

0379

72-6

1
2
3
4
5
6
7
8
9
0

S T A T E
 OF THE
 D E M A N D S
 OF
 SUNDRY CONTRACTORS
 UPON THE
 CROWN of GREAT BRITAIN,
 FOR
 F O R A G E, &c.

Delivered into the King's MAGAZINES,
 for the Use of the BRITISH Combined Army;
 to the Troops of the said Army; — Taken
 by the Enemy; — Destroyed by Order of the
 Commander in Chief; — And left unreceiv-
 ed, after it had been provided to perform their
 Contracts with the British Commissariate, &c.



L O N D O N,
 Printed in the Year MDCCLXVII.

(1)

STATE of the DEMANDS

O F

Mess. BORDELIUS, DELIUS, and Co.
&c.

ON the twelfth of September 1761, a contract was made at Munster, by Mr. Commissary-general Frederick Halsey, with Mr. Peter Ernst Delius, by which the said Mr. Delius undertook to deliver into the British magazines at Munster, Osna-burg, and Lipstadt, 300,000 complete rations of forage, of good quality, within two months, for which he was to be paid at the rate of 15 Dutch stivers per ration; the payment to commence as soon as 20,000 rations were delivered, and just and valid receipts of the magazine-keepers produced by him.—And if the position of the army should require additional magazines to be established in the neighbourhood, Mr. Delius was to be paid the same price for forage delivered into them, by order in writing from the British Commissary, as for that delivered into the magazines.

B

zines.

zines. And farther—if a corps or detachment of the British troops should approach the place where his stores lay, and require to be served from them, on their receipts, Mr. Delius was previously to obtain an order in writing from the Commissariate to serve them, otherwise such receipts were not to be accepted on account of this contract—with other usual clauses.

And—on the first day of November next following, another contract was made at Munster aforesaid, between the said Mr. Commissary-general Halsey, and Mr. Bordelius, (partner with Mr. Delius aforesaid) by which the said Mr. Bordelius undertook to deliver into the King's magazines, at Munster and Ham, 200,000 complete rations of forage, of good quality, for which he was to be paid at the rate of 15 Dutch stivers per ration, the payment to commence as soon as 50,000 complete rations should be delivered, and just and valid receipts of the magazine-keepers produced by him—with other usual clauses, the same as in the former contract, (though without any express reference to it) except that in this contract, no time was limited for Mr. Bordelius's delivering the forage, nor any permission

permission given him to serve the troops, but that all the forage was to be delivered into the magazines really and *in natura*; and that if a fraud should be discovered, or that receipts should be attempted to be introduced instead of forage, the whole quantity already delivered was to be confiscated to the King.

And—on the sixth of March 1762, the said Mess. Bordelius, Delius, and Co. agreed further with Mr. Commissary-general Halsey aforesaid, at Munster, to deliver out of their depots, 30,000 complete rations into the British magazine at Dullmen, and 30,000 complete rations into the magazine at Coesfeldt, which the Commissariate was to accept of on the terms and conditions of the contract entered into with the said entrepreneurs.

And again—on the thirty-first of May, next following, Mr. Commissary-general Elliot, gave a permission to the said Mess. Bordelius, Delius, and Co. to deliver, on the terms of the above contract, 20,000 complete rations more, at Coesfeldt, until the Commissariate should forbid it.

In the course of these transactions, Mess. Bordelius, Delius, and Co. received, on the twelfth of April 1762, at Munster, from

Thomas Higgins esq. Commissary of Accounts, a certificate for forage delivered by them into the King's magazines, at Ham, Wahrendorffe, Dullmen, and Coesfeldt; and to the troops, in the months of February, March, and April, 1762, amounting to 66039 Guilders.

And on the twenty-third of the same month of April 1762, the said Mess. Bordelius, Delius, and Co. received at Munster, from Mr. Commissary Higgins aforesaid, another certificate for forage delivered into the King's magazines at Dullmen, Furfeneau, and Coesfeldt; and to the troops in the months of March and April, amounting to 55067 Guilders, and 7 Stivers; in both of which certificates, the said Mr. Higgins expressly says, "that he had examined the original accounts of these deliveries, and received the receipts of the magazine-keepers, and of the troops for the said forage, and found them conformable to the contracts made by the British Commissariate with the said Mess. Bordelius, Delius, and Co. on the twelfth of September and first of November 1761."

Upon

Upon these certificates warrants for payment were directly granted by W. N. Elliot esq. Commissary-general, on the twelfth and twenty-fifth of the said month of April 1762, directed to Peter Taylor esq. Deputy Paymaster-general, who, on presenting them to him to be paid, gave for answer, "that he had no money in his hands; but that General Howard was expected daily, with remittances."

Directly contrary as this answer was to the express terms of their contract, by which they were to receive payment upon producing proper vouchers for the delivery, of less than the third part of the forage, contained in these certificates, they were obliged to submit to this disappointment; and proceeded, without relief, to deliver, according to their contracts, till the beginning of November following; when, upon their applying to Colonel Pownal, Director-general of Control, at Hameln, to countersign the certificates, which they had received for other deliveries made by them, he replied, that a complaint was lodged against them by Mr. Mason, Commissary of Control, for frauds discovered in their deliveries at Coesfeldt; till they had

B 3 cleared

(6)

cleared up which, he could do nothing in the affair, referring them to Mr. Mafon for the particulars.

Astonished at this information, they applied to Mr. Mafon, who delivered them a notarial instrument, purporting to be the examination of Englebert Hagedorn, one of the King's magazine-keepers, taken on the second of September preceding, in which he had declared upon oath, " that
 " on the twenty-eighth of May 1762, he
 " had given to Sprenger (clerk to Bordelius, Delius, and Co.) a receipt for 196
 " rations of oats, which oats he had not
 " received into his Majesty's magazine, but
 " was promised payment for it; and that
 " he had also given to the said Sprenger
 " another receipt for 5000 rations of hay
 " and 6996 rations of straw, which had
 " not been delivered into the magazine;
 " to which he was induced by the said
 " Sprenger's telling him that the French
 " were coming, and promising him to pay
 " him at a price that would be easily fixed
 " between them: and that, on the twenty-
 " seventh of June 1762, at his quarters in
 " Coesfeldt, he had received from Sprenger six regimental receipts, amounting
 " to

(7)

" to 123 complete rations, dated on the
 " twenty-fifth and thirtieth of June, for
 " which he had likewise given a receipt to
 " Bordelius, Delius, and Co. on promise
 " of being paid for it.---And that he had
 " included the receipt dated the twenty-
 " eighth of May, for 196 rations of oats,
 " in the general receipt of the tenth of
 " June, for 15614 rations, and the receipts
 " for 5000 rations of hay and 6996 rations
 " of straw, together with the six regimental
 " receipts, amounting to 123 complete ra-
 " tions, in the general receipt of the twen-
 " ty-second of June, for 3597 rations of
 " oats, 17392 rations of hay, and 32290
 " rations of straw: beside which three
 " receipts he did not recollect to have
 " given any more, without having actu-
 " ally received the forage for them."

What Mess. Bordelius, Delius, and Co. must have felt at this account may be easily conceived. They expostulated with Mr. Mafon and Mr. Pownal, on the injustice of not informing them of it while the accuser was upon the spot, and could have been confronted by them; and on the unfairness of keeping it two months concealed, and letting them go on with their delive-

(8)

ries in the mean time, as if a design to ruin them, by making the confiscation still greater.—They urged the utter incredibility of an accusation made professedly in extenuation of the guilt of the accuser, as appears by his answer to the third interrogatory, proposed to him by Mr. Mason, in which he strives to evade the charge of embezzlements which must fall solely upon himself, by his admission of another crime, in expectation that the penalty to which those whom he accused of being his accomplices were subject, might lighten his own punishment.—And, they shewed the falsehoods, falsifications, and contradictions, evident on the very face of the accusation; such, for instance, as his dating at Coesfeldt, a report he made at Munster; his swearing that he had received the regimental receipts from Sprenger at Coesfeldt, on the twenty-seventh of June, whereas he had before sworn, that he had left Coesfeldt on the twenty-second in the morning, and had arrived in Munster on the twenty-sixth at mid-day, where he had actually delivered in his report to Mr. Mason, on the twenty-seventh—and many others evident on the face of his examination,

(9)

tion.—And they alledged the severity of making them suffer for a crime in which the accuser himself had never dared to involve them personally, or assert their being in the least privy to it.—But all they could urge proved ineffectual to exculpate them in the sight of judges, who, from their conduct in the affair, appeared to desire that they should not be exculpated.

Anxious to acquit themselves of a charge equally injurious to them in their characters and their fortunes, they resolved to seek for other proofs of their innocence, since reason alone was not thought sufficient. With this design they applied to the magistracy of Munster for a warrant to take up Sprenger, (their sub-deliverer, who had been accused by Hagedorn, as his immediate accomplice in the frauds alledged by him) but upon examining the information of Hagedorn, the magistrates were of opinion that it was by no means sufficiently proved to justify their granting such a warrant; but advised the said Mess. Bordenius, Delius, and Co. to have him examined upon interrogatories formally, and upon oath, which they accordingly did.

By

By his answer, sworn in the presence of two credible witnesses, before a notary public, and duly attested by him, he “ denied positively and expressly having “ ever got receipts from Hagedorn for “ more forage than he had really received “ —So far from which he asserted, that he “ had not got them even for all which he “ had delivered, Hagedorn having foddered his own horse with the forage belonging to Mess. Bordelius, Delius, and Co. which he had not made good; and moreover, that he had sold to one Pintz, a Jew at Coesfeldt, between 5 and 6 molden of barley, and to the town-clerk Brawn-schweig there, 18 sacks of oats, each of 4 himpen, which as he, Sprenger, was the only deliverer in the magazine at Coesfeldt, must have been stolen from him.—The circumstances of his having given him the regimental-receipts were these: Hagedorn was so negligent and unacquainted with his business, that he frequently applied to him (Sprenger) to assist him, which he did by distributing forage for him to the troops, for which he took their receipts, and then gave them up to him; upon settling for him “ the

“ the accounts of such distribution; in “ which accounts he was so negligent, that “ he (Sprenger) had often told him he “ would ruin himself; as an instance of “ which negligence, he had often seen regimental receipts trodden under foot about him, and had been obliged to procure one Muller of Coesfeldt, to counterfeit two receipts which he had lost—and that as to his having promised him payment for the forage specified in such fraudulent receipts, he positively denied it, and alleged in support of such denial, his having Hagedorn’s promissary note then in his possession, for 222 Rd. which the said Hagedorn owed him before the time upon which he fixed the date of these transactions, and still did owe him; which note it was most improbable Hagedorn should have left remaining in his hands, had he been to receive any payment of the kind from him —and concluded with averring the whole purport of Hagedorn’s accusation to be directly and absolutely false and groundless; as a proof of which, he instanced the contradiction and perjury beforementioned, in his swearing that he had received

“ ceived those regimental receipts at Coes-
 “ feldt on the twenty-seventh of June,
 “ whereas he had before sworn, that he left
 “ Coesfeldt on the twenty-third, and had
 “ arrived at Munster on the twenty-
 “ sixth, where he actually delivered in
 “ his report to Mr. Mason on the twenty-
 “ seventh --- the very day he had swore he
 “ had taken the receipts at Coesfeldt.”---
 And in confirmation of this testimony of the
 said Sprenger, and as a farther confutation
 of the charge of Hagedorn, they also
 summoned William Berg, who had been
 an assistant to the said Hagedorn, in the
 King’s magazine at Coesfeldt, before a
 notary, to give an account of all that he
 knew concerning these transactions; who
 voluntary said, and offered to make oath,
 when required, “ that he had lived in Coes-
 “ feldt at the time when these transactions
 “ were said to have passed, as assistant to
 “ Hagedorn, and had the joint care of
 “ the King’s magazine there, with him---
 “ that sometimes he, sometimes Hagedorn,
 “ and sometimes Sprenger, at the request
 “ of Hagedorn, who was sickly, and could
 “ not rise early, distributed the forage to the
 “ troops, and took their receipts, as he
 “ himself had often given to Sprenger all

“ the receipts which he had taken from
 “ the troops for six or eight days suc-
 “ cessively, to settle for Hagedorn.---And
 “ that beside the forage which he delivered
 “ to the troops, he had also delivered to
 “ one Pintz a Jew, about 40 scheffel of
 “ barley, as nearly as he could recollect,
 “ out of the King’s magazine, by order of
 “ his master Hagedorn.”

Confiding in so clear a refutation of a
 charge that in reality refuted itself, Mess.
 Bordelius, Delius, and Co. presented these
 attestations of Sprenger and Berg, to Colo-
 nel Pownal, to be laid before the Lords of
 the Treasury, who had taken the decision
 of the affair to themselves; but though
 they repeatedly, and in the most earnest
 terms solicited him for their lordships re-
 ply, they never could obtain it.

Hard as this delay was upon them, it
 was not the only hardship which they ex-
 perienceed on this occasion. They had ex-
 pended their own fortunes, and strained
 their credit to its utmost extent, to fulfil
 their contract with the British Commis-
 sariate; and now when they expected,
 when they were in the strictest justice en-
 titled to expect immediate payment, not
 only

only these two warrants for so considerable a sum were stopped, but Colonel Pownal refused also to countersign their other certificates, to which no objection of any kind was, or could be made.

In this distress they were obliged, in order to avoid involving their friends in utter and instant ruin, to submit to the cruel necessity of depositing these two warrants in the hands of Mr. Commissary-general Leigh, till the determination of the Lords of the Treasury could be obtained, to induce Mr. Pownal to countersign the other certificates, that they might receive payment on them.

Under these difficulties they remained without redress, till the order was issued for bringing all demands on account of the war before Commissioners in London.

In obedience to this order they delivered their unsettled accounts into the office of the said Commissioners, in the latter end of the month of December 1763, among which accounts were these two warrants, and several receipts for other deliveries made at Coesfeldt, on Mr. Elliot's order of the thirty-first of May, since the granting of the said warrants, amounting to 29459 Guilders 19 Stivers.

Sinking under the distresses in which they were involved by the delays of office, Mess. Bordelius, Delius, and Co. obtained, by repeated and earnest solicitations, an order from the Lords of the Treasury on the twenty-sixth of June 1764, to the Commissioners, requiring them to take into their consideration, whether it was proper that the two warrants in question should be returned to the claimants or not: in consequence of which order the Commissioners did on the tenth of October following, make a report to their lordships; in which, after stating the several contracts, and orders upon which Mess. Bordelius, Delius, and Co. had made the deliveries specified in the certificates, upon which these two warrants were granted; and also the reasons which had induced Colonel Pownal to stop the payment of them; they declared their opinion "that the warrants
" ought to be restored to the claimants;
" and that whatever charge in them should
" be found in the certificates annexed to
" them to be for deliveries made at Coes-
" feldt, ought to be deducted therefrom," without paying any regard to the testimonies of Sprenger and Berg, herein before
set

(16)

set forth, or of Mr. Charles Gottlieb Wolter, and Mr. Christian Kahlbut, inhabitants of Sparrenberg, two men of fair character, and totally disinterested in the event of this affair, who swore positively and expressly, "that they had heard Hagedorn with the strongest appearance of sincerity and truth, retract every article of his charge against Sprenger (the sub-deliverer of Mess. Bordelius, Delius, and Co.) and profess the deepest remorse for so black a crime, to which he said he was stimulated by hopes given him of receiving a considerable reward for the detection of any fraud committed in the deliveries of Mess. Bordelius, Delius, and Co. confirming at the same time the testimony of Sprenger, in respect to the assistance he had given in the conduct of the magazine, and owning that without it, he should never have been able to carry it on, but must have ran away and left it in confusion," &c.---Which testimony, dated the twelfth of July 1764, and regularly authenticated by the magistrates before whom it was sworn, had been obtained by Mr. Bordelius, on his going to Sparrenberg to seek for Hagedorn,

(17)

dorn, in order to bring him to justice; but he had fled from thence for various crimes, nor was it known what was become of him.

The report of the Commissioners, I say, was made without regard to these testimonies, and in direct opposition to the opinion of his majesty's then Attorney-general, the officer appointed to transact the law-business of the crown, which the claimants had applied for, as their best direction in a matter to them of such importance, and laid before the Commissioners, as the best support *in law*, to a cause which *in justice* wanted no support, referring to the said opinion of the Attorney-general as annexed, together with a state of their reasons for dissenting from it; but neither has this opinion been restored to the claimants along with their papers, though confessedly procured by them at an expence to themselves, nor have the reasons on which the Commissioners grounded their dissent from it, been communicated to them.

In conformity with their opinion in this report, the Commissioners, on examining the accounts annexed to the certificates

(18)

upon which these two warrants had been granted, reported, on the twenty-fourth of December following, " that the said warrants for 121,002 Guilders 7 Stivers were duly and officially granted; but that the sum of 12912 Guilders 4 Stivers was certified, in consequence of deliveries made by Mess. Bordelius, Delius, and Co. at Coesfeldt, and therefore ought to be deducted therefrom."

And pursuant to the principles laid down in this report, they made another on the twenty-ninth of December following, by which they actually did deduct the sum of 12912 Guilders 4 Stivers from the said warrants, as having been certified in consequence of deliveries made by Mess. Bordelius, Delius, and Co. at Coesfeldt, and reported the residue of the warrants for payment.

Upon this report, a warrant was accordingly issued by the Lords of the Treasury, on the twenty-fourth of January 1765, for the payment of the residue of these two warrants, after deducting the said sum of 12912 Guilders 4 Stivers; in which warrant it is to be observed, that no mention is made of the information of

(19)

Hagedorn, nor of this deduction in consequence of it; the sum ordered to be paid, being barely said to be *in satisfaction of these two former warrants*, without any other reason being given for their having remained unpaid so long as from April 1762, to January 1765, beside that originally given by Mr. Taylor, the Deputy Paymaster-general, viz. *the discontinuance of the remittance of money to the said Paymaster*, though payment of the said warrants had been often and earnestly solicited in England for two years before; a circumstance upon which it is not necessary to make any remarks.

The insufficiency of the reasons upon which this report is founded, is most evident. The accounts of the deliveries, in payment for which these warrants were granted, were proved by proper vouchers; they were certified by the proper officer; and on his certificates the warrants were duly and officially granted; and all this not only before the accusation of Hagedorn was made, but also before the frauds charged in that accusation, are alleged to have been committed. The affair therefore, so far as relates to the deliveries in-

(20)

cluded in these warrants was finished, nor could any fraud, committed after, affect them; as in the same contract in which was the penal clause of forfeiture in case of fraud, there was a prior one, by which payment was expressly promised, as soon as just and valid receipts for deliveries to a much less amount than those contained in the certificates upon which these warrants were granted, should be produced. Had this clause therefore been fulfilled, the contractors would have been out of reach of this accusation, as to these warrants! For the Commissariate, therefore, to make use of their own breach of contract, as a means for making the contractors pay the penalty of a subsequent one, (however justly proved) is equally contrary to the invariable principles of equity, and of that law, in which it is a maxim, that *no man shall take advantage of his own act of injustice.*

For these plain and incontestible reasons, the said Mess. Bordelius, Delius, and Co. have an indisputably just right to payment of the sum of 12912 Guilders 4 Stivers, deducted from these two warrants, even if the accusation upon which that deduction was made, had been supported by sufficient proof;
whereas,

(21)

whereas, on the contrary, it is destitute of every colour of proof requisite to gain credit.

Nor is the payment of this sum, thus arbitrarily deducted from these warrants, the only demand which the proprietors have upon the crown of Great Britain, on account of them. They are also entitled, by every principle of justice and law, to interest upon the amount of these warrants, from the day when they were presented for payment, to the day of their being paid. This is so evident to common sense, so consonant to the constant course and practice in business, that it can require no proof. A warrant for payment of public money is exactly of the same nature, and within the same rules of law, as a private person's draught upon a banker, upon the refusal of payment of which interest is always recovered against the drawer.

A demand was accordingly made of interest for the amount of these two warrants, from the day of their having been presented to the Deputy Pay-master; which demand was rejected by the Commissioners, "as
" not founded upon any authority, agree-
" ment, stipulation, treaty, or accord, of

C 3 " the

“ the Commissariate, to make it a charge
“ against the crown of Great Britain,” &c.

The reason given for this rejection is equally insulting to equity and reason: it is playing upon words to elude justice! The agreement of the Commissariate was to make immediate payment; how then should they agree to pay interest on the delay of that payment? The very supposition of such a delay would have obviated their power to make any agreement, as by such immediate payment only, the contractors could propose to perform their agreements. But when this delay did happen, the omission of an express stipulation for interest could not take away the right of it. *Quod necessario intelligitur non deest.* A necessary consequence need not be expressed.

As the right of the claimants, therefore, to the warrants is admitted by the Commissioners themselves, and as the reason given for stopping payment of them is proved to have been without foundation, the said claimants have also an indisputably just right to interest upon them, while that payment was stopped.

Though the disappointment of receiving punctual payments, for the above-mentioned

tioned warrants, involved Mess. Bordelius, Delius, and Co. in great difficulties; they were not deterred by it from proceeding to fulfil the residue of their contracts, as they expected, from day to day, that the want of money, *the sole reason given for that disappointment,* would be removed by the arrival of the remittances from England, and knew how detrimental a discontinuance must be to the service, at such a critical time.

Among other deliveries made by them on this occasion, they delivered into the King's magazine at Coesfeldt, from the twenty-eighth of May to the twenty-first of June, inclusive, 24,211 rations of oats, 30,389 rations of hay, and 39,355 rations of straw, amounting to 20459 Guilders 19 Stivers, in consequence of an order given by Mr. Halsey, on the sixth of March 1762, and of the order of Mr. Elliot of the thirty-first of May following, for which they took the receipts of the King's magazine-keepers, Hagedorn and Croeschal, the proper officers to receive them.

When they carried these receipts, among others for deliveries made at other places, to the proper office to be settled, they

(24)

were surprized to find an objection made to them on account of the accusation of Hagedorn, mentioned in the foregoing article, for the frauds charged, in which the whole were alledged to be forfeited to the King, in consequence of the clause to that purpose, in the contract of the first of November 1761.

The steps taken upon this occasion, by those who had it in their power to take what steps they pleased, have been already sufficiently explained.

On this demand of 20,459 Guilders 19 Stivers, the Commissioners reported on the twenty-fourth of November 1764, " that
 " it ought not to be paid, in consequence
 " of their report on the tenth of October
 " next preceding; in which they were of
 " opinion, for the reasons therein given,
 " that the forage delivered on account of
 " this partnership at Coesfeldt, ought to
 " be confiscated."

Though Hagedorn's accusation has been shewn in the foregoing recital, not only to want every support of proof, but also to refute itself; yet as this report is rested solely on the credit of it, it may not be improper to take a short view of some of the most striking

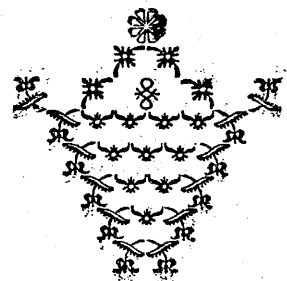
(25)

striking circumstances of that most extraordinary affair.

The information of Hagedorn depends on his single oath, unsupported by any other proof. It opens with an acknowledgement of his having falsified the date of a report which he had delivered to Mr. Mason, at whose requisition he made the information.---It is professedly made to shift off the crime of embezzlement, by owning another crime, the penalty incurred for which, by the accomplices he charged, he expected to lighten the punishment of his own guilt.---It alleges a motive for this crime, the baseness of which proves the man capable of being influenced by it, to be destitute of every principle of virtue, and therefore utterly unworthy of credit.---It contradicts itself, and convicts the informer of direct perjury, to the express knowledge of Mr. Mason, at whose requisition, and in whose presence it is made, by asserting that he had really delivered his report to Mr. Mason, on that very day at Munster---and it is sworn by two men of unblemished repute, and absolutely disinterested in the affair, to have been expressly and totally retracted by him, on finding himself justly disap-

disappointed in the base views for which he made it.

As the reasons therefore given for the confiscation of this demand are utterly destitute of foundation, the claimants have an indisputably just right to payment of it, amounting, as above, to 20459 Guilders and 19 Stivers.



State

State of the Demands of Mess. Bordelius, Delius, and Co. upon the Crown of Great Britain, for Forage delivered into the King's Magazines at Lipstadt, for the Use of the British combined Army in Germany.

PURSUANT to their contract of the twelfth of September 1761, (set forth in the foregoing State, p. 1.) Mess. Bordelius, Delius, and Co. made, within the limited time, the stipulated deliveries at Lipstadt; in the course of which their agent, Mr. Henrickson, received from Mr. G. C. Frederick, the King's magazine-keeper there, a receipt for 8664 rations of oats, and 15151 rations of straw, dated on the twenty-sixth of November 1761; which receipt was regularly presented to the Control; but the settlement of it could never be obtained, in consequence of the general stop put to settling their accounts, by the Commissioners of Enquiry, on the allegation of frauds in the deliveries at Coesfeldt; the injustice of which allegation has been proved in the preceding State.

On

On this receipt, the Commissioners for German Demands made the following report.

—“ In support of the demand for forage delivered into the magazine at Lipstadt, amounting to 4656 Guilders and 7 Stivers, there is produced an original contract, bearing date the twelfth of September 1761, between Mr. Halfey, and Delius and Co. wherein the latter engage, on their part, to deliver into the magazines of Munster, Osnabrug, and Lipstadt, 300,000 complete rations, which the said Mr. Halfey promised on the part of the Commissariate, to cause to be paid for, at the rate of 15 Stivers, Holland currency, for each complete ration, viz. the ration of oats 9 Stivers, the ration of hay 5 Stivers, and the ration of straw one Stiver.

“ We thereupon examined a general receipt, produced as the voucher of a delivery made in consequence of the said contract, signed by G. C. Frederick, the magazine-keeper at Lipstadt, on the twenty-sixth of November 1761, for 8664 rations of oats, and 15151 rations of straw; which being charged at the prices

“ prices fixed in the contract for these articles, do amount to above the sum of 4656 Guilders and 7 Stivers, Holland currency.

“ But we must beg leave here to observe, that the said magazine-keeper, Frederick, was, on the twenty-fifth day of the said month of November 1761, seized and arrested, together with all his papers, by order of Colonel Peirson, as appears by a minute made thereof, by the Commissioners of Enquiry; and as we apprehend this man's authority to give receipts was at an end, we cannot in this case consider the said receipts as a sufficient and valid voucher, and therefore are of opinion, that the said charge ought not to be paid.”

In order to form a proper judgment of this report, it will be necessary to recite some circumstances which immediately preceded the publication of it, and lead to a solution of the objection upon which it is founded.

On the second of May 1765, Mr. Peter Ernst Delius, who had come to London to solicit the settlement of his accounts, received notice to attend the Commissioners directly,

(30)

directly, which he accordingly did; and on being required to explain the circumstance of the date of this receipt, declared himself unable to do it, being utterly unconscious of the fact, but requested the Commissioners would defer making their report till he could have answers from his partners in Germany, to whom he would write directly, and was under no apprehension but he should receive such an explanation of it from them, who were upon the spot, as should be satisfactory; being convinced that there was no circumstance in his affairs, that would not bear the strictest examination; with which request the Commissioners promised to comply.

Accordingly Mr. Delius wrote that very night to Bielfeld, to Mr. Brockman, one of his partners, to acquaint him with the objection made to this receipt, and desire his assistance to remove it, who directly wrote to Ham, to Mr. Henrickson the agent before-mentioned, who had made the deliveries at Lipstadt, and taken this receipt from Mr. Frederick, the magazine-keeper; and also to the said Mr. Frederick, at Frankenfeld, whose answers, (which the writers are ready to confirm by oath)

as

(31)

as far as they respect this point, are in the following words:

—*Copy of Mr. Henrickson's Letter, dated at Ham, May 16, 1765.*

—“ I remember very well, that when
 “ Mr. Frederick was arrested, I heard
 “ of it the very day, at Bockum. I had
 “ then the *interim* receipts, but they were
 “ but little slips of paper; and I made as
 “ much haste as I could to Lipstadt, but
 “ could not get within the gate that even-
 “ ing. The next day, when I came there,
 “ the guard he was kept by, would not
 “ admit me to him; but after having
 “ made my representation to the officer,
 “ and shewing him what I came about, I
 “ got in his presence admitted to him, and
 “ Mr. Frederick gave me the receipt,
 “ which the officer perused. What be-
 “ came of the *interim* receipts I do not re-
 “ collect. This is all that I can recollect
 “ about it; and I believe Mr. Frederick
 “ would have dated it the 25th, if I had
 “ insisted upon it. I am sorry you have
 “ so much trouble about it; but I am of
 “ opinion that the English will easily per-
 “ ceive the injustice of this affair.”

(32)

—Copy of Mr. Frederick's Letter, dated at
Frankenfeld, May 30, 1765.

— “ By your letter of the 16th instant
“ I am informed, that the honorable com-
“ mission in England make an objection
“ against a magazine-receipt given to you,
“ by me, the 26th of November 1761,
“ because I had dated it the day after my
“ being arrested, and that it was therefore
“ of no value.

“ Though I am astonished at such an ob-
“ jection, and every one who has a true
“ idea of magazine-transactions will see,
“ and my accounts shew, that the forage,
“ for which I gave the receipt, was not
“ delivered in the magazine the 26th, but
“ at sundry times before, by one of the
“ sub-contractors (whose name I cannot
“ recollect), I will, for clearing up the
“ matter, only say, that I still remember
“ that one of the sub-contractors, or agents,
“ came to me with an officer, the day af-
“ ter I was arrested, and delivered to me,
“ the *interim* receipts, which were given
“ by the proviant-schreiber, at the delivery
“ of the forage, for which he demanded a
“ general receipt; it was my duty to give
“ it

(33)

“ it him, because the forage was delivered
“ into the magazine in my time; and so I
“ gave it him, as usual, in the presence of
“ the officer, (taking back the *interim* re-
“ ceipts) dated that day; and I could not
“ give it him sooner than that day, on which
“ the *interim* receipts were delivered to me.
“ This is all that I can say upon this
“ subject, and I don't doubt, but as all the
“ receipts issued for forage must correspond
“ and tally with my accounts, the ho-
“ nourable Commissioners neither can, nor
“ will form any doubt or objection to the
“ rectitude of the same.”

To this plain account it is unnecessary to
add any thing more, than an explanation of
what is meant by *interim* receipts, to re-
move every shadow of doubt of the justice
and validity of the receipts in question.
Interim receipts are short receipts, or rather
memorandums of particulars, given either
by the magazine-keeper, or one of his
assistants, on the delivery of every parcel,
or separate quantity, to serve as vouchers,
(*interim, in the mean time*) till a general
receipt can be given, when they are taken
up.

D

On

(34)

On receipt of these letters, the said Mr. Delius directly attended the Commissioners with them, when, to his utter astonishment, he was informed, that (notwithstanding the promise made to him to wait till he could have answers from Germany) the report above-recited had been made, by which this demand was rejected.

The injustice of this proceeding is most evident! That Mr. Delius was guilty of no delay, which could give colour for such a breach of promise, will appear from the date of his letter, and those of his correspondents. He was summoned to attend the Commissioners on the second of May. — His letter to Mr. Brockman bears date that very day. — Mr. Brockman's answer is dated the twentieth of May, in which is inclosed the answer of Mr. Henrickson, dated at Ham, the sixteenth of May; — and Mr. Frederick's is dated the thirtieth, at Frankfeld in Hanover, from whence it was first sent to Mr. Brockman at Bielfield, and by him transmitted to Mr. Delius in London, who did not receive it till the third of July, when he

(35)

he attended to have laid it before the Commissioners, but found that their report had been signed on the twenty-first of June.

Now as the said Mr. Delius was under an indispensable necessity of waiting for this letter from Mr. Frederick, from which he expected the explanation required of him, and as the whole time from the second of May, when the said explanation was required, till the beginning of July, when he attended with these letters, was not more than sufficient to seek for information from different people, in different and distant places, there certainly could be no reason to suspect him of delaying by design, that could justify signing the report so precipitately, even had there been no promise to the contrary given, much less against an express promise.

As to the objection itself, this recital of the circumstances of it totally takes away its force. For though the magazine-keeper's being arrested necessarily put a stop to his further receiving of forage, it by no means incapacitated him to give re-

D 2

ceipts

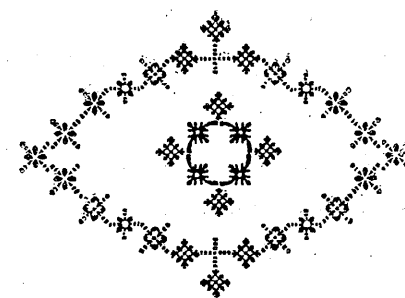
(36)

ceipts for forage already received by him, (which no other person could give), nor invalidated the said receipts when found to agree with the regular entries in his accounts, made before he was arrested; especially as he was soon after so fully acquitted of the charge upon which he was arrested, that he was restored to his former employment, and continued in it to the end of the war, it being *conviction*, and not *accusation*, that destroys *moral* character, and causes *civil* incapacity; and this the Commissioners themselves acknowledged, when the circumstances were laid before them, and professed concern, that they had not known them before their report was made.

As, therefore, there is no doubt even insinuated of the actual delivery of the forage, for which this receipt was given!---As the report, which rejects it, is founded solely on a bare *apprehension* of informality, which the Commissioners would not give time for removing!---And as the circumstance that raised that apprehension is thus fully and satisfactorily cleared up, and the apprehension consequently removed,

(37)

moved, the said Mess. Bordelius, Delius, and Co. have an indisputably just right to payment of this demand, amounting, as above, to 4656 Guilders and 7 Stivers.



D 3

State

State of Demands of Mess. Bordelius, Delius, and Co. upon the Crown of Great Britain, for Oats, Rye, Sacks, and Hay, which had been collected in their Depots at Meppen and Dullmen, in the Bishopric of Munster, for fulfilling their Contracts with the British Commissariate, and were taken and destroyed by the Enemy.

IN order to fulfil their contracts of September 12, and November 1, 1761, (*see p. 1. and 2. here immediately preceding*) Mess. Bordelius, Delius, and Co. were obliged to make large depots, at Meppen, on the river Ems, in the bishopric of Munster, there being no place left to supply the army, and particularly that part of it under the command of his Serene Highness the Hereditary Prince of Brunswick, with oats and rye, but Holland and East Frieland, nor any way left to bring them from thence to the magazines at Munster, Osnaburg, and Lipstadt, but by land-carriage from the frontiers of

3 Holland,

Holland, or by water, on the Ems; the navigation of which river is always uncertain, and very rarely practicable any farther than Meppen.

As all the vessels on the Ems were under the direction of the Commissariate, the said Mess. Bordelius, Delius, and Co. applied several times for a sufficient number of them to transport their forage to Meppen; as they did afterwards for carriages to remove it from thence to the King's magazines, but in vain, it not being in the power of the Commissariate to furnish them according to their engagement; the more immediately indispensable services of the army requiring all that could be had, as was attested by Mr. Commissary Halfey.

On the twenty-ninth of June 1762, Mr. Siebrun, burgher of Meppen, who had the care of the depots of the said Mess. Bordelius, Delius, and Co. there, perceiving that the French army advanced that way, applied to Mr. Berning, Notary Public, to survey the depots, and give him an authentic certificate of the quantities of grain then in them, which he accordingly did in the presence of the said Mr. Siebrun, and Mr. Godfrey Frankendahl, another burgher of Meppen, and joined with Mr. Siebrun in the care of the

(40)

faid depots; who, the faid Siebrun and Frankendahl, did, on the fame day, the twenty-ninth of June, make affidavits before Mr. R. Mulert, judge of the dutchy of Munfter, Meppen, and Haarem, of the faid particular quantities, which by the aforefaid certificates, and their affidavits, appears to have amounted to 77 lafts, and 58 vierlops of oats, contained in 1216 facks, and 4½ lafts of rye; copies of which affidavits and certificates were fent to Mr. Mafon, one of the Commiffaries of Control, then at Munfter, with a requifition either to affift them immediately with the neceffary carriages to transport their ftores, or to order one of the King's magazine-keepers to examine them.

The firft being impoffible, Mr. Mafon fent an order to Mr. Ruffel, King's magazine-keeper and infpector, then at Meppen, to examine the faid depots, which he did, and made a report accordingly to Mr. Mafon.

As had been apprehended, the French troops took, ufed, fold, and deftroyed the whole of the ftores aforefaid, on the feventh and tenth days of July next after they had been examined; of which fact Mr. Otto

(41)

Otto Siebrun, and Mr. Godfrey Frankendahl, before-mentioned, made regular affidavits, before John Henry Morrien, doctor of law for the dutchy of Munfter, and judge of the city of Meppen, on the twenty-firft of July next following; and to obviate every poffible objection, on the fixteenth of September, as foon as the French troops retired, at the requifition of Mef. Bordelius, Delius, and Co. Mr. Henry Ruffel, the King's magazine-keeper and infpector, who had examined their depots by the order of Mr. Commiffary Mafon, as mentioned above, made a regular attestation before a Notary Public at Meppen, “ that the
 “ quantity of grain in their ftores on the
 “ twenty-ninth of June, when he had examined them, amounted to 77 lafts and
 “ 58 vierlops of oats, contained in 1216
 “ facks, and 4½ lafts of rye, agreeable to
 “ the fpecification or lift thereof, delivered
 “ by Mr. Siebrun aforefaid;” as alfo “ that
 “ he had fent his report to the Commiffariate;” and, “ that the faid Mr. Siebrun
 “ had made feveral applications to him for
 “ carriages, in order to get the ftores provided, transported to the magazines,
 “ where they were to be delivered; but
 “ that

“ that he, (the said inspector) could not
 “ grant them for want of the necessary
 “ orders from the Commissariate, which
 “ he knew to be the reason of the said
 “ stores being left there till the arrival of
 “ the French; whom, upon proper enquiry
 “ afterwards, he found to have taken, used,
 “ sold, and destroyed the same, as he
 “ safely could, and thereby did attest, and
 “ was ready to make oath, if required.”

Besides the above oats, rye, and sacks,
 taken by the French at Meppen, they also
 took on or about the same time, 3000
 rations of hay, belonging to Mess. Borde-
 lius, Delius, and Co. at Dullmen in the
 bishopric of Munster, which had been
 collected there in order to fulfil the same
 contracts of the twelfth of September, and
 the first of November, 1761: as was attested
 on the twenty-third of July following, by
 the Baillieue, burgo-master, and council
 of Dullmen, on the declaration of Mr.
 Walter, who had the care thereof, for the
 said Mess. Bordelius, Delius, and Co.

The amount of the loss sustained by
 Mess. Bordelius, Delius, and Co. by the
 taking of the said oats, sacks, rye, and hay,
 which loss the Commissariate was engaged
 by

by contract to make good to them, is as fol-
 lows.

At Meppen.

For 77 lasts and 58 vier-	} Holland currency Guelders. Stiv.	
lops of oats (making 22451 rations, at 281 rations per last) at 9 Stivers per ration.		10105 13

This being the price con-
 tracted for on delivery at
 Munster, there is to be de-
 ducted the expence of carriage
 from Meppen to Munster,
 being 9 miles, which at 2½
 Marien-gros per quintal, and
 each last making 20 quintals,
 amounts to

	77 13
--	-------

	<hr/>	10028 0
—1216 sacks, at 16 Sti-	}	
vers per sack		972 16
4½ lasts of rye, at 35 ducats	}	
per last, the price contracted		826 17

	<hr/>	11827 13
--	-------	----------

At Dullmen.

—3000 rations of hay, at	}	
5 Stivers per ration		750 0

	<hr/>	12577 13
--	-------	----------

(44)

The causeless stop put by the Commissioners of Enquiry to settling the accounts of Mess. Bordelius, Delius, and Co. in Germany, (as hath been shewn before) obliged them to bring this demand over to London, to be liquidated by the Commissioners appointed here, who on the twenty-sixth of June 1765, made the following report thereon to the Lords of the Treasury.

“ Having examined the contracts under
 “ which the forage, rye, and sacks are
 “ pretended to have been destined to be
 “ delivered into his Majesty’s magazines,
 “ and likewise the proofs that the several
 “ articles were taken, or destroyed by the
 “ enemy, we find that the forage and sacks
 “ in question, in terms of the respective
 “ contracts, should have been delivered
 “ into the magazines some months before
 “ the loss is said to have happened; and
 “ we observe in particular, that $4\frac{1}{2}$ lasts of
 “ rye, said to be lost in Meppen, should
 “ have been, according to the contract, de-
 “ livered into the magazine in that place,
 “ which trifling circumstance cannot fail
 “ to impress us with a suspicion of the
 “ claimants intention to defraud.

“ We

(45)

“ We also find that the proofs for the
 “ loss, consisting of protocols, are *vague*,
 “ *ex parte*, and *insufficient*, and, in our opi-
 “ nion, as not amounting to an ade-
 “ quate proof, cannot be admitted to fix
 “ this as a just demand against the crown,
 “ and therefore do report, that this demand,
 “ amounting to above, as 12577 Guilders,
 “ Holland currency, *ought not to be paid.*”

The injustice of this report evidently appears from the recital here before given of the loss, the reason of that loss, and the proofs of it, which are as full and demonstrative as the nature of such a case can admit. That the oats, sacks, and rye, alledged to have been lost, were actually in the depots of the claimants at Meppen, at the time, is proved by the certificate of the Notary Public; by the affidavits of two credible and competent witnesses, Siebrun and Frankendahl, made before the grain and sacks were taken; and by the attestation of the King’s magazine-keeper, who had been ordered by the Commissariate, at the requisition of the said claimants, to examine them.---That they were actually taken, and totally used, sold, or destroyed by the French, appears from the affidavits of two credible and competent witnesses,

(46)

witneses, Siebrun and Frankendahl, made at the very instant, and on the spot, when they must have been detected had they attempted the least falsehood in a matter known to the person before whom the affidavits were sworn, and every one in the place.

That the reason why these oats, sacks, and rye were not delivered into the magazines, was the failure of the Commissariate to supply the carriages and vessels necessary for transporting them thither, according to their contract; and that the said carriages had been repeatedly demanded, appears from the attestation of the Inspector from whom they had been demanded; and beyond a possibility of contradiction or doubt, from the attestation of Mr. Commissary Halsey.

Are these proofs *vague*? Are they *ex parte*? Are they *insufficient*? Would the nature of the case admit of any stronger, more clear, and convincing? Or, could the claimants possibly have acted in any manner that could have acquitted them more fully from fraudulent design?

It is further to be observed, in answer to the objection, "that these articles should
" have

(47)

" have been delivered into the magazines before that time," that in the contract of the first of November, no time is limited for fulfilling, because experience had convinced the Commissariate that any delay must proceed from themselves, in not supplying carriages, which really was the reason for that contract's being left in blank.---May not the articles lost, therefore, be supposed to have been destined for fulfilling this contract, as well as that of the twelfth of September, in which a time was limited? And will not that answer remove such an objection? The truth of the case was, both contracts were fulfilling at the same time, and therefore the claimants thought it not necessary to make any distinction between them in the foundation of their demand, as it was impossible to foresee that such an absurd objection would be made.

That the Commissioners themselves looked upon these two contracts, as consolidated, appears by their subjecting the deliveries made under the former to the clause of forfeiture in the latter, in their rejection of the deliveries at Coesfeldt! Ought they not therefore, in common honesty to have also applied the unlimited time of the latter to the former? To

(48)

To the loss of the $4\frac{1}{2}$ lasts of rye, it is objected, "that as they ought to have been delivered into the magazine at Meppen, their being alledged to have been taken there undelivered, impresses a suspicion of an intention to defraud." But the least enquiry into the reason of their not being delivered, would have removed this suspicion, which really is as trifling as the circumstance upon which it is founded is confessed to be.

On the fifteenth of May 1761, a contract was made between Mr. Commissary Halsey and Mr. P. E. Delius, by which the latter engaged to deliver into the magazines at Halte and Meppen, 800 lasts of good and merchantable rye, for which he was to be paid at the rate of 35 ducats in gold for each last, &c.

To fulfil this contract, the said quantity of rye was brought to Meppen, by the said Delius, and Co. and the deliveries made accordingly, till the Commissariate put a stop to them; by which means these $4\frac{1}{2}$ lasts of rye lay there ready to be delivered whenever the Commissariate should order them to be received.

This

(49)

This short account of that circumstance will remove any suspicion which it could raise. That this account was not given, along with the demand, nor attested in the same manner as the former, was because the claimants thought, when they made the demand, that it would have been settled in Germany, where the fact was known, and where it was the custom (as in justice it ought to be every where) to examine them personally, and give them an opportunity of clearing up any difficulty that might appear.

In reality this inaccuracy, instead of impressing, ought to obviate every suspicion of an intention in the claimants to defraud. Frauds are always planed with care, to avoid every objection; but here every thing is produced, just as it is, without reserve or caution. The reality of the loss is proved, and they thought of nothing farther.

But should this *really trifling* circumstance raise a suspicion; was it just to reject for that suspicion, the former part of the demand, which is totally distinct from it, and against which it was impossible for any suspicion to arise?--Was it just to reject even the part against which it arose,

E

with-

(50)

without enquiring into the foundation of it?

The same reasoning holds in respect to the hay lost at Dullmen. That it was lost, appears indisputably by the certificate of the baillie, burgo-master, and council of Dullmen. On this evidence a demand was made for it; but that demand is submitted implicitly to discretion, because the proof of the quantity is acknowledged to be *insufficient*; and all other proofs, which were sufficient, have been lost in the hurry and confusion impossible to be avoided on such occasions. But is this insufficiency in the proof of one demand a just reason for rejecting another, where the proof is fully sufficient?—And does not the leaving this demand thus unsupported, prove that there was no intention to defraud?

As the reasons therefore given for rejecting that part of this demand, which relates to the loss at Meppen, are evidently without foundation, the claimants have an indisputably just right to payment of it.

State

(51)

State of the Demands of Mess. Bordelius, Delius, and Co. upon the Crown of Great Britain, for Sacks delivered into the King's Magazines at Oldensael, for the Use and Service of the British combined Army.

IN the beginning of the year 1762, Duke Ferdinand ordered all the magazines to be transported with all possible expedition to Munster, to be more convenient for the support of the army, which he had formed the resolution of drawing together very early, in order to relieve the country of Hesse Cassel.

In the midst of this hurry, Mr. Ricke, the King's magazine-keeper at Oldensael, having obtained carriages, but falling short of sacks, without which it was impossible for him to fulfil his orders, applied to the agent of Mess. Bordelius, Delius, and Co. and representing the distress he was in, and the disadvantage it would be to the service to let the carriages go away empty, at such a critical time, as it would be impossible

E 2 for

for him to get them together again ; the said agent knowing it to be the inclination of his principals to assist the service by all means in their power, let him have 6000 oat-facks, taking his receipt for them, dated the twenty-ninth of April 1762.

And on the thirtieth of May following, on the delivery of 96 lasts of rye, by the said Mess. Bordelius, Delius, and Co. into the said magazine at Oldensael, the same magazine-keeper, Ricke, being still in want of facks, obtained from them 2304 rye-facks, for which he also gave a receipt, of that date; the receipt of both which numbers of facks he entered regularly in his magazine-accounts and reports made at the time to the Commissariate, which accounts and reports were given to the Commissioners for their direction and assistance, and would have shewn the justice of this demand, had they been properly examined.

For these facks the said Mess. Bordelius, Delius, and Co. charged as follows :

For

	Gul. Stiv'
For 6000 oat-facks, at 14 Stivers,	4200 0
—2304 rye-facks, at 16 Stivers, being the price agreed for with Mr. Commissary Elliot, for facks received from Mess. Bordelius, Delius, and Co. about the same time at Meppen,	1843 4
	Gulders 6043 4

In consequence of the causeless stop put to the settlement of the accounts of Mess. Bordelius, Delius, and Co. in Germany, by the Commissioners of Enquiry, this demand came before the Commissioners in London, who, on the twelfth of December 1764, reported thereon to the Lords of the Treasury,

—“ That as they found the delivery
“ was made on a pretended verbal order,
“ given by William Nassaw Elliot, esq.
“ and only proved by the allegation of a
“ person interested in the demand, it could
“ not be considered as a sufficient founda-
“ tion, for any delivery made in conse-
“ quence to be brought as a charge against
“ the crown of Great Britain—and were of
E 3 opinion

(54)

“ opinion that this demand (for want of
“ proper authority) ought not to be
“ paid.”—

The inaccuracy of this report, and consequently the injustice of the rejection of the demand is most evident. The sacks were not delivered on a verbal order of Mr. Elliot, but on the requisition of the magazine-keeper, in a case of evident and indispensable necessity; and by the receipt of this magazine-keeper, who could be no way interested in the demand, vouched by the regular entries in his accounts, and by his regular reports made to the Commissariat at the time, the delivery is proved, and not by the allegation of any person; and upon this authority the demand of payment is founded: an authority from the nature of the case altogether unexceptionable; as the Commissioners themselves thought, where it was in their favour, as appears by the following instance.

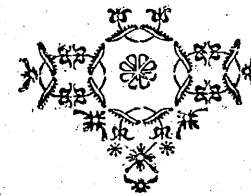
The sub-deliverers of Mr. Rose of Lipstadt happening to fall short of sacks, in making their deliveries, applied without the knowledge even of their principal, to the King's magazine-keeper, who supplied them, and entered the sacks in his accounts,
in

(55)

in the same manner, as the receipts of these sacks from Mess. Bordelius, Delius, and Co. had been entered.

When the Commissioners took into consideration Mr. Rose's demands, in which he had given no credit for these sacks, his people having never acquainted him with their getting them, on finding an account of them in the magazine-keeper's reports, they deducted the value on the sole proof of the said reports, nor would listen to his objecting that they had been obtained without any authority from him, or even his knowledge after.—Remarks on this proceeding must be unnecessary.

As the reasons therefore given for the rejection of this demand are evidently without foundation, the claimants have an indisputably just right to payment of it.



E 4

State

State of a Demand of Mess. Bordelius, Delius, and Co. upon the Crown of Great Britain, for Interest upon the Amount of a Warrant granted by Mr. Commissary-general Elliot, in Germany, for Payment for Forage delivered for the Use of the British combined Army; which Warrant had been stopped by the Commissioners of Enquiry, and was afterwards paid on their express Acknowledgment of the right of the said Mess. Bordelius, Delius, and Co. to receive such Payment.

IN the course of fulfilling the contract of September 12th, 1761, (*see p. 1. here immediately preceding*) Mess. Bordelius, Delius, and Co. obtained from Mr. Commissary-general Elliot, a warrant upon a certificate of Mr. Commissary Higgins, for the payment of 18848 Guilders 19 Stivers, which they presented regularly for payment to Peter Taylor esq. Deputy Paymaster; but he put them off, with an excuse, "that he had no money at that time," but

"but expected remittances by General Howard."

On the arrival of General Howard, the said Mess. Bordelius, Delius, and Co. applied to him for payment of this warrant, who informed them of a charge laid against them by the Commissioners of Enquiry; in consequence of which (all proofs of their innocence being set at naught!) they were obliged to deposit this warrant, along with others, as a security for their answering any charge that should be proved against them, in order to obtain payment of some part of their other unquestioned demands, to prevent the instant and utter ruin with which this general stoppage of their accounts threatened them, and their friends; nor could they ever prevail to have the affair settled, till it came before the Commissioners in London. (*See p. 14. here immediately preceding.*)

When the said Commissioners took into consideration the demands of Mess. Bordelius, Delius, and Co. they applied, by direction of the Lords of the Treasury, to Mr. Cuthbert, who had been of the Commission of Enquiry, to have the affair of this warrant cleared up; who, on the
twenty-

(58)

twenty-ninth of June 1765, reported to their Lordships, *that this warrant ought to be returned* to the said Mess. Bordelius, Delius, and Co. after reciting particularly all the circumstances of its having been deposited with the Commissioners of Enquiry, as herein before set forth; in consequence of which report, the Commissioners for German demands, reported to their Lordships on the tenth of February 1766, "that the said warrant, and the certificate upon which it had been granted (which had been delivered to them by the Commissioners of Enquiry, pursuant to their report) had been duly and officially granted; and that it did not appear to them, that the said certificate and warrant were the property of persons accused, or suspected of fraud, or upon whom there was reason to believe the public had any demand---and therefore that the said warrant ought to be paid." ---And accordingly his Majesty's warrant was granted for the payment of it, on the twenty-seventh of March following.

But in this report the Commissioners utterly omitted to allow, or even take any notice of the interest demanded upon the said warrant,

(59)

warrant, in consequence of which omission that interest was not paid.

The injustice of withholding this interest is most evident. By the signing of the first warrant of Mr. Elliot, the debt was ascertained, and the creditors entitled to interest on the delay of paying that debt, by every principle of justice and law; as has been shewn in similar instances (*see p. 22. here immediately preceding*); and therefore the said Mess. Bordelius, Delius, and Co. have an indisputably just right to payment of interest for this warrant, amounting, at five per. cent. per ann. from the fourteenth of May 1762, when Mr. Elliot's warrant was signed, to the twenty-seventh of March 1766, when it was paid, to 3363 Rd. 3 Stivers.



(61)

STATE of the DEMANDS

OF

Mess. MEYER and DELIUS

UPON THE

CROWN of GREAT BRITAIN,

FOR

Forage collected by them at Bielfeld, to fulfil a Contract with the British Commissariat; and destroyed there by Order of his Serene Highness Prince Ferdinand of Brunswick.

ON the twenty-fourth of February 1759, a contract was made by Mr. Intendant-general Hunter with Mess. Meyer, and Delius, by which the said Meyer and Delius engaged to deliver into the King's magazines at Munster, within the space of six, or eight weeks, 200,000 complete rations of forage, *for account and risque* of his said Majesty, and the use of the said army, for which they were to be paid at the rate of 18 Mgr. for the complete ration, &c.

In

In order to fulfil this contract, the said Mess. Meyer and Delius directly collected the necessary quantities of forage, at Bielfeld, to be transported from thence to the King's magazine at Munster.

As these transports could be performed only by the carriages of the country, and as the command and disposal of those carriages were always in the British Commissariate, the furnishing of them was held to be an indispensable article on the part of the Commissariate, in all contracts, whether expressly mentioned or not; and accordingly Mr. Intendant-general Hunter gave the said Mess. Meyer and Delius several orders to the magistracies for them, in the course of performing this contract.

But all these orders proved ineffectual, as appears by the attestation, upon oath, of P. F. Steitz, C. Menke, and J. F. Woermann, store-keepers and deliverers to the said Mess. Meyer and Delius, who had been often sent to solicit for carriages, and were from their employment thoroughly acquainted with every circumstance of the affair—by the certificate of Mr. Ebeling, secretary to Mr. Intendant-general Hunter, proving “that the said Mess. Meyer and De-
“ lius

“ lius had often solicited for the carriages ne-
“ cessary for making their deliveries, but that
“ it was impossible for the Intendant-general
“ to supply them at that time; and that their
“ not fulfilling their contract within the li-
“ mited time was occasioned by this want
“ of carriages.”—And by the attestation of
L.F. Alemann, secretary of the commission of
Ravensberg, purporting that, “pursuant to
“ the order of his Excellency, Mr. Massow,
“ president of the chamber of war and do-
“ mains of Minden, dated at Munster the
“ twenty-sixth of February 1759, two or
“ three thousand waggons were agreed for
“ and granted from the county of Ravens-
“ berg, for transporting the forage pur-
“ chased to stock the magazine at Munster;
“ but that although he did all in his power
“ to cause the said orders to be obeyed, and
“ that number of waggons provided, yet
“ so many extraordinary carriages happened
“ to be wanting at the same time for the
“ service of the army, that the said Mess.
“ Meyer and Delius could not be supplied
“ with carriages in the manner they had
“ been granted to them, nor more than
“ 314 could be gotten for them in the
“ space of seven weeks from the date of the
“ said

(64)

“ said orders, including some few which they obtained afterwards.”—

While they were struggling with these difficulties, which had been such as to prevent their fulfilling more than above half their contract, the head-quarters of the British army, upon their retreat out of the county of Hesse, were fixed at Ritberg, within three German miles of Bielfeld, where the said Mess. Meyer and Delius had 330 fodres of oats, and 4000 quintals of hay, remaining undelivered of what they had collected there to fulfil their contract.

On the army's coming so near, they applied again to Mr. Intendant-general Hunter, then at the head-quarters, for carriages to complete their deliveries, or else, orders how he would have the forage disposed of otherwise; who returned for answer, by his secretary, Mr. Ebeling before-mentioned, “ that the said forage should remain at Bielfeld, to be served there to the troops”—as appears by the certificate of the said secretary.

But while they waited in daily expectation of orders to this effect, they were served with notice from Major Cronholm, commandant at Bielfeld aforesaid, that he had

(65)

had received order from his Serene Highness Prince Ferdinand to destroy all the forage in store there, in order to prevent its falling into the hands of the enemy, who were then advancing that way.

All that was possible for the said Mess. Meyer and Delius to do, in such circumstances, was to apply to the burgo-master of the town, to examine their stores, that he might be able to give a proper attestation of the quantities of forage actually in them, when required; which was done accordingly, and the burgo-master found them to contain, according to the best of his judgment, it being impossible to take an exact account, in the midst of such a scene of tumult and confusion, “ about 330, or 340 fodres of oats, each fodre containing 40 Berlin sheffells, and 4000 quintals of hay, weighing 110 pounds each quintal,” as he attested several times afterwards upon oath, at the requisition of the said Mess. Meyer and Delius; as also “ that the whole of this said hay and oats was given up to plunder, and destroyed by Major Van Cronholm, on the order of his Serene Highness Prince

F

“ Fer-

(66)

“ Ferdinand, and taken away by the ene-
 “ my, so that the said Mess. Meyer and
 “ Delius neither did, nor could, save the
 “ least part thereof;” all which circum-
 stances are also attested by the oaths of Mr.
 Helling, merchant of Scheildefche, who had
 sold a great part of the said forage to the said
 Mess. Meyer and Delius, expressly for the
 intent and purpose of fulfilling this con-
 tract, and delivered it into their stores at
 Bielfeld aforesaid; of Mr. Frans Larentz
 Thicke, and of Mr. Carl Ludwig Schimdt,
 citizens of Herford, and Mr. Fredericke
 Saltpeter of the same place, in confirma-
 tion of the attestation of the said Mr. Hel-
 ling; in consequence of their having deli-
 vered some parts of the said forage for him,
 into the stores of the said Mess. Meyer and
 Delius; all which attestations, duly sworn
 before the proper magistrates, agree strictly
 with each other, both in respect to the
 quantities of forage actually in the said stores
 of the said Mess. Meyer and Delius, at
 Bielfeld aforesaid, at the time of the inva-
 sion of the French, in the month of July
 1759, and of the said forage’s being deli-
 vered up to be plundered by Major Van
 Cron-

(67)

Cronholm, and what remained taken by
 the French; and are still farther corroborated
 by the several attestations upon oath of Mr.
 Johan Ludwig Balcke, merchant of Her-
 ford aforesaid, who swears expressly and ex-
 plicitly, “ that no part of the said forage was
 “ taken out of the said stores by, or for the
 “ use or advantage of the said Mess. Meyer
 “ and Delius, or any person concerned
 “ with, or entrusted by them in any re-
 “ spect or sense whatsoever;” but “ that
 “ the whole was actually and truly plun-
 “ dered, destroyed, and taken,” in the
 manner herein before set forth; and of
 John Hendricke Sieckman, Bernd Hen-
 rich Lindeman, and Herman Hendric
 Brackfieke, labourers, who had been em-
 ployed in weighing and making up the
 said forage, and packing it in the se-
 veral stores, which they particularly spe-
 cify, and consequently could not be mis-
 taken in what they have so circumstantially
 sworn.

These several attestations of all these cir-
 cumstances being laid before the Prince,
 by the said Mess. Meyer and Delius, they
 received for answer, from his secretary
 F 2 Adju-

(68)

Adjutant-general Reden, “ that his Serene Highness had ordered him to grant them the necessary certificates to procure them payment; and to assure them that they need be under no uneasiness about it,”—for which certificate the said secretary desired they would call upon him some other time, as the army was just then breaking up; which they accordingly did, at Crof-dorff, on the twenty-ninth of October following, and received it in the fullest and clearest manner.

When the said Mess. Meyer and Delius had obtained this certificate, they applied to the Prince for an order for payment, when his Serene Highness directed them to apply to the Intendency, which they accordingly did; but Mr. Hunter was just then setting out for England, till his return from whence, he said, he could not attend to this or any other business: but he returned no more to the army; nor would any of the other Commissaries do any thing in it after, because it had happened in his time; a practice that, in many other instances as well as this, laid these and several other contractors under the greatest difficulties.

(69)

In this situation the affair remained till the order was issued for bringing all unsettled demands, on account of the war, to London, to be liquidated by Commissioners appointed for that purpose; in consequence of which this demand was laid before the said Commissioners, who, on the eleventh of December 1764, reported thereon to the Lords of the Treasury—

“ That this account had been presented to several officers of the Commissariate in Germany, who refused to enter upon, or make any settlement thereof.

“ Secondly, that there is no clause contained in the contract, which provides that the entrepreneur shall be indemnified for losses sustained on account of captures or seizures made by the enemy, or for any other loss or damage whatsoever.

“ Thirdly, that there was in general no agreement or authority on the part of the Commissariate, whereon this claim of indemnification can be grounded, to make it a matter of charge against the crown of Great Britain.—And therefore that this account ought not to be paid.”

(70)

The insufficiency of the reasons given in this report for the rejection of this demand, and consequently the injustice of that rejection, is most evident. The refusal of the several officers of the Commissariat to whom this demand was presented, after the departure of Mr. Hunter, to enter upon, or make any settlement of it, has been accounted for in a manner too well known to be contradicted. It was a neglect of duty of these officers, for which the claimants could be in no respect answerable, as it was not in their power to prevent it. For the officers of the crown, therefore, to make a plea of this refusal to settle the demand, for refusing to pay it because not settled, is taking advantage of their own act of injustice, in direct opposition to an express maxim of the law, as well as to the universal principles of equity.

Equally insufficient is the second reason, "that there is no clause contained in the contract, &c."—*Quod necessario intelligitur non deest.* Though such a clause is not expressly inserted, it is necessarily understood, because without such indemnification no contract could be made, as no contractor

was,

(71)

was, or could be, able to bear the loss; and for this reason, and as a proof that such clause was always understood, the payment of several demands for losses by the enemy can be instanced, where no such clause was in the contract.

But were it even otherwise, and such an express clause indispensably necessary, that would not affect this demand, which is not for forage *taken by the enemy*, but *destroyed by the express order of the commander in chief of the army*; all whose acts, in such capacity, are to be looked upon as the acts of the power whose army he commanded.

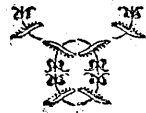
As therefore contractors have a right to be paid by the crown of Great Britain for forage delivered for the use of the British army; so, by the same reason, they have an equal right to be paid for forage, when destroyed by that army! A right, which in this case is still further strengthened, could it want further strength, by this, that this forage's not having been delivered was owing solely to the failure of the officers of the crown to perform their part toward the delivery of it, by supplying the necessary carriages.

F 4

In

In a word! It is proved that this forage was brought to Bielfeld for fulfilling a contract made with the British Commissariate, and there destroyed by express order of the commander in chief of the British army; whose order, in reason and the nature of the thing, is sufficient authority to make the crown of Great Britain, whose army he commanded, liable to pay for it.—To which may be added, that the want of other authority was never objected to it, when presented to the Commissariate in Germany, nor such authority thought necessary, till arbitrarily prescribed long after.—And this is a sufficient answer to the third reason given for the rejecting this demand.

For these reasons the said Mess. Meyer and Delius have an incontestibly just right to payment of this demand, amounting to 7662 Ducats : 2 Rd. : 6 Mgr.



STATE

STATE of the DEMANDS

OF

NATHAN ISAAC

UPON THE

CROWN of GREAT BRITAIN,

FOR

Forage delivered into the King's Magazines, in Performance of a Contract made by him with the British Commissariate.

ON the twenty-third of July, 1761, a contract was made by Mr. Commissary-general Hatton with Mr. Nathan Isaac, by which the said Isaac engaged to deliver into the King's Magazines at Osnabrug 100,000 complete rations of forage, for which he was to be paid at the
rate

(74)

rate of 13 stivers, Holland currency, for the complete ration.

In order to perform this contract, the said Nathan Isaac made the necessary provision, and began his deliveries; but he had delivered no more than 12,388 complete rations, 10,427 rations of oats, and 4369 rations of hay, when, upon the approach of the enemy, the magazine-keeper refused to receive any more, as appears by the certificate of Mr. Commissary Fraser, in which he expressly says, that, "the situation of the enemy made it necessary for the *proviant schreiber* (the magazine-keeper) to refuse receiving the whole."

During the stay of the enemy, Nathan Isaac took every precaution to conceal the forage that remained undelivered; but it was impossible to do it so effectually as to prevent their discovering a considerable part of it, which they took, and used or destroyed.

As soon as the enemy removed, the said Nathan Isaac continued his deliveries;

8

and,

(75)

and, from the thirty-first of October to the thirty-first of December, both included, delivered, according to the attestation of Mr. Schutt, King's magazine-keeper at Osnabrug, 22,026 rations of oats, and 30 rations of hay, quoted from the accounts of his magazine.

When the accounts of these deliveries were presented to Mr. Commissary Halsey, to be certified, he objected to the vouchers, as not being dated within the time limited by the contract, and applied to Mr. Hatton, to know if he had prolonged it; and on his answering that he had not, Mr. Halsey refused to certify the account; nor could the said Nathan Isaac ever after prevail to have it taken into farther consideration, when he would have easily removed that objection; so that it lay in the office of the Control till the order was issued for bringing all demands on account of the war to London, to be liquidated by Commissioners appointed for that purpose, before whom this account was accordingly laid, and by them reported upon to the Lords of the Treasury, on the seventeenth of May 1765, as follows:

---" It

(76)

—“ It appearing from letters, which
 “ have passed between Mr. Hatton and
 “ Mr. Frazer, that the vouchers pro-
 “ duced not being dated within the limits
 “ of the contract, Mr. Frazer was in doubt
 “ whether he could pass them, or not;
 “ and wrote to Mr. Hatton to know whe-
 “ ther he had given orders for prolonging
 “ the said contract, to which he answered
 “ in the negative; we are of opinion that
 “ these receipts thus dated are not founded
 “ on any just authority, whereby they can
 “ become a charge against the crown,”
 &c.—

The insufficiency of the reason given for the rejection of this account, and consequently the injustice of that rejection, are most evident. Though Mr. Hatton had not prolonged the time of the contract, was there no other person by whom it could be prolonged, or no other way of prolonging it?—

In many contracts, the limitation of time was expressly qualified by this clause,

(77)

clause, “ *If no intervention of the enemy*
 “ *binders.*” A clause, in the nature of such affairs, so indispensable, that it must necessarily be understood where it was not expressed; as who would undertake without such a clause, what, in such a case, it must be impossible for him to perform?— That the Commissariat held this clause to be thus indispensable, and of course necessarily understood, is sufficiently proved by their availing themselves of it, on this very occasion; as appears by the before-mentioned express words of Mr. Commissary Frazer, in his certificate of the deliveries made upon this contract, before this interruption from the enemy, “ that the situa-
 “ tion of the enemy made it necessary for
 “ the proviant schreiber to refuse receiv-
 “ ing the whole.”—For as all contracts are mutually binding in all points, if the magazine-keeper (the officer of the Commissariat) had a right to *refuse receiving*, the contractor’s *not delivering* within the time limited, *which was prevented by this refusal*, cannot make the limitation absolute, and preclude his right of delivering the residue after.

Nor

(78)

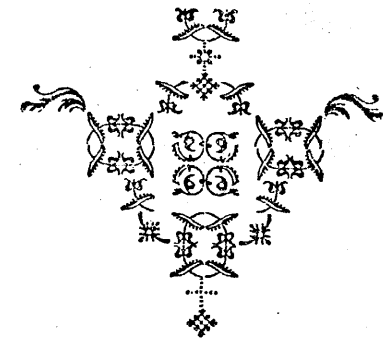
Nor do the following words of Mr. Frazer, "and therefore no further delivery will be made upon this contract till further order"—take away this right; for if the magazine-keeper had a sufficient authority of himself to refuse receiving, he must necessarily have also a sufficient authority of himself to recontinue the receipt after, without express order from any other; and his vouchers of such receipt are sufficient authority to make it a just charge against the crown.

In a word, as the failure of making the deliveries within the time limited, proceeded not in any respect from the contractor, but from the officer of the Commissariate, though for a reason unquestionably sufficient, and as the said officer afterwards accepted the said deliveries, when that reason was removed, that acceptance is an implicit prolongation of the time limited by the contract; or rather a new contract without limitation.

As the reason therefore given for the rejection of this demand is evidently insufficient,

(79)

ficient, the said Nathan Isaac has an indisputably just right to payment of the amount, being 1350 Ducats.



S T A T E

0420

STATE of a DEMAND

OF

HENRICK MULLER.

(81)

STATE of the DEMANDS

OF

Mess. ALBERS and Co.

UPON THE

CROWN of GREAT BRITAIN,

FOR

Loss upon a Quantity of Hay and Straw, provided to fulfil a Contract with the British Commissariate, and left upon their Hands at the Peace—and upon a Quantity of Oats provided to fulfil the same Contract, and destroyed by the Enemy, in their Depots, where it lay for want of Carriages, which the Commissariate was obliged to furnish them with, for delivering it.

ON the twenty-fifth of October 1761, a contract was made at Munster by Mr. Commissary-general Halsey, with Mess. Albers and Co. by which the said Albers and Co. engaged to deliver 200,000 complete rations of forage into the King's Magazines at Osnabrug within

G

two

two months, for which he was to be paid at the rate of 14½ Stivers, Holland currency, for the complete ration, the Commissariate to furnish the carriages for delivering it, to be paid for according to the tariff; and to pay for any part of the said forage, which should be taken by the enemy in actual transport, &c.

In order to fulfil this contract, the said Mess. Albers and Co. directly provided the necessary quantities of forage, and collected them in their depots, the oats at Haselunne, on the river Ems, in the bishopric of Munster, the nearest place to Osnabrug to which they could bring it by water carriage; and the hay and straw at Lemford and Osnabrug; and then applied to the Commissariate for carriages, according to their contract; but, instead of obtaining them, received for answer, that the other services of the army were then so urgent, that a sufficient number could not be spared them, so that the time of the contract expired before it could be completed, though all the forage lay in their depots.

The Commissariate, however, sensible that this delay proceeded not from any fault of the contractors, instead of making it a

reason for putting a stop to their deliveries, not only urged the continuance of them in the most pressing manner, but also obliged the said contractors to purchase oats, at an advance price, at and near Osnabrug, because carriages could not be spared to transport them from Haselunne, where they lay; and accordingly they continued their deliveries till the eighth of May 1762, when they were stopped by an order from sir James Cockburne, it not being thought necessary to augment the magazines at Osnabrug at that time.

Apprehensive of the loss which must ensue from this, Mess. Albers and Co. offered to complete the remainder of their contract at Munster, but before they could receive a definitive answer, the army marched away into the country of Hesse, so that there was no farther occasion for stocking the magazines in the bishopric of Munster.

On receiving information of this, the said Mess. Albers and Co. applied to the Commissariate to know how the forage thus left upon their hands should be disposed of, but could never receive a positive answer; so that they knew not how to act, till the

sale of the British magazines in the year 1763, suggested to them to sell theirs also; which they did at near 100 per cent. higher price, than the British magazines were sold for, and consequently lessened their just demands upon the Crown of Great Britain, by so much.

The loss upon the sale of these quantities of hay and straw, (that is to say, what the produce of that sale fell short of the contract-price), together with the several expences attending the said sale, and the keeping of the said forage for so long a time, amounted to 5663 Guilders 10³/₄ Mgr. the accounts of which were presented regularly to the Control; but the liquidation of them could never be obtained, till the order was issued for bringing all demands on account of the war to London, to be liquidated by Commissioners appointed for that purpose.

Nor was this the only loss occasioned by the failure of the Commissariate to supply carriages for the performance of this contract.

It has been shewn that the necessary quantity of oats was lodged in depots at Haselunne; of these oats there remained a

large
8

large quantity undelivered, when the stop was put by sir James Cockburne to any farther deliveries in the bishopric of Munster; but before the said oats could possibly be disposed of, as the hay and straw had been, the enemy took possession of that part of the country, on the seventh, eighth, and ninth of July 1762, and there took, used, and destroyed all that they found in the said depots.

The vouchers of this loss being laid before Mr. Commissary Dyer, he examined and allowed them; but when the account was presented to be certified, it appearing that 15799 rations of oats had been in the depots, more than were necessary for completing the contract, that excess was rejected, and so much only certified as, together with what had been delivered, completed the contract; upon which certificate payment was accordingly obtained; as it was known that the failure of the Commissariate to supply carriages for delivering it, pursuant to the contract, was the cause of these oats remaining in the depots; and consequently, that the Commissariate was justly liable to pay for the loss of them.

G 3 The

(86)

The same reason entitled the contractors also to payment for this excess, the cause of which was, the Commissariate's having obliged the contractors to purchase oats, at or near Osnabrug, to continue their deliveries, because carriages could not be spared to transport them from Haselunne, as herein before set forth; and accordingly the account of this excess, with the vouchers allowed by Mr. Commissary Dyer, was laid before the Control, but the liquidation of it could never be obtained, till the order was issued for bringing all demands on account of the war to London, to be liquidated by Commissioners appointed for that purpose. — This account amounted to 6417 Guilders 19 Stivers.

In consequence of that order, these two accounts of the loss upon the sale of the hay and straw; and of the excess of oats in the depots at Haselunne, were laid before the said Commissioners, who on the twenty-eighth of February 1765, made the following report thereon, to the Lords of the Treasury.

“ We have taken under consideration an
 “ account (presented on the twenty-seventh
 “ of December last, under N^o 57. of Mr.
 “ Legh's

(87)

“ Legh's list of accounts left in the Office
 “ of Control) of indemnification, con-
 “ cerning a parcel of forage remaining
 “ upon hand, in consequence of a contract
 “ made with the British Commissariate by
 “ Albers and Co. and the charges arising
 “ therefrom, amounting in all, to 5663
 “ Guilders 10³/₄ Stivers; and for the in-
 “ formation of their lordships do report,

“ That it does not appear by any paper
 “ delivered to us, that the existence of
 “ any depots of hay and straw, mentioned
 “ in the first part of the said account, were
 “ authentically ascertained; and even if they
 “ had been so, that a general order to Mr.
 “ Reinecke, to deliver what forage he
 “ could, without specifying the quantity,
 “ which is all the authority laid before us,
 “ can ever engage the crown to pay for
 “ any quantity he may pretend to have col-
 “ lected in depot.

“ Upon the remaining article of this
 “ account, for charges arising from the
 “ want of carriages for the delivery of a
 “ quantity of oats alleged to have remained
 “ at Haselunne,

“ We likewise report that the existence
 “ of the depots referred to, and said to be

(88)

“ in East Friesland, are by no papers before
 “ us authentically ascertained; and even
 “ if they did exist, that we do by no
 “ means apprehend the crown can be en-
 “ gaged to pay for the errors arising in the
 “ contractor's execution of his contract,
 “ by laying in depots at such a distance
 “ from the magazine at Osnabrug, as did
 “ not answer for the execution of their
 “ contract, when they were obliged to
 “ make others, by which the contract was
 “ fulfilled. We are therefore of opinion
 “ that the said demands, amounting as
 “ above to 5663 Guilders 10 $\frac{3}{4}$ Stivers,
 “ ought not to be paid.”

The inaccuracy of this report, and the
 insufficiency of the reasons upon which the
 rejection of these demands is founded, are
 so obvious, that they scarce require being
 pointed out.

The existence of the depots of hay and
 straw at Lemford and Osnabrug is authen-
 tically proved by a *notarial document* of G.
 D. Bahrens, imperial sworn notary-public,
 attesting the sale of the said quantity of hay
 and straw, the persons who bought them,
 and the prices for which they were sold;
 than which the nature of the case, and the
 laws

(89)

laws of the country do not admit of stronger
 proof.

As to the second reason, it is sufficient to
 say, as hath been herein before shewn,
 that the demand is not founded on a general
 order to deliver forage without specifying
 the quantity, but on an express contract
 with the Commissariate; which contract
 indisputably engages the crown to pay for
 the quantity collected in their depots.

To the objection made to the second
 article, that is, the loss of the oats at Ha-
 felunne, the state of that loss herein before
 set forth, is a sufficient answer. The ex-
 istence of the depots at Haselunne was
 proved certainly, when the residue of the
 loss there was paid, and is farther proved
 by the attestation of Mr. Commissary Elliot,
 who, in a letter of the third of June 1762,
 (preceding the loss) says expressly, “ that he
 “ had given orders to the magazine-di-
 “ rector Mr. Ruffel, to examine the depots
 “ at Haselunne,” &c.

As to the objection to these depots, of
 their been formed in East Friesland! it is
 beneath an answer. Haselunne is in the
 bishopric of Munster, and the nearest place
 upon the river Ems to Osnabrug.—

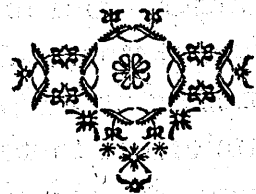
The

(90)

The mistake by which the amount of this account is sunk in the preceding, is a sufficient proof of the inaccuracy of this report.

As the reasons therefore given for the rejection of these two accounts are thus proved to be without foundation, the said Mess. Albers and Co. have a just right to payment of the joint amount of them, being 12080 Guilders and 29 $\frac{3}{4}$ Stivers, Holland currency.

F I N I S.



(93)

STATE of a DEMAND

O F

HENRICK MULLER,

U P O N T H E

CROWN of GREAT BRITAIN,

F O R

An Over-charge of Carriage deducted from his Accounts by the Commissariate in Germany.

IN settling the accounts of deliveries made by Henrick Muller, in performance of a contract with sir James Cockburne, a mistake was made in the distances between his depots and the magazines; and in consequence thereof, an over-charge of carriage deducted from his said accounts in the certificate granted upon them by Mr. Commissary-general Legh; and of course in the payment he received.

Upon the discovery of this mistake immediately after, Mr. Commissary Legh granted

(94)

granted the said Muller a certificate of this over-charge, dated at Hanover, June 30, 1763; but before payment could be received the offices were closed, and the order issued for bringing all demands on account of the war to London, to be liquidated by Commissioners appointed for that purpose.

The hurry and confusion caused by the shortness of the time limited for bringing over these demands is too well known. In that hurry, this certificate was confounded among other papers, where it remained undiscovered, till since the close of the said commission, and consequently never could be presented to them.

As there cannot possibly be any objection made to this certificate, the said Henrick Muller therefore has a just right to payment of this over-charge, amounting to 382 Ducats 2 Rd. and 30 Mgr.

F I N I S.