36TH CONGRESS, 1st Session. } HOUSE OF REPRESENTATIVES. { REPORT No. 406.

J. W. NYE.

[To accompany Bill H. R. No. 629.]

APRIL 13, 1860.

Mr. CARTER, from the Committee for the District of Columbia, made the following

REPORT.

The committee beg leave to submit the following report in regard to Nye's claim for improving a lot of public ground:

That, by an act approved 5th of July, 1812, (Statutes at Large, first session, twelfth Congress, page 775,) the President of the United States was authorized to lease any of the public grounds in the city of Washington, for a term not exceeding ten years, on such terms and conditions as, in his judgment, would best effect their improvement for public purposes.

By an act of Congress the Tiber creek was, in 1833, changed from its original bed, between the avenue and canal, to where it now flows, leaving the old bed of said creek an open, offensive channel. This lot of ground, in which was this channel, became the receptacle of the filth and rubbish of that part of the city, rendering it a public nuisance. This lot was bounded on the north by Pennsylvania avenue, east by the creek where it now flows, on the south by the canal, and on the west by Third street, now known as the botanical garden.

In 1843 J. W. Nye proposed to the President of the United States that, if the President would give him a lease of said ground for ten years, he would fill the old bed of Tiber creek, make a sewer to convey the water from the avenue to the creek, set out a row of shade trees along the avenue and along Third street, on the borders of said lot, and put the ground in as high a state of cultivation as the other grounds around the Capitol, and would enclose the ground with a board fence, erect a carriage-house and stable near the canal and Missouri avenue, and put no other buildings of any description on said piece of ground. When the proposition was made to the President he objected to giving a lease for ten years, on the ground that it was thought by many that Congress would direct the location of the Smithsonian Institution on that lot. To obviate that objection, Nye consented to agree to relinquish said grounds should Congress see fit otherwise to dispose of them, and to remove his fence and stable from said ground whenever required by the government so to do,

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without any claim on government for said improvement. When remonstrated with for making this offer, Nye said he would as willingly take it with this condition as without it, having no fear, should Congress desire to appropriate it to any other purpose after he had made the improvements, that any member of Congress would consent that it should be taken from him without making him sufficient compensation for his expenditures, and that they would as willingly do it as though it had been so expressed in the lease. Major Noland, the Commissioner of Public Buildings, remonstrated with Nye for making this offer, telling him that it would *cost at least five thousand dollars to make said improvements.*

He obtained a lease from President Tyler, on the 29th day of April, 1843, on the aforesaid conditions.

He planted the trees in November of the same year, agreeable to his contract. He was three years in making the improvements required by the lease, having expended over *twenty-nine hundred dollars* in making said improvements, besides putting three hundred dollars worth of manure on said ground, making an expenditure of about *three* thousand two hundred dollars, besides his own services, in making said improvements—he having kept no account of work done by himself—most of the work, filling up, and hauling soil to spread on the ground, being done by his own teams and hands.

The *fourth* year he raised a very large crop of corn and vegetables on said lot, the ground having been put in a high state of cultivation. The *fifth* year he had it put in a high state of preparation for a crop, but the Commissioner of Public Buildings (Mr. Charles Douglass) requested him to let the lot lie open long enough to enable him to have the creek near the avenue walled up; and when the Commissioner got the walling done, it was too late to raise anything that year. In the ensuing fall or winter this walling was washed away, and Congress having made an appropriation for walling the creek from the avenue to the canal, the Commissioner requested Nye to let the lot lie open in order to more conveniently make said improvements, promising Nye that he would get his lease extended as long as he was deprived of its use during both years, to which Nye consented. The Commissioner did not get the improvements made until winter; Nye was consequently deprived of its use that year also.

During that Congress an appropriation was introduced in the Senate for enclosing the public grounds on the north, south, and west front of the Capitol. Nye called on one of the senators to know if it was intended to include the lot leased to him, and was informed that it was not. After said appropriation was made, the Commissioner informed Nye that he was going to enclose the square between the Capitol and that occupied by Nye with a high paling-fence, and requested him to remove his *board-fence* and let the Commissioner extend his *paling-fence* around both squares, at the same time assuring him that it was in noway to interfere with him in his occupancy of said lot until the expiration of his lease, to which Nye assented. After the Commissioner had enclosed said lot, he called on Nye to remove his carriage-house and give up the lot, which Nye refused to do, and sent a memorial to the Senate to ascertain if it was their intention to de-

prive him of his lease without compensation. The memorial was referred to the Committee on Public Buildings and Grounds, but not acted upon. This Commissioner being removed in a few days, and another appoin ed, Nye proceeded to sow the lot with oats; but a short time before the oats were sufficiently ripe for cutting, the new Commissioner demanded of Nye the key of the gate, which he refused to surrender until the expiration of his lease. The next day he found the lock broken from the gate and the oats mowed and raked up for fodder; and from that time Nye was refused the occupancy of the lot. And the use of said lot for *one year* only, after the improvements Nye made, is all the compensation he has ever received.

Without the authority of Congress, the Commissioner had no right to bar his *occupancy* of the grounds under the lease of the President of the United States.

The lease was given in good faith, and with the intent that it should run its full term if Nye fulfilled the conditions; and there is no evidence that he did not to the letter.

At the commencement of the thirty-fourth Congress, the mayor, aldermen, members of the common council, and some one hundred and thirty very respectable citizens of Washington, feeling a deep interest in Nye and his *suffering family*, memorialized Congress, praying that "a liberal and generous settlement of his claims" might be made. This memorial, with the papers in the case, was referred to the Committee for the District of Columbia; they, after having fully examined the claim, finding that Nye having stated under oath he had expended in money $2,900 for improvements, and had used about $300 worth of manure on the said lot, in addition to his own labor, reported a joint resolution in his favor for the sum of $3,200, which passed the House, was sent to the Senate, and referred to the Committee for the District of Columbia of that body; when the committee examined the case they found no testimony showing what was the actual cost or worth of the work that had been done. It therefore became necessary for Nye to furnish that evidence to the committee before they would agree to report in favor of the House resolution. Accordingly, Nye procured the services of W. W. Birth, esq., a highly respectable citizen of this city, (a sworn measurer,) to measure the work, also statements made by other respectable citizens accustomed to doing such work, sustaining Mr. Birth, some of them naming a much larger sum than Mr. Birth. This additional evidence having been submitted to the Senate committee, they reported in favor of the resolution, which was passed, and the money paid.

The statement made by Mr. Birth shows that the actual cost of the work done by Nye on said lot, at a fair and reasonable price, amounts to the sum of..... $7,982 84

From which Nye makes the following deductions:

By cash received from treasury.....	$3,200 00	
By cash from sale of materials.....	210 00	
By use of square or lot one year...	1,140 40	
		4,550 40
		3,432 44

Leaving the above balance in Nye's favor, which he claims as being *equitably* and *justly* due him.

The measurement of this work was not an *after* thought of Nye, and never thought of by him until suggested by the Senate committee, and what is now claimed is not for damages, but for *services* rendered and moneys expended, which the government has received; and had Nye not made those improvements, Congress would have been called upon to appropriate that amount of money, and perhaps more, for that purpose.

The committee are therefore of the opinion that the said Nye should be paid the sum of ———, and report a bill herewith.

All of which is respectfully submitted.