

IN THE SENATE OF THE UNITED STATES.

FEBRUARY 2, 1858.—Referred to the Committee on Claims.

The COURT OF CLAIMS submitted the following

REPORT.

*To the Hon. the Senate and House of Representatives of the United States  
in Congress assembled:*

The Court of Claims respectfully presents the following documents  
as the report in the case of

JOHN ETHERIDGE *vs.* THE UNITED STATES.

1. The petition of the claimants submitted without argument June 30, 1857.
2. Petition to Congress with accompanying documents, marked A, B, C, D, and E, referred by the Senate to the Court of Claims, and returned to that House.
3. Certified copy of a statement of the Secretary of the Navy, dated March 3, 1857, offered by the claimant and transmitted to the Senate.
4. Brief of the United States Deputy Solicitor.
5. Opinion of the Court adverse to the claim.

By order of the Court of Claims.

In testimony whereof, I have hereunto set my hand and affixed the  
[L. S.] seal of said Court at Washington, this first day of February  
A. D. 1858.

SAM'L H. HUNTINGTON,  
*Chief Clerk Court of Claims.*

UNITED STATES COURT OF CLAIMS.

*To the honorable the Court of Claims of the United States, Washington,  
D. C.:*

The petition of John Etheridge, a clerk of the third class in the  
Navy Department, respectfully represents:

That, in the month of August, 1853, your petitioner was assigned  
by the Hon. James C. Dobbin, then and now holding the office of  
Secretary of the Navy, to the desk of principal corresponding clerk

in the Navy Department, to which position there was at that time, has been uninterruptedly since, and is now, added the separate and altogether different office of "Superintendent of the Southwest Executive Building."

The compensation fixed by law to the desk of the principal corresponding clerk of the Navy Department, <i>previous</i> to the appointment of your petitioner, was, as fixed salary.....	\$1,500 00
Temporary addition by act of 31st August, 1852.....	100 00
And as superintendent of the southwest executive building by the "legalizing" act of August 26, 1842.....	250 00
Making the total compensation of the principal corresponding clerk, eighteen hundred and fifty dollars per annum,	<u>1,850 00</u>

By the 3d section of the act making appropriations for the civil and diplomatic expenses of the government, approved March 3, 1853, a classification of the clerks in the several departments was directed to be made from and after the 30th June, 1853, in which classification the principal corresponding clerk of the Navy Department was placed in class *three*, and was designated by the head of the department to hold the additional office of superintendent of the southwest executive building, under the *further proviso* of the 3d section of the act just referred to. The intention of Congress, by the acts of 31st August, 1852, and 3d of March, 1853, as amended by the act of 22d April, 1854, was undoubtedly to increase the compensation of clerks, and there was accordingly added to the pay of the principal corresponding clerk of the Navy Department, by the act approved August 31, 1852, and continued by the classification act approved March 3, 1853, as amended by the act of 22d April, 1854, one hundred dollars per annum; so that the compensation paid to your petitioner, under the acts of 1853-'54, as a third class clerk, has been the same as was paid to the principal corresponding clerk, under the act of 31st August, 1852, viz:

The pay of a third class clerk, under the act of 3d March, 1853, as amended by the act of 22d April, 1854, being	\$1,600 00
And the compensation of the superintendent of the southwest executive building, legalized by the act of 26th of August, 1842, and provided for in the classification act of March 3, 1853, being.....	250 00
Making the total annual compensation eighteen hundred and fifty dollars.....	<u>1,850 00</u>

Your petitioner further represents, that he continued to receive compensation at the rate of eighteen hundred and fifty dollars per annum down to the thirty-first day of March, eighteen hundred and fifty-five; and that the accounts of the disbursing clerk of the Navy Depart-

ment for such payments were audited, revised by the Comptroller, and allowed by the accounting officers of the government down to the said date of thirty-first day of March, eighteen hundred and fifty-five. But your petitioner was informed that in subsequent settlements of the accounts of the disbursing clerk of the Navy Department, the said accounting officers reopened the accounts of the disbursing clerk as far back as the first day of July, eighteen hundred and fifty-four, and disallowed all payments made by him to the superintendent of the southwest executive building from and after that date, based upon an adverse decision made by the Hon. Elisha Whittlesey, Comptroller, in the case of Archibald Campbell, esq., chief clerk of the War Department, who claimed, in addition to his salary of \$2,200 (twenty-two hundred dollars) per annum, the compensation as superintendent of the *northwest* executive building, during the year ending the thirtieth of June, eighteen hundred and fifty-five.

Your petitioner further represents, that the office of the superintendent of the southwest executive building has not been abolished, nor his appointment thereto revoked; that the duties of the office continue to be devolved on your petitioner, are still performed by him, and that he cannot find, nor does he believe that the legalizing act, approved August 26, 1842, establishing the office, and fixing the salary or compensation, to wit: "one superintendent of the southwest executive building, at two hundred and fiftydollars," as distinct and different from that of clerk, *has ever been repealed, either expressly or by inevitable implication*; but, on the contrary, your petitioner finds it not only recognized and provided for by the very act directing a classification of clerks, to be arranged from and after the 30th of June, 1853, thereby making separate provision for the office of superintendent for an entire year after the classification of clerks took effect, but that the prohibitory enactment of September 30, 1850, against allowing "to one individual the salaries of two different offices on account of having performed the duties thereof at the same time," *expressly excludes* from its prohibition "the superintendents of the executive buildings;" and also, that the prohibition found in the 18th section of the civil and diplomatic act, approved August 31, 1852, extends only to persons "who hold or shall hold any office under the government of the United States, whose salary or annual compensation shall amount to the sum of two thousand five hundred dollars." And your petitioner begs leave further to refer to the opinion of Mr. Attorney General Cushing, of the 18th August, 1853, in the case of L. B. Hardin, who held two offices in the Navy Department, one as clerk, the other as superintendent of the southwest executive building.

And your petitioner states further, that upon his being apprised in November, 1855, of the decision of the Comptroller, Mr. Whittlesey, disallowing the payments made to the superintendent of the southwest executive building for four quarters, three of which had been previously reported upon and passed, allowing the payments therein charged, he addressed a communication to the Comptroller, remonstrating against his decision, and asking his forbearance and reconsideration of the matter involved. The remonstrance is of date 30th November, 1855, a copy of which will be found accompanying the

memorial of your petitioner to Congress. No attention was given to the remonstrance by Mr. Comptroller Whittlesey, so far as your petitioner was informed; its receipt was not officially acknowledged, although that fact was verbally admitted to your petitioner.

And your petitioner adds further, that the Comptroller's report of the adjustment of the accounts of the disbursing clerk of the Navy Department, for the quarter ending 30th September, 1856, continues the disallowances of payments to the superintendent of the southwest executive building, from the 1st of July, 1854, on the ground that there is "no appropriation therefor." Although there is a head of appropriation "*for the general purposes of the southwest executive building,*" viz: "*For labor, fuel, lights, and miscellaneous items,*" which specifies no particular species or kind of labor, fuel, light, or miscellaneous item for which provision is thus made. The entire appropriation being under the supervision and control of the Secretary of the Navy for the purposes indicated, and the labors of the superintendent being of a diversified and miscellaneous character, such as the general care of the southwest executive building, the employment of mechanics and laborers for repairs of the same, the providing of fuel, lights, &c., attending to its security against danger or injury by fire, or other cause, the examination of the accounts for disbursements, &c., the compensation of the superintendent for miscellaneous labor was deemed an *item* legitimately falling under the head of appropriation "*for the general purposes of the southwest executive building.*" It is to this head of appropriation the payments to the superintendents have been charged in the accounts of the disbursing clerk, and to which the Comptroller objects. Your petitioner, however, claims that he is legally entitled to the compensation fixed by law to be paid to the superintendent of the southwest executive building, from the 1st day of July, 1854, until the office shall be abolished, or until he shall cease to hold it.

Your petitioner further adds the assurance, that he knows of no other action taken in his case, by or in Congress, except the reference of the memorial and papers of your petitioner to the honorable the Court of Claims, which was done on the 25th of June, 1856; that no action has been had, except as herein stated, by any department of the government, and that no person or persons, except your petitioner, is owner in part or in whole, or interested therein, unless it be an indirect interest by the disbursing clerk of the Navy Department, in whose accounts the disallowances stand charged.

Your petitioner concludes by saying, he does not deem it necessary to appear before the honorable Court of Claims by counsel. He is willing to rest his case upon its merits, as herein set forth, and perhaps more fully presented in his memorial to Congress, and the paper accompanying it; invoking the honorable Court to hear and determine the same according to the law and the equity of this claim.

Your petitioner, as in duty bound, will ever pray, &c.

JOHN ETHERIDGE.

WASHINGTON, D. C., December 30, 1856.

*To the honorable the Senate and House of Representatives in Congress assembled :*

The memorial of John Etheridge, a clerk in the Navy Department, respectfully represents :

That in the month of August, 1853, your memorialist was assigned by the Hon. J. C. Dobbin, Secretary of the Navy, to the position of principal corresponding clerk in the Navy Department, to which position there was then, has been since, and is now attached the duty of superintending the southwest executive building. The compensation belonging to the desk of the principal corresponding clerk of the Navy Department before your memorialist was assigned to it was, as clerk..... \$1,500  
Temporary addition by act of August 31, 1852..... 100  
As superintendent..... 250

Making the total annual compensation..... 1,850

By the third section of the act making appropriations for the civil and diplomatic expenses of the government, approved March 3, 1853, a classification of the clerks in the several departments was directed to be made from and after June 30, 1853, in which arrangement the principal corresponding clerk of the Navy Department was placed in class *three* and was designated by the head of the Navy Department for the further duty of superintendent.

The intention of Congress by its acts of 31st August, 1852 and 3d of March, 1853, was undoubtedly to increase the compensation of clerks, and there was accordingly added to the pay of the principal corresponding clerk of the Navy Department, by the act approved August 31, 1852, and continued to third class clerks by the classification act approved March 3, 1853, one hundred dollars per annum, so that the compensation paid to your memorialist under the act of March 3, 1853, as a third class clerk has been the same, and no more, as was paid to the principal corresponding clerk under the act of August 31, 1852. The pay of third class clerk under the act of March 3, 1853, being \$1,600, and as superintendent \$250, making the total annual compensation \$1,850.

And your memorialist further represents that the duties of superintendent continue to be devolved upon him, are still performed by him, and that he has continued to receive the compensation allowed therefor by the legalizing act, approved August 23, 1842, to wit: at the rate of two hundred and fifty dollars per annum; and which legalizing act, authorizing the office of "one superintendent of the southwest executive building, at two hundred and fifty dollars," as distinct and different from that of clerk, has not been repealed, neither expressly nor by inevitable implication; but, on the contrary, is recognized and provided for by the very act directing a classification of the clerks to be arranged from and after the 30th June, 1853, thereby declaring the office of superintendent distinct and separate from the classification of clerks, and it was expressly excluded from the prohibition contained in the act of September 30, 1850.



And your memorialist further represents, that although his duties as superintendent are still continued, and although he continues to receive the lawful compensation therefor, yet it is within his knowledge that the accounting officers of the treasury, after allowing and passing his vouchers in the accounts of the disbursing clerk of the Navy Department, down to the 31st of March, 1855, (by admitting his balance to be correct, as stated in his account current to that date,) have reopened said disbursing clerk's accounts as far back as the 1st of July, 1854, and have charged back and disallowed all payments made to the superintendent of the southwest executive building, from the 1st of July, 1854.

And your memorialist thinks that, in thus disallowing the payments made to him for services duly recognized and legalized by enactments of Congress, and expressly excluded from the prohibition against any one individual being allowed "the salaries of two different offices on account of having performed the duties thereof at the same time," the intentions of the Congress of the United States have not been met, and more particularly does this appear, from the fact, that instead of the addition directed by the act of 3d March, 1853, of one hundred dollars to the annual compensation of your memorialist, the disallowances made by the accounting officers, really work a reduction of two hundred and fifty dollars from his annual compensation.

And your memorialist adds, that upon the announcement of the decision of the accounting officers, dated November 20, 1855, disallowing the payments made to the superintendent of the southwest executive building during four preceding quarterly accounts, three of which had been previously reported upon and passed, allowing the payments therein charged, your memorialist addressed a communication to the Hon. Elisha Whittlesey, Comptroller, remonstrating against the decision, and asking his forbearance and reconsideration of the disallowances. This remonstrance bears date November 30, 1855, and although six months have elapsed, no reply has reached your memorialist. He therefore prays that the annexed copy of that remonstrance may be received as connected with this memorial.

And your memorialist, therefore, appeals to the Congress, and respectfully ask of your honorable bodies such measure of relief as his case may seem to call for, not by any express appropriation of public money, but by the passage of a resolution or bill authorizing the accounting officers of the Treasury Department to allow in the settlement of the accounts of the disbursing clerk of the Navy Department, the vouchers for payments made to the superintendent of the southwest executive building for miscellaneous labor as superintendent, out of the appropriation "for the general purposes of the southwest executive building," "for contingent expenses of said building."

And, as in duty bound, your memorialist will ever pray, &c.

JOHN ETHERIDGE,

*Third Class Clerk and Sup't Southwest Executive Building.*

NAVY DEPARTMENT,

*Washington, D. C., June 4, 1856.*

IN THE COURT OF CLAIMS.—No. 795.

JOHN ETHERIDGE *vs.* THE UNITED STATES*Solicitor's Brief.*

It appears from the petition and papers in this case that the petitioner held the office and received the salary (\$250 per annum) of superintendent of the southwest executive building, (Navy Department,) in addition to his office and salary of third class clerk, (\$1,600 per annum,) in the office of the Secretary of the Navy, from the month of August, 1853, to the date of his petition, December 30, 1856.

That the payments made to him for his salary from August, 1853, to June 30, 1854, were allowed by the Comptroller, and there is now no question respecting the amount thereof.

That the payments made to him from July 1, 1854, to March 31, 1855, (\$187 50,) were allowed as credits to the disbursing clerk, but subsequently the account was opened, and the amount was charged to the disbursing clerk, who in turn demands the amount from the petitioner.

That the payments made to petitioner for his salary as superintendent subsequent to March 31, 1855, have not been allowed by the accounting officers in favor of the disbursing clerk.

It thus appears that the petitioner has no legal interest in this claim. The Treasury Department holds, not the petitioner, but the disbursing clerk of the Navy Department, liable for the sums in dispute, and the relief sought must, if accorded by the Court, be in the form of a bill to relieve the disbursing clerk from the charges against him on the books of the treasury. But, on the other hand, the disbursing clerk has no real interest in the claim. By the well settled practice in the executive departments, if any payment of salary be rejected at the treasury the officer who receives it is bound to refund. The disbursing clerk suspends his demand upon the petitioner to enable the latter to apply to Congress through this Court, and the latter is therefore the real party in interest.

For many years prior to the year 1842, there was in each of the executive departments a superintendent of the building, who kept it in repair, purchased fuel, supervised the laborers in their daily duties, &c., &c. The superintendent was appointed from the clerks, and was allowed a salary of \$250, in addition to his pay as clerk. This sum was included in the annual estimates, and given by Congress in the general appropriation acts; and the arrangement had no sanction of law beyond the appropriation of an annual sum for the salary of the superintendent. For examples of which, see 5 Statutes, 342, 374, 424. The allowance was not regarded as within any of the acts prohibiting the allowance of extra compensation.

In the first session of Congress under the new administration, which came in on the 3d March, 1841, the Committee of Ways and Means struck out from the annual estimates, and omitted in the annual appropriation bill, all items for which there was not express authority

of law, and reported for these a separate bill, which passed as the act of August 26, 1842, (5 Stat., 523,) "legalizing and making appropriations for such necessary objects as have been usually included in the general appropriation bill without authority of law," &c. This act, in sec. 1, par. 4, authorized the employment of a superintendent of the Navy Department, or southwest executive building.

The provisions of this act were limited by its 6th section to the 20th of July, 1844, but were continued in force by annual acts until June 30, 1854.—(See acts June 17, 1844, sec. 3, 5 Stat., 694; March 3, 1845, sec. 5, *id.*, 764; August 10, 1846, sec. 3, 9 Stat., 96, &c.; August 31, 1852, sec. 9, 10 Stat., 98; March 3, 1853, sec. 8, *id.*, 212.)

In the meantime, a proviso in the general appropriation act of September 30, 1850, sec. 1, (10 Stat., 542, 543,) prohibited the allowance to any one person of the salaries of two offices, but from this prohibition the superintendents of the executive buildings are specially excepted.

The general appropriation act of March 1, 1843, sec. 3, (10 Stat., 209,) made provision for classifying the clerks and other employés in the executive departments, and in a paragraph at p. 211, it enacted: "There shall be a disbursing clerk for each of the departments of War and Navy, and the Post Office; not more than three for the Treasury Department at the discretion of the Secretary thereof; and not more than three for the Department of the Interior at the discretion of the Secretary thereof. The said clerks to be appointed out of class four, by the heads of the respective departments, and to receive such sum in addition to their regular salaries as may amount in all to two thousand dollars per annum. But it shall be their further duty, when designated by the head of the department for that service, to superintend the buildings, and they shall give bonds as required by the independent treasury act," &c.

This classification went into effect on the 1st of July, 1853, and the question at once arose, whether the disbursing clerks were by law required absolutely to perform the duties of superintendents of the buildings, or whether they were required to do so only in the event of being "designated by the head of the department for that service."

The decision of this question depended upon the construction to be given to the paragraph just cited, viz: whether *designated for that service*, meant designated to be disbursing clerks, or designated to superintend the buildings.

The Secretaries of the Navy and of War gave it the latter construction, and declining to require the disbursing clerks to superintend the buildings, appointed in either department a superintendent. As the usual appropriation had been made for the fiscal year ending June 30, 1854, both superintendents were paid during that year. The departments estimated as usual for the superintendents' salaries for the next year, (July 1, 1854, to June 30, 1855,) but the appropriation was not made by Congress. In the Navy Department the salary was then paid out of the appropriation for contingent expenses, and, as above stated, allowed by the Comptroller. When, however, a similar payment was made to the superintendent of the War Department building, and presented for the approval of the Comptroller, he reviewed the



question and rejected the claim of the superintendent of the War Department building; and he moreover reopened the account of the disbursing clerk of the Navy Department building, and recharged to him the amounts he had paid to the superintendent of that building.

On the part of the United States the Solicitor adopts and relies upon the elaborate opinion of Mr. Comptroller Whittlesey, rejecting the claim of the superintendent of the War Department building, which was given under date of August 7, 1855, and is among the papers in this cause, in which he cites numerous provisions of law, embracing, no doubt, all that bear upon this subject.

JNO. D. McPHERSON,  
*Deputy Solicitor.*

*Memorandum of papers in evidence.*

- A. Certificate of Secretary of the Navy, dated March 3, 1857, proving appointment and service.
- B. Letter of Comptroller of July 2, 1855, admitting all payments made for the quarter ending the 31st March, 1855.
- C. Letter of Comptroller of November 20, 1855, containing notice of recharge of salary paid to March 31, 1855, and of rejection of subsequent payments.
- D. Letter of Comptroller of May 13, 1857, persisting in rejection of payments as above, and rejecting subsequent payments.
- E. Opinion of Mr. Comptroller Whittlesey of August 7, 1855, upon which the notice of November 20, 1855, and subsequent notices were based.

J. D. McP.

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IN THE COURT OF CLAIMS.

JOHN ETHERIDGE *vs.* THE UNITED STATES.

SCARBURGH, J., delivered the opinion of the Court.

In the month of August, A. D. 1853, the petitioner was appointed principal corresponding clerk, in class three, in the Navy Department; the appointment to take effect on the first day of September, A. D. 1853; and at the same time he was appointed superintendent of the southwest executive building. He continued to hold, and perform the duties of, the place of superintendent till the 31st day of March, A. D. 1857, (see the certificate of J. C. Dobbin, and the letter of the Comptroller to the disbursing clerk, dated May 13, A. D. 1857;) but, under a decision of the First Comptroller of the Treasury, it has been held that compensation therefor was not due him after the 1st July, A. D. 1854.

The petitioner alleges that he received compensation as superintendent of the southwest executive building till March 31, 1855

and that the accounts of the disbursing clerk therefor were settled and allowed by the accounting officers of the Treasury Department, but that those accounts have been opened by those officers, and the payments made to the petitioner since the first day of July, A. D. 1854, disallowed. The evidence on this point is a letter from the Comptroller to the disbursing clerk, dated November 20, A. D. 1855, in which it is stated that in the adjustment of his accounts for the quarter ending on the 30th of June, A. D. 1855, there was found against him a balance of \$250, which was produced by disallowing the amounts paid by him to John Etheridge, as superintendent of the southwest executive building, from the 1st July, A. D. 1854, to 31st March, A. D. 1855, and for April, May, and June, A. D. 1855. There is also on file a letter, dated May 13, A. D. 1857, from the Comptroller to the disbursing clerk, in which it is stated that similar payments to the petitioner for similar services to the 31st day of March, A. D. 1857, had been disallowed.

The petitioner claims that, as the superintendent of the southwest executive building, he is entitled to a salary of two hundred and fifty dollars a year, and he shows, by the evidence, that he has regularly received it from the disbursing clerk. If, then, on the one hand, his view of the law be correct, he has already received all that he is entitled to ; and if, on the other, his view of the law be incorrect, then surely he cannot be entitled to more. It seems to us, therefore, that his case presents no question for adjudication by this Court

Our opinion is, that we cannot grant the petitioner relief.