30th Congress, 1st Session. [SENATE.] Rep. Com., No. 44.

IN SENATE OF THE UNITED STATES.

January 25, 1848.

Submitted, and ordered to be printed.

Mr. Felch made the following

REPORT:

[To accompany bill S. No. 106.]

The Committee on Public Lands, to whom was referred the memorial of Henry Washington, praying redress for damages sustained in consequence of the rescinding of a contract entered into by him with the surveyor general to survey certain public lands in Florida, respectfully report:

That the documentary evidence presented to the committee shows, that on the 26th day of July, 1845, Henry Washington entered into a written contract with V. Y. Conway, Surveyor General of the United States for the State of Florida, by which he agreed, "In his own proper person, with the assistance of such chain-men, axe-men, and flag-bearers as may be necessary, agreeably with the laws of the United States, and with the general instructions to deputy surveyors, and such special instructions as he may receive from said surveyor general," to execute the necessary surveying within a particular district, amounting to seven hundred and fifty miles of line to be run and marked. The work was to be completed, and the field-notes thereof filed in the office of the surveyor general, on or before the 1st day of May, 1846, "acts of God excepted, on penalty of forfeiting the sum mentioned" in a bond given for the faithful performance of the contract. For this service four dollars for each mile was to be paid by the Treasury Department of the United States, upon the receipt of Mr. Washington's accounts at that department, properly certified by said Conway, and accompanied by the approved plats of the surveys.

On the 22d day of August, 1845—less than a month after the above-mentioned contract was executed—Mr. Conway, by written instructions, directed the memorialist, as deputy surveyor, to proceed as soon as practicable to locate certain private claims, which had been confirmed, within a tract of country known as the "Arredondo Grant." These surveys were to be made in conformity with certain Spanish surveys thereof, agreeably to an order of court, and the sum of five dollars for each mile run and marked was to

AUTHENTICATED U.S. GOVERNMENT INFORMATION GPO

After the above-mentioned directions were given, Robert Butler, esq., succeeded to the office of surveyor general, in the place of Mr. Conway.

On the 9th February, 1846, Mr. Butler gave written notice to the memorialist that his contract first above mentioned was abrogated; and that he should contract with some other surveyor for the services described in it. At the time this notice was given, Mr. Washington had made his arrangements to proceed with the surveys described in his contract, and was upon the eve of departure for the field of his operations.

The rescinding of this contract and the damages arising from it, are the subject of the memorialist's claim for compensation.

Three reasons are assigned by the surveyor general, for thus putting an end to the agreement. 1st. That the memorialist had been unable to return the surveys of the private land claims, in the interior of the Arredondo grant, from the fact of not having made a connection with the public surveys, agreeably to the general and special instructions of the office;

2nd. That the location of large grants, made by the memorialist, were not in conformity with the decree of the Supreme Court, which had been furnished from the surveyor general's office, and, taken in connection with other grants near the Atlantic, contrary to the calls thereof, or heretofore advised; and,

3rd. That the memorialist had failed to proceed in the execution of the contract made on the 26th July, 1845, as required by his instructions (having been engaged in private surveying,) and thereby placing it out of his power to complete the surveys, according to the terms of his contract.

In a letter to the Commissioner of the General Land Office, dated February 19th, 1846, the memorialist denies the alleged incorrectness of the surveys mentioned in the first objection and asserts that the surveys described in the second objection, were received and approved by the former surveyor general, as being correctly located—that no examination or investigation, had since been had to determine whether they were correct or not, and that he had every reason to believe them to be correct. As to the third and last reason given for rescinding the contract, he asserts that, previous to entering into the agreement, he had been appointed by the Superior Court, with the cognizance and on the recommendation of the late surveyor general, one of the commissioners to divide the "Arredondo Grant" among the several claimants, and that the act of the same surveyor general, in ordering him to make the surveys in the interior of that grant, operated as an extension of the time for making the survey under the contract first mentioned. He further claims, that as nearly three months remained within which to do the work under his contract, at the time of its abrogation, he had the right and still hoped to fulfil its terms.

The answer of the memorialist, to the first two objections above mentioned, is in the opinion of the committee fully sustained by the papers presented in the case, and especially by a communication on the subject from the Commissioner of the General Land

Office, to the President, dated April 1st, 1846, a copy of which is hereto annexed. And, in the same communication, it is stated that in the opinion of that office, the instructions of the surveyor general, directing Colonel Washington to proceed as soon as practicable to locate the private claims within the Arredondo Grant, were a virtual extension of the time limited for the return of the survey mentioned in the previous contract of 26th July, 1845."

In this opinion, as a matter of equity, the committee fully concur. They are of opinion, also, that while nearly three months remained, within which to do the surveying, under the contract, no valid reasons, arising from mere lapse of time, existed, for abrogating the agreement.

The services to be performed under the contract in question were, it is true, such as could be done only by a deputy of the surveyor general, duly appointed and continuing in commission. The right to remove a deputy is given to the surveyor general by the law of May 18, 1796, *for negligence or misconduct in office.* Unless one or the other of these two causes were shown, the memorialist had the right to the full benefit of his contract, and to the profits of the services to be performed under it. To abrogate it without evidence of one of these, was neither legal nor just.

Upon a careful examination of all the documentary evidence presented, the committee are of opinion that the abrogation of the contract was improper and illegal, and that the memorialist was thereby unjustly subjected to expenses and the loss of the profits of his contract.

The official character of the act complained of, while it shields the officer from personal responsibility, renders it proper, in the opinion of the committee, that compensation for the damages, resulting directly from the illegal act, should be made to the injured party from the public treasury. A bill is accordingly herewith reported for that purpose.

GENERAL LAND OFFICE, *April* 1, 1846.

SIR: I beg leave most respectfully to submit for your consideration the following statement relative to the recent action of the surveyor general of Florida, in rescinding the contract of Colonel Henry Washington, deputy surveyor.

On the 26th July, 1845, V. Y. Conway, then surveyor general of Florida, contracted with Colonel H. Washington, deputy surveyor, for the survey of seven hundred and fifty miles in the neighborhood of Tampa Bay. By that contract, Colonel Washington stipulated that the work should be done and returned on or before the 1st May, 1846; and entered into bond, with security, in the sum of $6,000, for the faithful performance of the surveys.

Afterwards, to wit, on the 22d August, 1845, the surveyor general instructed Colonel Washington to "proceed as soon as practicable to locate all the confirmed private claims which lie wholly or in part within the Arredondo grant," &c. Colonel Washington

seems to have considered these latter instructions as requiring his first attention, and has executed the work therein mentioned.

On the 9th February, 1846, the present surveyor general forwarded to this office a copy of a letter written by him on that day to Colonel Washington, in which he abrogated the contract made with that gentleman by his predecessor on the 26th July, 1845, for the reasons that he, Colonel Washington, had not made a connexion of the surveys of the private claims in the interior of the Arredondo grant with the lines of the public surveys, as required by the instructions of his office; that he had located two other grants near the Atlantic, contrary to the calls thereof; and that he had failed to proceed with the execution of the contract thus abrogated, until it was out of his power to complete it within the stipulated time—having been engaged in private surveying.

On the 19th February, 1846, Colonel Washington enclosed to this office a copy of the surveyor general's letter abrogating his contract, and declared that the grounds on which that action was had by the surveyor general were untenable and erroneous, inasmuch as he had given the necessary connexions between the lines of the private claims within the Arredondo grant and those of the public surveys, the evidence of which he submitted to this office; and that the grants near the Atlantic had been correctly located, but if otherwise, that the surveyor general could not determine that fact, and make it the basis of action, till he had received a report to that effect from the deputy sent out to examine those locations.

In the opinion of this office, the instructions of the surveyor general, directing Colonel Washington to proceed as soon as practicable to locate the private claims within the Arredondo grant, were a virtual extension of the time limited for the return of the survey mentioned in the previous contract of 26th July, 1845.

On the receipt of this letter from Colonel Washington, the whole subject was referred back to the surveyor general for revision, with the views of this office; and the opinion therein expressed, that this office was satisfied, his sense of justice was such, that he would gladly extend it to an old and faithful public servant like Colonel Washington, if he found that he was mistaken in the grounds of his original action.

On the 23d February, 1846, Colonel Butler forwarded to this office a copy of a contract he had entered into with Colonel Samuel Reid for the survey of the lands embraced in the abrogated contract of Colonel Washington; and on the 9th March he responded to the letter from this office, in which he adhered to his general positions and conclusions.

In this matter, I incline to the opinion that the surveyor general has acted hastily and without sufficient grounds, and that Colonel Washington could, in justice and equity, recover damages to the amount of the net profits of the contract. The first section of the act of 18th May, 1796, authorizes the surveyors general to remove deputies for negligence or misconduct in office. In this case, a regular contract was made and bond given. No negligence on the part of Colonel Washington is shown, nor do I find sufficient grounds to

sustain a charge of misconduct. The connexions of the private claims within the Arredondo grant, with the lines of the public surveys, appear to have been given; and if such were not the fact, the surveyor general could not advisedly judge of the fact till the field-notes were returned; and in the absence of those field-notes, it was inexpedient to decide the matter on his own impressions, or the report of the conversations of others. If these connexions had not been given, it would have been good grounds for refusing to re-organize or make payment for the surveys. The allegation that the private claims on the Atlantic were not correctly located, could not be satisfactorily determined till the report was received of the deputy appointed to examine that work; and, in the meantime, the surveyor general could have suspended such portion of the pay due to Colonel Washington, as would have prevented loss on the part of the government if those claims were found to be erroneously located.

The whole matter is respectfully submitted for your consideration and direction, with the remark, that the power of appointing deputies is placed in the hands of the surveyor general by the act of 8th May, 1822.

I have the honor to be, with great respect, your obedient servant,

JAS. SHIELDS, *Commissioner.*

To the PRESIDENT *of the United States.*