23d Congress, 1st Session.

[Rep. No 24.]

Ho. of Reps.

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HAZLETON AND PALMER.

[To accompany bill H. R. No. 24.]

DECEMBER 13, 1833.

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

REPORT:

The Committee of Claims, to which was referred the claim of Daniel Hazleton and William Palmer, report:

That this claim was referred to this committee at the first session of the last Congress, and a report made thereon, accompanied with a bill for the relief of the petitioners. At the second session of the last Congress, this committee was instructed to inquire into the justice of making said Hazleton and Palmer a further allowance under their contract than was provided for in said bill, and a report unfavorable to a further allowance was made thereon January 28, 1833, and is numbered 74. The first report was made March 2, 1832, and is numbered 343: they are both referred to, and made part of this report. The bill was not acted on by the last Congress, and remained among the unfinished business.

The committee have again examined into the claim of said Hazleton and Palmer, and see no cause to entertain a different opinion from that heretofore expressed and think the claimants are entitled to the relief mentioned in the first report, and report a bill accordingly.

MARCH 2, 1832.

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

That it appears by the papers submitted with the resolution, Daniel Hazleton 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 light-house on the ledge of rocks called the Whale's Back. The contract, among other things, provides that "the outside of the foundation 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 light-house, 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 28, 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 known 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 Gerrish, as he testifies, by the direction of John P. Decatur, and paid for by the contractors; the whole of which bill amounts to $288 47, which is understood by the committee to embrace the bolts used in bolting down the lower tier to the ledge.

Samuel Pray testifies that 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 dowel as to the labor, and that, according to contract, there would have been three hundred and ninety-six dowels; 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 considerably more upon the site of the light-house, in consequence of its being tide work, and other inconveniences 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 1,000 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 light-house 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 778 dollars and 25 cents, 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.

JANUARY 28, 1833.

The Committee of Claims, to which was referred, by resolution, the inquiry "into the justice of paying Daniel Hazleton and William Palmer the amount paid by them for copper bolts used by them in the construction of a light-house on Whale's Back, near Portsmouth, N. H.," report:

That, by the bill reported at the last session of the present Congress, for the relief of Daniel Hazleton and William Palmer, and not yet acted on, pay for the copper bolts in question was intended to have been provided for, and the committee have directed their inquiry whether it is so or not. It will be seen by the report accompanying the bill, that the claimants ask for a larger sum than that provided in the bill, and, by depositions, prove their expenditures in labor and materials to have been larger; but that having once, soon after these expenditures, exhibited their claim to the accounting officers for a less sum, the committee reported relief for that less sum, under the impression that they were then better acquainted with their extra expenditures than the deponents.

The present inquiry has been instituted on a suggestion of the claimants, that the expense of the copper bolts was not included in their account presented to the accounting officers, because they then supposed that the bill for the bolts having been made out to the United States, and on application of the agent of the Government, would be paid by the United States, and that their account was for the expense of drilling only. The bill then presented, as appears by one furnished by the contractors, and which agrees with a copy of it from the Fifth Auditor's office, is in the following words, &c., namely:

United States to the Contractors for building the light-house on Whale's Back. DR.

1830.	To drilling and copper bolting foundation, by order of the superintendent - - - - -	$968 25
	Deduct for stone dowelling, as named in the contract -	190 00
	Amount due contractors	$778 25

It will be perceived this is equivocal, and is not absolutely inconsistent with their further claim, but an expression in the letter of the contractors, dated October 12, 1830, seems to be decisive. The contractors say: "We now only ask payment for what we are justly entitled to by the terms of our contract, and only the amount that this extra work and copper has actually cost us." The committee therefore come to the conclusion that the copper bolts used by the contractors were included in the contractors' claim when made in October, 1830. This claim may have been less than they actually expended; and in the same letter they express an opinion that it was so. After all, the expenses to which the contractors are, by the terms of this agreement, entitled, must be a matter of calculation only, as they were so connected with other expenses. The data on which the witnesses make their calculations, seem to be reasonable, and differ much from that of the contractors: for instance, they estimate the expense of stone dowelling, for which the copper bolting was substituted, at $81 18, and the contractors estimated the same at

§190. The witnesses show the items in their estimate, while that of the contractors is in general terms, and does not show on what it is founded.

Still, the advantages the contractors enjoyed by the change of mode of construction, might quite overrule this difference of estimated expense, as each stone was confined by the copper bolts, and was not liable to be disturbed by the influx of the tide and waves, to which it was exposed twice in twenty-four hours, whereas, by the stone dowelling, they would have been liable to be baffled in their labor, and exposed to incalculable difficulties and expenses, according to the state of the weather.

The committee therefore recommend a resolution that justice does not require any further provision for the contractors than that provided for in the bill for their relief.