contract, as above - - - - -	13,641 22
	<hr/> \$35,197 11
And the aggregate amount found due on both contracts will be	

There are but two items of credit claimed by the petitioner, one in each of the above statements of the accounts of the claimant under the two contracts, which have not been established by the best of all evidence, the admission in the ex parte statement of these accounts by the Treasury and War Departments of the government.

The first of these items amounts to \$10,987 22, being the difference between the estimate of the loss of the contractor of vouchers and provisions on the defeat of the army, by the officers of the Treasury, without data to govern them, and the estimate of these same losses for the same period of time, by two intelligent and respectable men, who were superintendents of transportation and issues on the spot, and who were enabled by their books to ascertain precisely the amount of provisions received by them for the use of the army within the period before mentioned, and who, upon their oaths before different magistrates, at different periods of time and in different parts of the country, agree in declaring the loss of the contractor, by the defeat of the army, to be \$49,693 57, making his loss amount to the above balance of \$10,987 22 more than the estimate of the same loss by the Treasury officers, declaring at the same time that no other method could be fallen upon to do justice to the contractor than to take the whole amount of provisions forwarded from Fort Washington, allowing for wastage and issuing. Can there, then, be a moment's hesitation in the mind of any one, as to which of these estimates shall govern in rejecting or admitting this item to the credit of the contractor? This evidence would be admissible in courts of justice, and is the best that the case was susceptible of under the circumstances; and brings the item under that clause in the contract above quoted, by which the government bound itself to pay all such losses as could be proved by two respectable characters.

The second of these items amounts to \$36,000, being the cost of seven hundred and twenty horses, proved by the letter of the Secretary of War before referred to, and by the testimony of Israel Ludlow hereinbefore set forth, to have been purchased by him on account of W. Duer; and afterwards lost by the fatigues of the march or captured by the Indians on the defeat

of the army. While the government held the contractor liable, and charged him with the money advanced to pay protested bills drawn by the contractor's agent, to assist in the purchase of the horses, they clearly admit his right to a credit for them when purchased. The right of the contractor to a credit for this item is so clearly established by the testimony of I. Ludlow and the admissions of the government officers, as to induce the Committee of Claims before mentioned to pronounce it both reasonable and just; and it was evidently upon the clear conviction of the justice of passing both these items to the credit of the contractor, which would leave the United States largely indebted to him on both contracts, more than upon any other consideration, that the committee recommended to Congress the passage of the resolutions above recited, releasing Mr. Fowler from all responsibility.

When it is considered that all the accounts and vouchers of the contractor, with all the provisions furnished by him for the supply of the army, from the 14th of August to the 31st of December, were either left in Fort Washington, issued indiscriminately to the troops on their retreat, or captured and lost on the defeat of the army on the 4th of November, and that all his accounts and vouchers forwarded before that period, and upon which the accounts of both the Treasury and War Departments have been made out *ex parte*, (many if not all of which were submitted to the Committee of Claims in their investigation of Fowler's case,) have since been destroyed and lost by the burning of the Treasury building, it is matter of some surprise that any evidence could now be obtained to support the petitioner's claim, and would unquestionably be a matter of oblivion, had it not been for the elaborate investigations of the committees before mentioned; by which facts, from the books of the departments and papers then in existence, as well as the evidence of individuals submitted to them, have incidentally, as it regards this claim, been developed and preserved in their reports, as matter of official and authoritative record, sufficient to establish this claim beyond all dispute or cavil. It is, moreover, a matter of surprise and regret for the cause of justice and of individual suffering, that the accounting officers of these departments, whose peculiar province it was to render prompt and impartial justice to every citizen having business transactions with the government, did not feel bound (by the clause in the contract above recited, requiring them to settle these accounts without unnecessary delay) to pass these items to the credit of the contractor, especially after the report of the Committee of Claims in 1802, and upon which T. Fowler, the nominal contractor in the treasury contract, was released from all liability to the United States upon the ground, as before stated, that the United States were largely indebted to the contractor on both contracts. This omission can only be accounted for by the pressure upon these officers of other public engagements, and the practice probably prevailing of leaving unsettled business to be attended to only when their attention was called to it by those interested, which, unfortunately for this contractor and his family, could not have been attended to by him; as it appears from the memorial as well as the report of the Committee of Claims, that he was cast into prison for large sums of money in 1793, due by him, in consequence of his advances to the government of his private funds and credit, which was good, (see depositions of S. M. Isaacks and W. Popham, annexed) on account, in part, no doubt, of the purchase of these very horses, for which he tells the Secretary of War he had made other arrangements, and which was the reason given

for protesting the bills drawn on him for that purpose by his agent. From all which, it is fair to infer that the refusal or neglect of the government to refund this money has resulted in his imprisonment in 1793, and death in prison in 1799. It also appears that his oldest son was a minor at the death of his father, and unfit to attend to his affairs; and that no administration was had upon his estate until 1836, (see W. A. Duer's deposition annexed;) and then the administrator was ignorant of any unsettled account between him and the government, and so remained until 1842, when his attention was called to the subject by looking over the American State Papers, presented to the Columbia College of New York by the United States government while he was president of that institution. These circumstances account satisfactorily for the delay on the part of the claimant in not demanding the amount of his claim for so long a time, and may, unfortunately for him, be a good reason for the United States government, according to its usual practice, refusing to pay interest; yet it should be considered, under the peculiar circumstances of the case, as a strong inducement to the government to repair, as far as in their power, the injustice done to the late contractor and his family, by promptly passing a bill for his relief, for the amount of the principal shown to be so justly due.

There is another transaction between the United States government and William Duer, imperfectly shadowed forth in the papers furnished to Mr. Vance, chairman of the Committee of Claims, in answer to his letter dated the 16th January, 1845, and addressed to the Third Auditor, asking for information as well as that officer's opinion on the merits of the claim of the representatives of William Duer, but containing some important facts, tending to show that the Auditor, in his answer to said committee, has misapprehended or perhaps never understood the nature of this transaction, and has confounded it with the transactions of Wm. Duer under his treasury and war contracts, examined in the foregoing report, while the circumstances of this case show distinctly that they were of a separate and different character, altogether unconnected with those two contracts. The following is a copy of his letter:

"TREASURY DEPARTMENT,
" *Third Auditor's Office, 13th February, 1845.*

"SIR: Complying with your request to furnish any information obtainable by me, together with any personal knowledge I may have of the claim of William Duer, an army contractor in 1790, and my views of the case as it was left in 1791-'2 and in 1802, I have the honor to say that I have no personal knowledge on the subject, but that, pursuing the suggestions of the committee, I have sought such information of this large, ancient, obscure, and involved claim, as was accessible, and which I now proceed to detail.

"I applied to the Solicitor of the Treasury, who has charge of suits in which the United States is a party or is interested, to furnish such information in regard to the suits against Mr. Duer, to which the committee allude, and submit all that could be procured by that officer.

"It appears by an old docket, now in the Solicitor's office, of suits instituted by the Comptroller who then had charge of this business, that on the 12th of March, 1792, a suit in the circuit court of the United States for the district of New York was ordered against William Duer, *but the nature of the suit, or the amount claimed, is not stated in the docket.* In the mar-

gin, however, there is this note, 'Dead and insolvent, many years since.' There is no doubt that this is the same suit, copies of the proceedings in which were obtained by the Solicitor of the Treasury, and are herewith submitted. That officer, at my request, wrote to the district attorney of New York for such copies, and any information in regard to the suit which could be obtained, and the copies furnished, and the letter of the district attorney, with that of the Solicitor, communicate that information. The state of that case is this: 'It appears by the declaration in case of the United States vs. William Duer, filed by Richard Harrison, then United States district attorney, on the 8th of April, 1793, in the circuit court of the United States for the district of New York, that the United States delivered to said Duer, on the 7th of April, 1788, a quantity of indents of interest for the debt of the United States, amounting to \$203,150, which he promised to apply to the use of the United States, and account for when required. The declaration avers that he did not so apply and account. The declaration contains, also, the common money counts.

"To this declaration, a plea and notice of set-off were filed by said Duer in person, on the 26th of April, 1793. He pleaded the general issue; and for a further plea, that on the 1st of April, 1793, he did well and faithfully apply to the use of the United States, and account with them for all said indents of interest; and to support his plea, he gave notice that he should give in evidence that the United States were, first, indebted to him for indents of interest amounting to \$300,000, applied to their use by him, at their request. Second, that the United States were indebted to him in the further sum of \$300,000, for money laid out and expended by him for supplies for the troops of the United States, then in the western territory, by virtue of a contract made in 1790, between Alexander Hamilton, then Secretary of the Treasury, and Theodosius Fowler, and by the latter assigned to said Duer. Third, that the United States were indebted to him in the further sum of \$300,000, for money laid out and expended by him for purchasing provisions, &c., for the army of the United States, pursuant to a contract dated March 26, 1791, between said Duer and Henry Knox, then Secretary of War. Then follow the common money counts.

"On the 7th of October, 1793, Mr. Harrison, then United States attorney, filed a declaration against said Duer, in the same court, in which it is averred that on the 11th of September, 1789, the United States delivered to him 'certain warrants of the said United States of America, drawn for new emission money of different States, and certain sums of new emission money, to wit: new emission money of the State of New York, and warrants for new emission money of the State of Maryland and Virginia,' amounting to \$36,773 72, which he, the said Duer, promised to apply to the use of the United States, and account for. The declaration avers that he did not apply and account. There are also the common money counts. To this declaration no plea was filed.

"It appears by a letter from the United States attorney of the district of New York, of the 31st of January and 1st of February, 1845, that no judgment appears on record against William Duer, and that there is no entry or order in any of the court minutes or books which affords any information beyond the disclosures in the above described pleadings; and that the register of Mr. Harrison, now in possession of his family, contains no entry whatever in them of any suit of the United States vs. said Duer.'

"It also appears, by letter dated on the 18th of April, 1836, from the then

Solicitor of the Treasury to the then Secretary of the Treasury, (a copy of which is also furnished,) that a proposition had been made on the 18th of that instant, by the attorney of the administrator of William Duer, deceased, to deposit to the credit of the Treasurer of the United States the sum of \$300, in the discharge of the balance which stands charged on the books of the Treasury against him, provided he be allowed to receive the dividends due on the stock issued in his name. From that letter, it appears that the balance was of long standing; that all the records and files relating to it had been destroyed, but that it was a balance due previous to 1799, on account of advances made to Mr. Duer by the War Department.

"It appears, also, that the amount of dividends on stock issued in the name of William Duer was about \$3,000, and that the then Solicitor advised that the proper method of settling these outstanding balances was to deduct the balance standing against Mr. Duer on the books of the Treasury, from the amount of the dividends on the stock in his name, and to pay over the balance to Mr. Duer's legal representatives. I am not informed how, if at all, this business was closed.

"In a transaction so much involved, so obscure, and ancient, I give my views, as requested by the committee, with some distrust, but with confidence in the principles which govern in judicial determinations of stale claims. These principles are so well settled that I need only refer to them, as being perfectly within the knowledge of the committee. They govern in the adjudication of all stale or ancient demands, and are the basis of statutes of limitation, and the foundation on which, in equity as well as at law, there is a presumption, sometimes equivalent to a positive bar, and not unfrequently with attending circumstances of sufficient force to defeat such demands, when the time, although long, is less than sufficient to amount to a bar. These statutes, which are called statutes of repose, and the analogous presumption against stale demands, have been devised to protect against the loss of evidence which, in the case of a recent demand, is generally at hand to ascertain the truth of the case.

"Keeping these principles in view, I refer, in connexion with the lapse of time, to the fact, that suit was brought, as stated, against Mr. Duer, so long ago as 1792, for a very large sum of money, and that in that suit he set up, in his plea of set-off, the very claims which are now, after so long a period, preferred against the United States.

"It appears that this suit was not prosecuted by the United States, for the reason disclosed by the entry on the margin of the record of the Comptroller—'the insolvency and death of the defendant.' It is also evident that the defendant did not, after filing his plea of set off, press, as he might have done, for a trial of the case. If he had a valid demand against the United States, it is difficult to account for his omission to press it when the evidence of the transaction, then recent, was fresh and accessible. Take this in connexion with the fact, that the evidence of these transactions, which once existed in the Treasury Department, has been destroyed, either by time or the conflagration of the Treasury building, and it seems to me that, with the lapse of time, an answer is furnished to the claim, which cannot be overcome. Nor is the fact that in 1836, as appears by the letter of Solicitor Maxcy, that a small claim was made on the Treasury Department by the same estate, without suggesting the existence of that now made, without some weight, in my view of this question, although it may be that the force of it would be insufficient if explained, and it stood alone. This is

my view of the claim, which the committee has asked me to give, and which, with the papers referred to, are respectfully submitted.

"PETER HAGNER,
- "Auditor."

"To Hon. JOSEPH VANCE,
"Chairman Committee of Claims, House of Representatives."

The Third Auditor, in giving his opinion to the committee, and reasoning from the facts as set forth by himself, has manifestly misunderstood their bearing, and consequently has drawn inferences not warranted by these facts as presented. This is done in his zeal (laudable, no doubt) to protect the Treasury against what he has labored to show is an ancient, obscure, involved, and stale claim, which, if not barred by any statute of limitation, should be suffered to sleep under what he calls *statutes of repose*, so very useful, in his opinion, in settling old and stale claims. This might be very well as regards this particular case, if he had not connected it with the claim of the memorialist as set forth in the preceding report, and labored to raise a presumption that Mr. Duer was indebted to the United States in some indefinite but large sums of money, which should be allowed to carry with it into a state of *repose* the large balances shown to be due to him in the two cases before mentioned.

From the long experience and high character of the Third Auditor as an accountant, it is made necessary, in order to arrive at a proper understanding of this case, to review the facts and inferences drawn from them by this officer, as they are set forth, with more than ordinary attention. It appears, then, by this statement, that indents of interest and new emission money to a large amount, (according to the Third Auditor, to the amount of \$239,923 72,) were advanced to William Duer, of the State of New York, on the 7th of April, 1788, and on the 11th of September, 1789, by the United States government, to be applied by him to their use, but does not specify what use; nor does it appear that these advances were made to him as a contractor, a commissariat, or disbursing officer of any denomination known to the public, but simply to William Duer; showing (as the only inference to be drawn from this transaction) that he must have been employed for his high standing for integrity, responsibility, and capacity for business, as the confidential agent of the government, and intrusted with the expenditure of these funds in the service of the government, in a way known only to the President and head of the department requiring such service; (see depositions of S. M. Isaacks and W. Popham, hereto annexed;) possibly for the purpose of negotiating with the creditors of government, for substituting these indents of interest for other debts of the United States, allowing the dividends to pass to his credit, while the stock remained in his hands on account of commission or compensation. This inference is almost irresistible, as well from the facts above stated, as that after suits were instituted against Mr. Duer, by the order of the Comptroller, as a matter of course in the discharge of his duty, not being in the secret, nor acquainted with the nature of the service in which he was engaged, they were immediately dropped, no doubt by order of the President or head of the appropriate department. To confirm this view, no judgment or trace of proceedings can be found after the suits were brought and his answer filed in the courts of New York; nor can any charge be found on the books of the Treasury Department against him for these advances,

strengthening the idea that they never were charged, or intended to be charged, to him on the public books of the Treasury. This is certainly a more likely and reasonable way of accounting for these suits being dropped, than that adopted by the Third Auditor in the letter above copied. He says that "It appears this suit was not prosecuted, for the reason disclosed by the entry on the margin of the record of the Comptroller, viz. 'the insolvency and death of the defendant.'" This, indeed, is a most extraordinary reason, when he must have known that Mr. Duer's death did not take place until 1799, and that this entry could not with truth have been made until after that year, which would make it more than seven years from the time the suit was instituted in 1792, until the happening of this death, which has furnished the Auditor with so convenient a reason for the United States failing to prosecute these suits. With these facts in view, it is hardly necessary to say that the reason contained in this entry could have had no influence in causing the suits mentioned to be stopped; besides, having instituted suits against Mr. Duer, and then ceased to prosecute them, after his answer was filed, the presumption of law is raised, that the government found the suits could not be sustained, or that they had no valid claim.

Again, he says: "It is also evident that the defendant did not, after filing his plea of set-off, press, as he might have done, for a trial of the case. If he had a valid demand against the United States, it is difficult to account for his omission to press it when the evidence of the transaction, then recent, was fresh and accessible." To an unbiassed mind, the difficulty in this position lies in comprehending its force. It is well known that the government cannot be sued, and that the citizen, when sued by the government, can only defend himself, which was done in this case promptly, as appears by his plea in answer to the suit; nor could he, if he wished, hinder the government from withdrawing or ceasing to prosecute these suits.

Again, he says: "That suit was brought, as stated, against Mr. Duer, so long ago as 1792, for a very large sum of money, and that in that suit he set up, in his plea of set-off, the very claims which are now, after so long a period, preferred against the United States;" (alluding, no doubt, to the balances found due to him under his treasury and war contracts, as shown in the report of the Committee of Claims in 1802, and presented in the foregoing report.) Had the Auditor examined this plea with a little more care, he would have discovered that no such position is taken, as stated by him. Mr. Duer, in his plea of set-off, avers that he did well and faithfully apply to the use of the United States, and account with them for all the indents of interest; and to support this plea, he gave notice that he would give in evidence that the United States were, first, indebted to him for indents of interest amounting to \$300,000, applied to their use by him, at their request. Second, that the United States were indebted to him in the further sum of \$300,000 for moneys [not indents of interest or new emissions] laid out and expended by him for supplies for the troops of the United States, then in the western territory, by virtue of his contract made in 1790, &c., &c. And a like plea of set-off, for moneys laid out and expended by him for supplies on his war contract. In these pleas, it is not alleged by him that he has laid out and expended indents of interest or new emission money in furnishing supplies under either of his contracts, but money itself laid out and expended, &c., &c. From the

distinction made in his pleadings, it is evident that he considered these transactions separate and distinct, and that his object in pleading in these contract cases, also, was not as a set-off to his private and confidential transactions, but, as he had been sued by the United States, to bring all his claims before the court and jury in the only way in his power, that he might have the benefit of a verdict of a jury in his favor, for all that might be found due him, as well on his private and confidential transactions as on each of his two contracts, on which large sums were omitted in his credits.

In the last paragraph of the Auditor's letter, before mentioned, he observes: "Nor is the fact that in 1836, as appears by the letter of Solicitor Maxcy, a small claim was made on the Treasury Department by the same estate, without suggesting the existence of that now made, without some weight, in my view of the question; although it may be that the force of it would be insufficient, if explained, and it stood alone." This explanation has been given in the preceding report, sufficient to satisfy any mind open to conviction on the subject. The administrator declares that he did not know of any other claim until 1842, as before stated, and could not, therefore, have made such a suggestion. The fact, however, alluded to is not without its due weight, but, when examined with care, will be found to preponderate in the scale opposite to that in which the Auditor seems to think it should be found. It appears from the Solicitor's report, that the sum of \$3,000 stood on the books of the Treasury to the credit of Mr. Duer, unclaimed up to the year 1836, being for dividends on these very stocks of the United States, while standing in the name of William Duer, before he had passed them off in applying them to the use of the United States. Had the President or head of the department having charge of this transaction intended that these stocks advanced to Mr. Duer should appear on any of the public books in any of the offices, this is the book and place to find it; and instead of being a creditor for \$3,000 of dividends on these very stocks, or indents of interest, these books would have shown that this credit would have been absorbed or set off by the greater sum of indents of interest unaccounted for and still standing against him; and whatever stress may be laid on the loss of books by the burning of the Treasury, this book, containing this credit alone, is strong presumptive evidence that all the funds advanced to him in this transaction were disposed of and accounted for satisfactorily to the proper officer of government, before his entering into the treasury and war contracts. Can it be supposed for an instant that a man of such exalted character as General Hamilton for intelligence and integrity in the discharge of his public duties, would have recognised Mr. Duer as the assignee of an important contract for the supply of the United States troops with provisions, in times of such trouble, four years after these advances were made, and which he must have been familiar with, while he knew him to be a defaulter and in possession of large sums of government funds, and still advanced to him \$70,000 in money on account of that contract, without saying a word in any of his correspondence about his indebtedness?—or that Gen. Knox, then Secretary of War, would have entered into another contract with him, without any security but his own bond for \$4,000, on which he advanced him money to the amount of \$18,900?—showing the entire confidence reposed in him by the executive officers of the government. Could this have been done with justice to the United States had he not settled up his former transactions faithfully

and honorably, as he declares he did? It cannot be reconciled with the character of these two gentlemen named to believe otherwise.

There is another circumstance in this case worth mentioning. It appears there was the sum of \$300 standing to the debit of William Duer on the books of the Treasury Department, arising out of transactions with the War Department, which was settled when the \$3,000 to his credit on the same books was paid to the representatives of Mr. Duer in 1836. It is clear that this \$300 was unconnected with his transactions under his war contract; as the whole balance found due the United States upon an *ex parte* statement of that account was improperly transferred to his treasury contract, thereby closing his war contract, according to their statement, and making the treasury contract a debtor to government, which had before that transfer been a creditor. Had these \$300 belonged to the war contract, they would have been embraced in the transfer, which was not the case, and shows it to have belonged to his former confidential transaction, which must have been honorably settled, leaving him a debtor on the books of the Treasury Department to the amount of \$300 for moneys due the War Department, and creditor to the amount of \$3,000 for dividends due him in the Treasury Department, since settled on the recommendation of the Solicitor of the Treasury, by paying the balance over to the legal representatives of William Duer.

From the view now taken of the facts in this case, and of the opinions and views presented of them by the Third Auditor, it is manifest that he had just cause, as he states, to give his opinions with some distrust, when he confounds this case with the contracts of Mr. Duer, and gives still more cause for others to distrust his inferences when he says, "the evidence of these transactions, *which once existed in the Treasury Department, has been destroyed either by time or the conflagration of the Treasury building.*" Thus showing by his own alternatives that this fact of the evidence of these transactions ever having existed in the Treasury is reduced to conjecture. And as to the applicability of those statutes of repose he speaks of to old and obscure claims that are not understood; had he called them to his aid to quiet this claim alone, he might have been excused, as the facts disclosed prove it to have been of a confidential nature, so far as they prove anything, and show that it should be left in that repose to which it was evidently consigned by those who had the management of it, or who could know anything about it, without raking it up as a stumbling-block in the way of the memorialist's just claims arising out of his contract with the government, and which, from the explanation given in the preceding report, and the present just practice of the government, could in no way be affected by these statutes of limitation or repose.

STATE OF NEW JERSEY, }
 Morris county, } ss.

William Alexander Duer, late of the city and State of New York, now of Morristown, in the State of New Jersey, doctor of laws, being duly sworn, deposeth and saith: That he is the eldest son and child of Colonel William Duer, late of New York aforesaid, deceased, and Catharine, his wife; that the said William Duer departed this life on the seventh day of May, one thousand seven hundred and ninety-nine, intestate and insolvent,

leaving the said Catharine, his widow, (since also deceased,) and eight children, him surviving; that all the said children of the said William Duer, including the deponent, were, at the time of his decease, under the age of twenty one years; that letters of administration of the estate of the said William Duer were not taken out until the fourteenth of March, one thousand eight hundred and thirty six, when the same were duly granted to this deponent; that the deponent applied for said administration in consequence of information which he had shortly before received, that certain unclaimed dividends and interest upon public stock, or loan office certificates, were standing to the credit of his intestate in the books of the Treasury Department of the United States, amounting to three thousand dollars or thereabouts, which sum was, on application to said department, paid to the agent of the deponent. And this deponent further saith that, at the time the said sum of money was applied for, paid, and received as aforesaid, he was totally ignorant of any other claim or demand of his intestate upon the government or treasury of the United States; that subsequently to that time, this deponent, then being president of Columbia College, in the city of New York, received for the library of that institution, from the Department of State, a set of the "American State Papers;" and upon reading a report in the volume entitled "Claims," made to the House of Representatives by the Committee of Claims, in the year one thousand eight hundred and two, upon the petition of Theodosius Fowler, this deponent discovered for the first time that a large balance was reported by the said committee to be due from the United States to the said William Duer, his intestate; whereupon this deponent determined to petition Congress for the payment of the same at the next session of Congress thereafter, which he did accordingly. And this deponent further saith, that the signature to the certificate hereunto annexed is the proper handwriting of Major William Popham, of the city of New York, who served in the army of the United States during the revolutionary war, and is now, as this deponent is informed and verily believes, president-general of the Society of the Cincinnati, and of the age of ninety years or thereabouts, and personally well known to this deponent. And further this deponent saith not.

W. A. DUER.

Sworn this 10th day of July, 1845, before me; the words "which he," on the first page, being written on an erasure.

WILLIAM A. CARMICHAEL, *Notary Public.*

STATE OF NEW JERSEY, }
Morris county, } *ss.*

I, William A. Carmichael, notary public in and for the State of New Jersey, residing in Morris county, do hereby certify that, on the day of the date hereof, personally appeared before me, the subscriber, William Alexander Duer, L.L. D., well known to me to be the person described in the above affidavit, and, being by me duly sworn, did depose and say that the matters therein contained are in all respects true, to the best of his knowledge and belief.

[L. s.] Given under my hand and seal of office this 10th day of July, 1845.
 WILLIAM A. CARMICHAEL, *Notary Public.*

I, William Popham, formerly an officer in the army of the United States during the revolutionary war, do hereby certify that I was well acquainted

with Col. William Duer for several years prior to his failure, which took place, to the best of my recollection, about the year 1792 or 1793. That he had been largely engaged in speculations, and possessed great pecuniary resources for some years before and up to the time of his failure, and I understood at the time that that event was a matter of surprise to his most intimate friends. Until his failure he was looked upon as a man of very considerable wealth. I give this certificate at the request of Beverly Robinson, esq., who married a daughter of Col. Duer.

W. POPHAM.

NEW YORK, July 9, 1845.

NEW YORK, ss.

Sampson M. Isaacks, of the city of New York, a clerk in the naval office for the southern district of New York, being duly sworn, deposeth and saith, that he was well acquainted with William Duer, esquire, formerly of the city of New York, who died in or about the year seventeen hundred and ninety-eight; that in the year 1791, (seventeen hundred and ninety-one,) at the age of fourteen, the deponent was taken into the employ of Col. Duer, as a clerk in his office, and soon obtained his confidence and regard; that in that year deponent was often sent to the bank to make his deposits, and he well remembers that those deposits were frequently very large; that the said William Duer was during said year engaged in very extensive operations in stocks (or *scrip*, as it was called) and in land, and was supposed to be a man of wealth, until his failure, which took place in the year seventeen hundred and ninety-two or seventeen hundred and ninety-three, the deponent thinks in the latter year; that his failure was a surprise upon all his friends and the public, as his credit to that time was very great and his pecuniary resources very large; that the deponent went with him to Philadelphia, (as he thinks, in seventeen hundred and ninety-two,) when the said William Duer was believed to be in the full tide of prosperity, and in the succeeding year, 1793, according to the best of deponent's recollection as to the time, he was sent on some business to Philadelphia, by Col. Duer, and on his return to New York was informed of his failure.

S. M. ISAACKS.

Sworn this 9th day of July, 1845, before me, the word "first" being stricken out before sworn to.

GEO. D. COOPER, *Notary Public.*

UNITED STATES OF AMERICA, }
State of New York, } ss.

I, George D. Cooper, notary public, residing in the city of New York, do hereby certify, that on the day of the date hereof, personally appeared before me Sampson M. Isaacks, of the city of New York, hereinbefore mentioned, known to me to be the person described in the preceding deposition, and who, being by me duly sworn, did depose and say, that the matters contained in said deposition are, in all respects, true, to the best of his recollection and belief.

Given under my hand and seal of office, this ninth day of July, [L. s.] in the year of our Lord one thousand eight hundred and forty-five.

GEO. D. COOPER, *Notary Public.*