

the United States, that moment the capital represented by it becomes the capital of the United States, and stands in exactly the same light as if the amount had been advanced to the contractor by the United States, and nothing further remains due the contractor in the form of *compensation* for money advanced (capital), unless the *difference* between the total disbursements (exclusive of interest) and the total payments made under his contracts exceeds this represented capital. This *difference* is \$93,899.85, and being less than the capital represented by the interest allowed, it is the opinion of the Board that nothing further is due the contractor or his legal representatives under the head of *compensation* "for money advanced in the prosecution of the work."

5. In determining upon "What sum, if anything, should be allowed under the provisions of said act in adjusting and settling the claim upon just and equitable terms," the Board have been influenced to a great extent by the following language contained in the report of the Committee of Claims of the House of Representatives as printed on pages 10 and 11 of the Congressional Record of December 21, 1878, viz:

Your committee have not undertaken to determine what sum the claimant should receive in full compensation for his damages, but it is submitted that the Secretary of War may with great propriety be authorized to settle the claim upon just and equitable terms, by allowing the claimant not more than his actual expenditures, with a reasonable compensation for the use of his tools and for money advanced in the prosecution of the work.

Upon the report of the committee, the House at once passed the bill approved January 13, 1879, and by such action gave a construction to the terms "just and equitable" which the Board have not felt at liberty to ignore.

They therefore *state* the claim by allowing the claimant not more than his "actual expenditures, with a reasonable compensation for the use of his tools and for money advanced in the prosecution of the work," as follows, viz:

Actual expenses (including interest, exchange, and protest fees) of George Williams and his legal representatives in the prosecution of work under his contracts, and that of Mathew G. Kennedy, for certain work at Muscle Shoals Canal, Alabama	\$337,495 23
Compensation for the use of his tools in the prosecution of the work	21,000 00
Total credits	358,495 23
From which should be deducted the following debits, viz:	
Amount of cash paid on estimates	231,287 29
Approximate amount allowed in Major King's purchase of machinery, tools, and buildings, exclusive of the value of tools brought by Williams from Keokuk. This amount has been included in the abstract of disbursements (Exhibit B) and is now to be deducted	14,629 85
Railroad iron included in the abstract of disbursements (Exhibit B) but still in possession of Williams through his lease to S. N. Kimball	2,708 75
Amount received by Williams as profit on his "Tennessee River store"	8,332 62
Total debits	256,958 51

RECAPITULATION.

Total credits	358,495 23
Total debits	256,958 51

Remainder, to the credit of the legal representatives of George Williams, deceased, constituting the measure of relief proposed under the act of January 13, 1879

101,536 72

6th. In conclusion the Board desire to say, that in recommending the payment to the legal representatives of the late George Williams of the

balance (\$101,536.72) as determined by the statement immediately preceding, they aim to cover all the *losses* incurred in the prosecution of the work on locks 2, 3, and 4, of Muscle Shoals Canal, under his contracts, and that done by him on section-work as attorney under the contract of Matthew G. Kennedy, such being the understanding of the intention of the act of relief of January 13, 1879, as construed in the light of the report of the Committee of Claims of the House of Representatives, which was duly read in the House, and immediately after the reading of said report the act in question was passed by that body.

The following is a list of the papers appended to and forming a part of this report, viz:

1. Special Orders No. 56, Headquarters of the Army, Adjutant-General's Office, Washington, March 10, 1879.
2. Par. 5, Special Orders No. 60, Headquarters of the Army, Adjutant-General's Office, Washington, March 13, 1879.
3. Analysis of disbursements as shown by Exhibit B.
4. Copy of the act (private No. 7) entitled "An act for the relief of the legal representatives of George Williams, deceased," approved January 13, 1879.

And the following papers accompanying the report, viz:

1. Exhibit A, being pamphlet in the matter of Senate bill 1244 for the relief of George Williams, 1878.
2. Exhibit B, abstract of disbursements and receipts on account of Muscle Shoals Canal, by George Williams and his legal representatives, under his contract for lock-work; also, section-work under "power of attorney for Matthew G. Kennedy."
3. Affidavit of C. L. Williams, administrator of the estate of George Williams, deceased, in the matter of his claim against the United States of America.

All of which is respectfully submitted.

JNO. M. MACOMB,
Colonel of Engineers, U. S. A., President of the Board.
O. M. POE,
Major of Engineers, Bvt. Brig. Gen. U. S. A.
L. COOPER OVERMAN,
Captain Corps of Engineers, U. S. A.

To the Honorable the SECRETARY OF WAR.

HEADQUARTERS OF THE ARMY,
ADJUTANT-GENERAL'S OFFICE,
Washington, March 10, 1879.

SPECIAL ORDERS }
No. 56. }

By direction of the Secretary of War, and in pursuance of the provisions of the act of Congress approved January 13, 1879, entitled "An act for the relief of the legal representatives of George Williams, deceased," a Board of Engineers, to consist of Colonel John N. Macomb, Colonel Z. B. Tower, and Captain L. C. Overman, is hereby appointed to meet at Chattanooga, Tenn., on the 18th day of March, 1879, or as soon thereafter as practicable. The Board is authorized to visit such localities as may be deemed necessary to enable it to comply with such of the requirements of the act mentioned as are contemplated for its action, and will also report—

1. The actual expenditures of the said contractor, George Williams, and his legal representatives, upon the works described in said act.
2. The character and quality of the work done.
3. Whether the expenditures in the prosecution of the said work were reasonable and proper.
4. What would be a reasonable compensation for the use of tools and for money advanced in the prosecution of said work.

5. What sum, if anything, should be allowed under the provisions of said act in adjusting and settling the claim upon just and equitable terms.

6. Any other matter or recommendation which may occur to the Board as proper to be submitted.

The junior member of the Board will act as recorder.
By command of General Sherman.

E. D. TOWNSEND,
Adjutant-General.

Official:

R. C. DRUM,
Assistant Adjutant-General.

HEADQUARTERS OF THE ARMY,
ADJUTANT-GENERAL'S OFFICE,
Washington, March 13, 1879.

SPECIAL ORDERS }
No. 60. }

(Extract.)

* * * * *
5. By direction of the Secretary of War, Colonel O. M. Poe, aide-de-camp (Major, Corps of Engineers), is detailed for duty as a member of the Board of Engineers appointed to meet at Chattanooga, Tennessee, on the 18th instant, by Special Orders No. 56, March 10th, 1879, from this office, *vice* Colonel Z. B. Tower, Corps of Engineers, hereby relieved.

By command of General Sherman.

E. D. TOWNSEND,
Adjutant-General.

Official:

SAM'L BRECK,
Ass't Adjutant-General.

Analysis of disbursements as shown by Exhibit B.

Pay-rolls for labor and services:		
Pay-lists at Keokuk "special".....	\$7,178 89	
Pay-list at works.....	234,218 81	
A. Whitney, personal (pay-lists).....	640 00	
Pay-lists, extra labor:		
Civil engineers, blacksmithing, attorney's fees, &c.....	3,409 08	
Board bill for clerks, &c.....	770 46	
		\$246 217 24
Materials:		
Materials for construction:		
Cement.....	\$9,469 52	
Stone.....	2,478 42	
Sand.....	145 00	
		12,092 94
Materials for prosecution:		
Railroad ties.....	811 32	
Rope, &c.....	1,551 27	
		2,362 59
		14,455 53
Tools and machinery:		
Railroad iron.....	14,463 22	
Tools, small, &c.....	7,052 05	
Derricks, &c.....	957 19	
		22,472 46
Towing, freights, express.....		8,444 96
Supplies:		
Oil, &c., coal, wood, powder.....		8,046 84
Hardware supplies:		
Iron, steel, &c. (exclusive of tools).....		4,515 48
Lumber.....		3,561 06
Boats, skiffs, oars, &c.....		1,169 61

Transportation:		
Mules, wagons, horses.....		\$820 47
Feed for stock.....		1,478 90
Telegrams.....		1,438 07
Stamps, stationery, printing, &c.....		731 90
Rent of land, quarries, &c., taxes:		
Rent.....	\$2,000 00	
Taxes.....	607 20	
		2,607 20
Materials and articles furnished from Tennessee River store:		
Articles for house.....	880 32	
Materials for work.....	619 55	
		1,499 87
Ice.....		311 47
Traveling expenses.....		7,035 56
Interest, exchange, &c.:		
Interest.....	\$10,931 26	
Exchange.....	297 45	
Protest fees.....	84 95	
		11,313 66
Interest on outstanding indebtedness to January 13, 1879, (date of act for relief of the legal representatives of George Williams).....		1,374 95
		12,688 61
		337,495 23

[PRIVATE NO. 7.]

AN ACT for the relief of the legal representatives of George Williams, deceased.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the Secretary of War be, and is hereby, authorized to adjust and settle, upon just and equitable terms, the claim of George Williams for balance due for building locks two, three, and four of Muscle Shoals Canal, on Tennessee River, and on a contract for section work done under power of attorney from Matthew G. Kennedy: *Provided,* That in making said settlement the said Secretary of War shall not allow the legal representatives of said George Williams, deceased, more than his actual expenditures, with reasonable compensation for the use of tools, and for money advanced in the prosecution of said work: *And provided further,* That no allowance or payment shall be made under this act except in pursuance of a recommendation of a Board of not less than three Engineers, to be appointed by the Secretary of War, to inquire into and report upon the character and value of the work done and the merits of the claim.

Approved, January 13, 1879.

CHIEF OF ENGINEERS TO SECRETARY OF WAR.

OFFICE OF THE CHIEF OF ENGINEERS,
Washington, D. C., May 3, 1879.

SIR: I have the honor to return herewith the report of the Board of Engineers convened by Special Orders Nos. 56 and 60, Headquarters of the Army, to take into consideration the claim of the late George Williams, deceased, for work done on the Muscle Shoals Canal and locks on the Tennessee River, which was referred to this office for remark. The report with the papers accompanying it, as well as the records of this office relating to the subject, having been carefully considered, I have the honor to report thereon as follows:

The claim of Mr. Williams having been originally presented to this office and decided upon adversely, was brought before Congress, and the act of January 13, 1879, for his relief was passed. The Committee of Claims of the House of Representatives, having the subject under con-

sideration, called for any information concerning the same of record in the War Department, and in reply reports were furnished from the officers who made the contracts and under whom the work was executed, with a report from this office, all of which were adverse to the merits of the claim. With this information before it, the committee presented a report, which was read in the House at the time of the passage of the bill, in which an entirely different view of the case was taken from that presented in the reports referred to. I am, therefore, forced to the conclusion that it was the intention of the law to make some allowance beyond what the terms of the contracts authorized.

The Board, while of the opinion that upon the basis of the contracts alone a fair and just settlement has been made by the engineer officer, was satisfied that the act designed more than this, and has interpreted it as intending to cover all the losses incurred by the claimant in the prosecution of the works under the contracts, with reasonable compensation for use of tools and for money advanced, and has made its award accordingly.

I am at a loss to see what other construction can be placed upon the terms of the law, considered in the light of the report of the Committee on Claims of the House of Representatives; but as the action of the Board is based mainly on an interpretation which may not be a correct one. I would suggest that the question be submitted to legal authority for the proper construction.

In view of the fact that the Board found it impracticable to fix a definite sum as the actual "value of the work done," the officer in charge of the work, in compliance with instructions from this office, submitted a statement of "amounts" paid George Williams for work actually performed under each of his contracts for lock work, and by power of attorney under contract of M. G. Kennedy for section work, and,

2d. Abstracts of bids made at the time of the letting of these contracts, computed on the basis of *actual* instead of estimated quantities.

This report of Captain King, dated April 26, 1879, with its inclosures, is submitted herewith, marked A A. By examining these abstracts of bids and selecting for comparison the proposals of those bidders only who in each case—*i. e.*, for the locks and for the section work bid for all three locks and for all four sections, and aggregating the amounts of the proposals based upon the actual quantities, two tables have been prepared and are submitted, marked B B and C C. These tables show what each bidder would have received; and the amount of each may be assumed as his estimate of the cost of the work plus profit. Assuming these amounts as the value of the work according to the views and prices of these several contractors, and by a comparison of the values thus fixed by Kennedy for section work and by Williams for lock work with the mean of all the values of each fixed by all the bidders, it is found that the sum of the two, *i. e.*, of Kennedy and of Williams, which is the amount actually paid under the contracts, is less than the sum of the mean values by \$71,675.57. It must be remarked, however, that for section work there had been paid to Kennedy, prior to Williams's assuming the work under power of attorney, the sum of \$20,041.41.

In regard to the "merits of the claim," the Board reports:

* * * Upon the basis of the contracts alone, it is the opinion of the Board that a fair and just settlement has been made by the local engineer-officer. But the large excess of expenditures by the contractor and his legal representatives, over and above the amount paid on account of the contracts, indicates a considerable loss, and in view of the spirit of the act of Congress, the claim is meritorious.

As the results derived from these two views of the "merits of the claim" differ so widely, and as Exhibit A, accompanying the report of the

Board, is apparently a statement of the case prepared by the claimant, it seems proper that the views of the officer in charge of the improvement, touching the "merits of the claim," should also be considered, and I have therefore respectfully to submit herewith some extracts from a communication on the subject by that officer addressed to the Board, dated March 27, 1879, and marked D D.

The Board, while considering the expenditures of the claimant as in their *nature* reasonable and proper, is of the opinion that in *amount* they cannot always be called reasonable, and instances "traveling expenses" and three other items, aggregating nearly \$24,000, which are deemed excessive. The Board also thinks the wages paid were high, and attributes this, in part, to the high rate charged for board, viz, \$4 per week, or 57 cents per day. By proper arrangements for boarding, the cost ought, in the opinion of the Board, to have been diminished 25 cents per day, which if deducted from rate of wages (leaving net amount of pay to the men the same) would have resulted in a saving on the rolls of \$40,000. The workmen now employed on the works are boarded for \$1.75 per week, or 25 cents per day.

While the expenditures for the above items seem to be excessive, it is quite impossible to pronounce definitely upon them at this time when all the circumstances are so different. I am not, therefore, able to say how much, if anything, should be deducted from the award under these heads, and it seems to me doubtful whether any further examination which could now be made would result in a satisfactory determination of the question. It appears that the Board did not doubt that the amounts charged under these heads were actually expended by the claimant, and it has therefore included them, without deduction, in its award. If the construction given by the Board to the intent of the law be the correct one, it is difficult to see how any other decision could be arrived at.

It may be remarked also that the Board was satisfied that the claimant had no pecuniary interest in the boarding of the men. This is learned from one of the members of the Board and not from the report itself.

No other remarks seem to be called for in connection with the report.

Very respectfully, your obedient servant,

H. G. WRIGHT,
Acting Chief of Engineers.

Hon. GEO. W. McCRARY,
Secretary of War.

SECRETARY OF WAR TO JUDGE-ADVOCATE-GENERAL.

WAR DEPARTMENT, May 5, 1879.

This report, and the accompanying report of the Board of Engineers referred to herein, are respectfully referred to the Judge-Advocate-General of the Army for an opinion as to whether the act of Congress of January 13, 1879, "for the relief of the legal representatives of George Williams, deceased," has been correctly construed by said Board and by the Acting Chief of Engineers as intended to cover all the actual losses incurred by the claimant in the prosecution of the works mentioned in said act, together with reasonable compensation for use of tools and for money advanced.

GEO. W. CRARY,
Secretary of War.

JUDGE-ADVOCATE-GENERAL TO SECRETARY OF WAR.

BUREAU OF MILITARY JUSTICE, May 9, 1879.

Respectfully returned to the Secretary of War.

On reading and considering the within act in connection with the reports and other papers in the case, I am of opinion that it was the intention of Congress to authorize the Secretary of War, in his settlement with George Williams, to allow him for his "actual expenditures" (so far as reasonable and just) in building the locks referred to, whether the same were required or justified under the original contracts or not. The words, "*on contracts*," originally in the bill, were struck out in the Senate, and are not in the bill as passed, and from this fact, in connection especially with the terms of the report made by the House Committee on Claims, I infer that it was the intention of Congress that the claim should be adjusted upon a *quantum meruit*, or equitable basis, irrespective, so far as concern the items of "actual expenditures," "compensation for tools," and "money advanced," of the terms of the contracts formally made for the building of said locks. But no "losses" other than included in these three items, were, in my opinion, designed to be allowed for.

W. M. DUNN,
Judge-Advocate-General.

SECRETARY OF WAR TO BOARD OF OFFICERS.

Respectfully referred to the two senior members of the Board of Engineers who signed this report, for further consideration in view of the opinion of the Judge-Advocate-General herewith. They will meet in Washington without unnecessary delay, and in case of disagreement between them, the Acting Chief of Engineers will act as umpire.

They will make further inquiry as to the reasonableness of the expenditures of the contractor, George Williams, and his legal representatives, and will consider such sworn statements and other proofs as may be submitted, including the accompanying affidavits of J. H. S. Dale and C. L. Williams, administrator, &c., and they may take such measures as may be deemed by them best to ascertain the facts.

They will report whether any, and, if any, what deduction should be made from the sum of the actual expenditures under the rule laid down by the Judge-Advocate-General, namely, that there should be allowed actual expenditures so far as reasonable and just.

G. W. McCRARY,
Secretary of War.

WAR DEPARTMENT, May 21, 1879.

BOARD OF OFFICERS TO SECRETARY OF WAR.

WASHINGTON, D. C., June 10, 1879.

SIR: The two senior members of the Board of Engineers who signed the report dated April 9, 1879, in the case of the claim arising under certain contracts of George Williams and Matthew G. Kennedy, for work on Muscle Shoals Canal, to whom said report was referred by your indorsement of May 21, 1879, instructing them to "report whether any,

and, if any, what deduction should be made from the sum of the actual expenditures under the rule laid down by the Judge-Advocate-General, namely, that there should be allowed actual expenditures so far as reasonable and just," have had the matter under consideration, and report as follows, viz:

In their original report (April 9, 1879), the Board of Engineers concluded that "whilst the expenditures are in their *nature* reasonable and proper enough, yet in *amount* some of them cannot well be considered *reasonable*," and enumerated the following, viz:

Traveling expenses	\$7,035 56
Telegrams	1,438 07
Interest and exchange	12,638 61
Boats, skiffs, &c.	1,169 61
Feed for stock	1,478 90

These amounts, though not great in the aggregate, seemed to indicate extravagance. The Board also thought the rates paid for labor high, and attributed this to the rate charged for boarding.

Mr. C. L. Williams, the administrator of the estate of George Williams, deceased, has appeared before us and submitted affidavits upon these points, of himself, C. S. Whitney, C. P. Comegys, Timothy Ford, F. F. Wiehl, and John W. Hobbs; and an affidavit of H. S. Dale is found amongst the papers referred to us.

These affidavits are all of the same tenor, and indicate that the price of boarding at Muscle Shoals Canal during the prosecution of the work was probably as low as it could have been obtained for, and must therefore be considered as reasonable, notwithstanding the *estimates* of the Board of Engineers.

The affidavit of Mr. C. L. Williams covers the other items and satisfactorily explains them. The rate of interest paid was high, but no higher than any individual would have had to pay under the same circumstances. The government could have borrowed the money required to carry on the work at a rate not exceeding five per cent. (or half that actually paid), but no contractor could do it. It is hardly to be expected that a contractor undertaking a work of the magnitude of that in question has in hand money to the full amount that will be required. He usually has enough to begin the work, and depends upon payments as the work progresses to keep him in funds. This is all well enough when the contractor is engaged upon a profitable contract, but if he is losing money, he has no recourse but to borrow, and pay such rate of interest as may happen to prevail at the time. It is one of the vicious features of the contract system; but under the system the practice is not unreasonable, and in that view, the payment of interest at the rate of ten per cent. in this case was not unreasonable.

In conclusion, the undersigned report that, in their opinion, under the rule laid down by the Judge-Advocate-General, no deductions should be made from the amount, \$101,536.72, found by the Board of Engineers as representing the sum of the actual expenditures of George Williams and his legal representatives on the work in question.

The papers referred to us are herewith returned, and with them are transmitted the affidavit referred to.

All of which is respectfully submitted.

J. N. MACOMB,
Colonel Engineers, U. S. A.
O. M. POE,

Major of Engineers, Brevet Brig. Gen., U. S. A.

The Hon. SECRETARY OF WAR.

SECRETARY OF WAR TO THIRD AUDITOR.

This award is approved and respectfully referred to the Third Auditor for settlement for the amount of the award named within, to wit, \$101,536.72, upon the appropriation for the work in question, to the legal representative of the claimant, C. L. Williams, administrator.

G. W. McCrary,
Secretary of War.

JUNE 24, 1879.

T 2.

IMPROVEMENT OF CUMBERLAND RIVER.

Work has been continued during the year when the stage of water and amount of funds on hand would permit, on all the sections for which appropriations have been made, viz:

1. Below Nashville.
2. From Nashville to the Kentucky line.
3. From Kentucky line to Smith's Shoals.
4. Smith's Shoals.
5. From Smith's Shoals to the Falls of the Cumberland.

I.—BELOW NASHVILLE.

Work on this section was in progress at the beginning of the fiscal year and was continued at the following points, which are the principal obstructions to navigation between Nashville and the mouth of the Cumberland:

1. *Harpeth Shoals.*

1,361 cubic yards of rock excavated from channel.
175 cubic yards of gravel excavated from channel.
687 cubic yards of rock quarried for dams.
1,479 cubic yards of dam constructed.

This obstruction is a chain of shoals, five in number and 4.3 miles in length, with a total fall of nearly 12 feet. It was formerly considered the most formidable obstruction below Nashville, but Captain Overman reports that "it is now classed among the minor obstructions."

2. *Palmyra Island.*

187 cubic yards of rock excavated from channel.
35 cubic yards of gravel excavated from channel.
1,020 cubic yards of rock quarried for dams.
760 cubic yards of rock placed in dams.

3. *Dover Shoals.*

659 cubic yards of gravel excavated from channel.
4,450 cubic yards of rock quarried for dams.
7,561 cubic yards of rock placed in dams.

4. *Upper and Lower Gatlin Shoals.*

3,375 cubic yards of rock placed in dams.
2,045 cubic yards of rock quarried.
16 snags and logs removed from channel.

5. *Ingram Shoals.*

1,100 cubic yards of rock quarried.
450 cubic yards of rock placed in dams.

Besides the foregoing, a snagboat was employed at various points on this section of the river, and removed 415 snags and logs from the channel and 746 overhanging trees.

During the ice gorge which occurred last winter, soon after the boats had been laid up for the season, a number of boats were carried away and others crushed in the ice, causing considerable damage to the fleet. Those that could be recovered and were in suitable condition have been repaired and others are being replaced as fast as practicable.

The amount of commerce on the Lower Cumberland is reported as on the increase and in successful competition with the railroads.

The original estimate of cost of improving Cumberland River below Nashville was \$248,821. The sum of \$185,000 has been appropriated and \$142,744.84 expended at the close of the fiscal year.

Money statement.

July 1, 1878, amount available	\$45,008 63	
Amount appropriated by act approved March 3, 1879	40,000 00	
		\$85,008 63
July 1, 1879, amount expended during fiscal year	42,753 47	
July 1, 1879, outstanding liabilities	1,921 00	
		44,674 47
July 1, 1879, amount available		40,334 16
Amount (estimated) required for completion of existing project		63,821 00
Amount that can be profitably expended in fiscal year ending June 30, 1881		63,821 00

II.—NASHVILLE TO THE KENTUCKY LINE.

1. *Bartlett's Bar.*

2,414 cubic yards of gravel excavated from channel.
1,758 cubic yards of rock quarried for dams.
1,502 cubic yards of rock placed in dams.
16 snags and 89 overhanging trees removed.

2. *Sand Island Shoals.*

1,451 cubic yards of rock excavated from channel.
1,532 cubic yards of gravel excavated from channel.
722 cubic yards of rock placed in dams.

3. *Holliman's Island Shoals.*

170 cubic yards of gravel excavated from channel.
3,088 cubic yards of rock quarried for dams.
4,967 cubic yards of rock placed in dams.

4. *Cub Creek Shoals.*

87 cubic yards of gravel excavated from channel.
935 cubic yards of rock quarried for dams.
57 snags and logs removed from channel.

5. *Simpson's Island Shoals.*

20 cubic yards of rock excavated from channel.
513 cubic yards of rock quarried for dams.
311 cubic yards of rock placed in dams.
65 snags and logs removed from channel.