

compensation for damages actually sustained can never be awarded against the United States.

In this case the United States asked the court to find (1) the amount of damage done to the building on account of exposure to the winter storms in its unfinished condition; (2) the amount resulting from the retention of the skilled labor, &c.; and (3) the deterioration in the value of materials. All these were legitimate subjects of inquiry by the court in making up its final estimate; but we know of no rule of law or practice which requires a court or jury to specify the elements of the calculation by which it arrives at its final result. In this case the court was not asked to say whether it included this or that supposed element of compensation in its judgment; but the only effort seems to have been to ascertain the items of calculation so as to determine whether the proof supported them. The whole contest evidently was as to the sufficiency of the evidence, not as to the liability of the United States if the facts as claimed were established by the proof.

In the estimation of damages the Court of Claims occupies the position of a jury under like circumstances. Damages must be proved. The court is not permitted to guess any more than a jury, but, like a jury, it must make its estimates from the proofs submitted. The result of the best judgment of the triers is all that the parties have any right to expect.

As the record presents the case, we see no error in the court below.

*Judgment affirmed.*

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UNITED STATES *v.* PHISTERER.

1. An officer of the army, who, under the Consolidating Act of March 3, 1869, is ordered from a military post, at which he is doing duty, to his home, to await orders, does not exchange his station, within the meaning of sect. 1117 of the Army Regulations.
2. The case is governed by sect. 1110 of such regulations; and under it the officer is entitled to an allowance of ten cents for each mile travelled by him in pursuance of his orders.
3. The home of the officer to which he is ordered is not a military station. A military "station" is merely synonymous with military "post." In each case it means not an ordinary residence, having nothing military about it, except

that one of its occupants holds a military commission, but a place where military duty is performed, or stores are kept or distributed, or something connected with war or arms is kept or done.

4. An officer so ordered is not, when at home awaiting orders, entitled to commutation for quarters and fuel. His home is not a "station," within the meaning of sect. 1080 of the Army Regulations.

APPEAL from the Court of Claims.

*Mr. Assistant Attorney-General Smith* for the United States.

*Mr. Halbert E. Paine, contra.*

MR. JUSTICE HUNT delivered the opinion of the court.

The present case is one of a class of which several are now pending in this court, and many more, it is understood, are before the Court of Claims.

The claimant was a captain of infantry in the United States army, and on the seventh day of January, 1870, by special order from the Adjutant-General's office, at his own request, was ordered home to await orders. This was done by virtue of the Consolidating Act of March 3, 1869. The claimant proceeded from Fort Bridger, Wyoming Territory, where he then was, to his home in New York City. On the 28th of February, 1870, he reported as waiting orders at that place, and afterwards as waiting orders at Littleton, N. J., which was then his home.

The claim now made is for mileage in travelling from Fort Bridger to New York, and for commutation for quarters and for fuel while thus awaiting orders.

The Court of Claims allowed the petitioner both for his mileage and the commutation for quarters and fuel during the period mentioned. The questions will be separately considered.

1. As to mileage.

Comment is made upon the circumstance that the claimant reported himself to the department as awaiting orders at the city of New York, on the 31st of January, 1870, specifying that place as his home, and that on the 31st of March following he reported himself at Littleton, N. J., specifying that place as his home. We see nothing in this that should prejudice the claimant's right of recovery. New York may well have been his home in January, and Littleton his home in March. It is not

extraordinary nor a ground of suspicion that an officer should change his place of residence. Whether he resided in New York or in New Jersey could make no difference in his position in the army, or in his liability or readiness to respond to any orders given to him. It was indeed important that he should keep the department advised of his residence, that he could be called upon when it was desired. This he did. The department made no objection to this change of residence at the time, nor does it place its refusal to pay the mileage upon this ground. We think the circumstance quite unimportant.

The effect of the order to proceed to his home and there to await orders, and the difference between this *status* and that of an officer "absent from duty with leave," was considered by this court in the *United States v. Williamson*, 23 Wall. 411. That decision secures to the officer his full pay while thus awaiting orders, and we find no occasion to correct any thing contained in it. We are still of the opinion that the officer was not absent on leave, but that he was awaiting orders at his home. It results also from this decision, that, in thus proceeding to his home, he was travelling under orders.

The provision relating particularly to the case we are considering is found in sect. 1109 of the Army Regulations, authorized and confirmed by the act of July 28, 1866. It is there provided that "an officer who travels not less than ten miles without troops, escort, or military stores, and under special orders in a case from a superior, or a summons to attend a military court, shall receive ten cents mileage." This means that he shall be entitled to an allowance of ten cents for each mile thus travelled. It is hardly denied that the claimant was travelling within the meaning of this regulation.

But it is contended that, under regulation, sect. 1117, the department was justified in withholding the allowance. That regulation is in these words: "When officers are permitted to exchange stations, or are transferred at their own request from one regiment or company to another, the public will not be put to the expense of their transportation. They must bear it themselves." If A. at one station and B. at another desire to exchange stations or regiments or companies with each other, and prefer a request to that effect, the provision assumes that

the commanding officer may, in his discretion, grant it; but, as no public interest is advanced by it, and it is consented to for the advantage or pleasure of the two officers, they must bear their own expense of transportation in making the exchange. This is just and reasonable.

We are inclined to think that it would be too narrow a construction of this provision to hold that it required that two officers should be concerned in the exchange. An exchange from one station to another station by the same officer at his own request, if found compatible with the public service, would be within the words of the rule, and apparently as much within its spirit as when the exchange was made by and between two officers.

But we are of the opinion that Captain Phisterer did not make an exchange of stations within the meaning of this regulation. In other words, although he left a military station at Fort Bridger, his home at New York, to which he went, did not become, and is not to be deemed, a military station. In the broadest use of language, no doubt the word "station" means a place or position; and it may be said that wherever a man, in pursuance of orders, stays or remains, he is stationed, and that if he is a military man, such place becomes a military station. This word (station) has a recognized and a different meaning under different circumstances. It is a technical word in church regulations, in the science of ecclesiology, in the civil law, in surveying, in railroad language, and in military science. See Richardson and Worcester Dict.

A "military station" is merely synonymous with the term "military post," and means a place where troops are assembled, where military stores, animate or inanimate, are kept or distributed, where military duty is performed or military protection afforded, — where something, in short, more or less closely connected with arms or war is kept or is to be done.

In the Army Regulations the two terms are often used verbatim. Thus, in the regulations of 1847, —

If a post or station should prove unhealthy, the troops may be removed, &c. 11, par. 57.

Whenever a military post or station shall be abandoned, the property should be turned over, &c. 11, par. 58.

Commanding officers of forts and stations on the sea-coast to aid in quarantine regulations. 11, par. 61.

The military force at any post or station in the Indian Territory shall be employed, &c. 17, par. 91.

Whenever an officer is ordered from one station to another, or for the performance of any duty, not being with troops, he shall proceed by the most direct route without unnecessary delay; nor is he under any pretence whatever, except that of sudden illness, to apply for leave of absence from the time he quits the station at which he receives the order until he has arrived at his place of destination. 45, par. 227.

Whenever such officer shall appear to have made unusual or unnecessary delay, he shall immediately report the cause to the commanding officer of the post. 45, par. 228.

It is a misuse of language to designate as a post or a military station a cottage in a country village, in no way distinguishable in its use or appointments from every other residence in the village, because one of the persons who lives in it is an officer in the army. There was no exchange of stations by Captain Phisterer, and, therefore, nothing to except his case from the general law which allowed him mileage for his travel in proceeding to his home.

2. The claim for commutation for quarters and commutation for fuel while at New York and New Jersey is to be considered.

Among the army regulations established by the act of March, 1863, are the following, under the head of quartermaster's department: Sect. 1064. "This department provides the quarters and transportation of the army, . . . fuel, forage," &c. "Barracks and quarters." Sect. 1066. "Under this head are included the permanent buildings for the use of the army, as barracks, quarters, hospitals, storehouses, officers' stables." Sect. 1068. "The number of rooms and amount of fuel for officers and men are as follows: . . . Captain, two rooms, one as kitchen; cords of wood, three-fourths or three per month, according to the season of the year." Sect. 1071. "No officer shall occupy more than his proper quarters, except by order of the commanding officer, when there is an excess of quarters at the station." . . . Sect. 1073. "Fuel issued to officers or troops

is public property for their use ; what they do not actually consume shall be returned to the quartermaster, and taken up on his quarterly return." Sect. 1077. "An officer may select quarters occupied by a junior ; but, having made his choice, he must abide by it, and shall not again at the fort displace a junior, unless himself displaced by a senior." Sect. 1080. "When public quarters cannot be furnished to officers at stations without troops, or to enlisted men at general or department headquarters, quarters will be commuted at a rate fixed by the Secretary of War, and fuel at the market price delivered." . . . Sect. 1083. "Officers absent from their appropriate duties for a period exceeding six months, either with or without leave, shall not receive the allowances" mentioned. Sect. 1084. "Officers and troops in the field are not entitled to commutation for quarters or fuel."

The claimant bases his demand upon sect. 1080, above set forth. To maintain this claim, it must be held that Captain Phisterer, while at his home in New York and in New Jersey, was at a station without troops. That he was without troops is plain enough ; but that his home on these occasions was not a military station, we have undertaken to show when considering his claim for mileage. The same construction of the word "station," which gives him his mileage, cuts off his claim for commutation.

We think the regulation we have referred to was not intended for a case like that we are considering ; that is, where an officer is at his own home awaiting orders, and having no public duty whatever to perform.

Quarters are expected to be furnished by the government to its officers ; when it cannot thus furnish, it allows them to be obtained otherwise, and pays a money compensation therefor, called commutation. This is upon the assumption, first, that the officers are actually engaged in the public service ; and, second, that such quarters are necessary to the discharge of their duty. It is upon the latter idea that commutation for fuel and quarters is not allowed to officers when in the field. The duty there is public not only, but of the most necessary character ; still, apartments, kitchen, and offices are not there necessary, and cannot be commuted for.

We are of the opinion that the claimant was not at a station, in the sense that he is entitled to public quarters, or to a compensation in the form of commutation for rooms and apartments or fuel, obtained or supposed to be obtained in lieu of those expected to be furnished by the government. In making this allowance, we think the Court of Claims erred.

The briefs submitted contain suggestions of what would be the result in various cases, which, it is said, may arise under these regulations. Our judgment is intended to be given upon the precise case before us, and upon no other. Should other cases be presented, the Court of Claims will give them the attention required, as will this court, should they come here. Both courts have business enough to occupy them, without anticipating cases which may never be presented.

*Judgment reversed, and cause remanded with directions to enter a judgment awarding the claimant mileage, and denying him commutation for quarters and fuel.*

NOTE.—In *United States v. Chilson*, *Same v. Rheem*, *Same v. Lynde*, cases in which the claims for commutation for fuel and quarters by officers ordered to their homes, under the act of March 3, 1869, were allowed by the court below, and which were argued by the same counsel as in that case, MR. JUSTICE HUNT delivered the opinion of the court, reversing the judgment of the Court of Claims. At the same time and by the same counsel as in the preceding cases was argued *United States v. Mears*. It involved the question whether an officer ordered to his home, under the act of March 3, 1869, was entitled to his mileage. Mears, a paymaster, paid mileage to an officer so ordered. The government disallowed the item in his accounts, and he brought suit to recover the amount. The Court of Claims found in his favor; whereupon the United States appealed to this court. MR. JUSTICE HUNT, in delivering the opinion of the court, remarked: The officer was entitled to his mileage, and the payment was rightly made.

*Judgment affirmed.*

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CAMMEYER v. NEWTON.

1. This court finds that letters-patent No. 80,492, granted to William H. Cammeyer, bearing date July 28, 1868, for an improved portable and adjustable still-water dam, were not infringed by the defendant.
2. The claims embraced by the patent, and the nature and mode of operation of the invention which is therein described, and of the machine or apparatus used by the defendant in alleged violation of the patent, examined.