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DANIEL HASELTON AND WILLIAM PALMER.

March 8, 1832.

Mr. McIntire, from the Committee of Claims, made the following

REPORT:

The Committee of Claims, which was instructed, by resolution, to inquire into the expediency of allowing to Daniel Haselton and William Palmer, their claim for extra work by them performed in constructing the foundation of the Whale's Back Lighthouse, near Portsmouth, in New Hampshire, report:

That it appears, by the papers submitted with the resolution, Daniel Haselton and William Palmer entered into a contract with John P Decatur, on behalf of the United States, on the 12th of May, 1829, to construct the foundation, and erect a lighthouse, on the ledge of rocks called the Whale's Back. The contract, among other things, provides that "the outside of the foundation to be a circular wall of split granite ten feet in thickness, one half of the stones to be of sufficient length to go through the wall, and three feet wide by eighteen inches thick; the others to be of not less than five feet by six, and eighteen inches thick; the whole to be laid so as to break joints, to be hammered even so as to make fair work, and *to be dowelled together with the white flint, or beach stones, of not less than four inches diameter.*" In another clause of the contract, it is provided, that "the superintendent reserves the right to make such alterations as may, in the progress of the work, be found necessary, either for security or convenience of the lighthouse, which shall not, on the whole, increase the expense to the contractor; and if, by reason of the exposed situation, the proposed plan should be found defective, or insufficient for the purpose intended, the contractors are to make such additions or alterations as may be *required on receiving therefor a reasonable compensation, not exceeding the actual expense*" There is no provision in the contract for securing the lower tier of stones to the ledge. Early in the execution of the contract, it was found necessary to bolt the lower tier of stones to the ledge, which was done with copper bolts, and for which the contractors have received one hundred dollars. In a letter of the superintendent to the Secretary of the Treasury, dated November 28th, 1829, there is this remark: "As to the dowelling the stones with pebble or round stones, the building would be more secure without any thing; the round stones would only hasten the destruction of the building, by serving as rollers to precipitate the whole mass from its bed; as the pressure of the waves, when they come in contact with an object, is too well know to require explanation, more than to say that it is perpendicular as well as horizontal. I therefore caused the contractors to bolt every stone with large copper bolts, secured with wedges, at their own expense."

This change, in the mode of securing the foundation, has given rise to the present application. The evidence adduced by the contractors to show the actual increased expense, is the bill of copper bolts furnished by Samuel Gerrist, as he testifies, by the direction of John P. Decatur, and paid for by the contractors; the whole of which bill amounts to $288\frac{47}{100}$ dollars, which is understood, by the committee, to embrace the bolts used in bolting down the lower tier to the ledge.

Samuel Pray testifies he was present on the spot with the superintendent and the contractors, when an engineer, a Mr. Rogers, was present to examine the ledge before the foundation was laid, when it was determined to change the mode of securing the foundation, and, also, to secure the first tier by bolting it to the ledge, and substitute copper bolts for stone dowels, and that the superintendent said "Government would do what was right."

John Meserve testifies that he was present at the same time, and testifies to the same fact that Pray does, with more particulars; and further testifies to his knowledge of this kind of business, and the necessary expense attending it; and goes on to specify the expense of dowelling and that of bolting. He says the dowelling he would have done for twenty cents a dowell as to the labor, and that, according to contract, there would have been three hundred and ninety six dowells. That there were actually drilled for copper bolting, five hundred and ninety four holes, averaging two feet and three inches; and that the drilling must have cost the contractors, at least, seventy-five cents per foot.

Samuel Treat testifies that he is a stone cutter; that he has examined the contract under consideration; that, in his opinion, it would be one hour's labor to cut the holes for each dowell; that the usual price, on land, for drilling holes, of the size required for the copper bolts, would be fifty cents per foot, and that it would be considerable more upon the site of the lighthouse in consequence of its being tide work, and other inconveniencies attending said work.

A bill is among the papers, predicated on Meserve's affidavit and Gerrish's bill, deducting a proportion for the bolts and for the bottom tier, which bill amounts to $1,160 44 cts. One of the contractors makes affidavit, that he told the superintendent, at the commencement, the difference would be one thousand dollars, and thinks it cost the contractors more than that sum.

The committee called on the Fifth Auditor for information, and received his answer, and copies of several letters on the subject, from the superintendent and contractors; which are referred to for evidence, and more fully to elucidate and extend this report.

The committee are satisfied the change in the mode of securing the foundation was judicious, and within the reserved power of the superintendent; and that it must necessarily have been more expensive than that contemplated in the contract. The only difficulty arises from the remark of the superintendent, that he caused this to be done at the expense of the contractors. This expression seems to have been understood, at the department, as equivalent to the assertion that the contractors agreed so to do; and Decatur himself seems, afterwards, to have made that assertion, which is, and was, denied by the contractors. The superintendent himself admitted that a portion of the expense at least, namely, of bolting the foundation to the ledge, was to be borne by the Government. The contractors say, and so do those present, that they understood the remark of the superintendent, in relation to the Government's doing what was right, as applicable to the whole

copper bolting. Considering the difference in the expense, and the object to be attained in the change, and that it is the written contract which provides for the payment of any additional expense to be incurred in any necessary change in the construction and securing the lighthouse and foundation, and which is not proved to have been relinquished by the contractors, the committee think the contractors are entitled to a reasonable compensation, not exceeding the actual expense. Indeed the expression, in the superintendent's letter first apprising the Secretary of the Treasury of the change, and after the foundation was completed, seemed to imply that he had ordered [caused] the contractors to do it at their own expense, rather than by any agreement on their part so to do.

In a letter addressed to the Fifth Auditor, dated October 12, 1830, the contractors say: "we have enclosed you our bill stating the difference which it has actually cost us in substituting copper bolting in lieu of stone dowelling as named in the contract, amounting to seven hundred and seventy-eight dollars and $\frac{25}{100}$, which we think will be found less than it would be estimated at if left to competent judges."

The committee are of opinion that the contractors, in October, 1830, were enabled to ascertain the actual extra expense incurred by them; and their then estimate would, in this case, be safer to rely on than the opinions of any others. They therefore report a bill for the sum last mentioned.