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S T A T E

OF THE

D E M A N D S

O F

J O H N R O S E, Esq;

Counsellor of Justice to his Prussian Majesty;

UPON THE

CROWN of GREAT-BRITAIN,

F O R

Forage, meal, sacks, &c. delivered to the British combined army, and taken by the enemy during the late War in Germany.

L O N D O N :

Printed in the YEAR M D C C L X V I I .

Advertisement.

THE particulars of the following accounts, with the vouchers, and the several authorities upon which they are founded, are not inserted in this State, to avoid extending it to an improper length; but are all ready to be produced when called for.

S T A T E

O F T H E

D E M A N D S

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J O H N R O S E, Esq;

Counsellor of Justice to his Prussian Majesty.

U P O N T H E

CROWN of GREAT-BRITAIN, &c.

ON the 3d of September, 1760, a contract was made by Mr. Com. Gen. Hatton, with Mr. Counsellor Rose, by which the said Mr. Rose undertook to deliver into the King's magazines at Lipsstadt 10000 quintals of meal, at 3 R^d. per quintal, within the course of that month, under the penalty of forfeiting 10 R^d. per quintal for all that should remain undelivered of the said quantity at the expiration of that time, the Commissariate supplying him with the necessary requisitions for carriages, which he was to pay for, according to the or-

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ordinances, and also with requisitions to the dutchy of Westphalia, and to the counties of Marcke, Rittberg, and Rheda, for free exportation of the corn he might purchase there.

Mr. Rose having provided the meal, applied several times to the Commissariate for requisitions for carriages to deliver it, but was always answered there were none to be spared for him, at that time, all that were possible to be got being engaged in the immediate and indispensable service of the army, then marching towards Wesel; nor could he obtain the requisitions for the free exportation of his corn, the attention of the Commissariate was so entirely taken up with providing means to forward the success of that expedition.

Though this failure of the Commissariate to perform their part of the contract, upon which the performance of his depended, as attested by the persons appointed to regulate the transports, evidently freed Mr. Rose from his engagement to make these deliveries, and entitled him to payment for the meal, which he had provided in his depots, at and near Warendorff, within from four to six miles of Lipstadt, the quantities of which were also attested by Col. de Monroy, Commandant at Lipstadt, whose known sollicitude for the safety of that most important fortress, made him take care to be minutely informed what provision was made for the supply
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of it, Mr. Rose's zeal for the service would not permit him to take that advantage of it, in so critical a conjuncture; but he proceeded directly to transport the said meal, with his own horses, with such expedition, that several of them were killed or disabled in the service.

When he had delivered somewhat more than 5000 quintals in this manner, he was so pressing applied to by H. S. H. the hereditary Prince of Brunswick, who commanded the detached army besieging Wesel, and by the Commissaries who attended that army, to furnish it with bread; as appears by their many letters and requisitions to that effect, some of them from Mr. Hatton himself, who had made this contract; and who therefore certainly had a power to dispense with it; that he was obliged to discontinue his deliveries at Lipstadt for that time, and turn his care to supplying the army before Wesel, for which he baked upwards of 8000 quintals of meal into bread, in consequence of the said requisitions, as appears by the accounts of the deliveries of the said bread, settled by Mr. Com. Halsey, in Germany, and afterwards brought into the office of the Commissioners for German Demands, in London; which deliveries of 8000 quintals, in bread, to the Prince's army, and 5000 into the magazine at Lipstadt, both within the terms and time of his contract, together with near 3000 quintals, which, according to the attestation of the Com-
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missary

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missary of Provisions, remained in his depots, for want of carriages to transport it to the magazines, make 16000 quintals furnished and provided by Mr. Rose, within the time, and to fulfil his contract, which obliged him to provide only 10000 quintals for the delivery of which he was to be supplied with requisitions for free exportation, and carriages, but never could obtain either.

The accounts of the bread thus delivered were laid, among those of Mr. Rose's other deliveries, before the Commissariate in Germany, by whom they were settled, and a warrant granted for the payment of them, which was presented to the Deputy-Paymaster; but before payment could be obtained, the Commissioners of Enquiry, upon some suspicion of his not having made his deliveries, strictly according to contract, thought proper to put a stop, both to the payment of his said warrant, and to the liquidation of his other accounts.

Against this treatment Mr. Rose remonstrated in the strongest terms, and shewed the injustice of proceeding such lengths on mere suppositions, and insinuations of obscure persons, with whom he had never been confronted; but all his arguments, from reason and justice, had no effect; nor could he obtain any relief, till the order was issued for bringing all demands on account of the war before the Commissioners in London,
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in whose office they lay from December 1763, to the 10th of January, 1766, when they made the following report upon them to the Lords of the Treasury.

— “ We have taken into consideration a charge of 57888 ducats, 2 guilders, and 8 stivers, brought against Mr. Counsellor Rose, by the Commissioners of Enquiry, on a revision of eleven certificates granted to him in Germany, by Thomas Halley, Esq; and for meal, bread, and sacks, borrowed from the King's magazines, &c. &c.”—And do report,

— “ That Mr. Halley hath attended the Board, and explained to us the circumstances upon which several of the suspicions arose to the Commissioners of Enquiry in Germany, &c.—And in consequence of this explanation, and the opinion we have formed on the several articles in the account stated by the Commissioners of Enquiry, between the Crown and Mr. Rose, the balance is reduced to the sum of 14801 ducats, 4 guilders, and 12 stivers; and the same is carried to the credit of the Crown; as will more fully appear by the annexed state thereof, to which we beg leave to refer.

— “ We have likewise taken into our consideration the accounts delivered into our office by Mr. Rose, for liquidation, on the

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“ 21st

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“ 21st of December 1763, amounting to
 “ 101579 Duc. : 2RD. : 20½ MG. in gold.
 “ And doreport,

— “ That we have gone through the exa-
 “ mination of the same, and disallowed such
 “ articles as Mr. Rose could not produce suf-
 “ ficient authority for; and likewise rejected
 “ such vouchers as we found insufficient, ac-
 “ cording to our state, made out, and hereunto
 “ annexed, by which it appears that the bal-
 “ lance due to Mr. Rose is 55430 Duc. : 2RD.
 “ 6MG. in gold, which we are of opinion
 “ ought to be paid to the said Mr. Rose, in
 “ full of all his demands upon the Crown of
 “ Great Britain.”

In the state here referred to, which it is un-
 necessary to insert at length, the Commissioners
 for German Demands adopt a deduction of
 1904 Duc. : 4 GUILD. made by the Commis-
 sioners of Enquiry in Germany, from Mr. Rose's
 accounts, as a penalty for not having completed
 his contract of the 3d of September 1760, with-
 in the stipulated time, according to the clause
 in that contract, as herein before set forth;
 which penalty though, they do not charge ac-
 cording to the letter of the contract, but at the
 much more moderate rate of reimbursing the
 difference between the price Mr. Rose was to
 receive, and that paid to one Mr. Marguard,
 for meal delivered by him at Lipstadt within
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the same time, to supply the place of that which
 Mr. Rose was to have delivered on this contract,
 which they compute at 10000 quintals, the full
 amount of the contract, whereas, in fact, Mr.
 Marguard delivered no more than between two
 and three thousand quintals; without making
 allowance for the 5000 quintals delivered by
 Mr. Rose at Lipstadt; as before shewn, the
 8000 quintals baked into bread, and delivered
 to the Hereditary Prince's army, at the requi-
 sition of the Commissariate, whose directions to
 make his deliveries elsewhere were certainly a
 dispensation from the penalty in the former
 contract; or the 3000 quintals that remained
 in his depots, for want of carriages to deliver
 them, as attested by the Commissary of Pro-
 visions; and without even taking notice of the
 obligation which the Commissariate was ex-
 pressly under to supply the said carriages, and
 orders for free exportation, though the perfor-
 mance of that obligation was necessarily ante-
 cedent to his performing the delivery, as the
 means to the effect, and consequently the breach
 of it absolved him from any penalty upon the
 failure of the delivery.

Nor is this all. In all covenants the obliga-
 tion is mutual. That upon Mr. Rose was to
 provide the meal, and deliver it! That upon
 the Commissariate to supply carriages to make
 that delivery, and orders for free exportation,
 and then to pay for it, when delivered. By
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providing the meal, and applying for the carriages, &c. which have been sufficiently proved, Mr. Rose performed his part, so far as it depended upon himself! By not providing him with carriages, and orders for free exportation, the Commissariate broke the first part of theirs, and became liable to the second, without any farther act of his, that is, to pay for the meal provided in his depots for delivery, as if actually delivered, only deducting the expence he was to have been at in the delivery.

But even were the principle upon which this penalty is imposed just, the present extent of it is the highest injustice.

It has been shewn that Mr. Rose delivered about 5000 quintals of meal into the magazines at Lipstadt, within the time limited, even though disappointed of the carriages, and orders for free exportation, with which the Commissariate was obliged to supply him; but in levying the penalty, the Commissioners take no notice of his having delivered any at all, but charge it for the 10000 quintals, the whole amount of his contract, on a supposition that Mr. Marguard had delivered that quantity; whereas, in fact, Mr. Marguard delivered only from 2000 to 3000 quintals, the rest, which they suppose to have been delivered by him, having been the 5000 quintals delivered by Mr. Rose, before he was obliged by the requisitions of his
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Serene Highness the Hereditary Prince, and the Commissaries attending his army, to suspend his deliveries at Lipstadt, and turn them to the support of that army.

As it is proved, therefore, that this penalty was, in every respect, unjustly levied upon Mr. Rose, he has an indisputable right to payment of what has been so long withheld from him, on account of it, amounting to Dc.1904 : 4GD.

The sixth article in the state referred to, is a deduction (proposed by the Commissioners of Enquiry, and adopted by the Commissioners for German Demands) of Duc.89 : 1GD. : 7STI. for *supposed* bought forage-receipts, included in Mr. Halsey's certificates, of the 1st of February and 14th of July, 1761.

The reasons given for *supposing* these receipts to have been bought are, " their being dated " after the time limited for performing the " contract," and " having certain calculations " marked upon them."

The insufficiency of these reasons for forming such a supposition, is obvious to common sense. Had the receipts been bought, there cannot be a doubt but the buyer would have taken care to have had them dated within the time, to obviate such an objection, so that this reason overturns the supposition; and as to the cal-

calculations marked upon them, without there is also an express agreement for the purchase, at the rate of the said calculations, it is difficult to conceive how they could raise the slightest suspicion of such a purchase; as it is contrary to common sense to suppose that people engaged in such transactions should be so blind as to affix a direct detection of their villainy, on the very means made use of to accomplish it. Beside, were marks of any kind admitted as sufficient reasons for rejecting a receipt, without first knowing that they were upon it, when delivered in, which is not even asserted here, *cheap as assertions are with some persons*, it opens an opportunity for every clerk in office, through whose hands such receipt might pass, to invalidate it.

As the reasons therefore upon which this deduction is made, are evidently insufficient, Mr. Rose has an indisputably just right to the payment of it.

Beside these deductions from Mr. Rose's accounts liquidated in Germany, adopted from the Commissioners of Enquiry, the Commissioners for German Demands have rejected several articles in his accounts, laid before themselves for liquidation.

In the fourth and seventh articles of Mr. Rose's accounts, he charges 12577 Duc. for forage,

forage, meal, sacks, forage, &c. taken and destroyed by the enemy; and refused to be received in performance of an express contract, by an order of the Commissioners of Enquiry, founded on groundless suspicions.

As the taking of the King's magazines, and the depots of the contractors, at the time, and in the places, when and where Mr. Rose alleges his to have been taken, is a fact universally known, it cannot be necessary to enter into a detail of the particulars here.

The losses suffered by Mr. Rose on this occasion were proved by the affidavits of the persons entrusted by him with the care of his depots, ascertaining the several particulars taken from him; which affidavits, regularly made before, and attested by Mr. Anthony Gerard Riccius, Doctor of Law, at Haselunne, were accordingly laid before the Commissioners for German Demands, with his accounts, who not admitting them to be sufficient proof, rejected the several charges founded upon them.

On Mr. Rose's remonstrating against the injustice of objecting to the only proof which the nature of the case would admit, the Commissioners told him, that if he would make it appear, that such proof had ever been admitted in a like case, it should in his also.

Mr.

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Mr. Rose readily recollecting that another contractor, Mr. Bailiff Reinecke, had had several large depots of forage, taken at the same time with his, and received payment for them, on no other proof, beside the affidavit of the person, who had the care of his depots (though stiled in the certificate of the control at Hanover, a Magazine-keeper) and his assistants, made before the very same magistrate, Mr. Riccius, who had taken those for him; and that the said certificate was afterwards confirmed by the Commissioners for German Demands, procured as soon as possible the proper proofs of all these circumstances, (which the Commissioners themselves could be no strangers to, as they had just before determined this case of Mr. Reinecke's,) and laid them before the Commissioners, in full assurance of having that justice done him, which had been promised on such conditions; but to his utter astonishment, received for answer, that they had given in their report, and could not alter it; nor has he ever been able to obtain relief since.

As the sole reason, therefore, given for rejecting these charges, is thus proved to have been insufficient, by the express admission of the same proof, in another similar case, Mr. Rose has an indisputably just right to payment of what has been withheld from him, on this account.

Among

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Among the particulars thus disallowed in the fourth article of Mr. Rose's accounts, and included in the sum of 12577 Duc. was a depot of 59759 rations of hay, amounting to 2585 Duc. formed in Lipstadt, to fulfil a contract made by him with Mr. Com. Halsey, on the 20th of December 1761, for 100000 complete rations of forage.

On a stop being put by the Commissioners of Enquiry, to the receipt of Mr. Rose's deliveries, he applied for relief to Mr. Com. Halsey, with whom he had made this contract, who ordered the King's magazine-keepers to inspect this depot, which they accordingly did, and made an attested report of the quantity of it, as here set forth; beside which, the said depot was again inspected by Capt. Schmidt, made Control-Inspector, on the recommendation of Mr. Cuthbert, then in the Commission of Enquiry, who in a particular manner certified the quantity and good quality of the said hay: but notwithstanding these attestations, Mr. Rose could never obtain the justice of having this hay received into the King's magazines on the terms of his contract; nor would the Commissioners for German Demands, when the affair came before them, either allow him payment for it, as by the tenor of his contract he had a right to expect, the failure of delivery not having proceeded from him, or through his fault, in any sense; or the expences which
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have attended keeping it, from that time, Mr. Rose not thinking himself entitled to make use, or dispose of it, without express order.

As the suspicions of the Commissioners of Enquiry, therefore, upon which a stop was put to the delivery of this hay, have proved to be groundless, Mr. Rose has an indisputably just right, not only to be paid for it, as if it had been actually delivered, but also to be reimbursed the expences he has been at in taking care of it for so long a time.

The ninth article of Mr. Rose's accounts, in the state referred to, is a charge of 581 Duc. 2 RD. : 9 MG. for " The hire of houses, used " as grannaries, and gardens for the use of the " artillery; as likewise for damages done to " said houses and gardens while thus employed."

This charge the Commissioners for German Demands have totally rejected, as not founded upon any authority, &c.

This reason for refusing payment where the value has been received, is in itself so obviously unjust, and has been so often particularly refuted, in the course of stating these demands, that it cannot be necessary to repeat that refutation here. But were it even otherwise, it could not possibly have any weight in the present

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sent case, being directly contrary to the fact, which was this:

The British Commissaries not being able to find sufficient and proper places at Lipstadt, for laying up the King's provisions, &c. applied to Mr. Rose, who readily accommodated them with his own houses, barns, gardens, &c. which were accordingly altered, and made use of for those purposes.

Though the urgency of the occasion, and his confidence in the justice of the British Commissariate, prevented Mr. Rose from stipulating any particular hire for the said houses, &c. that cannot prejudice his right to be paid what the use of them was worth; much less what it must cost to restore them to the same state, in which he had given them. The former of these however he has entirely dropped in this charge, though mentioned to shew the justice of it, and demands only a reimbursement of the expences he has really been at, to put them into the same condition as when he gave them up, on the requisition of the Commissariate.

As the reason, therefore, given for rejecting this demand, is both unjust in itself, and inapplicable to the case, Mr. Rose has an indisputable right to payment of it.

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Beside these particular articles in Mr. Rose's accounts, the Commissioners have likewise rejected all his demands for interest, for the several sums so long withheld from him.

In all contracts for supplying the army, immediate payment was expressly stipulated; but instead of receiving that, Mr. Rose was five years before he was paid, during all which time he paid interest himself for the money with which he had completed his contract; and which he was not able to pay, till he should receive payment. To deny him a reimbursement of that interest therefore is the severest hardship.

Whatever objections tho' may be made to paying interest for unsettled demands; there is one particular instance in which the refusal of it is the most palpable injustice.

This is the case of a warrant for £.15331 : 3s. : 11d. sterl. granted to Mr. Rose, in March 1762, by Gen. Peirson; which money was not paid till March 1766.

As a warrant for payment of money gives an immediate right to that payment, it consequently gives a right, by every rule of law, as well as every principle of justice, to interest for that money till it is paid, without sufficient reason is shewn for delaying payment, which in this case is not even pretended, the only reason given in

in the warrant of the 27th of February 1766, upon which it was paid, for payment's not having been made directly on Gen. Peirson's warrant in Germany, being *the discontinuance of remittances to the Paymaster.*

For these reasons Mr. Rose has an indisputable right, in law and justice, to payment of interest on this sum, being in fact only a reimbursement of the interest paid by himself to his creditors, while it was withheld from him, amounting to Duc. 6377 : 3 Gild. 3 Stiv.

But whatever colour the Commissioners may have thought they had for passing judgment in this manner upon Mr. Rose's accounts, their arbitrarily refusing to take into consideration a particular article in them, because not delivered in, within the time prescribed, and thereby excluding him from receiving payment for it, is an act of such glaring injustice, as no pretence of law can be found to give authority for.— The case was this:

When the order was issued for bringing all demands upon the Crown of Great Britain, on account of the war, to be liquidated by Commissioners in London, Mr. Rose's indispensable attendance on the duties of his office under his Sovereign, not admitting himself to come over, nor the shortness of the time to state his accounts

regularly, he sent over his papers, as they were, by Mr. Champagnat de Bernard, his agent, with directions to make up the accounts in the best manner he could, and lay them before the said Commissioners.

Mr. de Bernard not arriving in London, till a few days before the expiration of the time limited, he could not possibly state Mr. Rose's accounts with accuracy, but was obliged to give them in, in a very confused and imperfect manner, to avoid the exclusion menaced, in case of exceeding the day.

Sensible of this, and apprehensive of the consequences, he applied to the Commissioners, in the month of June following, to have the said accounts returned to him, that he might arrange them properly, and correct the errors and omissions he had made in his former hurry, which was accordingly complied with.

Among the papers given him by Mr. Rose, was a receipt for 20000 compleat rations of forage, delivered at Corbecke, according to an agreement made with the Commissioners for Winter-Quarters, of which the following is a literal translation.

— “ Twenty thousand compleat rations of
“ oats, hay, and straw, have been duly deli-
“ vered to my regiment, by Mr. Justice Rose,
“ on

“ on account of that quantity agreed for with
“ the Commission for Winter-Quarters, which
“ I do hereby attest.

Corbecke,
April 30, 1760.

“ (Signed)
“ COUNT DE FINCKENSTEIN.”

— “ The above twenty thousand compleat
“ rations have been delivered into this depot,
“ *in natura*, by Mr. Justice Rose, which is
“ hereby attested.

Corbecke.
April 30, 1760.

“ (Signed)
“ R. SPILLNER,”
Magazine-keeper.

This receipt Mr. Rose had sealed up in a separate paper, and put among the authorities, for the greater safety, on account of its consequence, by which means Mr. Bernard had missed of it, in the hurry in which he made up the specification of the accounts, and consequently omitted it.

When the accounts therefore were returned to him, he stated this receipt in its proper place, informing the Commissioners, when he gave them back, of his having done so, and of the reason of its having been omitted before; but they peremptorily refused to admit it, because not given in within the time limited by the order.

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On the 27th of November 1765, Mr. Rose presented a memorial to the Lords of the Treasury, in which he set forth all these circumstances, and prayed relief; which memorial their lordships referred to the Commissioners, who on the 9th of January 1766, reported their opinion.

— “ That the memorialist had not stated
“ any special, and sufficient grounds, on which
“ the rule laid down by the Lords Commis-
“ sioners of the Treasury, of all demands being
“ presented by the end of the year 1763, ought
“ in this case to be dispensed with,” &c.

The injustice of this opinion is most evident. In all accounts there is reserved by necessary implication, a right to correct errors! The omission of this receipt in Mr. Rose's account was evidently an error; and consequently Mr. Rose had a right to correct that error, by inserting it. A right, equally supported by law and equity, as appears by this, that the High Court of Chancery will open an account closed, upon proof of error, in order to correct it, *à fortiori*, admit such correction in an account unsettled; and which no arbitrary limitation of time could take away.

Though even had this limitation the force here ascribed to it (a force which hath no authority, or foundation in the law) it could not take effect in this case; as it is not a new account which is attempted to be brought in, but an
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an article omitted by mistake, in an account laid before them, within the time limited.

For these reasons, the refusal of the Commissioners to liquidate this receipt is an act of the highest injustice; and consequently Mr. Rose has an indisputable right to the payment of it, amounting to Duc. 2807.

To conclude: the conduct of the Commissioners for German demands, with respect to Mr. Rose, appears throughout to be a most flagrant aggravation of the injustice suffered by him, from the Commissioners of Enquiry, who on suppositions proved to have been groundless, and accusations of persons, whom they were ashamed to name, had made such deductions from his settled accounts, as must have ruined him, could they have been confirmed; —, had put a stop to his deliveries, by which his forage was left upon his hands —, had put a stop to the liquidation of his accounts by which he was brought into danger of losing the amount of this receipt —, and had put a stop to the payment of Col. Peirson's warrant, by which so heavy interest had accrued upon it. — The probable motives for this conduct have been explained in the state of Mr. Redeker's demands.



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