

**THE UNITED STATES
VERSUS FRANKLIN
W. SMITH**

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The United States Versus Franklin W. Smith by Naval General Court Martial

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NAVAL GENERAL COURT MARTIAL

**THE UNITED STATES
VERSUS FRANKLIN
W. SMITH**

Naval General Court Martial,

Bay Ward, Charlestown, Mass.

THE UNITED STATES

versus

FRANKLIN W. SMITH.

First Day, Tuesday, September 20th, 1864.

Testimony Concluded, Sixty-Eighth Day, Tuesday, December 13th, 1864.

Argument of Counsel for Defence, December 29th, 1864.

Argument of Judge Advocate, January 11th, 1865.

BOSTON:

ALFRED MUDGE & SON, PRINTERS, 34 SCHOOL STREET.

1865.

US 6049.11

1866 Oct. 17.
Gift of
Charles F. Dunbar,
of Boston.
(No. 6. 1851.)

MEMBERS OF THE COURT.

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President.

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H. H. GOODMAN, Esq., New York City,
A. THOMAS SMITH, Esq., Washington, D. C.,
Judges Advocates.

HON. B. F. THOMAS,
HON. CHARLES R. TRAIN,
HON. GEORGE P. SANGER,
Counsel for Respondent.

FRED. J. WARBURTON, Esq., New York City,
Stenographer to the Court.

CHARGES.

1st. "FRAUD UPON THE UNITED STATES," in *seven specifications*; the fifth and sixth of which were stricken out by the Court, and

2d. WILFUL NEGLIGENCE OF DUTY AS A CONTRACTOR," in *six specifications*, and one additional specification, the fourth and fifth of which were also stricken out by the Court.

SPECIFICATIONS.

FIRST.

The first specification under the charge of fraud, stripped of its verbiage and technicalities, avers, in substance, that by a contract in writing, of March 30th, 1863, Franklin W. Smith, with his brother, Benjamin G. Smith, doing business under the firm of Smith Brothers & Co., contracted to deliver, for the Bureau of Construction and Repairs, at the Navy Yard in Charlestown, on or before the 30th of June, 1863, unless earlier required, with a notice of twelve days, five thousand pounds of "Banca tin," to be of the very best quality, at the rate of fifty-seven cents a pound; that they, in fact, delivered five thousand and two pounds of Revely or Straits tin, of an *inferior* quality and value to the Banca tin; fraudulently charged the United States for the Revely or Straits tin at the rate of fifty-seven cents a pound; presented a bill, and got eighty per cent of the price, with intent to defraud the United States, and to the injury of the United States.

SECOND.

The Second Specification charges, that on or about the 28th of August, 1863, Franklin W. Smith, with Benjamin G. Smith, having contracted with the Chief of the Bureau of Yards and Docks, to deliver at the Charlestown Navy Yard, ten reams of emery cloth, of Sibley & Co.'s manufacture, to be of the very best quality, at \$20 per ream; with intent to defraud the

United States, furnished and delivered ten reams of Stedman's emery cloth, of inferior quality and value, and not that of Sibley & Co.'s manufacture, as agreed to be delivered, and fraudulently charged the United States for the same at the rate of \$20 per ream, and presented a bill and received payment for the same.

THIRD.

In the Third Specification of the charge of fraud, it is alleged, that on or about the 28th of August, 1863, at the Charlestown Navy Yard, Franklin W. Smith, then and there being a contractor and contracting to furnish supplies for the use of the Navy of the United States, and having with one Benjamin G. Smith contracted, on the 30th of July, 1863, with the Chief of the Bureau of Yards and Docks, of the Navy Department, to deliver within the Navy Yard, Boston, certain articles therein enumerated, furnished and delivered at the Navy Yard, Boston, the articles of hardware and so forth, therein specified, and being part of the articles embraced in class No. 17, hardware, of the schedule annexed to said contract, said articles being of an inferior quality and value, and afterwards, to wit, on or about the 4th day of January, 1864, the said Franklin W. Smith, with the said Benjamin G. Smith, under the name and style of Smith Brothers & Co., fraudulently charged the United States, for the said enumerated articles, the prices agreed upon in said contract for like articles of the very best quality, and presented a bill for the same, and received payment therefor.

FOURTH.

The averments of the Fourth Specification of the first charge are that F. W. Smith "did, by making false and fraudulent representations to one William Henshaw, agent for Townsend & Co., induce the said William Henshaw, agent, to refrain from bidding a lower price than the bid of the said firm of Smith Brothers & Co., for the delivery of the iron advertised for, or a portion of the same, and purchase the amount from said Townsend & Co., at \$55 per ton for delivery under an award made to Smith Brothers & Co. at \$61.74 per ton.

[Fifth and Sixth Specifications were stricken out by the Court.]

SEVENTH.

In the Seventh Specification of this first charge, it is alleged that on or about 26th December, 1862, at Boston, Mass, Franklin W. Smith then and there being a contractor for furnishing supplies for the use of the Navy, and having, with one Benj. G. Smith, under the firm of Smith Brothers & Co., contracted by a written testament, bearing date 9th October, 1862, with the Chief of the Bureau of Yards and Docks of the Navy Department, to deliver at the Navy Yard, Boston, 1217 dozen files and rasps, at the prices and in the quantities set

opposite to each in the schedule, the said files and rasps to be hand-cut, and of the best quality; then and there, together with the said Benj. G. Smith, under the firm of Smith Brothers & Co., with intent to defraud the United States, furnished and delivered at the Navy Yard, Boston, a large quantity of machine-cut files, of an inferior quality and value, and of many of the said articles largely in excess of the amount stated in the contract, or in any requisition made on the said Smith Brothers & Co.; and afterwards, to wit, on or about the 8th May, 1863, and at various dates subsequent thereto, together with said Benj. G. Smith, fraudulently presented bills for the same, at the rates stated in said schedule; which, being approved, the said Franklin W. Smith, together with the said Benj. G. Smith, received payment therefor, to the injury of the United States.

[The above specifications were repeated under the charge of Wilful Neglect of Duty.]

ADDITIONAL SPECIFICATION OF THE SECOND CHARGE.

The Additional Specification of the *Second Charge* alleges that Franklin W. Smith, on or about the 31st of May, 1864, at Boston, being then and there a contractor to furnish supplies for the use of the navy, and having with one Benjamin G. Smith, under the firm of Smith Brothers & Co., by a written instrument, dated May 20th, 1864, offered, promised, and agreed, for the consideration of fifteen cents per pound, to be paid by the United States, to deliver at the Navy Yard, Charlestown, Mass., for the use of the South Atlantic Blockading Squadron, a lot of anchors, to wit: eighty-seven of various sizes, it being understood that all were to be of the best quality, which said offer was accepted by the Navy Agent, Boston, for and on behalf of the United States, for the use of the Navy, in compliance with requisition No. 7045, dated May 12, 1864, did, wilfully neglecting his duty as contractor, deliver at the Navy Yard, Charlestown, Mass., in all about sixty-five anchors: of which some of them, to wit: about ~~ten~~ in number, more or less, were second hand anchors of inferior quality and value; and afterwards, to wit: on or about July 1st, 1864, the said Franklin W. Smith with the said Benjamin G. Smith, under the firm of Smith Brothers & Co., with intent to defraud the United States, charged for the said anchors so delivered, and presented to Rear Admiral Stringham, Commander of said Navy Yard, or to the proper officer under him, for approval, a bill for the said anchors, to which he obtained the approval of E. L. Norton, Navy Agent, Boston, to the injury of the United States.

RULINGS OF THE COURT

AND PAPERS OF COUNSEL FOR RESPONDENT

IN THE CASE OF

THE UNITED STATES *vs.* FRANKLIN W. SMITH.

First Day, Tuesday, September 20, 1864.

SECOND DAY.

HIRAM CUTTS, WITNESS FOR GOVERNMENT.

Int. 23. Did you have any official interview with Mr. Merriam, in regard to the approval of the bill of Smith Bros. & Co., for this tin?

Ans. I did.

Int. 24. Please state the substance of the same.

The accused here tendered the following objection:

"Respondent objects, because the answer would be the conversation of third parties, in the absence of the Respondent, who could not be bound by it."

The Court was cleared, and after deliberation, decided that the objection be overruled.

Int. 26. If you had any other official interview with him in regard to the tin, state the substance of the same.

The accused here tendered the following objection:

"Respondent objects to question No. 26, that as it calls for the conversation of third parties not under oath, and when the Respondent is not present, the conversation is therefore mere hearsay testimony."

The Court was cleared, and after deliberation, decided to overrule the objection.