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Adverse Report : Mr. Blanchard

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IN THE SENATE OF THE UNITED STATES.

FEBRUARY 5, 1895.—Ordered to be printed.

Mr. BLANCHARD, from the Committee on Indian Affairs, submitted the following

ADVERSE REPORT:

[To accompany amendment intended to be proposed by Mr. Carey to H. R. 8479.]

Bartlett Richards, of Nebraska, petitions Congress for an appropriation of \$885.46 for payment of balance claimed by him for beef cattle delivered at Pine Ridge Agency, S. Dak.

The Senator from Wyoming (Mr. Carey) on the 10th of December introduced an amendment, intended to be proposed by him to the Indian appropriation bill, making provision for this payment out of the appropriation for "Support of Sioux of different tribes, including Santee Sioux of Nebraska," for the fiscal year ending June 30, 1896.

This amendment was referred to the Committee on Indian Affairs.

The petition of Richards and the amendment of the Senator from Wyoming were referred by the chairman of the Committee on Indian Affairs to the honorable Secretary of the Interior with the request that he would furnish the committee with the facts of the case and his opinion of its merits.

On the 20th of December, 1894, the Secretary answered, inclosing a copy of a letter from the Commissioner of Indian Affairs, dated December 17, 1894, wherein the circumstances relating to the delivery of the beef cattle in question are set forth.

The Secretary in his letter epitomizes the facts and concludes as follows:

For these reasons I am of the opinion that there is equity in the case.

The Commissioner of Indian Affairs, in his letter, concludes his review of the case as follows:

Although the cattle received at this particular delivery were below the average weight prescribed, I do not understand that such fact was any detriment to the service, or that the Indians suffered any loss thereby; and inasmuch as it appears that the cattle received were fully up to the contract requirements as to quality, I see no objection to the adoption of the amendment proposed.

The Secretary of the Interior ventures merely the opinion that "there is equity in the case."

The Commissioner of Indian Affairs goes further and declares he sees no objection to the allowance of the balance claimed by Richards.

Your committee are unable to concur in the conclusions of the Commissioner. Richards must be held to the letter of his contract. This contract must not be overridden under pretense of doing equity.

The facts are as follows:

On the 18th of May, 1894, a contract was executed between the Commissioner of Indian Affairs and Richards according to which the latter

was to furnish for the Pine Ridge Agency, S. Dak., 4,500,000 pounds of gross beef at the rate of \$2.99 per 100 pounds.

Articles 5 and 6 of this contract are as follows:

ART. 5. That it is further agreed by and between the parties hereto that the beef cattle furnished under this contract shall be good, healthy, merchantable steers and cows (no bulls or stags), not over seven years of age; and, unless authorized in writing by the Commissioner of Indian Affairs, not more than one-fourth of the cattle offered and accepted at one delivery shall be cows; that they shall be delivered on the Government scales, upon which the weight shall be ascertained (steers and cows to be weighed separately; or if weighed together they shall be accepted at an equal average per head for both classes, and payments therefor made as described in article three (3) hereof), at the agency aforesaid, at the time and in the quantities required by the respective Indian agent in charge, upon five days' notice by said Indian agent to the said party of the second part, or his authorized agents or representatives; that they shall be "lotted" without food or water during the twelve hours immediately preceding each and every delivery; that the average gross weight thereof at each delivery from May 1st to December 1st shall not be less than 850 pounds per head, and from December 1st to May 1st not less than 800 pounds per head; that all animals offered under this contract weighing less than 700 pounds gross, or being in such *condition* as to net less than *fifty* per centum of their gross weights in good, merchantable beef, from May 1st to December 1st, or less than *forty-five* per centum in such beef from December 1st to May 1st, shall be rejected (except as they may be received under the provisions of article 6 hereof) as inferior to the requirements of this article.

ART. 6. That it is also further agreed by and between the parties hereto that for all the cattle offered under this contract which are not in conformity with the requirements of article 5, but which the respective Indian agents may be compelled by the necessities of the service to receive, there shall be a deduction of one (1) per centum in the price agreed upon in article 1, for each and every five (5) pounds, or fraction thereof, that said cattle so received shall fall short of the standard weights agreed upon in the preceding article. And if the respective Indian agents are compelled, by the necessities of the service, to receive cattle whose *condition* as to quality although weighing the required average, as expressed in article 5 of this contract—renders them inferior to the requirements of said article 5—then the value of the cattle so received shall be determined by deducting from the price thereof, as agreed upon in article 1 of this contract, such a percentage as may be agreed upon by the agent and (if practicable) a military officer detailed for that purpose by the commander of the nearest military post, upon the written request of said agent to said commander; the said agent and the officer so detailed as aforesaid to appoint, in case of their disagreement as to the percentage of said deduction, a third and disinterested person to form with them a board of survey; the decision of a majority of such board so constituted as aforesaid to be final and binding on the parties hereto.

On the 3d of November, 1894, the agent (who is an army officer) at the Pine Ridge Agency, received from Richards, under his contract, 599 head of beef cattle, weighing 493,570 pounds gross. The receipt given by the agent reads as follows:

PINE RIDGE AGENCY, S. DAK., *November 3, 1894.*

Received at Pine Ridge Indian Agency, S. Dak., November 3, 1894, of Bartlett Richards, 599 head of beef cattle, weighing 493,570 pounds gross (weight ascertained by weigher's returns) under his contract dated May 18, 1894, for subsistence of Indians at the said agency, and for which I have signed receipts in duplicate.

I hereby certify that the beef here receipted for is fully equal to the requirements of the contract above mentioned, and in this delivery and receipt each and every condition, provision, and stipulation of the contract has been fully and honestly complied with, and that payment has not been made for same. The beef cattle were received under article 6 of the contract mentioned above.

CHAS. G. PENNEY,
Captain Sixth Infantry, Acting United States Indian Agent.

It is definitely stated in this receipt that the cattle were received under article 6 of the contract.

This article specifically provides that, for all cattle offered under the contract which are not in conformity with article 5, but which the neces-

sities of the service require to be received anyhow, there shall be a deduction of 1 per cent in the price agreed upon in article 1 for each and every 5 pounds or fraction thereof that said cattle so received shall fall short of the standard weights agreed upon in article 5.

The cattle furnished by Richards did not meet the requirements of article 5 of the contract. Therefore he could not be paid under the terms of article 5. The Indian agent decided correctly that he could only receipt for the cattle under article 6 of the contract.

Upon the arrival of the receipts given by the Indian agent, at the office of the Commissioner of Indian Affairs, the latter office telegraphed Captain Penney, the Indian agent, as follows:

On receipts issued to Richards for delivery of 3d instant, you say the cattle were received under article 6 of the contract. Were they so received because the necessities of the service required it, or for some other reason? Wire explanation, if practicable; if not, report fully by mail.

To this Captain Penney replied by telegram, on the same date, as follows:

Telegram received. Cattle received from Richards on 3d instant because the necessity of the service required it; taken under article 6 of the contract, not by reason of inferior quality, but because below stipulated average weight.

There was nothing left, after the receipt of this telegram, for the Indian Office to do except to pay for the beef cattle as provided for in article 6 of the contract.

The steers were of light weight. They could not be paid for under the letter of the contract at the regular contract price of \$2.99 per 100 pounds. The deduction provided for in article 6 of the contract must be made.

Richards's contention now is for the difference between the amount that would be coming to him at the contract price of \$2.99 per 100 pounds and what he actually received, on account of the cattle being of light weight and the deduction made therefor under the terms of the contract.

Had the cattle not been of light weight he would have received.....	\$14,757.74
He actually received	18,872.28

Difference	885.46
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In stating the account the Indian Office added this:

The deduction is made in accordance with article 6 of Mr. Richards's contract that a deduction of 1 per cent in the price shall be made for each and every 5 pounds or fraction thereof that said cattle so received shall fall short of the standard weight agreed upon, viz, an average of 850 pounds per head. The 599 steers averaged but 824 pounds, making a shortage of 26 pounds to each head, for which a deduction is made of 6 per cent on the contract price, or a total deduction on the 493,570 pounds of \$884.46.

The standard weight of the cattle agreed upon in the contract was an average of 850 pounds per head. The 599 steers averaged but 824 pounds: This made a shortage of 26 pounds to each head, for which a deduction is made of 6 per cent on the contract price, or a total deduction of \$885.46.

Richards contends in his petition that the lighter sizes of cattle were selected for delivery under the contract because each call for beef from the acting Indian agent expressly requested cattle to average not more than 900 pounds; that this weight was more convenient for distribution purposes, etc.

He quotes in his petition the order for beef of September 1, 1894;

also the order for beef of September 26, 1894, and also the order for beef of November 19, 1894.

None of these orders are for the beef over which this dispute has arisen.

It is worthy of remark that he omits from his petition the most important of all the orders, viz, the one under which the delivery of November 3, 1894, for the 599 head of beef cattle, on which this claim is based, was made.

An inspection of the three orders for beef which he does file with his petition negatives his assertion that each call for beef from the Indian agent expressly requested cattle to average not more than 900 pounds. All these orders say the same thing in reference to the weight of the cattle. For instance, the order of September 1 calls for 488 head of beef cattle to be delivered on September 17, 1894, "to weigh about 440,000 pounds gross, or to average about 900 pounds;" the order of September 26 calls for 84 head of beef cattle, "to weigh about 75,600 pounds gross, or to average about 900 pounds;" and the order of November 19 calls for 484 head of cattle, "to weigh about 441,000 pounds gross, or to average about 900 pounds."

As Richards has omitted the order under which delivery was made on November 3 for 599 head of cattle (being the one now under consideration), we are bound to assume that the Indian agent used the same language as he did in the other orders quoted above.

It is clear that he was in the habit of using in all his orders the general term "or to average about 900 pounds." This was 50 pounds per head above the average contract weight. This language of the Indian agent did not relieve Richards from furnishing cattle of the standard average weight required in his contract.

From his own statement he could have done this. He did not do it and must suffer the consequences. The letter and law of his contract were plain. He must furnish cattle of the average weight of 850 pounds, or suffer the deduction which was made in this case.

If contractors with the Government are thus permitted lightly to evade the law of their contracts a precedent will be furnished for innumerable claims for relief growing out of alleged equities arising from the execution of contracts made with the Government.

Richards seems to have culled out of his herds, some distance away from the agency, 599 head of cattle which, in his judgment, would meet the contract requirement of the weight of 850 pounds per head. In this he was mistaken.

The requirements of the service at that agency demanded that these cattle should be received anyhow for distribution among the Indians, notwithstanding the fact that they were under weight.

It was exactly this case that is provided for in article 6 of the contract, and Richards must be held to it.

Whatever equities there may be in this case must give way before the plain letter of his contract. The amendment is, therefore, reported adversely.

DEPARTMENT OF THE INTERIOR,
Washington, December 20, 1894.

SIR: I have the honor to be in receipt, by your reference on the 10th instant, of an amendment intended to be proposed by Mr. Carey to the bill (H. R. 8479) making appropriations for the current and contingent expenses of the Indian Department and for fulfilling treaty stipulations with various Indian tribes for the fiscal year ending June 30, 1896, and for other purposes, together with a petition of Bartlett

Richards, of Chadron, Nebr., for an appropriation of \$885.46 to pay a balance alleged to be due him on beef cattle delivered by him at the Pine Ridge Agency, S. Dak.

In reply to your request for the facts and opinion in the case, I beg to hand you herewith a copy of a letter from the Commissioner of Indian Affairs, dated the 17th instant, wherein the circumstances relating to the delivery of the beef cattle in question are fully set forth.

It appears that Mr. Richards has a contract for supplying the agency named with beef cattle; that the contract provides for a standard of weight, the minimum of which shall be an average of not less than 850 pounds at each delivery; that Mr. Richards had made several deliveries prior to the one in question, all of which were far in excess of the weight above stated; that at the request of the acting Indian agent in charge of the agency named, who desired cattle of an average of about 900 pounds each, he, Richards, culled out with special care all the lightest cattle from his herds to comply with the acting agent's request, though to his disadvantage to do so; that the cattle so delivered failed to come up to the standard specified, weighing an average of only 824 pounds per head; that said cattle were received and accepted by the agent in charge as fully equal to the requirements of the contract, and that the same were received under the provisions of article 6 of the contract, which provides for a penalty in case the delivery is not of the standard weight, "not by reason of inferior quality, but because below stipulated weight."

Upon this statement of the case the Commissioner of Indian Affairs, in the settlement of the claim of Mr. Richards, made the deduction provided for in said article 6, amounting to \$885.46.

The Commissioner states that "although the cattle received at this particular delivery were below the average prescribed, I do not understand that such fact was detrimental to the service, or that the Indians suffered any loss thereby. Inasmuch as it appears that the cattle received were fully up to contract requirements as to quality, I see no objection to the adoption of the amendment proposed."

It appears that the contractor had 1,600 heavy steers ready for delivery, within a few days' drive from the agency; that the delivery in question was not because of his inability to fully comply with the requirements of his contract, but simply through his efforts to oblige the acting agent in delivering lighter cattle than those previously delivered, and that the cattle selected for the delivery were somewhat lighter than he had estimated.

For these reasons, I am of the opinion that there is equity in the case.

The petition received by your reference is herewith returned.

Very respectfully,

HOKE SMITH, *Secretary.*

Hon. JAMES K. JONES,

Chairman Committee on Indian Affairs, United States Senate.

DEPARTMENT OF THE INTERIOR,
OFFICE OF INDIAN AFFAIRS,
Washington, December 17, 1894.

SIR: I have the honor to acknowledge receipt of a petition of Bartlett Richards, of Chadron, Nebr., addressed to the Senate and House of Representatives, for an appropriation of \$885.46 to pay him for beef cattle delivered by him at Pine Ridge Agency, S. Dak., together with a proposed amendment to the Indian appropriation bill on the subject, both of which were referred to this office on the 11th instant for early report.

The proposed amendment reads as follows:

"The proper accounting officers of the Treasury are hereby authorized and directed to pay to Bartlett Richards, out of the appropriation for 'Support of Sioux of different tribes, including Santee Sioux of Nebraska,' for the fiscal year ending June thirtieth, eighteen hundred and ninety-five, the sum of eight hundred and eighty-five dollars and forty-six cents, for beef actually delivered to the Pine Ridge Agency, South Dakota, in the month of November, eighteen hundred and ninety-four; said amount having been suspended or disallowed, under contract stipulations, for the reason that the average weight of five hundred ninety-nine beef steers was not fully up to contract requirements, the deficiency occurring through the efforts of the contractor to comply with written request of the army officer, acting Indian agent, to deliver lighter cattle than had been previously delivered under the contract."

The facts in the case are these:

On the 18th of May, 1894, a contract was duly executed between the Commissioner of Indian Affairs and Bartlett Richards, of Chadron, Nebr., according to which the latter was to furnish for the Pine Ridge Agency, S. Dak., 4,500,000 pounds of gross beef, at the rate of \$2.99 per 100 pounds.

Articles 5 and 6 of that contract are as follows:

"ART. 5. That it is further agreed by and between the parties hereto, that the beef cattle furnished under this contract shall be good, healthy, merchantable steers and cows (no bulls or stags), not over seven years of age; and unless authorized in writing by the Commissioner of Indian Affairs, not more than one-fourth of the cattle offered and accepted at one delivery shall be cows; that they shall be delivered on the Government scales, upon which the weight shall be ascertained (steers and cows to be weighed separately; or if weighed together they shall be accepted at an equal average per head for both classes, and payments therefor made as described in article three (3) hereof), at the agency aforesaid, at the times and in the quantities required by the respective Indian agent in charge, upon five days' notice by said Indian agent to the said party of the second part, or his authorized agents or representatives; that they shall be 'lotted' without food or water during the twelve hours immediately preceding each and every delivery; that the average gross weight thereof at each delivery from May 1st to December 1st shall not be less than 850 pounds per head, and from December 1st to May 1st not less than 800 pounds per head; that all animals offered under this contract weighing less than 700 pounds gross, or being in such condition as to net less than fifty per centum of their gross weights in good, merchantable beef, from May 1st to December 1st, or less than forty-five per centum in such beef from December 1st to May 1st, shall be rejected (except as they may be received under the provisions of article 6 hereof) as inferior to the requirements of this article.

"ART. 6. That it is also further agreed by and between the parties hereto that for all the cattle offered under this contract which are not in conformity with the requirements of article 5, but which the respective Indian agents may be compelled by the necessities of the service to receive, there shall be a deduction of one (1) per centum in the price agreed upon in article 1 for each and every five (5) pounds, or fraction thereof, that said cattle so received shall fall short of the standard weights agreed upon in the preceding article. And if the respective Indian agents are compelled by the necessities of the service to receive cattle whose condition as to quality, although weighing the required average as expressed in article 5 of this contract, renders them inferior to the requirements of said article 5, then the value of the cattle so received shall be determined by deducting from the price thereof, as agreed upon in article 1 of this contract, such a percentage as may be agreed upon by the agent and (if practicable) a military officer detailed for that purpose by the commander of the nearest military post, upon the written request of said agent to said commander; the said agent and the officer so detailed as aforesaid to appoint, in case of their disagreement as to the percentage of said deduction, a third and disinterested person to form with them a board of survey; the decision of a majority of such board so constituted as aforesaid to be final and binding on the parties hereto."

On the 3d of November, 1894, as it appears from papers filed here, the agent at Pine Ridge Agency received from Richards, under his contract, 599 head of beef cattle, weighing 493,570 pounds gross. The receipt given by the agent reads as follows:

PINE RIDGE AGENCY, S. DAK., November 3, 1894.

Received at Pine Ridge Indian Agency, S. Dak., November 3, 1894, of Bartlett Richards, 599 head of beef cattle, weighing 493,570 pounds gross (weight ascertained by weighers' returns), under his contract dated May 18, 1894, for subsistence of Indians at the said agency, and for which I have signed receipts in duplicate.

I hereby certify that the beef here receipted for is fully equal to the requirements of the contract above mentioned, and in this delivery and receipt each and every condition, provision, and stipulation of the contract has been fully and honestly complied with, and that payment has not been made for same. The beef cattle were received under article 6 of the contract mentioned above.

CHAS. G. PENNEY,
Captain, Sixth Infantry, Acting United States Indian Agent.

Accompanying this receipt were the usual certificate of inspection and weighers' return.

The certificate of inspection, signed by Lieut. Alfred B. Johnson, recites that the cattle described were "good, merchantable cattle, and of quality fully up to the requirements of the contract."

The weighers return showed that the cattle were weighed in lots of 6, 7, 8, 9, 10, 11, 12, and 13 head at a time, and that the average weight of the whole number delivered was 824 pounds.

Upon the arrival of the receipt already described, the office telegraphed to Captain Penney on November 21, as follows:

"On receipts issued to Richards for delivery of 3d instant you say the cattle were received under article 6 of contract. Were they so received because the necessities of the service required it, or for some other reason? Wire explanation if practicable; if not, report fully by mail."

To this Captain Penney reported by telegram on the same date, as follows:

"Telegram received. Cattle received from Richards on 3d instant because the necessity of the service required it taken under article 6 of the contract, not by reason of inferior quality, but because below stipulated average weight."

Upon this the account was stated and sent forward to the Auditor for settlement as follows:

The United States to Bartlett Richards, Dr.

1894.

Nov. 13. For beef cattle furnished under contract of May 18, 1894, to the Pine Ridge Agency, S. Dak., 599 steers, 493,570 pounds gross, at \$2.99.....	\$14, 757. 74
Less	885. 46

13, 872. 28,

"The deduction is made in accordance with article 6 of Mr. Richards's contract that a deduction of 1 per cent in the price shall be made for each and every 5 pounds or fraction thereof that said cattle so received shall fall short of the standard weight agreed upon, viz, an average of 850 pounds per head. The 599 steers averaged but 824 pounds, making a shortage of 26 pounds to each head, for which a deduction is made of 6 per cent on the contract price, or a total deduction on the 493,570 pounds of \$884.46."

As article 6 of the contracts is mandatory on the subject, there was no alternative but to make the prescribed deduction.

Although the cattle received at this particular delivery were below the average weight prescribed, I do not understand that such fact was any detriment to the service or that the Indians suffered any loss thereby. And inasmuch as it appears that the cattle received were fully up to contract requirements as to quality I see no objection to the adoption of the amendment proposed. I would suggest, however, that the clause after the word "requirements," in line 12, is superfluous, or if allowed to remain should be amended after the word "agent," in line 15, to read: "to deliver cattle of about a certain average weight."

Very respectfully,

D. M. BROWNING, *Commissioner.*

The SECRETARY OF THE INTERIOR.

To the Senate and House of Representatives in Congress assembled:

Your petitioner, Bartlett Richards, of Chadron, Dawes County, State of Nebraska, respectfully represents that, after due advertisement and in accordance with existing laws, he made sealed proposal and was awarded contract for furnishing beef cattle required for the Indians of the Pine Ridge Indian Agency, S. Dak., for the fiscal year ending June 30, 1895, which contract was executed May 18, 1894, and finally approved by the proper officer of the Department of the Interior July 9, 1894, and calls for 4,500,000 pounds of beef cattle, on the hoof, at \$2.99 per hundred pounds, gross weight, less 20 per cent for cows, subject to such inspection by an army officer, or otherwise, as may be deemed necessary by the party of the first part, cattle to be furnished "in monthly deliveries, as required, commencing in July, 1894, and furnishing continuously thereafter by the month the whole consumption of said agency until 4,500,000 pounds have been delivered. Should any increase be called for over and above quantity after the month of November, 1894, it shall be at a price equal to 15 per cent advance, and ninety days' notice shall be given of same."

By article 5 of said contract it is provided that the "beef cattle furnished under this contract shall be good, healthy, merchantable steers and cows (no bulls or stags) not over 7 years of age; that the average gross weight thereof at each delivery from May 1 to December 1 shall not be less than 850 pounds per head, and from December 1 to May 1 not less than 800 pounds per head."

Article 6 of said contract provides "that for all cattle offered under this contract which are not in conformity with the requirements of article 5, but which the respective Indian agents may be compelled by the necessities of the service to receive, there shall be deducted 1 per cent in the price agreed upon in article 1 for each and every 5 pounds, or fraction thereof, that said cattle so received shall fall short of the standard weight agreed upon in the preceding article."

Your petitioner further states that under call from the acting agent, Captain Penney, of the Pine Ridge Agency, S. Dak., he delivered on September 17, 1894, 372 steers, weighing 355,040 pounds, averaging over 1,062 pounds each, and 116 cows, weighing 105,070 pounds, averaging over 905 pounds each; that under call he delivered on October 15, 1894, 500 steers weighing 465,745 pounds, averaging over 931 pounds each; that these were the light sizes of his herds of beef cattle, and the light sizes were selected for delivery under the contract, because each call for beef from

the acting Indian agent expressly requested cattle to average not more than 900 pounds, this weight being most convenient for distribution purposes. Following are copies of calls for different months:

PINE RIDGE AGENCY, S. DAK., *September 1, 1894.*

SIR: You are hereby notified that I will require, on September 17, 1894, for issue to Indians, 488 head of beef cattle (to weigh about 440,000 pounds gross, or to average about 900 pounds), to be penned on the evening of September 16.

Please acknowledge receipt of this letter.

I am, sir, very respectfully, your obedient servant,

CHAS. G. PENNEY,

Captain, Sixth Infantry, Acting United States Indian Agent.

Mr. BARTLETT RICHARDS,
Contractor, Chadron, Nebr.

PINE RIDGE AGENCY, S. DAK., *September 26, 1894.*

SIR: You are hereby notified that I will require, on October 15, 1894, for issue to Indians, 84 head of beef cattle (to weigh about 75,600 pounds, or to average about 900 pounds), to be penned on the evening of October 14, 1894.

Please acknowledge receipt of this letter.

I am, sir, very respectfully, your obedient servant.

CHAS. G. PENNEY,

Captain, Sixth Infantry, Acting United States Indian Agent.

Mr. BARTLETT RICHARDS,
Contractor for beef, Chadron, Nebr.

PINE RIDGE AGENCY, S. DAK., *November 19, 1894.*

SIR: You are hereby notified that I will require, on December 21, 1894, for issue to Indians, 484 head of beef cattle (to weigh about 441,000 pounds gross, or to average about 900 pounds), to be penned on the evening of December 20, 1894.

Please acknowledge receipt of this letter.

I am, sir, very respectfully, your obedient servant,

CHAS. G. PENNEY,

Captain, Sixth Infantry, Acting United States Indian Agent.

Mr. BARTLETT RICHARDS,
Contractor, Chadron, Nebr.

The average weight of your petitioner's 3 and 4 year old steers, as shown by deliveries under the above contract and former ones, is more than 1100 pounds per head; that your petitioner culled with special care all the lightest cattle from his herds to comply with the acting Indian agent's request, though it was to his, the petitioner's, disadvantage; that your petitioner had 1,600 heavy beef steers ready for delivery within a few days' drive of said agency; that the delivery of cattle weighing less than the prescribed average weight was not because of his inability to comply fully with the requisites of the contract, but solely through his efforts to oblige the acting agent in delivering lighter cattle than were previously delivered, and that the cattle selected were somewhat lighter than he had estimated when cutting them out of his herds for the purposes of said delivery; that the 599 beef cattle—all steers—so delivered were weighed and found to average 824 pounds instead of 850 pounds each, but that said cattle were inspected by Alfred B. Jackson, first lieutenant, Ninth Cavalry, United States Army, who certified that he found the same to be good, merchantable cattle and of quality fully up to the requirements of the contract of Bartlett Richards, dated May 18, 1894, under which they were delivered, and that Capt. Charles G. Penney, United States Army, acting United States Indian agent for the Pine Ridge Agency, receipted for said cattle, as follows, after stating numbers and weight:

"I hereby certify that the beef here receipted for is fully equal to the requirements of the contract above mentioned, and in this delivery and receipt each and every condition, provision, and stipulation of the contract has been fully and honestly complied with, and that payment has not been made for the same. Received under article 6 of contract." And that said acting agent subsequently informed the Commissioner of Indian Affairs, by telegram of November 21, 1894, that said cattle were received under article 6 of contract, "not by reason of inferior quality, but because below stipulated average weight."

Your petitioner further states that the cattle so delivered were in fine condition

and of excellent quality of beef ; that the Indians received good, merchantable beef, fat and otherwise in fine condition, not lean and of large frame, and that it is a serious hardship to insist upon a deduction from the contract price of said delivery of beef steers, under a provision of the contract designed solely to protect the Government and the Indians against beef of inferior quality, and especially is it a hardship in making a deduction from said issue in this case, working an injustice that the Government should not and, it is believed, will not insist upon when it is clearly shown that the light weight, i. e., smaller beef cattle, but in excellent flesh and otherwise fine beef cattle, were delivered through a desire solely to turn in such cattle as were desired by the acting agent.

Your petitioner further states that the Commissioner of Indian Affairs expressed a strong desire to allow the full contract price for the cattle so delivered, but upon further examination of the provisions of the contract concluded that he had no power to waive the technical requirements of said contract, and therefore allowed said claim for the beef cattle so delivered by deducting from the amount thereof 1 per cent of the contract price for each and every 5 pounds, or fraction thereof, that said cattle so received fell short of the standard weight agreed upon, the standard weight being 850 pounds, and the actual average weight of said delivery being 826 pounds, making a shortage of 26 pounds, for which a deduction of 6 per cent from contract price, amounting to \$885.46, was made and said sum disallowed.

Your petitioner prays that an appropriation of \$885.46 be made to pay him for said disallowance for beef actually delivered, and of which the Government and the Indians received the benefit.

BARTLETT RICHARDS.

Subscribed in my presence and sworn to before me this 5th day of December,
A. D. 1894.

[SEAL.]

B. L. SCOVEL, *Notary Public.*

