

MOSES SHEPHERD.

MAY 10, 1828.

Read, and laid upon the table.

Mr. McINTIRE, from the Committee of Claims, to which was referred the bill from the Senate, [No. 112] for the relief of Moses Shepherd, made the following

REPORT :

The Committee of Claims, to which was referred a bill from the Senate, entitled "An act for the relief of Moses Shepherd," report :

That the said Shepherd, in his memorial on which the bill is founded, represents that, on the 17th of Feb. 1817, he contracted with Eli Williams, an agent of the Government of the United States, to do certain mason work on the Cumberland road : that he performed the work according to his contract. That, in pursuance of the directions of the Superintendent of said road, he also performed other work, not included in his contract, for which he was promised, and is entitled to receive, compensation. That, in consideration of a change in the location of one of the bridges contracted to be built by him, he undertook to pay the additional expense created by said change of location ; and in settlement he was required to pay for making fifty-three rods of road, when, in fact, the increased distance is only thirty-eight and a half rods. That, in consequence of the failure of the Government to pay him for his labor according to contract, he became embarrassed, was sued, and subjected to loss and expense, until he applied to Congress for relief. That a bill was passed for his relief, but in its provisions it provided for particular items, and failed to afford him complete satisfaction. That he ought to receive interest on the sum he has received, and is entitled to receive, from the time the same became due by the terms of his contract ; and prays that a bill may be passed to authorize the accounting officers to adjust and settle his accounts on principles of justice and equity.

In order to see to what justice and equity the memorialist is entitled, the committee have traced the history of the transaction from its origin, and have given a careful attention to the voluminous mass of testimony and papers connected with the subject.

In 1816, the Cumberland road was ordered to be extended to the Ohio river, at Wheeling ; that a portion of it, in the State of Virginia, from West Alexandria to Wheeling, had been viewed and considered as located over what was called the hill route. Notice was given by

Eli Williams, the agent, that, on the 23d of September, 1816, he would, at Wheeling, let out said road to make, including four large bridges, two of which the chord of the whole arch was to be one hundred feet each, and the other two, seventy-five feet each. After this notice was given, and before the day arrived, Williams had effected an alteration of the location of the road, to what was called the creek route, but which fact he kept from the knowledge of the public until the day of letting the contracts. Williams and Thompson had surveyed the *creek* route some time before, but pretended for other purposes than that of locating the road there. The reason they afterwards assigned for this was, that they did not want it known a change in the location of the road had been made, till they could get a release of damages from the owners of the land over which it was to be located, and liberty to take materials to make it.

On the day of sale of the contracts, the memorialist made a bid for the bridges, which was accepted; the largest at \$10,630 each, and the others at \$9,321 each; and also to do and construct all the mason work, culverts and bridges, between Alexandria and the east foot of Wheeling Hill, and entered into contract accordingly, which bears the date and is the same mentioned in the memorial. He and a Mr. Paul, also, at the same time, took the contract to make the road from Alexandria to a Major Good's, a short distance from the Ohio River.

In the Summer of 1817, the memorialist and others, sub-contractors under him, proceeded to perform these contracts, under the superintendance of Josias Thompson, and continued so to do till 1819, when the Secretary of the Treasury became dissatisfied with the conduct of Thompson, and ordered him to be dismissed, which took effect on the 5th of October, 1819.

In the Spring of 1817, Shepherd and Paul let their whole road contract to L. L. Skinner and others, the whole length being about 12 miles and three-quarters, at the rate of \$5,750 per mile for the whole. On their contract with the Government, they were to receive, for a portion of it, \$10,000 per mile, and the residue \$9,000 per mile, giving them a profit of about \$46,000 on making the road.

For the mason work, Shepherd, by his contract, was to have \$3 25 cents per perch; a portion of this he let at the rate of \$2 50 cents per perch, and other portions on equally advantageous terms.

One of the large bridges before mentioned was to be built near the house and store of the memorialist. Where the road was originally located, as early as 1806 or 1807, seems to have been near his mill dam, where was a good rock bottom, and in the proper direction of the road. (See report of Committee, page 46.) It seems Shepherd was desirous of having the road nearer his house and store, and this depended on the location of the bridge. By a survey, in 1816, a line was run nearer his house than the original location; and when the foundation of the bridge was to be laid, a year or two afterwards, the bottom was found to be soft and unsuitable at a reasonable depth. A new survey, by Thompson and Williams, was made of this route; one still nearer Shepherd's, called the Middle Route, and another, a

southwestern, still nearer to his house. A plan of this last survey, and representation of the nature of the bottom of the creek, was made to the Secretary of the Treasury, and sent by Shepherd by a special messenger. The Secretary, it seems, yielding reluctantly to these representations, directed the bridge should be built on the middle route, expressly forbidding the route nearest Shepherd's house, or southwest route, and on condition it should not be any more expensive than if it crossed where it was originally located. On these surveys, sent to the Secretary, the original location near the mill dam was not laid down. The bridge is actually built, not on the middle route, but that nearest to Shepherd's house. Out of this transaction grew two items in Shepherd's claim. (See the deposition of N. P. Atkinson, page 71.)

After Thompson was removed, the Secretary of the Treasury, in November, 1819, appointed A. Lacock, T. Wilson, and T. McGiffin, Esqrs. Commissioners, to go on to the road and examine into the conduct of Thompson, and see the manner in which the road had been constructed; who went on to the road, examined it, and measured the increased distance occasioned by the alteration of the bridge near Shepherd's, and remeasured the mason work. The mason work, by the admeasurement made under the directions of the Commissioners, fell short of that returned by Thompson, 8,715 perches. This difference is the foundation of the principal item in the claim of the memorialist. The Commissioners also returned that the increased distance of road occasioned by the location of the bridge near Shepherd's, to be fifty-three rods.

The Commissioners made a report, January 2, 1821, signed by Wilson and McGiffin, who also certified that Mr. Lacock agreed with them in their views. In April following, the Secretary of the Treasury instructed the Commissioners to take testimony on the side of Shepherd, as well as the Government, and, in the Autumn following, proceeded to do so, and reported the same January 29, 1822. Report was made by Lacock and McGiffin.

The memorialist then petitioned Congress for relief, and a committee having reported the principles upon which his accounts ought to have been settled, recommended to adopt a resolution directing the accounting officers at the next session to make a statement of his accounts on those principles, which was adopted, and the next session, a report was made accordingly; and on the 3d of March, 1825, a law was passed for the payment of the balance thus found.

One item in that account was the sum of \$20,338 53; being the difference between the mode of calculation made by the commissioners and the committee in estimating the extra expense of the bridges and wing walls thereto, in favor of Shepherd. Another item was the sum of \$7,640 41, paid by Shepherd to his sub-contractors, on the erroneous measurement of Thompson. Another item was \$3,407, for work rejected by the commissioners; and another sum of \$2,427 42 deducted by the commissioners for defective work; and lastly, another sum of \$2,480 50, for work rejected by the commissioners, and

not measured by them, but taken according to Thompson's measurement.

After the passage of the law alluded to, which purported to be in full of Shepherd's claim, and after he had received the amount awarded him, he made a further claim, being that now under examination.

The *first* item of this claim is for extra work in coping the walls of mason work, according to the directions of the superintendent, with heavy stone, clamped or dowelled together, to prevent their being injured by evil disposed persons.

The *second*, for the excess deducted from his account for increased distance between the first location and last, at the bridge near his house.

The *third*, the wing wall and culvert at said bridge.

The *fourth*, for certain walls partly built, and removed by order of the superintendent, not measured by commissioners.

The *fifth*, another wall measured by superintendent, and included in seventh.

The *sixth*, amount retained for repairs to broken-back bridge, not needed, or if needed, occasioned by the order of superintendent, and not fault of Shepherd.

The *seventh*, difference of the measurement between the superintendent and commissioners.

The *eighth*, extra work by Smith.

The *ninth*, costs of suits against Shepherd, by his inability to pay his workmen, occasioned by the failure of Government to liquidate his accounts.

And *tenth*, interest.

In consequence of this new claim by Shepherd, the Secretary of the Treasury appointed James Collier, Esqr. to investigate the subject, by letter of instructions, dated January 11, 1826. Collier accordingly proceeded to the investigation, and made reports, from time to time, of his proceedings, the last of which is dated February 23, 1827, and returned the depositions taken by him.

The committee have examined the report of the commissioners first appointed, and the testimony taken by them, and the report of Collier, and the testimony taken by him, as well as the other papers, submitted to them; and are irresistibly led to the conclusion that the contracts were entered into by collusion and fraud between the memorialist and the Government Agents, and have been executed, until Thompson was removed, in a manner to the great injury of the public, fraudulent on the Government, but to the advantage of the memorialist. They are brought to this conclusion by numerous facts and circumstances disclosed. The first they will name are the facts relative to the contract bridges. The contract describes them as two, with arches of one hundred feet chord each, and the others of seventy-five feet each. At the time of sale, the Agent was inquired of by John Mayer, who intended to make a contract, if they would not answer as well to have two or three arches each; and was told expressly, by Williams, they must be built with one only. This prevented

his making the offer, as he was unwilling to attempt so large an arch. But it seems there was an understanding at the time, between Shepherd and Williams and Thompson, that, instead of one large arch, each, they were to be built of three arches, each—equal to the number of feet mentioned; and they were so constructed. This understanding was admitted by former reports in this House. The contract expresses that they shall be twenty feet wide, subject to be enlarged or diminished by the Superintendent, and to be paid for in proportion: and immediately after the contract is closed and approved, the superintendent alleges the cost of them at double the amount mentioned in the contract, and ordered them to be built forty-one feet wide. After the contract was made for these bridges, and calculated to cost \$80,000, instead of \$40,000, J. L. Skinner proposed so to alter the road as to avoid the necessity of all these large bridges, and offered to engage to accomplish it, and save to the Government \$20,000, and give Shepherd \$20,000 to indemnify him for loss of his contracts. Thompson admitted the feasibility of it; but, on the ground that Shepherd would not consent to give up his contract, declined the proposition. He afterwards testified, before referees, that he never communicated the scheme to Shepherd. (See Skinner's deposition, p. 73, and Hawkins' do. p. 110.)

The next facts the committee will notice, are those relative to the change of location of the road from the *hill* route to the *creek* route. It is proved on Saturday, before the sale of the contracts, that on Monday, Williams was threatening some of the owners of the land on the hill route, if they would not release their damages, that he had the cure in his pocket. He had surveyed the creek route several days before. Shepherd and Paul had passed that way repeatedly, though not their usual road. Paul had endeavored to purchase farms on that route a few days before, evidently on speculation; and *Shepherd and Thompson* had jointly purchased one without disclosing the fact to the man of whom they purchased. The location of the road raised the value of farms on it from fifty to one hundred per cent. The owners of the land were not called on till Monday morning to sign releases—the same day the road was let. Williams and Thompson of course knew of the location before, and the inference is irresistible that Shepherd and Paul did also. No others did. The conclusion is, that this was done to enable Shepherd and Paul to have the contract at their own bid, as those who had prepared themselves to bid for contracts on the other route, were not prepared to bid on this. (See the depositions of John Mayes, page 106; William Hawkins, p. 108; Richard Hardisty, p. 114; Wm. Witham, p. 116; James Pursley, p. 117; and William Hall, p. 119, taken by the Commissioners.)

The next fact is the admitted partnership between Thompson and Shepherd, in the purchase of Craig's farm. (See the close of P. Doddridge's deposition.)

The next facts noticed to show the connexion between Thompson and Shepherd and Williams, are their practices in changing the location of the bridge near Shepherd's house, for his accommodation;

drawing a plan of a survey, laying down three routes, and marking the middle one as having a good bottom, omitting the correct route, and, after all, placing the bridge on the route rejected. (See the deposition of N. P. Atkinson, page 71, and others, and the report of the Commissioners on the subject, page 46.)

The interest Thompson took in making Shepherd's sub-contracts, his uniformly *over measurements*, his refusal to be cross-examined by the Commissioners, the aid he furnished Shepherd, and his consultations with him and his counsel, are all unaccountable on any other supposition than that of collusion, copartnership, or fraud. (See the deposition of J. L. Skinner, p. 73; Hawkins, p. 108, and others, and report of the Commissioners.)

The committee also notice the refusal, with the approbation of Shepherd, of Francis Woods, and of Jacob Atkinson, to answer questions touching the knowledge of any collusion or partnership between Shepherd and any agent of Government, because they chose to think that it was confidentially communicated to them, they being clerks in Shepherd's store. (See their depositions, taken by the Commissioners, page 58 and 60. They also refer to the refusal of Col. A. Woods and P. Doddridge, Esq. to testify, when called on by Mr. Collier, although Doddridge had once before offered himself as a witness, but now declined, as not being obliged to disclose what had been confided to him as counsel. (See Collier's report.) To this they would add the unexplained call on Shepherd, by a son of Williams, for some claim, to obtain which, he expected to need the aid of legal counsel. (See Collier's report, and A. Caldwell's deposition, taken by Collier.)

To all this might be added Williams' declarations to those disposed to bid on the road contracts, that no money would be advanced, and then advancing large sums to Shepherd. The large credits given by Shepherd to Thompson of \$8 or 9,000; the declaration of Thompson to Hawkins, of his wish to be interested in these contracts, if he could keep it secret; and his conduct in his settlement with Killen, and consulting with Shepherd on that subject; (see Hawkins and Wood's depositions, and Killen's, page 120, taken by Commissioners, also deposition of S. Sprigg, page 55,) all these facts and circumstances seem to the committee irreconcilable with innocence on the part of Shepherd, and fidelity on the part of the Government Agents.

Shepherd claims pay according to Thompson's measurement, because he was the Agent of the Government, and they are bound by his acts. If this were a case in which the Government would be bound by the acts of their Agent, if done in good faith, even if erroneous, enough has been shewn to deprive Shepherd of that advantage by their improper collusion; but on looking into the contract it is evident that this is not such a case: he was to be paid by the perch, and all Thompson's agency was to point out how it should be done. He cannot be entitled to pay for more work than was done.

He contends further, that Thompson's measurement is more to be relied on than that of the Commissioners. To this the committee

cannot assent; many facts are disclosed by the Commissioners, which shew, conclusively, that no reliance could be placed in the correctness of Thompson's measurement. The reference they make to two or three bridges is enough to shew that. But Shepherd had an opportunity to have seen that the Commissioners were correct; he was urged to do it, but obstinately refused. Though the Commissioners could not, in all cases, be so accurate as they might have been before the foundations were covered up, still the committee believe they were *essentially* correct, and their measurement is the only guide that it could be safe to follow.

Mr. Caldwell, who has been of counsel for Shepherd, testifies, that, in his opinion, he has been amply and generously paid for all his *extra* work not required by contract. (See one of his depositions taken by Collier.)

The second item arises from the difference, in the measurement of the increased length of the road, between the Commissioners and others; but on looking into the depositions, those who measured it do not seem to have thought of the first and only correct location in 1806 and 1807: hence the difference. The wing wall near Shepherd's house was occasioned by the location of the bridge at the forks of the creek, and would not have been needed if the bridge had been built where it ought to have been; and of course, Shepherd ought to bear that expense.

The committee might more particularly notice the objections to the several items now claimed, and enumerate other circumstances, to shew the grounds on which they found their conclusions, but would refer to the reports of the Commissioners, of Collier, and the testimony taken by them to justify the correctness of their conclusions.

The committee will further remark, that, at an early day in the session, the memorial of Moses Shepherd, accompanied by *his* documents, was presented to the House and referred to this committee. The committee had progressed in the investigation of the claim, when an application was made by him to the committee to withdraw his papers for the purpose of arranging them, and for procuring other testimony; and, at his solicitation, the committee was discharged, and the papers were delivered to the memorialist. Immediately after this, instead of being returned to this House, the papers were presented to the Senate, and referred to the Committee on Roads and Canals. The report of the Commissioners, and depositions by them taken, and the report of Mr. Collier, referred to in this report, do not appear to have been before that committee of the Senate. The committee, therefore, recommend the adoption of the following resolution:

Resolved, That the bill from the Senate, entitled "An act for the relief of Moses Shepherd," be indefinitely postponed.

To the honorable the Senate and House of Representatives of the United States in Congress assembled.

Your memorialist, Moses Shepherd, respectfully represents: that on the 17th February, 1817, he contracted with Colonel Eli Williams, the authorized agent of the United States, to do certain mason work on the Cumberland road; which contract is herewith filed as a part of his memorial.

Your memorialist has faithfully performed his work according to the terms of his contract, under the directions and to the satisfaction of the agent of the United States, appointed to superintend the work as it progressed, and to measure and receive the same. In pursuance of directions from the agent of the Government, he also executed certain other work, not included in his contract, for which he was promised, and is entitled to receive compensation.

Your memorialist further shews, that a certain change having been made in the location of one of the bridges contracted to be built by him, he undertook, at his own expense, to make the increased distance of the road occasioned by such alteration: that, in consequence of that undertaking, he has been required, and has actually paid for 53 poles of road—whereas the real increase of distance is only 38½ poles—whereby he has paid for 14½ poles more than he was bound to have done; making a difference of \$406, or thereabouts.

Your memorialist further shews, that, in consequence of the failure of the Government of the United States to pay him for his labor according to the stipulations of their contract, he became much embarrassed, and was harassed and sued by his creditors, and compelled to raise money for the payment of his workmen, by mortgaging his real estate, until he could apply to the Congress of the United States for relief and justice. Upon that application, his case was referred to a committee, who made a report in his favor, (which is referred to as a part of this his memorial,) and a bill passed for his relief. It will appear, that, although *the report* just alluded to, admitted the justice of his whole claim, the amount awarded *in the bill* was not a complete satisfaction and indemnity, but only intended as a remuneration for the particular items contained in an account annexed to said report.

Your memorialist further shews, that by his contract, he was entitled to his compensation so soon as the work was completed, which being wrongfully withheld, and he thereby subjected to much loss and inconvenience, he is entitled to be reimbursed by the Government.

He therefore prays that a bill may be passed for his relief, instructing the accounting officers to settle his accounts upon the principles of equity, and to make the proper allowances, and to correct any errors made in the former settlements of his accounts.

MOSES SHEPHERD.

January 17th, 1828.

Articles of Agreement made and fully concluded on this seventeenth day of February, 1817, between Moses Shepherd, of the one part, and Elie Williams, duly authorized on behalf of the United States, of the other part.

Whereas the aforesaid Moses Shepherd agreed, for and in consideration of the payments hereinafter mentioned, to build and complete, in a workmanlike manner, two large bridges below the forks of Little and Middle Wheeling, each of which are to be arches of 100 feet chord, and twenty feet wide, at ten thousand six hundred and thirty dollars each, and two bridges over Little Wheeling, at Bentley's, each of 75 feet chord arches, and twenty feet wide, at nine thousand three hundred and seventy-one dollars each, and also to make and construct all other bridges, culverts, and other mason work, between the east foot of Wheeling hill and Alexandria, at three dollars and twenty-five cents per perch, and to provide all the materials of every kind necessary, and of the best quality, at his own expense, thus contracted for, and to build and complete the same in the following manner, and on the following conditions, viz: He is to dig the foundations, clear away, both above and below such building, sufficient for the free entrance and passage of the water, to build all the walls of such a size, and of such dimensions, as may be directed to cope and point such walls as may require it, to procure materials of an approved quality, and, in short, to do every thing necessary for the proper and permanent construction of the said bridges, in such manner and form as the said superintendent may direct or approve; a good and sufficient number of good and experienced workmen shall be provided, and the work to progress with sufficient speed, so that contractors for turnpiking said road may not be delayed. In admeasurements, the arches only to be measured, girt, and half girt; all other mason work agreeably to their solid contents, and all openings to be deducted. The workmen shall move from any one part of said sections to any other, for the purpose of building such buildings as may be most needy. No mason work to be paid for, except such as shall be approved by the superintendent aforesaid. Should any of the contractors be thrown idle, or any of the men, so that they sustain loss, the sum or damages so sustained in the opinion of the superintendent, shall be paid to the contractor for turnpiking. If he refuses such payment, the superintendent of said road, in such case, is hereby authorized to pay to the said contractor for turnpiking, out of any moneys due or coming due to the said Moses Shepherd. The United States, it is understood, is at full liberty to change the locations, and the size of any bridges and culverts as pointed out; the grading notes, as the superintendent shall direct. Now, this agreement, made and concluded

ed on the day and date herein written, between the said Moses Shepherd, of the one part, and Elie Williams, duly authorized on part of the United States, of the other part, witnesseth, that the said Moses Shepherd, for himself, his heirs, executors, and administrators, doth hereby covenant, promise, and agree, to and with the said Elie Williams, duly authorized on the part of the United States, that he, the said Moses Shepherd, shall and will, well and faithfully, and in a workmanlike manner, on or before the first day of March, 1820, make, finish, and complete, in the manner and on the conditions herein before mentioned, all the bridges and culverts on the aforesaid part of the United States' Western Road, and which may be thought necessary, and may be directed to be built, by the superintendent aforesaid. In consideration whereof, the said Elie Williams, duly authorized on behalf of the United States, doth hereby covenant and agree, to and with the said Moses Shepherd, his heirs, executors, and administrators, that the said United States shall and will, for doing and faithfully performing the work aforesaid, well and truly pay, or cause to be paid, to the said Moses Shepherd, his heirs, executors, or administrators, the several sums for the four bridges as above mentioned, at the rate of three dollars and twenty-five cents for every perch of mason work contained in any arched bridge, and for every perch in any other work; except, at all times, reserving such sum as the superintendent aforesaid may conceive proper and necessary, to the United States, for the due performance of this contract, which sum so reserved shall be paid to the said Moses Shepherd, his executors or administrators, as soon as the aforesaid work is completed and approved, as before provided. And the said Moses Shepherd, for himself, his heirs, executors, and administrators, doth further covenant, promise, and agree, to and with the said Elie Williams, duly authorized on behalf of the United States as aforesaid, that, in case the said Moses Shepherd shall not well and truly, from time to time, comply with and perform all and singular the covenants, agreements, and conditions herein before stipulated on his part to be complied with, in the manner and form, and within the time, herein before mentioned, or, in case it should appear to the said superintendent of the road aforesaid for the United States, that the work does not progress with sufficient speed; so as to justify an opinion by the said superintendent, that the said mason work herein provided to be done within the time herein before mentioned, or that the work is not so perfect as it ought to be, or that the contractors for turnpiking are delayed for want of mason work being done, that then the foregoing agreement, and every part thereof, on the part of the United States, shall become null and void. And the United States shall be at liberty, and have full right to employ and set to work, or to contract with any person or persons whomsoever, in the place of the said Moses Shepherd, and without any interruption whatsoever from the said Moses Shepherd, his heirs, executors, and administrators.

In witness whereof, the said Elie Williams, duly authorized on the part of the United States, hath hereunto subscribed his name and affix-

ed his seal, and the said Moses Shepherd hath also hereunto set his hand and seal, the day and year first above written.

It is hereby provided, that no member of Congress shall be admitted to any part of this contract or agreement, or to any benefit arising therefrom.

Before signing, it is understood and agreed between the contracting parties, that, in case the size and dimensions of either of the four bridges herein specially contracted for shall be altered or enlarged, a proportionate allowance shall be made and paid for by the U. States : and it is further stipulated, that, in order to assist the contractor in this case in providing adequate supplies preparatory to this undertaking, an advance on account shall be made by the United States to the said Moses Shepherd, of ten thousand dollars, in drafts on the Treasury Department, by the said Elie Williams, duly authorized, upon the said Moses Shepherd executing a bond, with security, to refund or account for the same, in claims for work under this contract.

ELIE WILLIAMS, [L. s.]

Duly authorized.

MOSES SHEPHERD, [I. s.]

Signed, sealed, and delivered, in presence of

GEORGE PAUL.

The Hon. WM. H. CRAWFORD, Esq.

Secretary of the Treasury.

SIR : In obedience to your letter of instructions, bearing date the 30th of November, 1819, we have proceeded to the discharge of the several duties enjoined, with as much despatch as the nature of the inquiries and our other engagements would admit. The statements marked A and B will show, in detail and result, the amount of mason work, bridges, and dry walls done by Colonel Shepherd. C and D will show the difference of each description of work between our measurement and that of Mr. Thompson, the late Superintendent. By the former, it will appear that the whole amount of his claim for masons' work done by the perch, is (vide accounts A and B) perches ; and, by the latter, that the deficiency of admeasurement is (vide accounts C and D) perches. Statement — shows the bridges and walls which had been measured by Mr. Thompson, and those bridges or walls which he had never measured ; and it results that the deficiency upon all the admeasurements made by him is equal to thirty per cent. Statement E shows the extent of his claim for the four special contract bridges, together with such explanations as have occurred to us to be just and necessary. — exhibits the amount of his claim on account of the road, and — their claims which were embraced in Thompson's measure, omitted in ours, but for which we recommend an equitable and reasonable allowance as to part.

The result of all their statements presents the entire claim of Col. Shepherd, according to our admeasurement, and our ideas of justice, between him and the Government. We shall now present to your consideration such facts as have occurred in the course of our examination, and such explanations as are deemed proper, by which we feel assured that you will be satisfied of the general and substantial accuracy of our admeasurement, together with the reasons which have determined and controlled our minds as to the justice of his claim as now presented by us, and from which we feel equally well assured of your concurrence. By the communications already made by us, some idea will have been conveyed of the difficulty incident to our inquiries, and of those which were superseded by the contractor. It may be proper now to say, that, from the extensive amount of mason work, and the situation of it, from having been filled in from the depths of the foundations, and from the total want of system or plan as to thicknesses or depths, our efforts to arrive at certainty were great and difficult, protracted, and necessarily incurred considerable expense. One fact was stated by Thompson in the outset, and was confirmed by the information of nearly all concerned, either as contractors or masons, which led us, from the beginning, to the expectation that errors to no inconsiderable amount would be found to exist in the dimensions of the foundations, under the surface of the ground, viz: that those parts were not actually measured by him or his assistants, but were taken from the representations of the contractors or masons, who had been directed to measure them and keep memoranda thereof, which were received and adopted as the true measure. Take *men* in general "as they are," and not "as they should be," and no other result than that which has occurred could be expected. The ascertainment of the fact, and the just apprehension of the consequences resulting, imposed the duty on us to examine and sink to the very foundations, in order, by actual measure, to determine the true depths. Owing to the nature of the ground, and the streams of water, this, in many places, was attended with much difficulty, delay, or expense. We, however, feel much confidence in saying, that, whenever we have altered the dimensions from those reported by the late Superintendent, it has been from the certain rules of *seeing* and *feeling*, and not from conjecture. We have been convinced beyond all doubt, that the former measure, or rather representation of the measure, was erroneous, and that our own is substantially correct. The local information possessed by the contractor, and those who had dug the foundations and built the walls, if candidly disclosed, would have facilitated our examination. Although repeated and earnest applications and solicitations, verbally, and in writing, were made to the principal contractor, this information was withheld. Colonel Shepherd appears to have at once adopted the opinion, that his interests would be best subserved by adhering to the admeasurement reported by Mr. Thompson, as the basis of his claim; and that this ground could not, so successfully, be occupied, should he give any countenance or co-operation to our labors. We

shall not now stop to inquire whether this opinion and this conduct afford just ground for the inference of his *knowledge* of the true state of the case. You are already apprized that, after we had continued our examination for some time, and had become convinced of great, uniform, and apparently systematic inaccuracy, that the deductions would be important even to the Government; and, after having heard indirectly, and, we may say, directly, as it came from the counsel of Colonel Shepherd, that, although he would not give us any aid, or co-operate in the admeasurement, he intended to follow us with measurers of his own selection, we addressed him a note in writing, informing him of the general fact of deficiency; that, although we had confidence in our own accuracy, we might err; and we invited him to attend, either personally or by agent, and see and examine for himself, as well the errors of Thompson, as our correctness of ascertainment, offering him every facility in our power, particularly to see and compare with our notes as they were taken. To this he did not accede, or then give us any answer. Mr. Skinner, however, who was interested as the contractor of that portion of the work which we were then examining, soon after attended, and remained with us until we closed that in which he had an interest. On returning and commencing the work which had been done under Colonel Shepherd's eye, and over which he had the immediate and exclusive direction, having sunk the foundations, and furnished the materials upon the ground—the masons, to be sure, laying the stone by the perch—two agents attended on his behalf, both practical masons, and one of them a practical measurer. The one attended to the line or rule, and to the foundations, and the other took the notes. In this way, we measured three bridges, two of which had been previously measured; the other, it is said, never had. At all events, we were not furnished with any regular bill. Upon calculating and comparing the results of the two, of which we were furnished with the notes of the former measure, we found them to fall short; the first 613 perches, and the other 450 perches, = 1063. It was after these measurements, and upon ascertaining these deficiencies, even by his own agents, that Colonel Shepherd withdrew from all further co-operation. Of the pretexts made use of, his protest, and that of Thompson, you are already informed. We continued our examination with as much care as was in our power, and measured the balance of the work done under his contract, and for which he was to be paid by the perch. It may be proper here to state, that, upon the withdrawal of the agents of Colonel Shepherd by his orders, we applied to one of them, a Mr. Gilchrist, who had attended as the practical measurer on his part, who appeared to be competent, and had evinced a reasonable degree of candor, to aid us in our future admeasurement. He stated, at once, that he had no objections; that his ordinary engagements would not prevent him; but, until he ascertained the wishes of Colonel Shepherd, he could not engage; as he had employed him heretofore, he was unwilling to displease him; but that he would give us an answer in a day or two. After some

days, we again saw him, and renewed the proposition ; he answered that he would willingly engage, but that Alexander —— did not wish him to do it, as it would displeas Colonel Shepherd. This Alexander was from the same country with Gilchrist, (Scotland ;) was active, intelligent, and zealously devoted to the interests of his employer ; was then engaged in building a large stone house for Col. Shepherd, and had attended, as his agent, with Gilchrist, in measuring these three bridges, to which we have alluded. After we had made our principal calculations of the work measured, and compared them with the bills furnished, and had discovered that the deficiency was greater than even we had anticipated, although aided in our conjectures by former experiments in other parts of his contract, we addressed Colonel Shepherd a note, informing him of our having measured this work ; that the deficiencies were great ; that, possibly, we might have committed some error ; and that we again invited him to co-operate with us in the accurate ascertainment of quantity ; and with this view, if he would now point out any wall or bridge that he wished remeasured, and would attend, or send an agent, we would recur to it, remeasure, and, if we found ours inaccurate, we would continue our re-examination with him throughout, in case we found we had been inaccurate, or until he should be convinced of our correctness. To this communication he never made any reply, written or verbal. The four large special contract bridges were then measured, in which he assisted, with the aid of Mr. Gilchrist and Alexander Lawrence. Other engagements then occupied our time and attention for about six weeks. When we returned to that part of the road, we were informed, indirectly, that Mr. Shepherd had been making experimental measures to detect our errors, and that he had been successful. In conformity to your directions, we had previously taken measures to procure the aid of a practical mason of reputation in his profession, to give his opinion as to the sufficiency of the work. A Mr. Coultard, of Pittsburgh, who was well recommended, arrived at this time. We informed Colonel Shepherd of his arrival, and the object of his attendance, and invited him to attend. On the next day, we had an interview with Colonel Shepherd, and we then stated to him, verbally, that, as Mr. Coultard was recommended to us not only in the capacity of a practical mason, but *measurer* also, and, as we had heard that he had been making experiments to detect our errors, and, it was said, had been successful, particularly at a large wall at Wood's Narrows, near where we then were, we had determined to avail ourselves of the experience or skill of Mr. Coultard, to ascertain, for our own satisfaction, whether it was indeed true that we had been inaccurate. That Mr. Coultard should measure the wall according to his own judgment as to what was just between the contracting parties, aided by Mr. Hawkins, the Assistant Superintendent of Thompson, who had been continued in the same capacity by Mr. Shriver, and had assisted the committee as the practical measurer during the whole examination. That Mr. Wilson, one of the committee, would also attend to keep the notes,

and invited him also to attend with any aid he thought proper. We further stated to him, that, if we found we had committed any substantial errors in this admeasurement, we would direct Mr. Coultard to continue his measures until we should be all convinced either of general error or accuracy. He then said that he would attend, or send his practical men to co-operate in the experiment. We fixed the day of attendance, but when it arrived, other *counsels* had prevailed, and he did not attend, nor any person in his behalf, with a view of co-operation. The same Alex. Lawrence did attend, but stated he was not authorized to assist, but came merely to see how it was measured, and to make any objections which occurred to him. He did so. Mr. Coultard completed the measure, and the result was such as justly to give us increased confidence in the accuracy of our own work. This last refusal, on the part of Shepherd, to co-operate, we are fully informed, was the result of deliberate reflection and consultation. A man of intelligence and character informed us that he had had a full and free conversation with him upon the subject, and that he had urged the necessity of Shepherd's now acceding to our proposition; that he had observed to him, "You have heretofore refused to co-operate, because you alleged that a majority of the committee were prejudiced, and that neither of them were *practical* men; but you have always professed a willingness to have your work measured by any person who was not prejudiced, and who was a *practical* man. This appears to be that man; there is no ground to suppose that he can entertain any prejudices upon the subject, and he is a *practical mason* and *measurer*. If you still refuse, you will be justly chargeable with insincerity; and the very refusal, under these circumstances, must be prejudicial, if not fatal, to any claim you may set up, founded on Thompson's measure." By what process of reasoning he evaded the force of this appeal, we are not informed. We know the fact that he did not accede to our proposition. At the request of Mr. Skinner, who was, as we observed before, principally interested in the mason work done under Colonel Shepherd's contract, above the upper of the four special contract bridges, we went over, or re-examined, with the aid of Mr. Coultard, the principal part of his work. We found some trifling mistakes; but they were unimportant, and partook of the character of *error*, being indiscriminately on both sides. In short, so far as we have had any intimation that we had been previously inaccurate, we have remeasured; and, when we discovered error, have corrected our notes according to the late measure.

Col. Shepherd has repeatedly applied to us for our notes of admeasurement, and we have as frequently refused to give them. As he has already, and no doubt will again, make use of this as an evidence of hostility on our part, we think proper to explain our reasons for this course, which, we presume, will be satisfactory. It will be observed, that we had, from the commencement, endeavored to obtain, we almost say, to coerce, his co-operation; to bring him face to face, and, on the spot, convince him that it was in our power, and, in point

of fact, we did ascertain the true contents ; that, of course, Mr. Thompson had been imposed upon, committed blunders, or had erred from worse motives. We endeavored to convince him, not only that the Government had a right to be satisfied upon this subject, but that it was due to himself, as a man solicitous to preserve his own reputation, to afford every facility in his power to obtain that object. That his local information, seeing the foundations and the work, from day to day, for years, would enable him to give us important aid, and would prevent that delay which was otherwise inevitable. That, if he intended to rely upon Thompson's measure, it would not defeat his claim, or lessen his chance of success, by evincing so much confidence in its correctness, as to endeavor to show that it was so. If he succeeded in showing to the agents of Government on the spot, that it was correct, he put an end to the question, and insured success. If he even failed in this, and had good grounds of legal or equitable protection from the Government against the mistakes of their former agent, these would not be impaired by a candid disclosure of all the information within his power ; and, above all, that this course, on his part, would not evince that consciousness of error, and subject him to the reasonable imputation of having been privy to the fraud, which was afforded by his refusal. We endeavored, also, to convince him that his *excuse* generally used for refusal, was not well founded in fact, and of our ability to demonstrate it, if he would afford the opportunity by a personal attendance. Besides, that it was inconsistent even with his own interest ; and, if true, must be fatal to his claim to a very considerable extent, inasmuch as bridges and walls, to a great amount, were previously in the same situation, equally inaccessible ; had been made so by his own voluntary act, which he alleged never had been measured ; and for which he, of course, could never be paid, unless it were practicable now to measure them. If impracticable in the former case, when measures had been made, why not equally impracticable in the latter, where none had ever been made ? and, if impracticable in the latter, how was he to obtain his pay ? In vain were these considerations urged : his aid and co-operation were withheld. Why then did he now wish the possession of our notes of admeasurement ? If his object had been to ascertain the true amount of his claim, why did he not accede to our repeated solicitations ? By being present, and seeing the line or rule applied, he could know whether it was correctly done. His presence would give him full and certain opportunity of judging for himself, whether, in our soundings, we had got to the foundation ; in short, every circumstance attending the measure would be within his view and observation, and if any mistakes occurred he could point it out ; if any doubt existed he could suggest it ; and if the mistakes were not corrected by us, or the doubts removed, he would have the certain means afforded him, of time, place, and circumstance, to correct all errors, and remove all doubts. Face to face, men could not well disagree and persist in their disagreement as to the true depth of a foundation, or thickness of a wall ; a temporary

misapprehension might exist, and no doubt would in many cases, but a permanent difference could not, among men of even ordinary intelligence and integrity, on a subject of this kind, and for this plain reason, that it is susceptible of certain or mathematical demonstration. We did not, however, merely refuse to give our notes, but we always accompanied it with the information that there was a deficiency, according to our measure, in nearly all his bridges and walls; and told him, "point out to us any wall or bridge of which you have any doubts of our accuracy, and we will go with you, and we will make a *joint measure*, and if the result shows that we have been wrong, we will continue the process until both parties are convinced either of error or accuracy." To none of these propositions would he accede. Why, then, we again ask, did he wish the possession of our notes? Manifestly, to our minds, for the purpose of deception. With the aid of his expert assistants and coadjutors, he expected to be able to discover some errors against him, overlook any which might exist in his favor, and by an *ex parte* representation make the most of the former, and induce even honest men to believe and to certify that we had been mistaken. Face to face, he was well aware that he must fail. Else why withdraw? Why decline our subsequent invitations? Besides, when he applied, we informed him, and such was, obviously, the fact, "If your object be alone to ascertain the true contents of all or any of your work, and for that purpose you intend to measure for yourself, our notes are not necessary; the notes of the former measure are evidently within your power; make your measure, and produce your notes, and we will then compare with you, and if we find a substantial disagreement, we will again measure, and convince ourselves at least who is right." Convinced by these considerations, and confirmed in our opinions by the passing events of almost every day, that his object, whatever it might be, could not be fair and candid, we felt it our duty to withhold this mean of imposition; and the more especially were we constrained to pursue this course, from being fully aware of the facility with which many men, of even reputable standing in society, lend themselves to the purposes of deception. In that part of this communication respecting the alteration of the location, and particularly the alteration at Colonel Shepherd's house, you will find a strong instance of this, to say the least, unreflecting disposition, and conduct, on the part of men from whom a different course might have reasonably been expected. Another instance we will here state, with full confidence that our information is correct, as it is derived from one of the actors. In December last, 1819, previous to the journey of Colonel Shepherd and Mr. Thompson to Washington City, it seems it had occurred to him, Colonel Shepherd, that he might derive some aid by procuring and taking with him the certificates or statements of some of the most respectable citizens in and about Wheeling, on the subject of the state of his road and bridge contracts. A respectable number attended, passed over his contract from one end to the other, returned, and then made out and signed statement, substantially, that they had passed over the

contract of Colonel Shepherd, examined the execution of the work, and were of the opinion that both the contracts, road and bridge, were well executed—even finished. This appears all very well; and with those who were acquainted with the character and standing of the gentlemen who signed it, would be calculated to have, and no doubt would have, weight. There was, however, a concealment of one fact, which, had it been disclosed, would have lessened the confidence of even their friends. They had passed over the road in sleighs, the ground, the road was so entirely covered with snow as to make it good sleighing, and of consequence it was impossible that they could see the stoning, or form any opinion, from that view, of the character of the work. It is presumed this same certificate was handed to you, and if so, the names of the gentlemen are known to you. John McClure, the contractor at Wheeling, was one of them, and was also one of those who had previously signed the statement in favor of the alteration at Shepherd's; and it is expected that he has since lent his aid, in the same way, in relation to some of our admeasurements. In possession of these facts, and upon reviewing the whole course of Colonel Shepherd's conduct during the investigation, we had little doubt of his true object in wishing to have our notes; and we think we were equally justified in believing that he could again procure the proper kind of aid in effecting that object; justified or not, we refused; and these are the reasons which governed us in our refusal.

We might omit any further explanations or observations in relation to the history of our examination, tending to establish the conclusion, that the details and results of our admeasurement, now presented, are substantially correct; we will merely add, that the four large bridges have been measured, with the co-operation of Colonel Shepherd. They were precisely in the same situation, in point of difficulty of access, with those which we measured without his aid: no more care and circumspection were used, if indeed so much. It is not pretended, so far as we have been informed, that they are inaccurately measured; upon that measure he must rely for his proportionate allowance for increased dimensions. By reference to statement — the amount of mason work which had never been measured by Thompson appears. Will Colonel Shepherd admit that this is also correct, and accept of payment according to our admeasurement? or has he any other upon which we can rely? If our admeasurement of the large bridges, and those which had never been previously measured, are admitted to be substantially correct, and adopted as the correct data upon which a settlement is to be made, upon what evidence, what plausible reason can be adduced to withhold equal confidence in the accuracy of those which had been previously measured, and which had also been measured by us? We know of no consideration which would not equally effect both; and if Colonel Shepherd should succeed in establishing the position which has been adopted as the pretext for refusing his co-operation, on the ground of the impracticability of effecting an accurate measure of his bridges and walls, in the state in which they now are, he necessarily

defeats his own claim for a greater amount than the deficiencies discovered by us.

It is, however, alleged by Colonel Shepherd, that he is entitled to receive pay according to the admeasurement of Thompson, accurate or not; that he was the agent of the Government, and his acts as such are conclusive. It may not be irrelevant to recur to circumstances which occurred previous to the closing of the contracts for that portion of the road, particularly, which lies between Washington and Wheeling. There was some difficulty in persuading the President to sanction the proposals which had been made, and direct the contracts to be closed. Two objections arose—the first, that the price per mile for the road, and per perch for the mason work, was too great; the other, that the contracts proposed to be placed in the hands of individuals and of companies were too extensive. The answer given by the contractors, and urged by their friends, was, as to the first, the price of labor and provisions was high; and that there was an uncertainty whether an adequate supply of either could be obtained, even at the high prices then current; and that, of course, the risque was considerable, even upon the terms proposed. The price was admitted to be liberal, but was not supposed to be extravagant, under all circumstances as then existing. The answer to the second objection was, that, in placing an extensive contract in the hands of men, or companies of men, of respectable standing in society, both as respects integrity and wealth, an additional security was given to the Government, for a prompt and faithful execution of the contracts. It was urged, these men have characters to sustain or lose—of course, will be careful to discharge their engagements with fidelity. They are men of wealth, and, even if they should prove regardless of reputation, the Government can, out of that wealth, indemnify itself against their negligence or fraud. In giving contracts to men without established reputations for integrity, and without property, your only reliance, for the faithful execution of your contracts, is in the energy and vigilance of your agent, which, in a work so extended and complicated, may, and most probably will, prove inadequate. It is the interest of the Government that men of character and wealth should become contractors, as thereby the prompt and faithful execution is ensured: and they cannot be expected to take contracts unless they are sufficiently extensive, and the terms liberal, to become an object. The President acknowledged the force of these reasons, and directed the contracts to be closed. The reputation and the wealth of Col. Shepherd, as well as of those who were similarly situated, were held up to the Government as an inducement—as a consideration, upon which the contract for the acknowledged liberal prices proposed should be given him. Were those reasons and arguments delusive? They are so; and worse than delusive, if he is irresponsible for errors or frauds, which, as contractor, he was equally bound, as well as the agent of the Government, to guard against. Independent of these considerations, neither the terms nor spirit of the contract itself support his pretensions. Mr. Thompson was, to be sure, the agent of the Government; but, as respects this question

of *fact*, viz : the contents actually built in any particular wall or bridge, he was no more : he had no *exclusive* right to measure the work, or conclusive authority to determine the quantity. By the contract, Col. Shepherd engaged to do certain mason work for a specific price per perch. The position, shape, and dimensions were reserved for the direction and discretion of the agent, the superintendent. In these respects, no doubt both Col. Shepherd and the Government were bound by his acts while he remained superintendent. And why ? Because, by the contract, this discretion was reserved to him ; and, from the nature of the case, discretion ought to be exercised. But, in regard to the question of quantity which might be built by Col. Shepherd, no such control was given by the contract ; and, being a question which must be determined by known and certain rules, susceptible of mathematical demonstration, no *discretion* could be exercised by either party. When the work was done, the number of *perches* contained must be determined by admeasurement ; and, in making this measure, under the contract, neither party—the Government, represented by Mr. Thompson, nor Col. Shepherd—had any exclusive authority or duty, but merely concurrent. It was as much the right and duty of the one as the other to measure the work, and ascertain the number of perches contained : and, in case of any mistake by either, or disagreement between them, an appeal was to be had to a tribunal which cannot err—to the line and the rule—to *mathematics*. If Col. Shepherd thought proper to commit to Mr. Thompson the exclusive determination of quantity, it was his own voluntary act—not imposed upon him by the contract, nor from the nature of the subject ; and, in doing so, he constituted him his own agent. By becoming a contractor for the erection of bridges, and stipulating that he should receive his pay by the *perch*, it would be presumed that he either was competent to measure his work when done, and before he applied for payment, or that he intended to procure a competent agent for that purpose. If competent, and he did not measure it, it was his own negligence ; or, if incompetent, and from parsimonious motives, or from any *special* confidence in Thompson, he did not employ an agent that was competent, he ought not to be protected from the consequences of his own omissions or his own acts. Suppose the deficiencies which exist to have arisen *from mere mistake*, and that Mr. Thompson had confided to Colonel Shepherd himself the admeasurement of his own work, and had paid him accordingly, and the Colonel should afterwards discover that he had made as great mistakes against himself as it is now established Thompson has made in his favor—would he consider himself without remedy ? Would the Government hesitate one moment to inquire into, and satisfy itself, of the truth of the facts alleged, and, if found to be true, promptly correct the error ? The moral sense and feeling of every man in the community would revolt at the idea. It is understood, however, to be admitted by Colonel Shepherd, that, if the case had stood as when the contracts were made, and third parties, in the shape and name of sub-contractors, had not intervened, he would have been bound to correct the mistakes—he could have ob-

tained pay for no more work than was actually done by him. But, inasmuch as third parties have intervened, the work has been done by sub-contractors, and his payments to those sub-contractors have been regulated by the admeasurement of Thompson, in consequence of an express provision in his contract with them, "that payment was to be made according to the admeasurement of the superintendent," he contends that the nature of his case is changed, and that the Government are bound to pay him according to Thompson's measure, however erroneous it may be. The road contract, in which he was then confessedly interested, and since is said to have obtained the *entire* interest, and the mason contract, signed by him, were executed at the same time. By an examination of those contracts, it appears, that, in the road contract, there is a provision which sanctions and protects sub-contractors: in the mason contract, there is no such provision. It is presumed to be a fair and legal conclusion, that, when contracts are cotemporaneously made, and a provision of a particular nature and import inserted in the one, which is omitted in the other, the omission is an *exclusion*—is the result of *intention*. The claim in the road contract which relates to sub-contractors, does not seem to have been introduced for the purpose of exonerating the original contractor from his responsibility to the Government, but for the *protection* of the subcontractor. But, if even the other conclusion should be deemed correct, before the original contractor should claim an exemption from responsibility, it would be necessary to show that his sub-contracts were made and approved of by the superintendent, in conformity to the provisions in his contract with the Government. It was surely intended that the Government should have and retain the responsibility of some person, before the original contractor was released; and we feel confident that it will not be pretended that, in any one instance, was the sub-contractor recognised as such, in the manner provided for in the road contract, or that there was any privity of contract, or other connexion, between the Government and those sub-contractors, which would enable the former to coerce the execution of the contract, or correct any mistakes which might be made. The clause introduced by Shepherd into his agreements with his subcontractors, "that payment was to be made according to the admeasurement of the superintendent," cannot change his rights, or lessen his responsibility. There is no such clause in his contracts with the Government. By that contract, *he* was to be paid by the perch; and, as we have sufficiently shewn, it was as much his *right* and his duty to ascertain the true contents, as of the other contracting party, acting by their agent, the Superintendent. If, then, Colonel Shepherd and his sub-contractors chose to refer this question to the exclusive determination of Thompson, it was from considerations emanating from themselves in doing so; they voluntarily constituted him *their* own agent—their mutual friend; and any measure which he might make under that agreement was as much at their responsibility as if it had been made by any other indifferent person, selected by them. His being also the agent of the Government could not vary the case. The same

person may be the agent of any number of persons who choose to confide in him ; in doing so, however, each assumes, and is held to his own proper share of responsibility, without lessening or enhancing that of those who may have previously confided in him. Independent of the intrinsic evidence furnished by an inspection of the contracts, that it was intended to exclude the *intervention* of subcontractors in the construction of the bridges, there are some considerations which give weight, and are corroborative of this construction of the contract. The skill and attention necessary to make roads is much less than that which is necessary to build bridges ; and if, through want of skill or negligence, defects exist in the road, the remedy is easy ; if a part is insufficient, it can be made good, without interfering with that which is well done. This is not the case with mason work ; if a part, for instance, the foundation, gives way, or the ring stone or *sheathing* of the arch of the bridge, the whole bridge is useless, and must be taken down and rebuilt. Any man of common intelligence and honesty can make a good road : it requires the labor and experience of years to render a man competent to built a bridge. The defects or fraud in road making are more apparent and accessible to detection ; and hence it is reasonable that the Government should be more particular in their selection of mason contractors than for the road ; and when they have procured one in whom they can confide, or has the means of indemnity against negligence or fraud, that they should be more unwilling to risk a substitute. It appears to us evident, that, under the contract, Colonel Shepherd has no claim to protection against the mistakes which have been made, as a matter of *strict legal right*. Has he an equitable claim to protection ? Good faith is the *basis* of equity, and requires all the vigilance, diligence, and attention, which, under the circumstances, and from the nature of the case, can reasonably be expected from a prudent man. Claiming to be protected from the errors of frauds of his agents, or any other agents, it must not appear that he had notice of the fraud, or information of such facts in relation to it, "as would put a prudent man upon inquiry." If his situation has been such as must necessarily give him that kind of information, that ground of *suspicion*, which would and ought to lead a *prudent*, an honest man to *inquire* further—if he has had sufficient cause of inquiry, and has not pursued it—he cannot be protected, even in equity. The reputation of Colonel Shepherd, as a man of integrity, of vigilance, and attention to business, as well as wealth, was put into market to obtain the contract. These were the inducements, the considerations, upon which the Government was asked to give the contract to him. The nature of the work to be done under the contract, particularly when the amount and extent of it is taken into view, required integrity and vigilance on the part of the contractor. If dishonest or inattentive, the vigilance and attention of no superintendent would be adequate to guard against injustice and injury to the Government. It was within view of the contract, that he should employ others to do the work ; and hence the clause introduced, in which *he* engages to provide "a good and sufficient number of good

and experienced workmen." At whose responsibility, either as respects the skill or integrity of these workmen? If at the responsibility of the Government, nothing was gained by his integrity, his vigilance, or his wealth. The mode and terms upon which he should employ these "good and experienced workmen," whether by the day, by the month, the year, by the perch, or by the entire bridge, and at what price, were entirely left to the exercise of his own judgment and discretion, and whether he adopted the one or the other course, (and it seems he adopted all of them,) his risk and his responsibility for their fidelity and skill were equally retained. And why? Because this is the engagement he has made in his contract, to build the bridges; and for that purpose to employ "good and experienced workmen." Besides, by the terms of his contract with the Government he receives three dollars and twenty-five cents per perch for bridges; and it is not understood that he paid to any of his subcontractors, as they are termed, more than two dollars and fifty cents, receiving a profit of seventy-five cents upon every perch thus built in the bridges. In addition to this profit from twenty to twenty-five per cent., he received a considerable one upon the supplies of merchandise and provisions to his workmen—which may be properly taken into view, as, under the contract, an *advancement* of money was made for this very purpose, say 10,000 dollars on the bridge contract, and 20,000 dollars on the road, both executed at the same time, and which he was then jointly, and is now (as is said) solely interested. The profits, then, which he received on contracts, which cost the Government near three hundred thousand dollars, and which cannot be less than one hundred thousand dollars, would seem to be a sufficient *consideration*, independent of the terms of his contract, to hold him responsible for the errors or frauds of his own agents; and, while he retains this profit, he can have no claim to even the *equitable* or liberal consideration and interference of the Government. The very terms upon which the work was in fact done, may, in some measure, account for the frauds which have been practised. Men engage in business of this kind for the purpose of making money; of receiving a liberal and reasonable compensation for their labor and trouble; and, if this be not secured to them by the price allowed to them in the contract, a direct temptation is given to obtain it either in the *quantity* or *quality* of their work, and would require all the vigilance of all concerned to guard against this result. The greatest deficiencies occur in that portion of the walls which are under the surface of the ground, in the foundations; and the only reason or excuse given by Thompson for these deficiencies was, that *he had never measured* them, but had received the dimensions of those parts from the *contractors* and workmen. This statement of fact has been so generally and uniformly confirmed by the information of those who had every opportunity of knowing, that we feel ourselves justified in believing it true; and, although we cannot withhold our unqualified reprehension of his negligence and desertion of his duty in this respect, yet most assuredly the confidence reposed, even improperly, by him, in the con-

tractor and his agents, would not lessen their obligations of honesty and vigilance.

Admitting that Colonel Shepherd did not himself make those mistakes, or rather practice those frauds upon the Agent of the Government, it was however done by men whom he employed, by his agents; and the same principle which holds the Government responsible for the errors or frauds of their agents, would equally hold him responsible for the errors or frauds of his agents. The Government act by *agency* from necessity; Colonel Shepherd has done so of choice—from convenience; and it would be a solecism indeed, if he were not equally responsible, even in equity. But if, from the whole history of the case, and from the *evidence* of his own acts, it should appear that he was aware of the true state of the case, or had that kind of information which would lead to inquiry, there is an end to his claim. Instead of evidence appearing to satisfy us, or give a *shadow* to the conclusion that he has made use of due diligence in guarding against the frauds which have been practised, or that he was ignorant of their existence, much has appeared, particularly in the shape of facts and circumstances; during the course of our examination, which establish his obstinate and persevering negligence and *blindness*; or the conclusion is inevitable that he had notice sufficient to put him upon inquiry. Among the variety of cases which have occurred during our examination, we will refer to three or four; presuming, that, if these or any one of them justify the inference of his knowledge of the error, or of such facts as would lead to the suspicion of error, it matters not to him, even in equity, whether it be established that he had notice in the other cases. As one case *was*, others might be, erroneous, and it was his duty to ascertain. The first is the bridge in front of Mrs. Gooding's tavern, which was built under his own immediate eye and directions: it is near his residence, and he *furnished* the materials upon the ground. The rock upon which the abutments were built is bare, or apparent to the eye of the passenger. By Thompson's measure, the height of the abutments to the spring of the arch (which point is of course apparent,) is represented to be *fourteen* feet. The true average height of those abutments is seven feet eight and a half inches. The east one is seven feet five inches, and the west eight feet. By the eye, it is admitted that a person could not tell the exact height; but surely the difference could not escape the attention of even indifference, much less of a man who was interested in the subject, and who saw it daily when building, and passing it almost daily for years after it was built. And here let it be remarked with another view, Colonel Shepherd was present, as well as his assistants and Thompson, when we measured the bridge: this error was demonstrated, and was distinctly admitted by all. After seeing and admitting the existence of this error, did it not behoove him, as an honest man, to pursue the inquiry further, and ascertain for himself whether others equally important *might* not exist? How, then, can we account for his withdrawal and refusal to co-operate? and with what face can he now rely upon the accuracy of Thompson's measure? The second

is the case of the bridge first west of Carter's tavern. This was also built by Colonel Shepherd without the intervention of a sub-contractor. He dug the foundation, and furnished the materials upon the ground. By comparing our admeasurement with that of Thompson, it appears that the whole error is four hundred and fifty perches against the Government; and by examining the details, it will appear that the principal and almost exclusive error is in the foundations. Colonel Shepherd and his assistants were present, and the latter aided in the admeasurement. The depth to the rock upon which the walls are generally built is not great, and no difficulty is presented in the correct and certain ascertainment of the true depths. Besides, it will appear by the testimony of certain persons, which we took at his instance, that there had been a mistake in measuring the foundations; that, after it was dug, and a part of the stone laid, it was changed by the direction of Thompson, with an understanding that he was to be allowed for the work done. Had Colonel Shepherd no curiosity to know whether Thompson had allowed him for this work, and what sum, and finding by the returns of his admeasurement that nothing had been allowed directly, would he not naturally inquire, as to the extent of the indirect allowance, if any had been made? Here, again, the same remarks will justly apply as in the first case, in regard to the accuracy of Thompson's measure, and the duty was *enhanced*, by this second demonstration of error, to inquire further.

The third is that of the "bridge over Wood's Run." This is said to have been principally built by a sub-subcontractor. The sub-contractor's name is Church; he was present at our admeasurement. This bridge is directly on the road, as then travelled, to Wheeling—obvious, in all its stages, to all who passed the road; and it is admitted that Colonel Shepherd passed very frequently. It is contiguous to the residence of Colonel Woods, who, it may be remarked, signed this contract in this way, "Ar'd. Woods, and Arc'd. Woods, for Moses Shepherd." There is supposed to be no rock within a reasonable depth for a foundation; it is loose gravel and sand. Upon examining the notes of Thompson's measure, we found the heights represented, viz: pier height, to offset, ———, do. to spring of arch, ———, in all, ———. In sinking for the foundation of the walls, we soon came, in the case of the pier at the south end, within a few inches of the surface, to logs. It was there ascertained that the true height of this wall, to the spring of the arch, was only ——— feet ———, and of the west about ——— feet ———. The explanation given by Church, the sub-contractor, was, that these logs were put in by the direction of Thompson, and with the knowledge of Colonels Shepherd and Woods, as they then were, and that he was to be allowed for the logs. What allowance had been made he knew not, unless it had been in the measure. Further details are deemed unnecessary. Whatever doubt might exist, is in our minds sufficiently removed by the *evidence* of his own acts, his own conduct, relative to this examination. The Government had dismissed Mr. Thompson, their late Superintendent, and had given the work in charge to another. They had directed an

inquiry into his conduct, as Superintendent; and, as an incident, had directed the ascertainment of the quantity of mason work done under his direction—embracing, of course, the mason work of Colonel Shepherd. Of the inquiry, and the object of that inquiry, Colonel Shepherd was duly informed. The suspicion of error or fraud in the reported contracts of the work is enhanced in the very idea of a remeasurement. If satisfied that it was correct, it would be worse than useless to have it remeasured. That the Government had a right to have their work remeasured, by whatever agents they thought proper, at their own expense, Colonel Shepherd *could not doubt*. That they were determined to have it done, he *had no reason to doubt*. Claiming a large sum of money from the Government, predicated, at least in some measure, upon the accuracy of the former measure, and having no grounds to believe that this balance claimed by him would be paid until the result of a remeasure was known, his interest combined with his duty as the contractor to afford every facility within his power to effect that remeasure with despatch and accuracy. Delay itself was inevitable injury to him. If he had full confidence in the accuracy of Thompson's measure, he had no ground, he had no *right*, to presume that a remeasure would not establish that accuracy. If those to whom the remeasure was entrusted were supposed to be incompetent, his attendance would enable him to determine for himself whether this suspicion was correct, and, if correct, would give him the means of avoiding the consequence of any errors which they might make. In the very nature of the case, the measure of a wall affords no room for the operation of prejudice. Neither prejudice nor discretion can make it longer, thicker, or higher, than it really is. Villainy may contract or enlarge a *wall*, but neither prejudice nor discretion can. Errors will occur in the admeasurement of the most competent: but, if mere error, it will be as likely to fall on the one side as the other—they may balance. The local information, however, and the vigilance which a man interested in the result as contractor would bring to the aid of even comparatively incompetent measurers, would afford a reasonable security against injustice to him. And, if Colonel Shepherd entertained merely doubts as to the correctness of Thompson's measure, his prospects of advantage would be equal to the risk attending the result of a remeasure. If there were any peculiar circumstances attending his case, by which, in law or equity, he was entitled to protection against Thompson's measure—if, in the aggregate, they should prove to have been in his favor—his chance of protection, either at law or equity, would not be lessened, but would be increased, by a candid disclosure of all the information he possessed, and an earnest, vigilant co-operation in the measure. Why, then, unless he was conscious of the true state of the case, did he so uniformly and so obstinately refuse all aid, countenance, or co-operation in the remeasure? And, if aware of the *frauds*, (for, happening so uniformly and systematically on the *one* side, they cannot be errors, let who will be concerned) it will be admitted, we presume, that, however much he may have paid on that account, he has

no claim to protection, to even the exercise of *liberality*, on the part of the Government. But, admitting that, under all the circumstances of this case, he is entitled to protection, what is the extent of that protection? It cannot be the full amount of the contract price per perch, according to Thompson's measure; but at most must be confined to the amount actually paid by him for work, which, according to our measure, does not exist, but which he paid upon the faith of Thompson's measure being correct. His profits upon the deficiencies are inadmissible under any view of the case. It appears to us, however, that, before Colonel Shepherd can sustain an equitable claim against the Government, for an excess of money paid to his sub-contractors upon the faith of Thompson's measure, he ought to establish the fact that it is *lost* to him. These are the men to whom he confided the execution of his contract; they have imposed upon the Agent of the Government; and have, through him, Shepherd, received pay for more work than is done. The amount thus received, whether through mistake or villainy, is without consideration; and there seems to us no principle of law or equity which would prevent Colonel Shepherd from recovering it back again. Unless more be meant than meets the eye in that clause of the contracts which provides that they shall be paid "according to the admeasurement of the Superintendent," there can be no legal or equitable difficulty in the case; and, if this clause was inserted with a view to the very case which has occurred, neither law nor equity can protect *him*. The men who have pocketed the money without *consideration*, to use the mildest term, ought to be compelled to refund. The Government cannot *coerce* them—they know them not—there is no privity of contract or payment by which they can reach them without equal fault. Colonel Shepherd can. There are few, if any of them, insolvent. Daniel Steinrod is a man of wealth; and there cannot well be a good reason advanced why the Government should pay money to Shepherd, which, in effect, is to protect him. Church is not insolvent: so far as we are informed, and believe, he has adequate means to refund any excess which he may have received. Is it pretended that Skinner is either paid or insolvent? We have no information which would justify us in believing either to be the fact. By adopting this principle, viz: that Colonel Shepherd shall only be paid the *actual* amount *lost* by him through the error of the superintendent, and the insolvency of his sub-contractors, we presume to think the amount will be very inconsiderable—not worth disputing about. In this way, there will probably be more difficulty on the part of Colonel Shepherd to prove the *fact* and amount of his payments. Receipts are *prima facie* evidence of payment, but no more. Receipts are frequently given upon settlements of accounts and *notes*, or other security for the balance taken, instead of money. This may be the case with his receipts: by his own admission, *it was* the case in one instance, when he presented his receipts to us; in addition to which, he then admitted (October 24, 1820) that those receipts, without date, had, in fact, been given on the day before, (October 23d, 1820.) In

regard to the question of fact, whether he has paid, and how much, to his sub-contractors, beyond their dues, after deducting the deficiencies we always informed him, that, if he intended to rely upon it, he ought to produce his evidences to us, in order that we might inquire into all the incidental facts of each particular case. The details, as respects the particular contracts, their locality and extent, together with the names of contractors, were known to us, or at least some of us, which would enable us, with more facility and certainty, to determine whether it was established, than could be done at Washington City. That, as we intended to transmit not only our opinions, but the evidence or data upon which it was founded—if, through mistake or *prejudice*, our conclusions were erroneous, they could be corrected; and that of course he might gain, at least as to time, but could not lose by now presenting them. Colonel Shepherd seemed at least to be sensible of the propriety of this course, and on the day before we left Alexandria, the 24th of October, 1820, presented some accounts and receipts. As he did not choose to give us the originals, we suggested to him to have them copied, compared, and attested, and forward the copies to Mr. McGiffin, at Washington, Pennsylvania, as soon as convenient, together with any other evidence he might think proper. This he promised to do, but has not. Upon the whole, we feel fully justified in expressing our decided opinion that his allegation, that he has fully paid his contractors according to Thompson's measure, is not founded in fact. Upon a review, then, of the whole case, it appears to us, conclusively, that, neither upon strict legal principles of law, nor from the most liberal principles of equity, is Colonel Shepherd entitled to receive pay for more than is embraced in our admeasurement. The foundation of all the deficiencies, and consequent embarrassment of his case, seems, to be attributable to one radical error adopted in the outset, and persisted in to the last—a misapprehension of the nature and extent of his own engagements under the contract, and a misconception of the duty and authority of the superintendent. In all contracts of this kind, some discretion is necessarily reserved and exercised by the agent of the Government. But this discretion regards those matters merely which are not made, and frequently are not susceptible of being made, matters of specific stipulation or description. Whenever, by the contract, a specific stipulation or description is made, no discretion can be exercised, it then becomes a matter of contract, in regard to which the parties are equal; neither can do more nor less than execute it. The same principle is equally correct when applied to subjects which cannot, by any exercise of discretion—for example, quantity, or distance—a perch of stone, or a mile of road—in neither case, can any discretion or authority of either party make the one more or less, or the other longer or shorter. Fraud or mistake may do either. It would not seem, however, that this delusion, as to the unlimited discretion of the superintendent, always existed in the mind of Colonel Shepherd. Instances will appear hereafter, when he could appeal to his contract, and doubt, if not deny, the discretion of the superintendent, when proposed to be exercised in a way which would inter-

tere with his rights in cases of specific contract. The case of the proposed change of location to avoid the four large bridges, and that of the *side walls* being embraced in his contract, will now suffice as instances. There would even then be little reason to believe that his misapprehension or misconception were real in regard to those cases, which have occurred, but which operated in his favor.

It is to be regretted that the description of the dimensions of the special contract bridges had not been made with more precision in the contract; and no good reason has occurred to our minds which could have induced the parties to leave to construction or to discretion these things which manifestly might have been made matters of specific contract. By an examination of the contract, it would seem to us, that it was intended that each bridge should have *one arch*—two of 100 feet chord or span each, and two of 75 feet chord or span. The construction of these bridges upon this plan would have been much more expensive than upon the one adopted in the execution, viz: building three arches, which, in the aggregate of their span, amount to 100 feet, and to 75 feet, as it is well known to every man conversant with the subject. The change, therefore, which has been made in this respect, might justly have been taken into view in making the proportionate allowance, to which he is no doubt entitled, for an extension of the width of the bridge.

By the contract he is entitled to a proportionate allowance, in case the size or dimensions are altered or increased from those which are specified in the contract. The only description which is definite is in two particulars, viz: the size of the arches, and the width; and, as an alteration and extension of these dimensions have been directed, the one advantageous in its effects, and the other clearly entitling him to an increased allowance, the effect of that alteration which is beneficial is a fair item in the consideration of the question, what is a *proportionate* allowance under the contract? Conforming, however, to a rule which we early adopted in the course of our examination, to give the contractor the benefit of every doubt which might arise, and, as it was supposed that a *shadow* of doubt might arise upon the evidence of Mr. Thompson, who says, in express terms, that it never was intended to build the bridges with only one arch, we have not taken it into view in our calculations. In regard to the width, we have adopted this construction, that the engagement to build the bridges 20 feet wide must mean that there shall be a passage or thoroughfare over the bridges 20 feet wide. The road, by act of Congress, must be stoned 20 feet wide; and in contracting to build a bridge on a road which cannot be made of stone less than 20 feet wide, it would seem that this must have been their intention. If the 20 feet be calculated from outside to outside, there would be only 12 feet between the walls over the arches for a road, and only 16 feet between the parapet walls. Independent of these considerations, which arise out of the subject-matter of the contract. Mr. Thompson, who was privy to the making of the contract, says that it was the intention to have the *capacity*, or passage over the bridge, 20 feet wide at the least, although

he owns that, in point of fact, it never was intended that the *capacity* should be confined to 20 feet. The bridges are built 40 feet wide, and we have allowed 16 feet as the additional width, for which Colonel Shepherd is to receive a proportionate allowance. This 16 feet has been allowed on all the piers, abutments, arches, and backings, which parts of the bridge are alone effected by the increased width. The wing walls, and walls over the arches, and ring-stone of the arches, which are most expensive, would be the same, whether the bridge be 20 feet or 40 feet wide, when there is no greater filling than exists here. Colonel Shepherd, however, not only claims the 20 feet as the increased width, but all the wing walls beyond 12 feet at each side, viz: 48 feet of wing wall to each bridge. It is a circumstance not the least singular attending the whole of this business, that neither the Government nor we should have been able to obtain, from either the late superintendent or the contractor, the extent or nature of the claim for proportionate allowance for these four special contract bridges. By your letters of January 16 and 19, 1819, the attention of Mr. Thompson was called to this subject in a manner which could not well be evaded. It is presumed, however, that no information was given, as nothing to that effect appears; and besides, after Mr. Thompson was removed, and forwarded his statements of work done under his direction, he mentions those bridges as being finished, or nearly so, and states the price in each case, corresponding with that mentioned in the contract, giving no intimation whatever that any thing beyond the contract price was due, or claimed by Colonel Shepherd. It appears, however, by information received by us from undoubted authority, that, so early as the Autumn of 1817, Mr. Thompson informed individuals that those bridges would cost the Government 80 instead of 40,000 dollars; and it would seem probable that the 32,000 dollars in Thompson's estimate of 1818, was intended to cover the proportionate allowance for those bridges; we mean the 32,000 embraced in, and over and above, the *data* which he furnished in his estimate, and which is referred to in your letter of January 19, 1819. We early applied to Mr. Thompson for information upon this subject, but received for answer, that no additional allowance had been made or fixed upon by him, nor any understanding or agreement made with Colonel Shepherd in relation to the question, and concluded by referring us to the contract. We then applied to Colonel Shepherd, and asked him to inform us of the nature and extent of his claim for additional compensation, and the principles or data upon which it was founded. He answered, that he claimed additional compensation beyond what was expressed in the contract; but instead of intimating the nature, extent, or principles upon which he claimed, also concluded by referring us to the contract. It is not to be presumed that Colonel Shepherd had entered into a contract of the nature and extent of this one, and had not at least put his own construction upon it—did not know his own intention; and that reason, therefore, which was given by himself and his friends, for withholding any statement of his claim, could not be sincere. And after the information was communi-

cated by Mr. Thompson, as early as 1817, we have as little reason to believe his answer *candid*. At a late period, Colonel Shepherd handed us a bill or statement of his claim for those bridges, amounting to between 71 and 72,000 dollars, which, on some pretext or other, he withdrew. The basis of his claim seems to have been partly under the special contract, and partly under his general contract. He first calculated the bridges as if built 20 feet wide from outside to outside, and with wing walls of 12 feet in length each, to 48, to each bridge. For this he charged the contract price. He then stated the contents of the increased width at 20 feet, for which he charged the proportionate price per perch, according to the former statement. To this he added the wing walls beyond the 12 feet which was embraced in his first account, and charged the aggregate at \$ 3 25 cents, his contract price for other bridges. The claim for the wing walls is justified by Colonel Shepherd, by a plan of these bridges furnished him by Thompson, in March, 1818, which contracts the wing walls to 12 feet. It will be observed that this contract was closed in February, 1817. Any plans, therefore, or directions which Thompson might have subsequently given, could only be in *execution*, not in alteration or abrogation of the contract. Had this plan been made out before the contract, and referred to in it, there would be reasonable ground for giving it the effect proposed; it would then have been part of the contract, and as such available. This, however, cannot be pretended; and how it happened that such a plan was given by Thompson, is somewhat unaccountable, particularly at that late period. In the year preceding, many bridges had been erected, and were in progress—many of them over small ravines; and there is probably no bridge built under his direction with wing walls so contracted as contemplated in this plan. Bridges built at these positions on this plan would, in any event, appear extraordinary; but when compared with these which had and have been built by the perch, would evince an inconsistency of plan, inexplicable upon any other principle than naked favoritism. In the contract there is no reference to the wing walls; and, as it is not pretended that the bridges should be built without any, it would of course be within the discretion of the superintendent to determine their extent; and in doing this, it is presumed he would be governed by what was customary in similar situations on the same road.

It is well known, and could not have escaped the attention of either of the parties, that, to all bridges, "*ex vi termini*," wing walls, to a reasonable extent, are incident; they are built in and with the arches, and constitute a part of the bridge. The extent will, of course, be greater or less, according to the position—to the nature of the crossing place; and any contract to erect a bridge over a particular stream, at a particular place, would embrace the erection of wing walls reasonably necessary to enable the public to pass over the bridge. But upon what principle does he adopt the general contract price for the extension of wing walls? This is not the rule of allowance stated in the contract; by it, he is to be paid a proportionate allowance; and, if cor-

rect in his construction, or rather gratuitous assumption, that he is to be paid for those wing walls, it must be in the proportion which that *extension bears* to a bridge of the dimensions designated in the contract. By this rule, his claim for these bridges would be near 90,000 dollars. The construction adopted by us, and the allowance made, is presumed to accord with justice, and is the only fair one of which we consider the contract susceptible. Much has been said by Colonel Shepherd and his friends, or those interested in the success of his claim, upon the subject of his taste, liberality, and public spirit, displayed in the erection of those bridges in a style that reflects credit even upon the nation; that he is likely to lose by this course of conduct; and that he is entitled, not only to the sympathies of the public, but the liberal protection of the Government against losses which he must otherwise sustain. The effect and impressions made by general statements are frequently dissipated by an examination in detail of the facts and circumstances assumed in these general assertions. It may so happen in this case. The ambiguity or want of precision in the contract, from which he is likely to suffer, if at all, is attributable to himself: it was his own voluntary act to enter into the contract; and whether he loses by the effect of his *own accident* or design, it is not the less his own affair. An examination of the contract, and the execution and the course of conduct pursued by him in relation to this subject, together with a variety of incidental information which we have received, would lead us to the conclusion, that it was not intended originally that either the public at large, or the Government, should be apprized of the cost of these bridges until it was too late to be remedied. Besides, in the Fall of 1817, before either of those bridges were commenced, Mr. Skinner proposed to avoid them altogether, at a saving to the Government of the sum which it was then stated by Thompson they would cost—40,000 dollars, and at a profit to Shepherd of 20,000 dollars. The change of location was not only practicable but otherwise advantageous to the public, besides the saving of expense, as it would have lessened the distance. He was then warned by Skinner, that the building of these bridges would not be as profitable to him as he then appeared to suppose; he still, however, opposed the measure, and insisted upon his right, as a special contractor, to prevent any change whatever at these points. Mr. Thompson, it seems, concurred in this opinion, and the project was abandoned.

It is very doubtful, however, that he can have lost any thing, even upon his special contract, with all his display of taste and liberality, which, by the by, is certainly confined to two of the four. We have allowed him \$23,694 94, for the two upper and smaller bridges, costing the Government little more than \$5 20 per perch. These we are assured were built to him, by subcontract, for \$3 per perch, and would therefore amount to only \$13,610, giving a clear profit, on two of the four bridges, of \$10,084 94. He is allowed for the other two, \$27,736 71, equal to \$4 27, and a fraction over, per perch. Now, if to this sum you add the profit which he makes on the former two, a part of the same contract, he receives \$37,771 65, applicable to his

indemnity for building the two latter, equal to \$5 81 $\frac{1}{2}$ per perch. This, it is presumed, under any thing like prudent and intelligent management, would be a liberal compensation for these bridges. What they really cost him, we know not; for, although he frequently proposed exhibiting to us the cost of these two bridges, yet he never did. The bridge over the "Big Crossings," at Smithfield, built by Kincaid, by special contract also, came to \$3 50 per perch, as we are informed; and we also understood that the piers and abutments of the Monongahela bridge, at Pittsburg, were built for \$3 per perch. The character of the work in the two latter cases is at least equal to the best of Col. Shepherd's, in every other respect than the *dressing* of the stone for outside show. It may also be remarked here, that, although in the case of these special contract bridges, the work be well done, yet, in the other bridges and walls which are built under his general contract, there are a great many exceptions. Above ground, and from an extensive view, they appear well in general, but in the main, *bulk* is substituted for workmanship; and when the earth is removed from the foundations, and from the inside of the walls, the character of the work can at most be called "*middling*." In the most cases, walls of two-thirds the thickness of those which are built, if well done, would have been more permanent, and would, of course, have saved to the Government one-third of the expense; and it would seem to us that any credit which may be due to him for the character of the special contract bridges is more than counterbalanced by the inferior quality of the *great* body of his other work. It may also be justly remarked, that he is allowed \$14,274 61, for the bridge near his own house, which is not upon any location sanctioned by the Government, and is at the extreme southern point, expressly stated by you to be inadmissible, in your letter of June, 1819, hypothetically approving of a change of location. By a concealment of the true state of the facts known to him and the late superintendent, an alteration was provisionally approved by you, which is manifestly to us permanently injurious to the public, inasmuch as the distance is increased 53 rods in less than one mile, for no other reason than to gratify his pride, and subserve his interest and convenience. In strict legal right, this item of his account might have been excluded. We have, however, allowed all the work, and probably more, which would have been necessary at the point provisionally sanctioned by you. There are walls built to this bridge, for which we have not allowed him any thing, as, beyond all question, they are rendered necessary by *the position* of the bridge. For instance: the wing wall, which is directed from the direction of the road at the extremity of which his monument is erected, can have no other use than to facilitate his communication from the United States' road to his own house, and as a connexion with a county road. At the same side, a culvert is also built, no otherwise necessary than as above. A long wall is also attached to the wing walls of the bridge, which is alone rendered necessary in consequence of the bridge, as now built, being placed close to the other principal branch of Wheeling creek. But, if it should even appear that, as regards these spe-

cial contract bridges, he is not entirely indemnified by the sums allowed, yet, if, upon his entire contracts, contemporaneously executed with the Government, he should demonstrably receive a profit which must not only indemnify him for any loss, but liberally, and even profusely, compensate him for all trouble and risk in the discharge of his engagements with the Government, it is presumed he can have no claim upon either the sympathies of the public or *liberal* protection of the Government. Although he has been frequently urged to disclose the nature and amount of what is termed his subcontracts, as well for the road as the bridges, he has never given us any satisfaction, but not very indirectly intimated his own opinion, that even inquiries on this subject were irrelevant, if not impertinent. From information, however, which is relied upon by us, as substantially correct, his profits, received upon all his contracts with the Government, direct and incidental, cannot be less than \$100,000.

On reference to our statement or exhibit, marked —, it will be observed that we have excluded certain items of claim which appear in Mr. Thompson's book, and which it was most probably his intention to admit in the shape and to the extent there stated. There are two classes of cases embraced in this exclusion: one embracing certain brace walls or supporters, a number of double culverts, one four feet span high culvert, into pieces of side walls and conducting walls at particular bridges; and the other, certain statements of work done, which was abandoned by change of location or plan, and for work which was taken down. As to the first class, we have rejected them entirely; but as to the second, we recommend an equitable allowance, which will appear in our statement of the account. It may be necessary to refer to the particular items in detail, and give the reasons which in our opinions justify the decision which we have made. The first item of the first class is, "the brace walls to the side walls at east foot of Wheeling hill." By an examination of Mr. Thompson's book, it appears that the contents of the side walls are 741 perches 11 feet 4 inches; and the contents of these brace walls, which were subsequently built to support the side walls which had given way and were likely to fall down, are 307 perches 11 feet 3 inches. From a careful examination of the workmanship, the height, and thickness of the side wall, aided by Mr. Coultard, we are unhesitatingly of the opinion that the necessity of the brace walls or supporters was alone incurred from the insufficiency of the workmanship in the side wall. Independent of the circumstance of the thickness of the wall being sufficient, if well built, to sustain the pressure of the filling, which exists as a matter of opinion, there exists this analogous proof at the same place, viz: the wing walls of the bridge to which this side wall is attached, are of a greater average height, and less average thickness, and yet remain good. The contract required good and sufficient workmanship; and although the superintendent might, in his opinion as to the character of the work, form an erroneous view, yet, when a wall of greater thickness, and much less average height, gave way, and was likely to fall down, beside one of greater height or less thick-

ness, it is inconceivable that his *error* should longer exist. Finding the wall giving way, from no probable or assignable cause than insufficiency of workmanship, his *discretion* might have been exercised in one of two ways : either compel the contractor to take down and rebuild the wall at his own expense, or permit him to support it with brace walls, also at his own expense. To permit him, by any exercise of *discretion*, to accept of bad and insufficient work, is changing his power from *executing* to avoiding the contracts; and it matters not whether he does this from being *imposed* on by the contractor or workmen, or whether he does it from motives of favoritism to, or collusion with, the contractor, as it respects the justice of the assertion of the claim. Good faith on the part of the *contractor and the agent* of the Government can alone protect the former. In addition, we may remark that, by our measures, this wall only contains 519 perches 3 feet 5 inches, and the brace walls 220 perches 17 feet 2 inches; in all, 739 perches 20 feet 7 inches—instead of 1046 perches 22 feet 7 inches, as stated in Mr. Thompson's book.

The second item of the first class of cases embraces certain "double culverts," which have been built and charged to the Government, and which, in our opinion, are clearly within the road contract, and were built in this form exclusively with a view to evade that contract. It will be remembered that Col. Shepherd is substantially, although not originally, in name, the road contractor, as well as the contractor for mason-work within certain points. The road contract was taken in the name of George Paul, and the mason contract in the name of Moses Shepherd; but it is known, and, if denied, is susceptible of distinct and clear proof, that Col. Paul and Col. Shepherd were mutually interested in both contracts, and that Col. Paul subsequently parted with his interest to Col. Shepherd. By the terms of the road contract, all bridges and culverts under "four feet span" were to be built at the expense of the road contractor. As we have not been furnished with the original notes of the location, we cannot say whether the culverts of this description, which were deemed necessary, were designated in these notes. It is usual, in preparing the notes previous to letting the contracts, to designate the bridges, culverts, &c. which are then determined to be necessary, in order that the contractors may be apprised of the extent and nature of the work they are about to undertake. In practice, the superintendent is not confined to the number and dimensions of the bridges and culverts as designated, but increases or diminishes their number and dimensions, according to his judgment of their necessity or adequacy. The changes, however, which are generally made in particular places, will not, in any considerable distance, essentially change the nature or extent of the work. In one place, where a culvert is designated, he may think it unnecessary; and in another, where none is noted, he may determine it to be necessary; and so of the dimensions of those which are noted. This *discretion*, however, which is admitted to exist in, and, in practice, to be exercised by, the superintendent, is presumed to have its limits. The spirit and intention of the contract, as

disclosed by the *terms* and subject matter, it is presumed, form a barrier in favor of the contractor against a capricious or wanton exercise of discretion, whereby oppression would result, and, also, in the favor of the Government against favoritism to, or collusion with, the contractor, resulting in a sacrifice of the interests of the Government. The terms of the contract are, "The contractor is to find materials, and make and construct all bridges and culverts under four feet in width, in such manner as the superintendent shall direct." The word "manner" would not seem to imply *place* or *position*; and hence it is reasonable to presume, either that the notes of the location, which was before the parties designated the "places" where these bridges and culverts were to be constructed, or that they left this question of place, which of course implies the number, to be determined by the *subject matter* of the contract, viz: whatever would be reasonably necessary to protect the road from the water running over or alongside of it, so as to injure its permanency. It is known, however, to all even slightly conversant with the subject, that *water* is the great ruin and destroyer of roads; and hence it is necessary to conduct, by some means, the water from and off the road, as frequently as may be necessary and reasonable, taking into view the situation and nature of the ground over which you are making it. By keeping it dry, and, in time of rains or floods, providing, by the curvature in form, and by the side gutters and ditches, and passages under or over the road, at convenient distances from the immediate discharge of the water, a good and permanent road can be made of comparatively indifferent materials. If you permit the water to run or remain on or in and through the stoning, the road will soon be destroyed, although made of the best materials in the world. When the road is made along a side hill, it is necessary to provide for the passage of water to the lower side, within reasonably short distances, although no permanent stream or ravine may intervene, otherwise the water which falls and runs down the side hill, after being obstructed by the road, runs along the side of it, and, if your distance be extended, will accumulate and run over the road, besides intermediately washing away the side roads, which are formed by earth. By extending the distance, you *may* make it necessary to build a bridge or a two or three piped culvert, when two or three or four single culverts, under four feet, if placed at intermediate distances, would discharge the water much better, and with much less injury to the road. It is equally obvious that it is for the interest of the public to pass the water which runs in permanent streams, gullies, or ravines, immediately at the point of contact with the road; and that the size of *each particular* stream will determine the dimensions of the bridge or culvert which may be necessary; and it is not competent, under any exercise of *discretion*, nor could it be called discretion, to force those streams along side of the road, until, by the intervention of two or more, a different description of mason-work would become necessary. Reverse the case of Col. Shepherd, and suppose some other person had contracted to construct the culverts under four feet, and that he had contracted to build the

bridges within certain points for a *specific* sum, instead of being paid by the perch, and that Mr. Thompson had connected two or three streams, each of which separate would have only required a culvert under four feet, but collectively would render a bridge necessary, and thereby had imposed the expense of a bridge upon him—would he have submitted? Would he not have contended that it was contrary to the reason and spirit of his contract? The *principle* is substantially embraced in the application of Mr. Thompson to the Department, in relation to this very subject. The case stated is, When, from the size of the stream, bridges even were necessary, or culverts greater than specified in the road contract, and it would be best for the road to build them in the culvert form, with two or three pipes or openings: and he asks, who is to be at the expense? He is answered, at once—the Government, to be sure; otherwise, the contractor might be compelled to pass the water of the principal streams, which would be unjust and unreasonable, not warranted by the terms or spirit of the contract. If, then, in the opinion of Mr. Thompson, it was incompetent to *subdivide* the streams, or pass them in the form of culverts, with two or three openings, under four feet, and thereby *compel* the contractor to be at the expense of superseding bridges—whence is his authority, or the principle upon which it rests, to *connect* streams which separately would require a culvert under four feet, (and in that case would have been done at the expense of the contractor,) and *thereby* make it necessary to build culverts of two or three pipes, and, in consequence, make the Government bear the expense? His application to the Government implies at least his doubt; and if he doubted his power to *decide*, why not have equal doubts of his power to connect? The reverse of his doubtful case could not escape him. With regard to the principle, it would seem that no difference of opinion exists; and why any application should even have been made in relation to a case so obvious, we cannot conceive, if it had been intended to practise fairly within the principle embraced. If, however, it were intended to obtain from the Government a sanction under which an evasion of the contract might be plausibly justified, the application was natural enough. That this was the case, we unhesitatingly believe; and shall now adduce some of the facts and circumstances upon which we feel justified in expressing this belief to the Government.

It is not to be expected that the intention or fact of evasion would be disclosed by a direct avowal of either the superintendent or the contractor. Within the 18th section of the road made by Steinrod, and which extends one mile and 153 rods, as per contract, there are 18 single culverts built under Colonel Shepherd's mason contract, and charged to the Government. In the first 6½ miles of Shepherd's road contract, where he was to build the culverts at his own expense, there is *one* single culvert under four feet, and there are ten double and three piped culverts, and one of four feet span, all charged and measured (except the four feet ones) by Thompson, or entered in the book. The nature of the ground furnishes no reason for the une-

qual distribution of culverts, nor is there one instance within the 6½ miles above stated, where a single culvert within the contract would not have been sufficient. In general, they are placed at extended distances, so as to pass the water of two or more ravines. To be correctly understood, a person must see the ground: no description upon paper can give the same adequate idea and impression of the real nature of the case. If we could believe that any honest man, with common intelligence, upon reviewing the ground, would *express a doubt* upon the subject, we would have recommended payment. Within the remaining 6 miles to Alexandria, a reasonable number of single culverts have been built by Mr. Skinner; six double culverts were also built, three of which we have rejected. The three which are admitted appear to have been built where bridges were originally intended; and it is possible that a single culvert under the contract might have been inadequate. We have direct information that two other double culverts were directed where single ones have been built and proved sufficient, and that Mr. Thompson expressed dissatisfaction in both instances. The first case is where two small ravines were not far distant; and Mr. Thompson directed Mr. Skinner to build a double culvert in one of them, and bring the other along the side of the road to it. Mr. Skinner, believing a single one at each place would be better, and not knowing the *chasm* between double and single culverts, built them in that way. The other was where a bridge had been built under his directions, afterwards discovered to be useless, and directed to be taken down. Mr. Thompson, it seems, had measured the bridge, and had given the bill to Mr. Hardisty, who had built it under Skinner, who held under Shepherd, and had directed Skinner to build a *double* culvert, but he constructed a single one; and, when Hardisty understood, subsequently, that his bridge had not been noted on Mr. Thompson's book, that he was, in consequence, not likely to be paid for it, he called on him to know the reason. Mr. Thompson told him he must look to Skinner for his pay: as he had built a *single* instead of a *double* culvert, in place of the bridge, contrary to his direction, the Government would not pay for the bridge. He never intimated, to either Skinner or Hardisty, that the single culvert was insufficient, and it is now proved by time and use to be fully adequate. Why the payment by the Government, of the bridge which was taken down, should depend upon the erection of a double culvert in its place, is not for us to account. He who creates may dissipate the mystery.

In regard to the single culvert of four feet span, we have only to observe, that there is no permanent water at the place, and one of a few inches less span would have answered equally: besides, it is upon the changed location at Shepherd's house, and is only rendered necessary (if at all) in consequence of that change. The third item of the first class is contained in two conducting walls at two bridges. As to the first, that at the bridge above Bentley's Tavern, if necessary at all, it is an incident to the bridge which is built by special contract. But the only reason which made it necessary, was the removing of the

earth and rocks from the points of the hill, to fill the bridge, by the road-maker. And, as Col. Shepherd is both road-maker and bridge-builder, it would be unjust to pay for work which is alone rendered necessary by his own act.

The other conducting wall is at the bridge above Bell's Tavern. The real contents are 84 perches 9 feet, instead of 155 perches 13 feet 6 inches. The same reason which was given in the former will apply to this, as far as respects the removal of the earth to fill in the bridge by the road-maker. Besides, as respects both of them, by the contract Col. Shepherd was bound to conduct the water through his bridges; and if he chose to build walls for that purpose, instead of clearing out the channel, it was his own affair. The obstructions to the passage of the water through the arches above and below, have not been removed, although his attention has frequently been directed to the subject. There is one other claim which we have rejected, which remains to be mentioned—a small side wall annexed to the bridge just west of Mrs. Gooding's. It would seem that at one time, Mr. Thompson had directed the wall to be built, but afterwards countermanded, in consequence of *your directions* to curtail the mason work. Col. Shepherd insists upon his right to be paid, because, Thompson having once directed it to be built, and the stone being quarried, (which appears to be the fact,) he had no right to countermand. If the claim had been for the price of quarrying the stone, say 50 cents per perch, it might have been allowed; but, in the shape in which it is presented, is clearly inadmissible.

The second class of cases relates to work taken down and rebuilt, and for which we recommend an equitable allowance. The first case which occurs, is the "bridge over Lee's run." It would appear from the entry in Mr. Thompson's book, that 376 perches 3 feet 11 inches had been built in a bridge, which, from a change of location, was abandoned. The new location is within about 50 feet of the old; and, over the same stream, a concave and foot bridge is built, amounting, as per same book, to 339 perches 1 foot 1½ inches. The stone are removed from the former, and were, no doubt, built in the latter. It may be proper to remind you, that it is within the section originally taken by Coffield, and subsequently by Steinrod; and that Steinrod contracted with Col. Shepherd at, as we are informed, either \$ 1 and 75 cents or \$ 2 per perch, to construct the mason work, which had not been parted with within his section. The change of location mentioned in Thompson's book refers to the general change which was made within this section, which has been explained. There was no slipping of the hill *at the bridge*, which made it necessary to alter the location, as would seem to be implied by Mr. Thompson's entry. It will be observed, also, that the contents of the bridge, which was partly built, and of the concave, foot bridge, and culvert, which are substituted, are within about 37 perches of being equal; and, when it is remarked that a wall of 74 feet long is annexed to the foot bridge of nearly five feet in height, and four feet seven inches thick, and only comes to the surface, for which no object or reason appears, it would

seem that no loss of materials was intended. It is admitted that any Superintendent may sometimes be mistaken; and that, in consequence, work already done may have to be changed, taken down, and rebuilt, or abandoned. In such cases, an indemnity equal to the injury sustained ought to be made to the contractor. The rule of compensation will vary according to the particular circumstances of each case. In this case, although the work which had been done was abandoned, yet the *same* materials were employed in *other* work contiguous, for which the contractor claims and is entitled to pay. The price stipulated in the contract is to indemnify the contractor, as well for the *materials* as for the mere workmanship; and when, as in this case, the same materials are used, there can be no reason or conscience in charging the Government the contract price in both cases. The injury is, that the contractor was compelled to lay the stone twice, not furnish the materials twice. By paying for the second work, which was made out of material which had been built in the former, you meet all the expense incurred by the contractor, except the price paid to masons for laying the stone in the first place, and removing them to the second position. We are not apprised of the exact amount paid the masons for laying the stone in this bridge, but, from the general prices, which are known to have been liberal at that time, it would be from 75 to 87½ cents per perch. As the work was principally in the foundation, where lime and sand are not used, it is pretty certain that 12½ cents per perch would indemnify the contractor for the loss of this description of materials. Hence, *one* dollar per perch would be the amount of the *actual* loss, as respects the *mason* work. Twenty-five cents per perch would be a full price for removing the stone 50 or 60 feet. It therefore appears to us equitable and fully liberal, to pay one dollar twenty-five cents per perch for the amount stated to be done in the bridge which was abandoned. Our general account shews the gross amount.

The second is the case of a "culvert at Wood's Narrows," which, it would appear by an entry in Mr. Thompson's book, after it was built, slipped into the creek. The contents, as stated, are 124 perches 6 feet 5 inches. The fact of a culvert having been built, and, owing to some slipping, being abandoned, is, probably enough, true, but the evidence of its slipping into the creek has alone appeared in Mr. Thompson's entry. The materials remained; another culvert was made at the same place or very near it; and hence the same rule of indemnity which was applied to the first is applicable to this, with this difference, that the price paid the masons for rebuilding culverts was considerably less than for bridges, and there is no mortar in them. 75 cents per perch would be an adequate indemnity. The amount of allowance appears in our general account.

The third embraces work which had been built, and was taken down, to enlarge two bridges, and lower the arches of another bridge. The first is the bridge below Bell's Tavern, and the amount of work taken down is stated in Mr. Thompson's book, to be 132 perches 15 feet. The second, at bridge 2d, above Bell's Tavern, is work taken down to

lower the arches, 28 perches 10 feet 8 inches. And the third, work taken down to enlarge the bridge above Hardisty's, will amount to 101 perches 7 feet 9 inches. In the aggregate, amounting to 262 perches 8 feet 8 inches. The principle and rule of indemnity which was adopted in the case of the "bridge over Lee's run," has governed us in this: 1 dollar 25 cents per perch is therefore allowed.

The last case to be noticed, in which Col. Shepherd is interested, is in relation to the "bridge at McGrath's run," now Skinner's, which had been partly built, and a concave and foot bridge was substituted. The contents of the work done in the bridge would appear, by Mr. Thompson's entry, to be 182 perches 17 feet 6 inches. The contents of the foot bridge appear to be 103 perches 7 feet. That of the concave, which is under a different contract, is 147 perches—within near thirty perches, as it respects materials—embraced in the concave and foot bridges, which had existed in the bridge. If the statement of Skinner, who constructed the work and made the substitution, be taken as evidence in the case, we are relieved from making any estimate of an equitable allowance. By the statement of Mr. Skinner, which accompanies this report, it appears that "an agreement was made at the time, that the work done shall be paid for as measured, and the new work, viz. the foot bridge, at \$1 50 cts. per perch." Although this agreement was unreasonably liberal, yet we have no disposition to meddle with any thing, which appears in the shape of a contract; and if the evidence should be satisfactory to the Government, as it is, in point of *credibility*, to us, an allowance, according to that contract, will be made.

If this rule be not adopted, we see no reason to change the rule of allowance, as made in the case of the "bridge over Lee's run," viz. 1 dollar 25 cents per perch, for 182 perches 17 feet 6 inches, which had been built, and was subsequently put in other mason work. The other case which is mentioned in Mr. Skinner's statement, cannot be further noticed than barely to remark, that, if it turns out to be correctly stated by him, and the bill of admeasurement referred to as made by the superintendent be produced, and an allowance to Hardisty, who did the work, equal to the amount which he was to receive, which is said by Skinner, but omitted in his written statement, to be 2 dollars 50 cents, ought to be paid. Shepherd can have no claim to the profits upon work which does not exist. The omission, on the part of Mr. Thompson, to mention the latter bridge in his book, and to make an entry, in relation to the former, corresponding with the agreement, are circumstances which would seem to require some explanation. We are informed of no reason in regard to the bridge at McGrath's run; and the one given in regard to the Hardisty bridge, viz. that Skinner had not built a double culvert, increases the mystery. In the abstract, probably, the reasons given by us for the exclusion of certain claims, and for fixing the rate of allowance in the others, might be considered contracted and illiberal; under a view, however, of the whole case, as developed in the course of our examination, we are satisfied that there exists no proper or just

ground for the exercise of *liberality*. If, upon examination, the reasons appear consonant with *justice*, it is sufficient. The contracts are deemed liberal, and by a facile, conceding disposition on the part of the superintendent, which (if exercised without collusion) equally excludes the idea of merit or of crime, an accumulation of the profits will still remain to the contractor, beyond all risk and trouble which can have been incurred. By the substitution of *bulk* for workmanship, the Government will still pay upwards of 50,000 dollars more than would have been necessary, had the thickness corresponded with the heights. Besides, it would appear that a very considerable amount of that kind of work which gave the most profit was not within the contemplation of either the Government or the contractor, at the time the contract was executed. The building of those large and extensive side walls at "Woods' narrows," for instance, and a number of others, which are annexed to culverts and bridges, were not then intended to be built: these became necessary, in the opinion of the superintendent, in the course of *execution* of the contract. By an adherence to the words, merely, of the contract, this additional work might be considered as embraced, and Col. Shepherd entitled to the construction of it, and the profits arising. This *verbal* criticism or construction could not have been sustained; nor does it agree with Mr. Thompson's own construction of precisely similar contracts, in relation to this subject. The contracts of Doyle, Oliver Loomis, Skinner, and Loomis, were expressed in the same terms, viz: to construct all the bridges and other mason work within certain specified points, at the specified prices; and yet, when Mr. Thompson decided that side-walls should be erected, beyond what is originally contemplated, he received proposals, and actually gave out a number of contracts within the limits of those original contracts. And it may be remarked that this was done in one case, that of Loomis and Gay, within the contract of Oliver, although there was no difference in the terms: both at 2 dollars 75 cents per perch. Why was not the same course pursued in Virginia, within the limits of Colonel Shepherd's contract? If, indeed, by the contract of Colonel Shepherd, as there understood by him, 3 dollars 25 cents were to be paid for all kinds of mason work, the justice and necessity of pursuing the same course was more manifest. These walls would then have been taken at 2 dollars per perch: they are not understood to have cost Col. Shepherd more than 1 dollar 75 cents. If Colonel Shepherd claimed his right under the contract, as most probably he did, to build these walls, yet Mr. Thompson adopted and acted under a different construction, when less could be saved to the Government. Why did he not submit the question, with all its incidents, to the Department? The building of the walls was a matter of *expediency*, not of *necessity*, either from the contract or the nature of the ground; and of course the *price* at which they were to be built was a proper consideration in deciding upon that expediency. And if the Government had then been apprised of the fact, that this additional work, which was *now* deemed expedient

to construct, but which was not within the contemplation of the parties at the time the contract was made, was nevertheless claimed by that contractor, at a price nearly double that for which contracts could then be made, it is more than probable, it is certain, they would have directed that it was inexpedient then to build them, unless the contractor would waive his claim, and do the work for a fair price; or, at all events, would have directed them to be built by other contractors, upon reasonable terms. The construction of Mr. Thompson, it is admitted, would not conclude the rights of the parties under these contracts; it is not adduced with that view, but to shew, and it does, conclusively, that he has *conceded* to the claims and interest of Colonel Shepherd what he has deliberately withheld from other contractors similarly situated. And further, that he has, with equal deliberation, withheld from the Department the necessary information upon which to decide as to the expediency of constructing this new, and, as to expense, inferior description of work. If he discovered his error, in the course pursued in Pennsylvania, why did he not retrace his steps, and reinstate those contractors in their rights? But it may not be improper to add a few observations to show that his construction in Pennsylvania was correct. The contracts are made, as in all other cases; will be construed, with a view to the subject matter; and the terms employed may be limited or extended so as to exclude or embrace, according to the state of the facts within the contemplation of the parties. Terms are artificial, and often equivocal; and hence the experience of most men shews that a reference is made to the subject matter of the contract; the state of the facts, as known and understood at the time of entering into it; in other words, the intention of the contracting parties. The nature of the case, in regard to these contracts, would not admit of specific detail of position and description of bridge or culvert, which were intended. The most experienced engineers, in locating roads, will sometimes err as to the position or extent of bridges, and which may be deemed necessary; and hence it is necessary and usual, in making the contracts, to employ some general terms, which will embrace all kinds of work then deemed necessary, instead of going into specific detail. The contracts are, however, made in reference to location, on which is noted the bridges, &c. which are intended. The location and the notes, designating the description of work, became in some measure identified with the contract, from the description of the subject matter of the contract. If, then, upon reference to the notes of the original location, which was before the parties at the time, and with a view to which the contract was made, it should appear that these extensive side walls were not noted, it would be sufficient evidence that the contract was not intended to embrace them. The history of these side walls shews that their erection was an *after thought* of Mr. Thompson. They embrace a new description of work, deemed by him to be proper and necessary long after the contracts were made. The prices stipulated in the original contracts were predicated upon the description of work then in view, and upon the prices of labor, &c. at that period. Becoming expedient to construct a different description

of work at a different period, when the prices of labor, &c. had materially changed, it would be unreasonable, by the force of mere terms or words, to *permit* or *compel* the contractor to embrace it. The terms relied on are "all other mason work." Admit that these side walls were not noted in the location, even not, in the contemplation of the parties, that it was deemed necessary to erect them, but, instead of doing them in the manner they are done, it had been required to procure and dress the stone in such manner as would evidently exceed the contract price, as would make a loss to the contractor to build them, would he be compelled to execute this work? And, in case the price of labor had materially changed against the contractor, after entering into it, could there be any conscience in attempting to compel him? We think not, as to both propositions. Suppose that, according to the view of the Commissioner in locating the road, it had been deemed proper to avoid bridges over the principle number of the streams, by the substitution of concaves and foot bridges, and notes corresponding with that intention had been made upon the location, and the same contracts as to terms which now exist, had been made, viz: bridges, culverts, and all other mason work, and that the superintendent, in the execution, was of the opinion that concaves and foot bridges would not answer, but that bridges in the ordinary form must be made, and should so direct the contractor, would not the contractor appeal to the notes of the location, to shew that these bridges were not within the view of either party when the contract was made? that his prices were predicated upon the character and description of the work which was then understood to be required? That the prices necessary to indemnify him for building the bridges now required would have been very different from what he considered adequate when concaves and foot bridges were supposed to have been contracted for; and besides, that, since making the contract, *prices* had been materially changed, and that he could not execute this new description of work, without a new contract, corresponding with the present *prices*, and the character of the work now required. We are aware of no principle so rigid as to justify a disregard of this appeal. Reverse the proposition, and you have substantially Colonel Shepherd's case.

It will be seen by our statement of the account, that we have discriminated between the price paid for bridges and mortared walls, and that of dry walls. The former is charged 3 dollars 25 cents per perch, and the latter at 2 dollars 50 cents. The contract which was placed in our hands by the Government makes this difference; and, although by the contract in possession of Colonel Shepherd, which we have seen, no discrimination is made, no satisfactory evidence has been adduced to us by which it should appear that the error exists in the one which we have. The different character of the work, which is usually made in bridges, and that of side walls and culverts, would seem to justify a difference in price; more especially when the latter are built without lime and sand. The practice has been to make a distinction in the contracts; and it may be observed, that, in all the contracts for mason work on the western division of

the Cumberland, (and it is understood to have been so on the eastern,) a difference in the price of bridges and mortared walls, from that of dry walls, has been made, except in two cases. By referring to the contracts, it appears that there are only two exceptions, viz: one in the case of Oliver and —, and the other in that of Blakely. Oliver's price for bridges, and all other mason work, between certain points, is 2 dollars 75 cents, and Blakely's 3 dollars. It is said, however, that the original offer of Colonel Shepherd will put this matter at rest; and a paper, said to be a copy of that offer, has been shewn us, by which it appears that he is right. Where that original bid is, we have not been informed. Wherever it is, however, it is presumed all the other original bids are also; and when this one is produced, it may not be improper or unnecessary to require the production of all the others. It may turn out that the bid shewn by Colonel Shepherd to sundry individuals, (as is said to be the case,) may have required this *discrimination* to entitle him to the contract. This can only be determined by an examination and comparison of all the other bids which were received; and besides, as much noise and clamor, and dissatisfaction, at one time existed upon this subject with regard to the contracts generally, it is due to the public, and to all persons implicated, that an opportunity should be given to test the solidity of these allegations. The circumstance of Colonel Shepherd having shewn his bid to individuals *unconnected* in his offer, is rather adverse to the idea of that being the genuine bid. Colonels Woods and Paul may have, however, the real bid; but, until it shall be established that they were not jointly interested, they are presumed to be incompetent to testify or certify in this case. John McClure, of Wheeling, made a disclosure to us upon this subject, which may have some weight in determining this question upon presumptive evidence. It will be recollected that he was not the original proposer (at all events at the terms of the contract,) for the section which he made: a man by the name of Greathouse was entitled by his offer to the contract; and would have obtained it, if he could have ensured the execution within one year. This security he could not obtain, and was obliged to abandon his claim. John McClure then agreed to take the contract, and when it was proposed to include the mason work within the limits of his contract, he states that he observed to Colonel Williams, that he had made no estimate, or calculation, or inquiry, which would enable him to know for what sum per perch he could do the mason work. That Colonel Williams replied, that he supposed he might be safe at the rate to be paid to Colonel Shepherd. McClure said that he would; and the contract was filled up and signed, without the price being stated verbally by Williams, or read by him. His clear and distinct understanding was, that he was to receive the same price that was to be given Colonel Shepherd. By the contract, the discrimination between the price of bridges and mortared walls, and that of dry walls, is made; and, by the by, his price for dry walls is 2 dollars 25 cents. The object of Mr. McClure's disclosure to us was probably with a different view than to effect this question between the Government and Colonel Shepherd. His object cannot alter the nature of the

facts, or inference from them ; and that inference would be, that this distinction was then, at least, supposed by Colonel Williams to exist in Colonel Shepherd's contract, or rather bid. Be the fact, however, as it may, with regard to the real price which he was to receive, it is presumed that we are clearly justified in stating the account according to the terms of the contract which has been forwarded to us by the Government. And the more especially as Colonel Shepherd has produced no evidence, other than what he represented to be a copy of his bid, to shew the error to be in the contract in our possession. And we may indulge the remark, that it is more consistent with the course he has uniformly pursued, to withhold from the Committee the means of examining the nature and import of the evidence upon which he relies. It is said he has obtained certificates or affidavits upon this subject, which he has transmitted to the Department. He could have easily furnished us with copies, without impairing the effect of the originals. The information which we now possess in detail, both as respects the general subject in which this is embraced, and also as to the connexion and relative standing of those who may have given certificates or affidavits, might be of some service towards the full and correct understanding of this matter.

In regard to that part of our duty which was enjoined in our letter of instructions, which relates to any change of location which may have been made by the late superintendent, and the effect, either to the public or to individuals' interests, we are necessarily precluded from going into details. You are already apprised that we could not obtain the original notes of the location from any quarter ; and we did not feel ourselves justified in trusting to any less certain data. Many changes have been made, some to a limited extent, which have been beneficial to the public, and without prejudice to individuals. The principal alterations, however, have not been made subservient to the public interest, and some have been injurious to individuals. We cannot reconcile it to our duty to omit explaining, as far as our means will admit, one alteration which was made on Colonel Shepherd's lands, and near his house. The original location of 1807 crossed the creek immediately below Shepherd's mill dam, indisputably the best position, either in regard to the certain foundation for the bridge, or the making and distance of the road. The pretence is idle and unfounded, that, in occupying this position, his mill seat would have been injured ; the fact is not so, as there is unquestionably adequate space to build the bridge, without in anywise injuring his *contemplated* mill dam. If reliance is to be placed in the information of Mr. Thompson, it would appear that Colonel Williams changed the location so as to cross the creek, say eight or ten rods below. Neither the authority or the object of this change has been disclosed to us. By the preliminary observations of the Hon. A. L. Dallas, in his letter addressed to Williams, Moor, and Kerr, in 1816, it is to be inferred that this part of the location of 1817 was not under the control of the Commissioners. It is distinctly stated in the letter referred to, that the location previously made by the same Commis-

sioners, with certain exceptions of alterations made by the superintendent, Mr. Shriver, was confirmed from Cumberland to the Monongahela, at Brownsville, and from the 113th mile tree to the Ohio river at Wheeling. The location which Colonel Williams was then directed to make was from Brownsville, through Washington and Alexandria, to the 113th mile tree. And, although he ultimately connected with the location of 1807 at a different point, viz: on the Wheeling creek, some distance west of that point, yet, as that was done by a special reference of the two routes from Alexandria to the President, who sanctioned the one now substantially occupied, it is presumed our former inference is not impugned, viz: that no authority existed in or was given to Colonel Williams, as Commissioner, to change the first location at the point now in question. Colonel Williams might, and possibly may, have represented the propriety of making this change, and another more extensive one, made, as is also said by him, between this point and Wheeling, to the Department, and obtained the approbation of the President; but, as no vestige of evidence of this nature appears, we take it for granted that, in point of fact, no such representation was made, or sanction obtained; and, if not, we feel much confidence in repeating that it was made by him without authority. Never having accepted or acted under the appointment of superintendent, no change would have been made by him in that capacity; and even in that case, it was incompetent for him to make any change without the special approbation of the President. We feel no inclination, nor does any necessity exist, to impute any improper motives to the late Commissioner, Colonel Williams, in regard to this alteration. The inaccessible distance to a rock for the foundation of a bridge, at the point to which he changed, may not have been known to him; and inducements of a public nature may have occurred, or been offered to his mind, of which we are uninformed, which may have satisfied him in making so slight an alteration. That Colonel Shepherd was anxious to obtain a change from personal and selfish considerations, is in full proof; and that he ultimately intended and expected to obtain one to the point where the bridge is now erected, is justly inferrible from facts and circumstances. The point to which Colonel Williams had removed the bridge site was known to be one of the deepest water in that stream, and of which there is no reason to believe he, Shepherd, was ignorant. It was early asserted by him, that no rock would be found at that point; and he expressed his wish, and his confident intention, of having the bridge erected at the point or very near where it now stands. It will be admitted, and is known, that he frequently urged the late superintendent to change to this point; and it will be admitted that this very alteration formed one prominent item in the charges exhibited by Colonel Marshal of Charlestown, in 1817. The charge of Colonel Marshal in this respect was then met by one of your Committee, who was at Washington City, by a denial of the fact that any alteration as described by him had been made, and that the superintendent had expressed his determination that none should be

made by him. Notice was given to Mr. Thompson, in January or February of 1818, that this change in particular would not be tolerated by the Government; and that, if it was made, he would be inevitably removed. In, probably, February, 1819, the same caution was distinctly repeated; and, as no attempt was made to commence the erection of the bridge, it is presumed that the question was somewhat undecided, until May or June, 1819, when an effort was made of that imposing, plausible description, which was not easily to be defeated. Thompson, it would appear, became passive; and Colonel Shepherd having procured the attendance of a number of gentlemen from Wheeling and its vicinity, in their presence, and that of Colonel Williams, who happened to be there, Mr. Thompson sunk with an iron bar to such a depth that satisfied all that no rock could be found in any reasonable distance at the point which was termed the *location*. This fact was represented in distinct terms in a representation signed by those gentlemen, whose names you have in the Department, accompanied by a plat or draft, shewing, 1st, the location as there assumed, and no doubt generally believed by those present; 2d, an intermediate route, which was deemed practicable; and 3d, an extreme southwestern route, occupying the position for the bridge, where it is now erected, at the junction of the two branches of Wheeling creek; and, if we are not misinformed, representing the increase of distance at 14 rods. The facts, that this first position was not on the *location* of 1807, which is now assumed by us to be the true one, must have been known to Mr. Thompson and Colonel Shepherd, and to Colonel Williams, if he were indeed present; that there was a rock foundation at that point, must have been as certainly known, at all events, to Colonel Shepherd. "Concealment is falshood" is an axiom in equity as well as in morals, which is known and felt by every man whose mind and feelings are uncorrupted. How, then, did it appear that these facts were not disclosed to the Department, and a plot of this route, even if it never had been located, as it was obviously the shortest, forwarded in connexion with the others? The other gentlemen may not have known these facts, and are less reprehensible; but, as it could not escape the eye of an indifferent traveller, that the proper crossing place, if practicable, as respects a rock foundation, was near to the mill dam, it is strange, indeed, that it should not have occurred to even those gentlemen, to examine as to the practicability of this route. Admitted that, at the point represented to them, (and this is said by one of them, Mr. Skinner, to be the fact,) as the *location*, a proper foundation could not be had, it did not follow that they must necessarily adopt another, whereby the distance to the traveller must be increased. And, inasmuch as it must have been evident to the most inattentive and indifferent observer, that a change to the point where the bridge is now built would obviously be desirable and subservient to the pride and interest of the contractor, more care and circumspection was due from those who volunteered their information and advice to the Government, unless, in the event, it might appear they were blindly lending themselves as

instruments of deception. The fact is admitted that no experiment whatever was made to ascertain the practicability of the route of the mill dam. An examination of the plot of the road, now forwarded, will give you a better idea of the nature of the change than can well be done by any written description. From the point A. to B. on plot, a distance of one mile, it is increased 53 rods. It may be remarked here, that this is in part on the ground, and embraces one of the bridges which it was proposed to under the proposition of Mr. Skinner, in 1817, heretofore referred to and explained. In your letter in answer to the application for this change, the route described on the plot then forwarded to you as No. 2, on the middle route, was hypothetically approved, and the extreme southern, or No. 3 route, expressly stated to be inadmissible. Yet upon that very route the bridge is built, and the road in part made.

Another alteration of the location of 1807 was made, (as is said by Colonel Williams) commencing at a point marked C. on the plot, and terminating at D., whereby the distance is considerably increased. The ground is in general better for a road on the former location; and we have in vain looked for any public object in making the alteration. This alteration, in part, passed through the lands of Major Good; and, as a suit is pending against the late superintendent, arising out of the change, we forbear further remarks.

A change was made by the late superintendent between the house of Daniel Steinrod and the east foot of Wheeling hill, which, as respects the ground occupied, was decidedly advantageous to the public, in regard to the permanency of the road. The former, generally, occupied the ground on the side of the hill; the latter is at the base of the hill, and, in general, on level ground. It is, however, due to the public interests to state the manner, means, and effect of the change. It will be recollected, that a man by the name of Timothy Caffield, became the contractor for the making the 18th section of the United States road, west of Washington, at 26 dollars per rod. He commenced the work, and progressed as far as to graduate, principally, about 130 rods, and had quarried stone to a considerable amount. He soon became sensible that, upon the location as it then stood, he could not complete his contract, and urged the necessity of changing the location. The proprietor of the land, Daniel Steinrod, would not consent, although an effort on the part of the contractor was made, to compromise with him, and pay for the injury apprehended to his property. After receiving from the Government 520 dollars, Caffield abandoned the contract. Notice appears to have been given by Mr. Thompson, that the same section would again be let to the lowest and best contractor. Numbers proposed at the time; and it is said that a man of the name of Patch was the lowest bidder, at, say, 28 dollars per rod. Mr. Thompson informed those interested of this fact, and that Patch must have the contract. Sometime afterwards, it became known to the public that Daniel Steinrod had taken the same contract at 40 dollars per rod. It is said, and is probably true, that Patch was a *doubtful* contractor; but as there were others, Richard

Hardisty for instance, who were men of worth and enterprize, who had offered to take the road at a much less sum, why were not the public, or at all events those who had previously bid, notified of the failure of Patch's offer? Besides, as soon as Steinrod became the contractor, the location was at once changed, from the *side hill* to the bottom, where it could and would have been made, at that time, for 22 dollars per rod. Why was not this location previously changed? or, at least, information given to the Government of the necessity and advantage of it? Caffield states that he can prove that, upon being informed of the change of location, he went forward to Thompson, and offered security to make the road on the new route for 22 dollars per rod; and that Thompson informed him that he could not have it: that Steinrod had gotten the contract; and if he did attempt to hold it, Steinrod was as rich as Crassus, and would ruin him. Had the location been changed without the consent of Steinrod, he no doubt would have claimed, and would, probably, have been entitled to compensation; but we feel much confidence in saying, that the amount which, in any event, he ought or could have obtained, would not exceed from 4 to 500 dollars. The section, by the contract of Caffield, appears to embrace one mile and 153 rods, equal to 473 rods; which, at 18 dollars per rod, the difference between 22, the sum at which it would have been made, and 40 dollars, the sum which Steinrod receives, amounts to 8514 dollars, more, by 8000 dollars, besides the sum, 520 dollars, paid Caffield, than, in any event, the Government could have lost by an adverse change. And here let it be remarked that it is somewhat singular that a change should have been made in the location, through Major Good's land, without hesitation, or paying any respect to claim for indemnity, and yet, when a change was proposed in that part of the location, which would have avoided the *four* large bridges, but would have affected the interest of Colonel Shepherd, and another which would interfere with the interest and views of Daniel Steinrod, it is not only rejected, but no information given to the Government upon the subject.

Before we close this report, which relates almost exclusively to the case of Col. Shepherd, it may be proper to remark that General Lacock assisted in the admeasurement of the work; and that the views which are taken of the subject in our report, were generally and substantially submitted to, and unreservedly approved of by him.

We are, respectfully,

Your obedient servants,

THOMAS WILSON,
THOMAS MCGIFFIN.

January 2d, 1821.

Examination of Josias Thompson, late superintendent, on the part of Colonel Shepherd.

Witness states that the mason work done under the contract of Col. Shepherd was executed under, and according to, his directions, with some small exceptions. The exceptions are, 1st. That part of the wing walls of the bridge near Col. Shepherd's house, which is not coped, viz: the one which turns and points to his house, and the other extending on the north side eastward. The north wall is not considered necessary, it could have been done without.

2d. Is an additional wall to the bridge first west of Mrs. Gooding's. Instruction had been given, in the first instance, to build the wall; but, in consequence of the instructions from the Department, Col. Shepherd was directed to omit this additional wall. Col. Shepherd then alleged, the stone were quarried, and the masons engaged to build it. He considers the wall necessary to the road; he considers the mason's work done by Col. Shepherd, well done, and was executed under his inspection; lived about the middle of the contract, and saw the work from the commencement to the end, so far as it was completed, when he was removed; at which time, the whole work was nearly completed, when the estimate of the mason work was made out. No part of the work, which is designated as being done without his instructions, was embraced in that estimate, nor is it contained in his books of admeasurement, or the abstract furnished Col. Shepherd. From time to time, Col. Shepherd applied to him, and received partial abstracts of his mason work, as he, Col. Shepherd, then stated, with a view to settle with his sub-contractors; and when he gave him the general abstract, he understood it was with a view to settle with the Treasury Department: he never gave him but one general abstract. The contract was made with Col. Williams, as the agent of the Government; and he knows not, nor does he believe there was, any unfair means used in the procurement of it. He never saw a road, including bridges and all kinds of work, equal to the road by Col. Shepherd, under Col. Paul's contract, and, also, own mason contract. The stone, for the mason work, were quarried and generally hauled some distance; and he thinks some of the stone cost him, when delivered, (particularly that which was done by himself,) more than he was to receive for the mason work by the perch. The white part of Col. Shepherd's family consists of himself and wife; they are both laborious, frugal people. He owns a number of valuable slaves, very industrious; he owns a mill and valuable farm; and the spare labor of himself and family, his slaves, and the spare produce of his farm and mills were applied to the execution of his contract, during the time of his executing it. He believes if the accounts of Col. Shepherd were settled, agreeably to the report of the Commissioners, he would be the loser by the contract in a pecuniary point of view, besides the loss of his own labor, and of his slaves, and the product of his estate; that, if paid as he claims, then he will be the gainer. He does not know, nor has he any reason to believe, that Col. Shepherd had any

secret partner in the contract, or any other than those known to the Government by the written contracts; and that the bridges were constructed according to his directions, that is, all the bridges within Col. Shepherd's contract, and the width was specially directed by him.

The re-examination of Josias Thompson by Col. Shepherd's counsel, on the 13th October, 1821.

The abstract referred to in Jacob Atkinson's deposition, marked A, and made part of his examination, was not intended by deponent to embrace all the mason work within Shepherd's contract, but was furnished for the use of Shepherd's counsel, and principally relates to bridge work. The abstract marked B, and attached hereto, is a true transcript from the books, and is similar to the one sent by deponent to the Government, and contains all the mason work done by Col. Shepherd under his directions as superintendent.

This abstract is the one furnished by deponent to Col. Shepherd, as mentioned in former examination. The abstract marked C. is a correct abstract of the double and three piped culverts in Shepherd's contract. The three piped culvert, at Smithsfield, is substituted for an arch of four feet span, and is the only instance, as designated by the graduating notes of the Commissioners. That a bridge at this place would have cost the Government 1150 dollars and fifty cents; that he communicated with the Secretary on the propriety of making double and three piped culverts, and stated that the bridges would disfigure the road; that the same water might be carried off by double culverts, which would preserve the shape of the road, and save expense. The Commissioners directed bridges to be erected, at places not designated on the field notes, and which this deponent deemed necessary, but thought two or three piped culverts might answer the purpose of bridges. The Secretary authorized deponent to make the substitution, which he did; that he prefers double culverts of two feet span each, to one of four feet span, because they are stronger and more durable. It is very difficult to procure stone of sufficient strength to cover a four feet culvert. This deponent does not recollect ever to have seen a four feet culvert of sufficient strength to be durable, when filling in was heavy. He would never erect such a culvert, and has known such frequently break down. The difference in the expenses of making a two piped culvert of the same capacity of one of four feet, consists in the partition wall, in the different width of payment and covering. That the changes made by this deponent, of bridges to culverts, and of single to double and three piped culverts, to have been to the disadvantage of Shepherd. That the alterations aforesaid were not the result of a previous understanding between deponent and Shepherd. That the sheeting stone upon the large bridges were directed to be of a greater depth than the ring stone of the arch: some of them were five feet in length. That the papers marked D, F, G, H, I, K, and L, and herewith filed, are the originals addressed to Col. Shepherd, as his instructions, and bear the true dates of the periods at which they were written.

Note by Committee. The witness refused to attend and to be cross-examined by us. In addition to what appears in the testimony of Messrs. Caldwell and Doddridge, upon this subject, we addressed him a note, a copy of which is herewith sent, to which he replied, verbally, that he would not attend.

Noah Zane, Esq. examined on the part of Col. Shepherd.

Has known Col. Shepherd from his, Mr. Zane's, infancy, and known him to be a laborious, honest and candid man, and his wife an industrious, frugal woman. His estate, as a farm, very productive; and did not know of any material claim against him, or other embarrassment in his affairs, before he entered into this contract. As far as he knows, the surplus labour of himself and his slaves, and the produce of his farm and mills, were applied to the execution of his contract. He knows of no speculation which Col. Shepherd has made; and, from their habits of intimacy, if any had been made, he presumes he would have known it, unless his purchase of bank stock may be called a speculation, as to which, he has purchased stock in the Northwestern Bank of Virginia, at Wheeling, to the amount of about 38,000 dollars, and near that period, has borrowed from the bank between 36 and 37,000 dollars. His stock, and the farm upon which the mill is situated, is pledged, and might at any time be sold for about 29,000 dollars of this sum; if the fact be true, which is said, that the report of the Commissioners brings him in debt about \$2,000, and this report should be confirmed, it would result in the sacrifice of a principal part of his estate; this is given as a matter of minor from his general knowledge of his affairs; and that, instead of gaining, he would lose by the contract. The stone and mason work generally done under Col. Shepherd's contract is considered by him superior to any he has ever seen on roads. He has been one of the directors of the Northwestern Bank, and its president, except a few weeks since its establishment. John Gilchrist, the mason, has not resided long in Wheeling, but since his residence, deponent has had considerable intimacy with him; he is generally esteemed, has considerable knowledge of mathematics, and is a good surveyor. He has known Jacob Atkinson, late a clerk of Col. Shepherd's, for some years past, and his other clerk, Franklin Woods, from his infancy, and believes them both of fair character, and worthy of belief any where.

Peter Yarnell, Esq. examined on the part of Col. Shepherd.

Considers the road between Wheeling and Alexandria, and the bridges, equal to any he has ever seen. Has been acquainted with John Gilchrist, for about two years—he is a very good mechanic, and among the first order in point of integrity. Witness has lived in Wheeling for twelve years. He knows no man whose reputation is fairer than Col. Shepherd's, for labor, fairness, and frankness in

dealing—has disbelieved all reports to the contrary. Is a director of the Northwestern Bank at Wheeling, and concurs in the account given by Mr. Sprigg, of Col. Shepherd's stock and bank debt.

Samuel Sprigg, Esq. examined on the part of Col. Shepherd.

He thinks the road and stone work done on the road from Wheeling to the State line is at least equal to any he has ever seen. Col. Shepherd is an industrious, frugal man, and his reputation is that of an honest candid man. The stone work he thinks superior to any he has ever seen erected on a road. He is not a mechanic, nor, as such, can he judge of these things. Has been acquainted with Col. Shepherd since his, Mr. Sprigg's, infancy. And this reputation has been as above stated. Witness is, and has been, since its establishment, a director of the Northwestern Bank of Virginia, at Wheeling, and was a director of the "Ohio Company." Col. Shepherd was a stockholder in the latter, and still is in the former; the amount of stock in the "Ohio Company" is not precisely recollected, nor the amount due by him to the bank; neither was to a considerable amount. Col. Shepherd owns stock in the Northwestern Bank, to about 37,000 dollars, and his debt due the bank is about that amount. Col. Shepherd has frequently been unable to pay the discounts on his notes, when it was no doubt his interest, and, he believes, his wish, to pay those discounts. This has occurred within the last year. He obtained an accommodation last winter to enable him to pay the discount, and reinstate his note, and also bear his expenses to Washington. According to a rule of the board of directors, the stockholders were required to reduce their discounts a certain per cent. every renewal. Col. Shepherd was practically excepted from the operation of this rule. He is a very industrious man, and his wife an industrious and frugal woman; they are hospitable, and have entertained a good deal of company, and entertain well; since he has been engaged in the execution of his contract, they have entertained less. As to Col. Shepherd's business, other than that contracted with the bank, he has no personal knowledge. Before he entered into the contract, he was considered a wealthy, though not a moneyed man. If the report of the Committee, which is said to bring him in debt to the Government, be confirmed, and he be in debt to individuals in the country ten or fifteen thousand dollars, of which he knows nothing, his circumstances are materially changed for the worse by the contract. The farm and slaves of Col. Shepherd, connected with his mill, he considers among the most productive estates in the country. His farm was well attended before he engaged in the contract; a part of his land was devoted to the pasturage of his cattle and horses employed in making the road, and cultivation lessened. From his general knowledge of the character of Col. Shepherd, he would not have suspected him of any improper connexion with the late superintendent, or any dishonorable uncandid conduct. He knows of no man whose general character stood fairer than that of Col. Shepherd, for labor, for frank-

ness and, fairness. The general character of John Gilchrist is that of a good mechanic and an honest man.

Interrogatories exhibited to Samuel Sprigg, Esq. in behalf of the Government, and his answers thereto, taken this 10th day of November, 1821.

Ques. 1. If it be true that the clear profits received by Col. Shepherd, from his mason and road contracts with the Government, be between 80 and 100,000 dollars or more, how can you account for his present embarrassments, otherwise than by supposing the existence of secret partners, to whom the principal portion of those profits must have been paid?

Ans. If the profits of Col. Shepherd have been equal to the sum stated, I cannot account for his embarrassments on any other ground than secret partners.

Ques. 2. If you be satisfied of the existence of secret partners, can you account for the concealment of the fact by Shepherd, otherwise than by the conclusion that at least some of those secret partners were public agents of Government?

Ans. I do not know that he had such secret partners, but if he had, I can see no good cause for withholding their names if they were not agents of Government.

Ques. 3. You have been asked by the counsel of Col. Shepherd, whether, from the general reputation of Col. Shepherd, you would believe him capable of forming a corrupt or improper connexion with any agent of Government, and you have answered. From all the facts and circumstances within your knowledge and information, what is your present conclusion and belief of the fact that he has or has not been so concerned? and what the facts and circumstances upon which this conclusion is founded?

Ans. In reply to this interrogatory, I will only say, that, at the time of the sale of the road and mason contract at Wheeling, I was dissatisfied. I did then, and for some time afterwards, believe, to say the least of it, that there was favoritism practised. I am not now able to state all the causes that produced such belief; one was, I was disposed to bid for part of the road. The day of sale, I applied either to Thompson or Williams, or both, to know, if a contract was made, any money could be drawn from the Treasury, by giving unquestionable security for the performance of the contract. They, or one of them replied, that it could not; that Government would pay according to the terms of the contract, and no other way. I declined bidding, and shortly after, I learnt that Paull, Shepherd and Baird, had drawn about \$30,000 as an advancement. What my impressions are at this time, on the subject of connexion or otherwise with the agents of Government, I must decline answering; all the facts and information I have upon the subject, that would justify me in forming an opinion, I have received in confidential conversations with witnesses and others, stating to me what had been, would be, and might be, proved.

Ques. 4. At the arbitration between Shepherd and Skinner, what did Josias Thompson swear, touching the knowledge of Col. Shepherd of the proposition of Skinner to avoid the 4 special contract bridges?

Ans. Josias Thompson stated on his examination before the arbitrators, between Col. Shepherd and I. L. Skinner, that Col. Shepherd was ignorant of Skinner's proposition to him, to avoid the 4 large or contract bridges; and that he had carefully avoided letting Col. Shepherd know it.

Ques. 5. Is there a rock foundation for a bridge, immediately below Shepherd's mill-dam? and is or is not this the natural place for the bridge? And what is your opinion of the subserviency, or otherwise, to private interest, in changing the location to the point where the bridge is now erected?

Ans. I think there is a rock immediately below Col. Shepherd's mill-dam, suitable for the foundation of a bridge. I saw it last summer, but did not carefully examine it. It is in the direction of the road. I must say, if public convenience had been consulted, the bridge would not have been built where it now stands, provided a suitable foundation could have been had immediately below the dam.

Ques. 6. What is and always has been your opinion, and what the facts and circumstances upon which that opinion was founded, as to Col. Woods being a partner of Col. Shepherd?

Ans. I never knew any facts that would justify me in saying Col. Woods was engaged or in partnership with Shepherd. I have thought Col. Woods was concerned with Col. Paull, but that was only surmised, because of the family connexion, the extent of the contract, and its having been considered a very lucrative one.

Sworn and subscribed, 10th Nov. 1821.

SAMUEL SPRIGG.

Major Zac. Sprigg, examined on behalf of Col. Shepherd.

Has been acquainted with Moses Shepherd for upwards of forty years: his general character is good, and, from his character, he would not suppose him capable of forming an improper or dishonorable connexion with the late superintendent, or any other person.

Major John Good, examined on the part of Col. Shepherd.

About ten years ago, was at Baltimore; and about nine years, travelled over that part of the national road which was then made. He considers the national road superior to the Baltimore road. He has passed over about half or more of Shepherd's road contract: he believes it well made, except a bridge at the lower end of the bottom at Col. Shepherd's, which does not appear to be so—is falling down. Has been acquainted with Col. Shepherd for 22 years; as to any transactions, personally, with him, all has been fair; does not know that his character is bad. There has been no intimacy between his family and himself and Col. Shepherd's; there has been no quarrel or misun-

derstanding ; knows nothing about the intimacy or otherwise, between the families of Thompson and Shepherd ; has seen Mrs. Shepherd riding in Thompson's carriage.

Daniel Steinrod, examined on the part of Col. Shepherd.

Has lived in this settlement 32 years, about 2 miles east of Wheeling ; never has travelled eastward since, further than Brownsville once, which was at the sales of the U. S. road at that place. The principal part of the road made by Col. Shepherd is well done. The mason work is generally well done. He is no judge of mason work, but knows of but one exception, which is the bridge below Col. Shepherd's house. The character of John Gilchrist is that of a good mechanic, and an honest man ; has been acquainted with Col. Shepherd ever since he, Steinrod, came to this country ; he is considered a very industrious man, more than commonly so. The spare labor of himself and his slaves, and the produce of his farm and mills, were applied to the execution of his contract. He has ceased to make flour for exportation. The saw mill was engaged in sawing boards and scantling for centres of bridges, or for sledges, &c. for the road. He lives within 4 miles of Col. Shepherd's, and six and a half miles from Mr. Thompson's ; has been intimate with both ; has no reason to believe there was any improper connexion or combination between Col. Shepherd and Thompson, or any other person. He had at first supposed that Col. Shepherd, Paull, and Woods, were jointly interested in the contract ; but, from a quarrel that took place between them and Thompson and John McClure, at the east foot of Wheeling hill, that quarrel satisfied him that no connexion existed. Col. Shepherd and Thompson had frequent misunderstandings, would not speak to each other for some days, and Col. Shepherd often asked him to speak to Thompson, which he did ; Shepherd frequently complained to him that Thompson was a hard master, exacted more from him than others. The friendly family intercourse was frequently interrupted from this cause, as he learnt from both sides. Would suppose \$100,000 more than a reasonable compensation for his time, his labor, that of his slaves, and the risk incurred by the contract, even supposing him to be accountable for the conduct of those under him ; he never knew Col. Shepherd impeached for falsehood or fraud ; does not believe that his moral principles would permit him to enter into any fraudulent connexion with any agent of Government, or to commit any deliberate fraud.

Franklin Woods, examined on the part of Col. Shepherd.

Has been clerk of Moses Shepherd for nearly three years, say two and a half or thereabouts. His estate is a good and profitable one. Col. Shepherd was up early and late, and very industrious and attentive to the execution of his contract. The surplus labor of his slaves, produce of his farm and mills, were applied to the execution

of his contract. The farm, in connexion with the mills, is considered as profitable as any known to him in the country. Col. Shepherd was personally attentive to the execution of his contract, generally up by daylight, and remained out until dark. If the settlement be made according to the report of the Committee, he considers his estate would not be more than sufficient to pay his debts, at a forced sale by a public officer.

Question. How far was Col. Shepherd bound by his contract with the United States? The contract is executed, in the opinion of the witness. Witness has no personal interest in the success or failure of the claim of Col. Shepherd, except a small claim for services: has never seen any road or bridges superior to those executed by Col. Shepherd. The books were kept by single entry, and any moneys received were placed in the drawer, and paid out without any entry against Col. Shepherd; the grain delivered in was used in the same manner, no charge or credit being entered in the books, other than against those who from time to time received. The paper marked A, and which is annexed to Jacob Atkinson's, is, so far as he is acquainted, an abstract from the books of Col. Shepherd. The entries made in the books of Shepherd by witness are correctly made, and truly stated, as to the times of the different payments. Before entering into the contract, Shepherd was in the habit of making flour for exportation; since that period none has been made for that purpose, but his mills were employed in manufacturing for the contract, and were insufficient for an adequate supply. Col. Shepherd and wife are remarkably industrious, and he knows of no family who live more within their own means, and from their own personal industry. The embarrassment of Col. Shepherd is greater now than when he entered into the contract. He has often heard Shepherd complain that Thompson was too hard with him, requiring him to execute his work in a superior and expensive style. The harmony and intimacy of the families of Thompson and Shepherd were frequently interrupted, and broken off for a time, as he presumes, on that account. He has never seen any entry in the books of Shepherd, or any other fact or circumstance, from which he would infer an improper connexion between Thompson and Shepherd, and has no knowledge in point of fact of any such connexion. He has always found Col. Shepherd a man of truth and fairness; his general character is so. And from his knowledge, personally, and from reputation, he would consider him incapable of forming an improper connexion with him, or any other person. He has been raised within about four miles of Shepherd, and has known him well, and intimately, since his infancy, and has never heard any intimation against his moral character.

Interrogatories exhibited to Franklin Woods, on the part of the Government, and his answers thereto, taken the 16th November, 1821.

Question 1st. Are you not the son of Col. Archibald Woods, and brother-in-law of Col. George Paull?

Answer. I am the son of Col. Archibald Woods, and brother-in-law of Col. George Paull.

Ques. 2d. Was not Col. Paull jointly interested with Col. Shepherd in the mason contract? And was not Col. Shepherd jointly interested with him in the road contract?

Ans. Col. Shepherd may have been jointly interested with Col. Paull, and Col. Paull jointly interested with Col. Shepherd; if so, I have no recollection of it, at present.

Ques. 3d. Was your father interested in both or either of those contracts; and if so, to what extent was he interested?

Ans. I do not know that my father was interested in either of those contracts.

Ques. 4th. Did Col. Paull and Shepherd dispose of the road contract to I. L. Skinner, Esq., and when?

Ans. In the Spring of 1817, there was a contract made by I. L. Skinner, for road and mason work, but whether it was made by Col. Shepherd alone, or by Shepherd and Paull, I do not at this time recollect.

Ques. 5th. Did Col. Paull dispose of his interest in those contracts to Col. Shepherd? When, and for what sum? What amount of this has been paid to Col. Paull? To whom, and how much has been paid to any other person?

Ans. Col. Paull disposed of all his interest in the road contract to Col. Shepherd, in the Spring or Summer of 1817, as I have been informed, for the sum of 8000 dollars, five of which has been paid to George Paull, and 2000 were paid, on a transfer of Shepherd's bonds, to myself, and the balance, 1000 dollars, was transferred by me to my father, which is not yet paid.

Ques. 6th. After the road contract was disposed of to Skinner, at a clear profit of about \$46,000, how did it happen that Col. Paull disposed of his interest in both contracts for 8000 dollars?

Ans. I do not know that the road contract was disposed of at a clear profit of \$46,000: if it was so disposed of, I am unable to say, why it happened that Col. Paull disposed of his interest at \$8000.

Ques. 7th. Have you formed an opinion, and do you believe that Col. Shepherd was connected in interest with any and what agent of the Government in the inception or execution of both, or either of his contracts? And if so, from what facts and circumstances have you formed this opinion, or derived this belief?

This interrogatory witness declines answering.

Ques. 8th. Have you heretofore expressed your opinion, that there was a connexion? When? And to whom? Under what circumstances? And why were you not asked your opinion or belief on your examination by Col. Shepherd's counsel?

This interrogatory witness declines answering.

Ques. 9th. What, if any thing, do you know, or have been informed, and by whom, touching the purchase and ownership of the tract of land on which Mr. Thompson resides?

Ans. I have heard Col. Shepherd or his lady state that the farm on which Thompson resides was owned by Thompson and themselves, jointly, and that Thompson bought their interest, or something to this amount.

Ques. 10th. What amount of money and goods has been advanced by Shepherd to Thompson? How much before Thompson removed, and how much subsequently? And how and when has this been secured to Shepherd?

Ans. There was advanced to Thompson, previous to his removal, I think, between 8 and 9000 dollars: since his removal I have not examined Col. Shepherd's books; therefore, am not able to say what amount has been advanced since that time, if any. I was called on by Col. Shepherd to witness an instrument of writing, said to be a deed of trust given by Thompson to Shepherd, to secure the payments of his accounts with Thompson: this was done in the Fall of 1819, I think.

Ques. 11th. If any, what amount has been advanced or paid to any other, and what agent of Government, or to any other person, who was at any time a public agent, in regard to the making or execution of the mason and road contracts of Col. Shepherd?

Ans. I know of no advance being made by any agent of the Government, except Thompson, or to any other person, who was at any time an agent of the Government.

Ques. 12th. Why do you refuse to answer interrogatories No. 7 and 8, on the part of the Government?

This question witness declines answering.

Jacob Atkinson examined, on the part of Col. Shepherd.

Has been clerk in the employ of Col. Shepherd, since November 1818; and has posted most of his accounts connected with the road and mason contracts. The paper marked A is made out by him, and is annexed to this deposition. This is an abstract from the books, files, and other documents in the possession of Col. Shepherd. Is not acquainted with any improper contract between Col. Shepherd and Mr. Thompson, or any other person. The account of Elijah Church is taken from the ledger. The amount was settled by him, and his final receipt taken in October, 1819. The accounts in relation to the bridge over "Good's Run," he knows that a man by the name of Stewart engaged to build this bridge at two dollars per perch. Sims and Gassaway engaged with him to furnish the stone, to be paid by Col. Shepherd—how much per perch he does not know. Stewart abandoned the work before it was completed, and he believes was overpaid for what he had done. With Sims & Gassaway no settlement has been made, but he believes they are overpaid.

Gilchrist finished the bridge; laid about 159 perches, at two dollars 50 cents per perch, and has been paid. The culvert in "Good's" fields was built by Stewart at 2 dollars per perch, and is in the same situation, as to payment, as his other account in relation to the bridge over

“Good’s” run. The culvert in Smithfield was built by Clark, Jordan, and McGan, at 80 cents. The deep hollow bridge was built by the same, as well as the double hollow bridge, for he believes 80 cents per perch; when they came to settle for 6 or 800 perches, built in the block-house bridge, they acknowledged they had been paid for the culvert and the two bridges. The settlement had been, in the Fall of 1818, for the culvert and the deep and double hollow bridges. Martin and McCain for 125 perches 16 feet, 314 dollars 75 cents; laying parapet on deep hollow bridge, this was settled; paid McCain for parapet and coping at the double hollow bridge, 82 perches 9 feet, at 2 dollars 50 cents per perch. The bridge at Carter’s spring branch, he knows nothing about. The additional wall at hollow west of Mr. Gooding’s, built by Martin and McCain, was not measured by Thompson, but by Lawrence, and contains 135 perches, at 2 dollars per perch; a settlement was made, and notes given for about 700 dollars, in January, say 19th, 1820, part of these notes have been paid; one of them is now transferred, and both in suit for recovery. In the case of the bridge front of Mr. Gooding’s, a certain Patrick Currin built it at 80 cents per perch, and has been paid. The same person built 687 perches of the broken bridge, for which he has been paid at one dollar and 25 cents; 150 dollars was afterwards paid for completing it—Col. Shepherd finding the materials. The dates of the different accounts are stated accurately in the books, and the payments were made according to the dates of those entries: so much of the abstract which is taken from the books of Col. Shepherd, is from entries made by himself and Franklin Woods; and so far as he made any entries in those books, they are correctly made. On the cases where the accounts were made by Franklin Woods, and he, Atkinson, has settled with the individuals, which embraces the principal part, no objection was made by those individuals. Witness settled with Toole for building two culverts in Thomling’s lane, and east of Fay’s, at 70 cents per perch. The side wall at Keefer’s narrows was built by Gingley, and the culvert in the wall. The culvert at Craig’s spring, run and narrows, at one dollar 80 cents per perch. He was paid before July, 1819. If Rork was paid for finishing this wall, 48 perches, 294 dollars, that was the amount of his account; no payments were made after January, 1820, of any amount to cover any deficiency in the mason work. The payments were generally and principally made before that period. Witness lived in the family of Col. Shepherd. They are unusually frugal and industrious: his slaves were industrious, and were employed in the execution of his contract, as was the produce of his farm and mills; during the execution of his contract, Col. Shepherd engaged in no speculation, to his knowledge. His mercantile establishment was profitable. The seventeenth section of the road, he understood at the time of the sales, and has always understood so since, to commence at the east end of D. Steinrod’s contract, and to extend about twelve rods east, beyond the bridge at the west end of Shepherd’s bottoms; the distance of said section he knows to be about 2 miles and 74 rods, and to be the one that Col. Shepherd

was to have 10,000 dollars for making, per mile. N. P. Atkinson, my brother, and myself attended the sales, for the purpose of bidding for said section.

October 12, 1821. Examination resumed by Colonel Shepherd.

As to the document annexed to this deposition, and which is in the hand-writing of Mr. Thompson, and subscribed by deponent, he says: The bridges east of Wheeling Hill were built by Elijah Church at 80 cents per perch, and was paid for 1,475 perches 21 feet 3 inches. The materials were found. The parapet wall containing 17 perches 15 feet 7 inches—Church was paid at the rate of 3 dollars per perch, equal to 52 dollars 75 cents. The whole amount paid Church, on this bridge, was 1,233 dollars and 56 cents. The culvert east of Cuffield's Hill, the culvert on Cuffield's Hill, and the culvert near the top of Cuffield's, he knows nothing about them—how, and by whom they were built. The side wall, near Wood's narrows, was built by E. Church, at one dollar 68 cents per perch, and was paid for 926 perches 12 feet 6 inches, amounting to 1,556 dollars and 52 cents. Shepherd dug the foundation. The culvert near Wood's stone house was built by Church, at one dollar 68 cents per perch, containing 88 perches 4 feet 8 inches, equal to 148 dollars 18 cents. The bridge over Wood's run was also built by E. Church. He first built 366 perches 15 feet 4 inches, at one dollar 35 cents per perch, equal to ———; and 2292 perches 18 feet 4 inches, for which he was paid 2 dollars 37½ per perch; in all 5,940 dollars 22 cents. The bridge over Good's run was built by Stewart and others, at 2 dollars per perch, on which Stewart received 1,530 dollars 58 cents, and ran away. John Thompson had received goods for a considerable amount from Colonel Shepherd, equal to 300 dollars. This Thompson paved the bridge: whether he quarried and hauled the stone, he knows not. If he did, he would suppose it to be worth 2 dollars per perch, equal to 68 dollars. No settlement was ever made with him. Jacob Portman worked on this bridge, was a mason, and quarried stone. He received from the store to the amount of 308 dollars. No settlement was ever made with him; nor has he any opinion of the amount of the value of his work. He knows of no other dealings which Shepherd had with him. Benjamin Gassaway quarried stone for this bridge principally, and has received 1,300 dollars. No settlement has been made, and Gassaway still claims more money from Shepherd, for which he has brought suit. Clarborne Sims hauled stone for this bridge, and has been paid 1,014 dollars. Sims did other work for Colonel Shepherd, probably to an equal amount with his hauling at this bridge. Sims lives in the neighborhood; and no settlement has ever been made, although an attempt was made by the clerks of Colonel Shepherd, Atkinson and Wood, to obtain one. The general price for hauling stone was from 45 to 50 cents per perch. Whether he was to be paid by the perch or by the day, he knows not. John Gilchrist was paid for laying 159 perches 18 feet, at 2 dollars 50 cents per perch, and was paid for extra paving

30 dollars, amounting in all to 4,147 dollars 95 cents. The same man built the three-piped culvert in Good's field, amounting to 72 perches 22 feet according to Thompson's measure, and the payments to them are embraced in the above sum. The three-piped culvert in Smith's field, the deep hollow bridge, and the double bottom bridge, were built, principally, by Clark, Jordan, and McGaw, at 80 cents per perch—Shepherd finding the materials, and digging the foundation of the deep hollow bridge. Martin and McCain laid 125 perches, at 2 dollars and 50 cents per perch; of the double hollow bridge, James McRain laid 82 perches 9 feet, at 2 dollars 50 cents; and Hiram Martin laid on the same 59 perch 8 feet, at 2 dollars 50 cents. The same men, viz: Clarke, Jordan and McGaw, laid 600 perch on the blockhouse bridge, at 80 cents per perch. The company of Clarke, Jordan and McGaw have received 2,983 dollars; and the individuals of that company have received 318 dollars. In the Fall of 1817, they had received 2,283 dollars on account, which was supposed to cover the whole amount of the work then done. During the Winter, their account in the store continued, and, in the Spring, they finished all they ever did on those bridges; and, in the Summer of 1819, a settlement was made of the Company account, amounting to 700 dollars, for which they gave their joint note, liable to be an offset for any amount of work which they might have done beyond the first payment or settlement of 2,283 dollars. The company is now insolvent. The bridge front of Mr. Gooding's was built by Patrick Currin for 80 cents per perch, which, by Thompson's measurement, contained 1,734 perches 3 feet 6 inches, for which he was paid on Thompson's certificate, given about the 10th October, 1819. He was paid one dollar per foot, for 192 feet of coping, in addition to the 80 cents per foot. Patrick Currin also laid 687 perches 23 feet 11 inches on the bridge at the lower end of Shepherd's bottom, at one dollar and 25 cents per perch. Currin quarried the stone, Shepherd hauled them, and found them the lime and sand. Shepherd gave 150 dollars to finish the bridge. Currin also built a part of the diagonal bridge over Shepherd's mill-race, viz: 166 perches 16 feet. The price per perch was 80 cents, for all of which work Currin was paid by Colonel Shepherd. The last payment was made the 4th October, 1819. The double culvert in Thornburgh's lane, and the three-piped culvert near Thornburgh's house, and the three-piped culvert near widow Fay's, were built by Toole, and amounted to 306 perches 21 feet 9 inches, for 68 cents per perch—Colonel Shepherd finding the materials. He was paid in January, 1819. The side walls at Keefer's narrows were built in part, viz: 1,017 perches 12 feet 6 inches, according to Thompson's measure, by Gingley, for which he was paid one dollar 80 cents per perch, as early as May, 1819. There was no settlement made, and he ran away. Rork laid 49 feet—the parapet in this wall. He has taken up in the store 294 dollars. The three-piped culvert in the same wall was built by Quigley, amounting to 73 perches 7 feet 3 inches, at one dollar 80 cents. The three-piped culvert at Craig's Spring run, (Thompson's,) and the three-piped culvert at Craig's nar-

rows, were also built by Quigley ; the first 124 perches 8 feet 3 inches, and the second 154 perches 13 feet 6 inches, at one dollar 80 cents per perch, for all of which he was paid on Thompson's measurement, while he was Superintendent. There is no part of the work spoken of by this deponent contained within Skinner's sub-contract, but is within Shepherd's, and is exclusive of Steinrod's contract, and the four large bridges erected by Shepherd by special contract. All the work referred to by this deponent is contained in Thompson's abstract before alluded to, and made a part of this re-examination, excepting "a culvert at Wood's stone-house," "a three-piped culvert in Good's lane," and "a side wall and culvert at Keefer's narrows," the three culverts near Mrs. Fay's, built by Toole, and the three-piped culvert at Craig's narrows, none of which are mentioned in said abstract. That, in relation to the mason-work contained in the abstract before-mentioned, and to which this deponent has not spoken, he says he omitted to speak of them, because, as to some, he understood there was no dispute, and, as to others, he knew nothing about them. Deponent was the last of Colonel Shepherd's clerks during the execution of his contract. He further deposes, that his knowledge of the times of payments, differently spoken of in his deposition, are derived from the books kept by Franklin Woods before him—the entries were made by Mr. Shepherd and himself—his own knowledge of facts, and the admissions of the parties when he made settlements between them. He further states, that the entries made on the books of Colonel Shepherd, touching the whole subject, by himself, were correctly made as to dates and amounts. And from the reasons beforementioned, he believes those proceedings were correctly made. The latter, he principally supposes, because few settlements were made before he entered into the business. They were principally made by him, and the previous entries were agreed to by the parties, unless errors could be shown. The ledgers here exhibited are those containing the amounts and settlements. The mason work in the abstract of Mr. Thompson, before alluded to, and hereto attached, were generally paid for before Mr. Thompson went out of office. The exceptions in the deponent's knowledge, are the following : 1st. To Mr. Church. He was settled with, the 13th of October, 1819, upon a certificate from Mr. Thompson, obtained a few days before. On that settlement, Colonel Shepherd gave his note for 250 dollars 76 cents, as a balance. He believes it was paid in a short time, but how he got this information, he does not recollect. 2d. Gilchrist was settled with, the 6th November, 1819. There appeared due him 93 dollars 37 cents, for which he appears, by the books, to have been paid by a due bill and cash. That was for building a parapet on the bridge at "Good's" run : whether this has been paid, deponent does not know. Martin and McCain were settled with 9th January, 1820. They received a due bill for about 667 dollars. This was for parapets on the deep hollow and double hollow bridges. The foregoing are all the exceptions to an actual payment before Thompson's removal, of which deponent had knowledge, and now within his remembrance. Jacob Atkinson co-

pied the letter dated 29th April, 1820. which was signed by Colonel Shepherd, to the Commissioners. The original draft of that letter was drawn by Mr. Skinner, and adopted as a substitute for one of the same date, drawn by Mr. Doddridge, and copied by Mr. Caldwell. He, witness, had copied the last letter, and shewed it to Skinner, who objected to it as being too long, and said that Shepherd ought not, at that time, to enter into too much detail in stating his claims, lest he might commit himself. Shepherd was not present. Skinner stated that, in the progress of the settlement, the principles upon which it ought to be made would be developed. This is according to the best of the witness's present recollection. Colonel Shepherd came to the store while Skinner was there; and, after a conversation on the subject with Colonel Shepherd, the letter Skinner had written was copied by the witness, signed by Colonel Shepherd, and sent to the Commissioners. The paper marked C witness copied for Colonel Shepherd, with a view, as he supposes, to be sent to the Commissioners. This was done on the 21st of May, as appears by the paper. Why it was not sent, he is not able to state.

Interrogatories exhibited to Jacob Atkinson on the part of the Government, and his answers thereto, taken the 19th November, 1821.

Ques. 1st. When was the abstract of the measurement of Church's work exhibited to Shepherd? And what amount of payments were made to him after the measure of his work, and exhibition of that abstract?

Ans. The abstract of Church's measurement was exhibited when his account was settled, the 13th October, 1819, according to which he was settled with. I believe he had it with him at Shepherd's store, some one or two weeks before he settled; and that, between that time and the settlement, 400 or 1000 dollars were paid him. At the settlement, there was a balance due him of about 250 dollars, for which a due bill was given.

Ques. 2. Was there any measurement of the bridge over Good's run made before the several payments which have been made on account of that bridge? If so, to whom, and how much was paid after that admeasurement?

Ans. I never knew of any measurement of the bridge over Good's run, at any time.

Ques. 3. Was there any measurement of Currin's work before the payments which were made to him? If any payments were made after the admeasurement, state how much, and on which of the bridges built by him were the afterpayments made?

Ans. I am impressed with a belief that the bridge opposite Mr. Gooding's, the first built by Currin for Col. Shepherd, was measured some time before he left off work on the other bridges, which he undertook to build for Col. Shepherd. A quarrel, I think, induced Currin to leave his contracts. He then got Thompson to measure the balance, viz. what he laid in the mill-race bridge. With these measurements he came to the store to settle, when it was found he had been paid

for all the work he had done. This, I believe, was about the 10th October, 1819. Payments were made to Currin, as to all other persons, as the work was supposed to progress.

Ques. 4. Was the mill-race bridge finished as early as the 5th October, 1819? If a part, say what part?

Ans. The mill-race bridge was not finished as early as the 5th October, 1819? I suppose two-thirds of it was done then. I speak of this only from the best of my recollection at this time.

Ques. 5. Were the admeasurements of Patrick Currin's work on bridges made previous to the 5th October, 1819? If a part, say what part?

Ans. I believe that part of the race bridge built by Currin was measured after the 5th October, 1819, with a view to settle with Currin.

Ques. 6. Were the payments which were made to Toole before or after the admeasurement of work done by him?

Ans. Toole came to settle his running account, I think, in January, 1819, when the work done by him was passed to his credit, agreeably to an abstract of the measurement of his work, given to him by Thompson.

Ques. 7. Was Guigley paid before or after the admeasurement of his work? and how is the fact in relation to Rork?

Ans. Guigley was paid as the work progressed, and, before the work was completed, ran away. Rork, who claimed to be a partner of Guigley, finished the wall at "Keefer's" narrows, and was paid, and principally while he was at the work, over what the work came to.

Ques. 8. Were any, and to what amounts, payments made to Clarke, Jordan, and McGan, after the admeasurement of the deep and double hollow bridges, and on that account? By whom and when were these bridges measured?

Ans. Payments were made to Clarke, Jordan, and McGan, as stated in former examination. I know of no admeasurement of their work by any body.

Ques. 9. Was the large wall erected by Steinrod at Wood's narrows commenced as early as 30th March, 1818? If not, when was that wall commenced? When finished?

Ans. I do not think the large wall at Wood's narrows was commenced as early as the 30th March, 1818. I think it may have been commenced in April, and finished in June or July.

Ques. 10. When was the abstract marked "O" made out? When was the endorsement thereon made?

Ans. I do not know when the abstract marked "O" was made out, nor when the endorsement thereon was made.

Ques. 11. Was not this abstract exhibited to Messrs. Wilson and McGiffin, at Alexandria, in the Fall of 1820, accompanied with a letter from Josias Thompson to Col. Shepherd, bearing date the 30th March, 1818? What has become of that letter? and what were the contents? and was not a receipt (and what were its contents?) at the bottom of this abstract? What has become of that receipt?

Ans. The abstract marked "O" was exhibited at Alexandria to Messrs. Wilson and McGiffin, in the Fall of 1820, and, I believe, was accompanied with a letter from Josias Thompson to Col. Shepherd, bearing date the 30th of March, 1818. This letter was among Col. Shepherd's papers a few days since. Its contents were, to direct Col. Shepherd to pay Mr. Skinner for his mason work, agreeably to an abstract he had furnished Steinrod. There was a receipt at the bottom of this abstract at that time, purporting to be an acknowledgment of pay in full by Steinrod, for the work contained in that abstract. I know not what has become of that receipt.

Ques. 12. You have already stated that you have been in the employment of Col. Shepherd as a clerk, since about the 1st November, 1818, and continued until March, 1821. Was the statement marked "P," and headed "A general statement, showing," &c., made out with your aid and assistance? and does it contain, in your judgment, a correct account, in detail and result, of the profits and losses of Col. Shepherd, derived from, or sustained in consequence of, his contracts for the road and mason work with the Government?

Ans. The statement marked "P," and headed "A general statement, showing," &c., contains, in my judgment, a full account, in detail and result, of the profits and losses of Col. Shepherd, derived from, or sustained in consequence of, his contracts for the road and mason work with the Government.

Ques. 13. Why were you not asked in your examination, in chief, your opinion or belief of the existence of a connexion between Thompson and Shepherd? And why was not Franklin Woods, Shepherd's other clerk, asked the same question?

This question I decline answering.

Ques. 14. From all the facts and circumstances (and what were those facts and circumstances?) coming within your knowledge and observation, did you come to the conclusion, in your own mind, that a connexion in interest existed with Shepherd and any and what agents of Government in relation to the road and mason contracts? And has Franklin Woods expressed any and what opinion upon this subject, and when?

This question I decline answering.

Ques. 15. Has there not, ever since the examination of the road and mason work on behalf of the Government, been a continued intercourse and consultation between Shepherd and Thompson, and other persons, and who were they? State fully all you know on this subject, coming down to the present time.

This question I decline answering.

Ques. 16. Have there not been sham and pretended quarrels between Thompson and Shepherd? If so, when, and what the circumstances?

This question I decline answering.

Ques. 17. Was not the fracas between General Lacock and Thompson the result of a fraudulent plan between Thompson and Shepherd? State every thing you recollect on this subject.

Ans. I do not know that the fracas between General Lacock and Thompson was the result of a preconcerted plan between Thompson and Shepherd.

Ques. 18. What have you heard Thompson and Shepherd, or either of them, say, as to the purchase or ownership of the land on which Thompson resides ?

Ans. I do not recollect to have heard Thompson say any thing about the purchase of the place on which he now resides. Colonel Shepherd and Mrs. Shepherd have told me they bought the place and paid for it, and let Thompson have one half of it. Since that time, one or both of them have said that they had sold out to Thompson, at 25 dollars per acre, fearing that his improvements would be more extravagant than useful.

Ques. 19. Was not Shepherd fully informed of the proposition of Skinner to avoid the four special contract bridges, and of the nature, extent, object, and terms of the alteration of the location ?

Ans. I believe that Col. Shepherd was informed of the proposition of Skinner to avoid the four special contract bridges : whether he was informed of the nature, extent, and terms of the alteration, I cannot say.

Ques. 20. Did not Thompson know that Shepherd had, at the time, full information on this subject ? If he had, state why you know it ?

Ans. I know not whether Thompson was informed that Shepherd had full or any information on this subject at the time.

Ques. 21. At the arbitration at Wheeling between Shepherd and Skinner, what did Thompson swear touching this matter ?

Ans. At the arbitration at Wheeling between Shepherd and Skinner, Thompson said or conveyed the idea that he regretted to proceed in his testimony, as it would disclose a transaction bearing upon Col. Shepherd, that Shepherd never knew of, and which he had intended to conceal from him. The transaction was a proposition of Skinner's to avoid the four special contract bridges. On this subject, Skinner and he had considerable conversation ; and he had communicated with the Government or Department on the subject, and this was the reason why he would not suffer Shepherd to examine his letter book, and this was the first time Shepherd had ever heard of the part he and Skinner had acted in this affair, and finally declined making the alteration, as it interfered with the rights of Col. Shepherd.

Question 22. State any thing you know touching the alteration of the location near Shepherd's house : and is the bridge built where it was recommended and sanctioned by the Government ?

Answer. The bridge near Shepherd's house is not built where I understood it to be sanctioned by the Government.

Question 23. What is the amount of moneys and goods advanced by Shepherd to Thompson ? and how much of this sum has been advanced since Thompson's removal from office ? How and when has this debt been secured to Shepherd ?

Answer. Shepherd's books show an advance of goods and moneys to Thompson of about 900 dollars. I believe a sum in addition to that has been advanced, as pay towards the place on which Thompson lives; or otherwise, money and goods appear by the books to have been advanced Thompson, since his removal, to the amount of 1600 dollars. In January, 1820, or late in the Fall of 1819, I witnessed an instrument, which was said to be a deed of trust, made by Thompson of his farm, to secure Col. Shepherd in the advances he had made him.

Ques. 24. When was it, before or after giving the contract of the road to Skinner & Co., that Shepherd bought Paull's interest, and for what sum? How much was paid to Paull, and to whom was the balance paid?

Ans. Col. Shepherd bought Col. Paull's interest in the contract, according to the best of my recollection, after Skinner and Loomis had undertaken it. I have always understood that Paull was to receive 8000 dollars for his interest, and that 5000 dollars, or thereabouts, had been paid him; and that his claim for the balance had been transferred to Franklin Woods.

Ques. 25. State every thing you may know, which may be beneficial to the Government; and expressly, every thing you may know touching the impression you may have as to a connexion in interest between Thompson and Shepherd, or between Shepherd and any other person, as fully and as particularly as if thereunto especially interrogated.

Ans. This interrogatory I decline answering.

Ques. 26. In answer to the interrogatory on the part of the Government, you say that you do not know the fact that the fracas between Gen. Lacock and Thompson was the result of a preconcerted plan between Shepherd and Thompson, to get rid of the examination. Is it not your belief that such was the fact? and from what facts and circumstances do you derive this belief or opinion?

Ans. This interrogatory I decline answering.

Ques. 27. Why do you decline answering the 13th, 14th, 15th and 16th interrogatories? Does it or does it not arise from an apprehension, and what is the foundation of that apprehension, that Col. Shepherd and his connexions in interest (and who are they?) will injure you in your business and reputation?

Ans. This question I decline answering.

Ques. 28. Was the endorsement in the hand-writing of Thompson, and signed by Daniel Steinrod, on abstract marked "O," in existence when that paper was presented by Col. Shepherd to Messrs. Wilson and McGiffin, at Alexandria, in the Fall of 1820?

Ans. The endorsement in the hand-writing of Thompson, and signed by Daniel Steinrod, on the abstract marked "O," was not in existence when that paper was presented by Col. Shepherd to Messrs. Wilson and McGiffin, at Alexandria, in the Fall of 1820.

Ques. 29. Have you not (and when?) declared to Col. Shepherd and his counsel the course you intended to pursue in relation to your answers on your cross-examination? did they approve or disapprove of that course? State fully any thing that took place upon this subject, and whether you did not inform them distinctly what your answers must be, if you answered at all.

Ans. I have intimated to Mr. Doddridge, on different occasions, that, if a cross-examination took place, I should decline answering any questions which sought, in my opinion, a disclosure of private and confidential conversation: on these he neither approved nor disapproved of the course I intended to pursue. I have, since this investigation by Messrs. Lacock and McGiffen commenced, in conversation with Col. Shepherd, objected to taking opinions and disclosing confidential conversations, as evidence, for obvious reasons; and have stated to Col. Shepherd, that I would not answer any questions of the kind. He has not advised me to such a course, but concurred with me in opinion that it was proper.

Ques. 30. Below the old and present mill-dam, is there not a rock suitable, and within sufficient depth, for the foundation of a bridge, and of sufficient width or extent, without injuring Col. Shepherd's mill-seat?

Ans. I had for some time before believed, and after an examination for a foundation, at or before the old mill-dam, by Mr. Lacock, that I witnessed, I became convinced, beyond a doubt, that there was a rock suitable, and within a reasonable depth, for the foundation of a bridge, and of sufficient width and extent without injuring Col. Shepherd's mill-seat.

Ques. 31. You have seen the answer of I. L. Skinner to interrogatory No. 22, on the part of the Government: does your recollection of the facts accord with his statement in that answer, touching the letters there mentioned?

Ans. They do, generally. I do not, however, recollect that Mr. Skinner particularly objected to Mr. Doddridge's answer to Mr. Shepherd, because it demanded that the arches should be measured inside and out. I distinctly recollect of saying to Mr. Skinner, in the counting room, that such a claim was absurd, and that Mr. Skinner then said it would not do at all.

Sworn to and subscribed this 20th November, 1821.

JACOB ATKINSON.

Thomas Woods examined on the part of Col. Shepherd.

Has travelled our different turnpike roads, and considers the road made by Col. Shepherd superior to any he has ever seen: has been acquainted with Col. Shepherd for twenty years—ever since he (Woods) was a boy. His father and Shepherd live about four miles apart. Witness is cashier of the Northwestern Bank of Virginia, at Wheeling, and was Cashier of the "Ohio Company"—Cashier of both from their first establishment. Col. Shepherd owns stock to the

amount of 38,300 dollars: he owes the bank 34,900 dollars: the debt has been reduced to what it was formerly, 2000 dollars: the reduction has been made since Shepherd's return from Washington City, last Spring. The reputation of Col. Shepherd is, as much so as most of the neighbors, that of an honest, honorable man: he and his wife constitute a remarkably frugal and industrious family. Col. Shepherd is now much more embarrassed than when he entered into the contract. If Col. Shepherd receives nothing more from Government, he considers he will be a loser by the contract: his road contract is considered the principal cause of his embarrassment. From his knowledge of the character of Col. Shepherd, he would not suppose him capable of an improper or corrupt connexion with any person. Has heard Col. Shepherd complain of Thompson, as requiring too much of him. He believes the families of Thompson and Shepherd have not always been on good terms.

N. P. Atkinson examined on the part of Col. Shepherd.

Witness knows the commencement and termination of that section of the road, viz. the 17th, for which \$10,000 per mile was to be paid; and believes the distance to be about two miles and a quarter: the termination eastward is at the end of the grade, beyond the broken bridge, as he understood at the time of receiving bids, before and after.

Interrogatories to N. P. Atkinson on the part of Government, and his answers—19th November, 1821.

Ques. 1. Were you employed, and by whom, to carry representations to the Secretary of the Treasury, in order to procure his sanction to the change of the location of the bridge near Col. Shepherd's house?

Ans. I was employed by Col. Shepherd to carry to the Secretary of the Treasury certain papers and documents, the object of which was to induce the Government to change the location or site of the bridge near Col. Shepherd's house, and did hand those papers to the Hon. William H. Crawford, Secretary of the Treasury.

Ques. 2. Were you furnished with a plot or draft, exhibiting the different routes which were mentioned? If so, by whom was that plot made and furnished?

Ans. Among the papers handed by me was a draft or plot, exhibiting the different routes, and sites for the bridge. This plot was made and furnished by Josias Thompson, then superintendent of the western division of the Cumberland road. The day before I went to the city with the papers, Mr. Thompson made a survey, upon which the plot or draft was founded.

Ques. 3. Was there any reference on that plot to the location of 1806, or any route that should cross the creek immediately below Shepherd's mill-dam, or at any point above the "Hackberry?"

Ans. There was no reference, on the draft furnished by Thompson, to any route which should cross the creek immediately below Shepherd's mill-dam, or at any point above the "Hackberry;" which latter point was represented on the plot as the *old* location.

Ques. 4. Was not the point where the bridge is now erected expressly rejected by the Secretary? and were not Thompson and Shepherd informed of this by you, independent of the letter of the Secretary?

Ans. The bridge is erected at the extreme southwestern point, at the junction of the two branches of Wheeling creek, and at the point which was expressly and distinctly rejected by the Secretary of the Treasury. I did inform either Shepherd or Thompson, or both of them, that this point was expressly rejected. I gave this information as soon as I returned home from the city.

Ques. 5. On the route represented as the middle route on the plat, and which was conditionally sanctioned by the Secretary, was it not stated, in the documents presented, that a good rock bottom was found?

Ans. On the middle route, which was sanctioned by the Secretary, there was represented, on the plat furnished by Thompson, a good rock bottom or foundation for the bridge.

Ques. 6. Who was present, or joined in the representation of the necessity of a change of location? Was Colonel Williams present; and what statements did he make to you and others? Did he intimate that there had been a location in 1806, immediately below the mill dam, or at any other point above the "Hackberry," or that a rock would there be found?

Ans. I have a representation, made and signed by Phillip Dodge, John McClure, and others, recommending a change. I was not then present. Colonel Williams was along when the survey was made by Thompson, upon which the plat was founded. Col. Williams then represented that there was no rock at the "Hackberry," and stated the necessity of changing the site, so as to embrace the middle or southern route. I never heard any intimation, either from Williams, Thompson, or Shepherd, that there had been a location in 1806, which crossed immediately below the mill-dam, or at any point above the "Hackberry," or that a rock foundation could be then had. I have heard Shepherd since say that there was a rock where the old mill-dam was.

Ques. 7. If there be a rock suitable for the foundation of the bridge immediately below the old-mill dam, is not that the proper situation for the bridge? and, in that event, can you account for its being built where it now is, otherwise than in subserviency to the private interest of Colonel Shepherd?

Ans. If there be a rock foundation immediately below the old mill-dam, that would be the proper place for the bridge. I can see no public object in building it where it now is.

Ques. 8. Would there be any necessity for building the long uncoped wall which extends down big Wheeling creek, from the wing wall of the large bridge, had the bridge been built at the place mentioned by the Secretary?

Ans. There would have been no necessity for this wall, had the bridge been erected at the point which was sanctioned by the Secretary.

Sworn and subscribed, the 19th November, 1821.

N. P. ATKINSON.

J. E. Skinner, Esq. examined on the part of Colonel Shepherd.

Witness executed the entire road contract held, originally, by Col. Paull. The distance is ascertained to be twelve miles and three-fourths and twenty-nine rods. The contract with Government was at the rate of \$9,000 per mile, for certain sections, viz: from the 11th to the 16th, inclusive; and \$10,000 per mile for the 17th section: what the precise distance may be in each, he knows not: the payment would amount to about \$119,000. These facts appear from the contract, except as to precise distance of the whole. He built bridges, and other mason work, as a sub-contractor of Colonel Shepherd, to the amount of about 22,726 perches, according to the admeasurement of the Committee of Examination, as he understands is contained in their report to the Government. He has received no payments from Colonel Shepherd since the Committee commenced their examination; nor does he know of any payments made by Col. Shepherd to any sub-contractors since that period. He is of opinion, that, whenever a double culvert can be substituted for an arch, it would be a saving of expense to the Government. He thinks some of these which are built in the double culvert form have not more than sufficient capacity to vent the water: some, he thinks, have. He has not sufficient means of knowing the quantity of water which is discharged by these streams: has been four years in this country. The inhabitants say much more water passes than he has seen since he has been in this country, and, therefore, he speaks with some doubt on the subject. The runs are more violent, and require a greater capacity to discharge them than in the Eastern States, where he was raised. These double culverts are generally built to pass off the water from small ravines, and water which collects alongside of the road from gusts of rain. This remark is common to most of the single, as well as double culverts. He does not think he has received an amount equal to his claim against Colonel Shepherd, according to the report of the Committee of Examination, as to admeasurement of the mason work. The materials for making the road for a distance of better than one mile, say about one mile and a half, were taken from Col. Shepherd's estate. The estate of Colonel Shepherd is considered by him the best in the country, so far as he is acquainted. Col. Shepherd and family are industrious and economical, and his estate well managed. The produce of his farm, his mills, and the labor of himself and slaves, were advantageously applied to the execution of his contract, during its fulfilment. When he came to this country, he understood the general reputation of Colonel Shepherd to be good. It is now questionable on account of his road contract, and no other, as

he knows. He has heard nothing against his reputation on any other subject, that he recollects.

Interrogatories exhibited to I. L. Skinner, Esq. on the part of the Government, and his answers thereto—October 31st, 1821.

Ques. 1. In connexion with Daniel Loomis and Erastus Loomis, did you not contract with Messrs. Paull and Shepherd to execute the road contract which they had made with the Government ?

Ans. I did.

Ques. 2. Where was that contract made ?

Ans. I came to this country, for the first time, in April, 1817, and the contract was made in parol about the 1st of May, 1817, and put into writing, as it now stands, during my absence over the mountains, and was signed by me after my return, in July following. This contract was, afterwards, the same season, assigned to me by my partners; since when, no other person has been interested therein.

Ques. 3. Previous to the closing that contract, did or did not Josias Thompson, the Superintendent, enter into all the minute details and explanations, on behalf of Shepherd, in relation to the work ?

Ans. He did, but not so far as to excite any suspicion, at that time, that there was an improper connexion between them.

Ques. 4. At what price, per rod, did you execute that contract ?

Ans. At \$ 5,750 per mile—about \$ 17 96 per rod.

Ques. 5. Did you afterwards make a contract with Shepherd for mason work ? at what price per perch ? and how many perches of stone were erected under that contract, according to the admeasurement of the Committee ?

Ans. I did, at \$ 2 50 per perch ; and erected about 23,000 perches of stone under that contract, according to the admeasurement of the Committee.

Ques. 6. What amount of mason work was done by you, chargeable to the road contract, under the provision for building bridges and culverts under four feet span ?

Ans. I built 25 single culverts, upon a third separate contract, at 2 dollars per perch, as any road contract with Paull and Shepherd did not include culverts, although theirs with the Government did. The amount of these culverts, as allowed me on settlement, was 1936 dollars 40 cents.

Ques. 7. Did you not make propositions, how many, and to whom, to avoid the four special contract bridges ? Upon what terms ? What conversations or correspondence had you with Thompson and Shepherd ? what their answers ? and, finally, their reasons given for refusing to accede to your propositions ? And, in point of fact, was not Shepherd then made fully acquainted with the nature, extent, object, and terms, of that alteration of the location ?

Ans. In the latter part of the season, say September, 1817, I became alarmed at the probable amount of mason work under Colonel Shepherd's contract. I called on him, and expressed my apprehensions : said to him, that Government never could expect that the ra-

vines should be filled up, at such a rate, with mason work ; that much of what seemed to be contemplated might be dispensed with ; that the public would be dissatisfied in the end ; and that it was making me, as a road contractor, an unreasonable filling, which I did not contemplate when I made the contract, and which I could not afford. I did, then, also, or at the next conversation, suggest to him what I chiefly had in view—the propriety of altering the location, so as to avoid the four special contract bridges altogether ; to which he did not seem to be opposed, but required me to converse with Mr. Thompson on the same subject, which I did. He, Thompson, appeared to be highly pleased with the proposition, and said they had looked at it when laying out the road, but did not think it practicable, all things considered ; wished, however, that it could be done, and desired me to converse with Colonel Shepherd on the subject : I did so ; and conversed with them both, several times, with an increasing prospect, as I supposed, of accomplishing the object. Mr. Thompson requested me to get Benty's terms for the sale of his plantation, as the purchase of that would be necessary, because a canal would have to be made through his bottom about half a mile ; also a removal of the house in which he lived ; which I did, and reported to him the price at 8,000 dollars, which I thought 2,000 dollars more than it was worth. In the course of the business, I learned from Mr. Thompson that the expense of the four bridges would be, to the Government, 80,000 dollars. I then made the following proposition : to take to myself 20,000 dollars, as a compensation for the loss in purchasing out Benty's, building the bridge over " Peters " run, the necessary side walls, cuttings, fillings, risk, &c. to give Colonel Shepherd 20,000 dollars for relinquishing the contract of those bridges, and save to the Government 40,000 dollars. This object I pursued unremittingly, for several weeks, endeavoring to convince them both that Colonel Shepherd would make more money by this, than by building the bridges ; and, in the mean time, conversed with Thomas McGiffin, Esq. on the subject, whom I happened to meet at Bell's tavern, early in November, and made a statement of the case, as it then stood ; he approved of it entirely, and encouraged me to proceed, but I do not recollect that I had any further conversation with him, till the thing was given up. Soon after this, I found the thing less likely to succeed. Colonel Shepherd, as I understood, manifested an unwillingness to accede to the alteration, and Mr. Thompson began to find some objections and difficulties ; one was, that they were special contracts, and could not be interfered with, without the consent of Colonel Shepherd. I then became dissatisfied with their conduct, because I thought them to have been insincere, and told him, Thompson, I was ready to make to the Government a proposition by which they would save \$ 60,000. Perceiving, at length, however, the object attended with many difficulties, I abandoned it.

Ques. 8. Was it not immediately after the refusal to accede to this proposition, that the contract for mason work was given to you ? And with whom, by whom, and under what detail of circumstances, was this mason contract made ?

Ans. Before Mr. Thompson and Shepherd had finally rejected my proposition, conversations had commenced between Shepherd and myself for this mason contract. The contract was closed soon after I had ascertained that I could not succeed in effecting the alteration. It was made in part between Shepherd and wife, and myself; a difficulty arising between us as to the terms, we submitted it to Mr. Thompson, who directed that I should receive 250 dollars per perch, the price at which we ultimately settled our accounts.

Ques. 9. What other alteration of the location did you propose, and how far did you succeed?

Ans. I proposed an alteration from Hawthorn's to Faris's narrows, and succeeded. It was merely to straighten the road, which I did for the price it would have cost on the original location: 2d, to avoid two of the bridges below Bell's tavern, to which Mr. Thompson agreed; but it was prevented by Faris and McKinty, the owners of the land over which the alterations would pass, which would have saved to Government 5 or 6000 dollars: 3d, to avoid the two small bridges on S. Frazier's land, which would have saved about the same sum; to this Mr. Thompson agreed also, and staked out the alteration, but was deterred from pursuing it by the opposition of Frazier, the owner of the land, who had not given his consent to have the road pass over it at all: 4th, to avoid three bridges near Hardisty's, two over main creek, and one of his run, which was effected, and which saved from 10 to 15,000 dollars—the distance the same: 5th, the substitution of several concaves for bridges, which saved a considerable sum: 6th, was an alteration from Morrison's run, to near Gilman's mill, a distance of near a mile: the objects of this were better ground, and a southern exposure, and to avoid a side hill, which it was supposed would slip: distance and mason work about the same as on the first location.

Ques. 10. From your knowledge of the contracts, as well original as sub-contractors, and the means employed by Shepherd in the execution, what, in your judgment, is the clear profits received by him from his contracts? And have you seen and examined statement marked "P" and headed "General statement, &c."—do you believe the details and results substantially correct?

Ans. From all the information I have had of Colonel Shepherd's business, I had supposed the clear profits of the whole, in relation to the road, could not have been less than 100,000 dollars; and I have now seen and examined the statement marked "P," and believe it to be substantially correct.

Ques. 11. Were you present at any examination for a rock for the foundation of the bridge near the "Hackberry?"

Ans. I never was present at any examination, except that once I passed accidentally by, when Mr. Thompson was boring and searching for a rock between the dam and where the bridge is now built. I then saw him drive down a bar about fifteen feet, without finding, as he said, a rock, and took it for granted there was none in a reasonable depth. I did not, at that time, know that there had been a loca-

tion just below the mill dam, in 1806, as it is now said there was, and said also, there is a foundation there for a bridge. I never have examined or seen it examined. If there is a foundation at that place, it is the proper site for the bridge, as it would have saved about 40 rods in distance.

Ques. 12. If there be a rock within a reasonable depth, immediately below the mill dam, would not that obviously be the proper site for the bridge? and why?

Ans. It obviously would; because it would shorten the road about 40 rods, and would avoid the long uncoped side wall, which is made to secure the road against Great Wheeling creek.

Ques. 13. Is the bridge erected at the place recommended in the statement made to the Government, and which was understood to be authorized by the Secretary?

Ans. It is built lower down than the place where I understood from Mr. N. P. Atkinson it had been authorized.

Ques. 14. Under all the circumstances, does not the alteration of the location at this place afford to your mind a strong ground of inference of an improper connexion between Shepherd and Thompson?

Ans. It does seem to carry that inference.

Ques. 15. How many single culverts are erected within your subcontract? and how many double or three piped culverts? and how many of each from the commencement of your contract to Bell's tavern, and what is that distance? Were not more, and how many, double culverts directed above Bell's tavern? and why were they not erected? What occurred in relation to the little bridge above Hardisty's? why was it not entered in the book of admeasurement? and why was not a double culvert there built?

Ans. There were 25 single culverts built by me, from Bell's tavern to West Alexandria, a distance of six miles, and six double culverts, four of them in lieu of small bridges, and two inside walls; from Bell's to the lower end of my contract, a distance of seven miles, there are two single culverts, and ten double culverts; two other double culverts were contemplated by Thompson, above Bell's tavern, one near Gilman's mill, and the other in lieu of the little bridge above Hardisty's; as to which, the bridge was nearly finished, and then, by Thompson's orders, taken down, a double culvert directed, and, through a misunderstanding of mine, as to the necessity of a double one, a single culvert was built, and on this account, as I have understood, the contents of the little bridge which had been built, was not put into Thompson's book of admeasurement.

Ques. 16. Is the difference in the number of single culverts erected above and below Bell's, accounted for from the nature of the ground, or the ravines intersecting the road?

Ans. I think it is.

Ques. 17. Did you ultimately, when, and from what circumstances and facts, come to a conclusion that a connexion existed between Shepherd and Thompson, touching the road and mason contracts?

Ans. I cannot say when I first began to fear there might be a connexion between Thompson and Shepherd. Their whole course taken together, however, and especially the results as they now appear, have forced upon my mind the conviction that there must have been such a connexion from the beginning.

Ques. 18. When the committee first commenced their examination, were you asked, or did you give your advice to Col. Shepherd as to the proper course he ought to pursue in regard to that examination? if so, what was that advice?

Ans. I was at first somewhat dissatisfied at the course taken by the Government, especially in the removal of the superintendent, at a time and in a manner extremely embarrassing and injurious to me and others; nor did I then see the reasonableness of the examination by the committee; and therefore, without any want of personal respect for the gentlemen, I did feel and express some impatience with the course adopted. During this period, I did advise Col. Shepherd to stand aloof, in some respects, from the committee, until we could ascertain the extent of their object. I very soon, however, became sensible that the case required an examination, because that I found there was, in fact, a measurement of some of the mason work. I then felt it my duty to attend on the committee, which I did, at their request, and rendered every aid in my power to facilitate and render certain the results of these admeasurements, so far as I, as a sub-contractor, was concerned. From the time I became satisfied of the reasonableness of the course adopted by the Government, and that a mismeasure did exist, I advised Col. Shepherd to attend on the committee, either alone, or with the aid of an experienced measurer, and in general to facilitate their examination. From about this period, and after giving this advice, Col. Shepherd began to be dissatisfied with me, and seemed not to wish my advice.

Ques. 19. After the committee had procured the attendance of Mr. Coultard, what advice did you give Col. Shepherd?

Ans. I do not recollect after the above period to have had much intercourse with Col. Shepherd. After the arrival of Mr. Coultard, and after the committee had offered to examine and remeasure any of our work with which we might be dissatisfied, I was once at Col. Shepherd's house, and staid overnight. I then told Shepherd that this man, Coultard, was said to be an experienced workman and engineer; that the proposition of the committee was reasonable, and that we ought to comply with it.

Ques. 20. Was not the fracas between General Lacock and Thompson the result of a preconcerted plan between Shepherd and Thompson?

Ans. I have supposed this was the fact, from circumstances which occurred about and since that time.

Ques. 21. Have their not been pretended or artificial quarrels between Thompson and Shepherd? What the circumstances, and when?

Ans. There has been something mysterious in the intercourse between them since the difficulties in Shepherd's business began; and I have sometimes noticed, when they seemed to be in a quarrel, there was at bottom a friendly intercourse between them.

Ques. 22. What were the circumstances under which you wrote the letter referred to in Mr. Doddridge's deposition?

Ans. I called at Mr. Shepherd's house, on my way to Wheeling, and was shown by Mr. Atkinson a letter which he had copied, or was about to copy, written by Mr. Doddridge, in answer to a note from the committee, calling for a disclosure as to the nature and extent of his demand against the Government, and for papers, &c. After reading it, I expressed an opinion to Mr. Atkinson and Mr. Shepherd, who was then at the store, that it was not the most suitable answer that could be given; particularly I disapproved, as I had before done, of the demand that our arches should be measured all round, inside and out, because I thought it an unreasonable demand, and that to make it would injure us in the event, and that the letter itself was circuitous and inappropriate, and perhaps some other things, which I do not recollect. Mr. Atkinson then said to me, If you do not like this, you had better write one yourself, which I did; and, about this time, Col. Shepherd came in, and my remarks were repeated; soon, however, I left the store, and found, sometime afterwards, that the letter I had sketched was copied, and sent to the committee in lieu of Mr. Doddridge's. The whole thing, however, even calling at the store, was accidental, and without any design, and without any expectation that Shepherd would be influenced by me in preference to Mr. Doddridge.

Interrogatories in reply, by the Counsel of Colonel Shepherd, to I. L. Skinner, Esq.

Ques. 1. Did you not expressly advise Col. Shepherd to decline an explanation with the Commissioners last year?

Ans. At the commencement of the examination by the Commissioners, I did endeavor to hold Col. Shepherd back, and advise him that he ought to stand aloof till we could know their object. But, after the examination of the committee had proceeded far enough to show us that there was likely to be found an error in Mr. Thompson's measure, I changed both my feeling and my course in regard to the committee, and attended with them in the examination of the mason work, in which I had been concerned, upon which they expended several weeks before they proceeded to the examination of that in which Col. Shepherd was more immediately concerned; and, during this examination of my work, Col. Shepherd was frequently with us, and saw how the business progressed, and was informed of the deficiency in the measure as fast as it could be ascertained. I told him several times, when he asked me, how such and such pieces of work held out; and that there would be, I feared, a great deficiency in my work, and that I expected there would be in his. These re-

marks were made by me to him, on account of what I had already discovered, as far as we had gone in the examination. He said he believed that his work would not fall short, and that he had always supposed Thompson's measurement was too little, although he never had measured it after him; nor had I measured any of my own work, but intended to do it far enough to satisfy on final settlement. As soon as I became satisfied that there was an error in Thompson's measure, as I did become satisfied before the committee left the examination of my work for Col. Shepherd's, I advised Shepherd to take effectual measures to satisfy himself, as he still seemed to doubt whether both the committee and myself were not mistaken. After this period, I never advised Col. Shepherd to decline an explanation with the committee, but I advised him to the contrary, when I gave him any advice. About this time, however, he began to avoid me, and seemed not to wish my advice.

Ques. 2. Did you not urge to Philip Doddridge, one of Col. Shepherd's counsel, that to meet the Commissioners on the plan proposed by them would look like begging justice, instead of demanding it as a right?

Ans. I do not recollect to have said this to Mr. Doddridge; I might have said so before I was satisfied that the examination was necessary, as it corresponds with the sentiments I then entertained, and I think it is probable I did say it; but I have not, since I became satisfied of this necessity, either held or expressed such a sentiment to any person; nor have I been in consultation with Mr. Doddridge since the fracas at Thompson's.

Ques. 3. All your calculations and propositions to change the location, so as to avoid or render unnecessary the four bridges built by special contract by Col. Shepherd, were they not made to secure some contract for mason work, or were they only made with a view to the public good?

Ans. They were made by me, both with a reference to my own interest, and that of the public; but the propositions to change the location were not made by me in reference to any other contract than that contained in the propositions; nor did I ever make a proposition with more sincerity, in regard to the object itself, than that of avoiding the four bridges. I did wish for a contract, and for this in particular, because I thought I could make the alteration proposed, and save a handsome sum to myself, after allowing Shepherd a greater profit than he could think of making by building the four bridges, and after saving to the Government what was supposed to be 40,000 dollars, and because I was alarmed at the probable amount of mason work on Col. Shepherd's contract, but not so much so as I ought to have been. One of the motives, however, which led me to abandon the project, was a fear I should be considered as a meddler and speculator, having ascertained that there was no probability of effecting my object, but by recourse to the Government.

Ques. 4. When you advised, if you did advise Col. Shepherd not to follow the advice of P. Doddridge, in relation to this inter-

course with the Commissioners, did you not write a letter to him, requesting him to keep that matter a secret from the said Philip, lest he might be displeas'd ?

Ans. I never did advise Mr. Shepherd not to follow the advice of Mr. Doddridge, except so far as the writing the letter before explain'd may seem to imply this ; but I do recollect that I had afterwards some apprehensions in regard to the delicacy of having written the letter at his store, alluded to in this question, and on account of what I had said of the letter written by Mr. Doddridge, and was afraid, if it came to his knowledge, that his feelings would be hurt, and did, I believe, (perhaps in writing,) request Col. Shepherd to have a care of that.

Ques. 5. During the time the Commissioners were here, in the year 1820, and while Col. Shepherd, with your advice and concurrence, was refusing to enter into any arrangements with them, were you not employed in making to them separate explanations for your own benefit ? or for what purpose, if any ? Did you not write a confidential and detailed statement of facts to them ? and, if you did, was that a statement to be concealed from Col. Shepherd, and if so, for what purpose ?

Ans. At no time during the year 1820, after the return of the committee from the adjournment to the examination of our work in June, 1820, was Col. Shepherd, with my advice and concurrence, refusing to enter into any arrangements with the committee. While they were engaged in their examination, I frequently conversed with them in relation to my own business and concerns therein, and also as to the manner in which the business of the Cumberland road had been done. In October, 1820, I received a confidential note from the committee, proposing to me certain questions, to which I gave a confidential answer in writing ; both of which I am willing to show. The reason why the note and answer were confidential was, that, by this time, the errors of the superintendent had become so apparent, as to require explanation. But I never was employed in making separate explanations to the committee, other than in regard to matters of my own interest, or those which grew out of the examination itself ; and never did I, at any time, either before or after the fracas between the committee and Shepherd and Thompson, report or disclose to one side what the other had said in my hearing. This rule I have observed studiously from the commencement, and would call upon all the parties to recollect this fact. I cannot help noticing with surprise the insinuating and imperious manner in which this question and some others are introduced with the same matter, when it is well known that, as early in the season as the 7th June, a personal and formal quarrel was had between Mr. Thompson and Col. Shepherd and the committee, which had no relation to me, and of which I did not know until after it happened ; and, especially, when notes in writing were sent to the committee by Shepherd and Thompson, and these notes drawn up and sent with the knowledge, if not by the advice, of the counsel who puts these interrogatories, which notes

expressly informed the committee that they, Shepherd and Thompson, had lost all confidence in the committee, and would have nothing more to do with them.

Ques. 6. If you wrote such a statement, or any one, state whether that was done gratuitously, or was requested of you by the Commissioners or either of them?

Ans. I have already answered this question in my answer to the 5th interrogatory, that my letter was written in answer to the note of the committee.

Ques. 7. When a change of location from "Morrison's" Point to Gilmore's mill was proposed by you, did not Thompson refuse to make the change? And if he did, what reason did he assign for such refusal?

Ans. Thompson never refused to make the alteration, but admitted that it ought to be done. He said, however, that he could not do it unless he was authorized by the Secretary, or unless it should be the opinion of Clay that it ought to be made. Accordingly, we met Clay on his return from Washington city, and took him over the ground, on his way home, in the Spring of 1818. Mr. Clay told me he had no authority to say any thing on the subject; but, after having passed over the ground, he said to Thompson, that he did think it a desirable alteration, and so obviously beneficial that he would be warranted in making it, unless the distance would be increased, and unless the cost would be increased considerably; and as to the expense, he further added, that it was of so much importance to the public, he would think it would be made, if the increased expense did not exceed 2,000 or 2,500 dollars. One of the principal reasons for the alterations, which we presented to Clay, was, that the location passed about half a mile over the north side of a steep hill, which would be likely to slip, and occasion expense in repairing the road. We proposed to place the road on the other side of the creek, where it now is, which is a southern exposure and level ground; soon afterwards, Thompson measured the two routes, and found that the alteration would lengthen the road about two rods; and on a calculation of its probable expense, he found the difference, as he there supposed, to be about 4 or 500 dollars. I then told him that it would not increase the expense at all, and am still of the same opinion. Mr. Thompson, after this, did not hesitate, but made the alteration proposed.

Ques. 8. Did you not offer him 500 dollars, if he would make such alteration? If you did not do so directly, did you not do so by insinuating that you would give such sum, or some other sum? What did you say in this particular—and what his answer? Did he spurn the offer?

Ans. I did not, directly or indirectly, offer him any sum of money to make the alteration; nor did I, at any time, directly or by insinuating, offer him any sum of money for an improper purpose. And as to his having spurned such an offer, I have no recollection that any indelicate or offensive word had ever passed between us down to the time of his removal from office; and, in confirmation of the fact

that his confidence in me was unimpaired in November, after he was superseded, he requested me to write for him a letter to the Secretary, complaining of his removal from office, and requesting an investigation of his public conduct, which I did, and wish it may be produced.

Ques. 9. If the transaction in the preceding interrogatory happened then, did not you propose, or in some way or other insinuate that you would give, or that there might be given, to Thompson's daughter, Cecilia Loomis, the sum of 500 dollars, or some other sum, if that alteration could be made? Or if not, what did you say in that particular case?

Ans. No such transaction ever did happen; but I did say, at some time in conversation with Thompson, I do not recollect at what time, that I intended to give something to Cecilia Loomis, his daughter, which I will explain as well I can at this distance of time, and without ever being conscious that Thompson had any suspicion that I had an improper motive in saying it, and certainly not in reference to that alteration. In the latter part of the Winter of 1816, or 1817, Erastus Loomis, the son-in-law of Thompson, with the appearance and character of a gentleman, was in that part of the country where I resided, and called on me with Daniel Loomis, stating the Government had been making a further location of the Cumberland Road, particularly between Wheeling and Washington, and that Colonel Shepherd and others, and Judge Bauce and others, had entered into large contracts for road and mason work with the Government, and wanted help; that he was by Thompson requested to look up competent men, at the eastward, for this business, and to say to them that there was good encouragement to come out, and take contracts, and shewed a letter or letters from Thompson, explaining the object, and referring to Colonel Shepherd, Judge Bauce, and others. I inquired of some members of Congress, in the neighborhood, to know, as to what Congress had been said to do. &c. After becoming satisfied as to the probable reality of what had been represented to us by Mr. Loomis, and after consideration, I concluded to come to this country. Accordingly, in April following, I started for this country with Daniel Loomis and Erastus Loomis, and arrived here about the middle of April, and continued here till some time in May, when I returned home again; but after my return, Daniel Loomis, Erastus Loomis, and myself, had, as partners, entered into several contracts for road and mason work, and we had agreed with Colonel Shepherd to take the whole of Paul's road contract. After my departure home, this contract was filled up and signed by them, and they went on to work upon some of the contracts, till my return back to this country, in July. Daniel Loomis and myself soon found, after my return, that the conduct of Erastus Loomis had been such that we must be rid of him at some rate or other, or perhaps be ruined by him. It was the opinion of some of our friends, that Erastus Loomis's mind had been injured some how, perhaps by the wound he had received on "Lake Champlain," with Mr. McDonough, and that he was partially deranged; we took measures to

buy him out, which we effected, because we had, as well as all our friends, come to the opinion that it would be highly imprudent to proceed in connexion with Erastus Loomis in a concern of such magnitude. In a few months he had expended and wasted what we had given him, and returned from a journey to the eastward, and settled with his family in Wheeling; he soon became needy, and there was much talk about Thompson's having abandoned them, and not helping them, &c. Thompson conversed with me often on the subject of Erastus Loomis and his family, when we happened to be together on business, and asked my opinion and advice what he should do, and whether I did not think that Erastus Loomis was deranged. He appeared in these conversations to have all the feelings and solicitude of a father; but he said, as to taking Erastus into his family, he would not, nor could he take his daughter from him—said he did not know what to do. I entered into his feelings, in some measure, and told him I did not know what he could do; and recollect to have said to him, in some of these conversations, that I intended to do something for Erastus Loomis's family, if the contracts should come out as I expected; and I think I should have done it, inasmuch as E. Loomis had been the occasion of giving me the contracts, which I then supposed would be very beneficial to me. If this remark was made by me at a time and in a manner offensive to Thompson, I did not intend it. He never insinuated to me, nor did I ever suspect he had so received it. I have said that I did not recollect the time at which I made the remark to Thompson, that I had intended to make E. Loomis's family a consideration. I think, however, it must have been after the alteration had been made, because E. Loomis did not get into the situation to originate the conversation which I have mentioned, till after the alteration had been made. The alteration was made early in April: E. Loomis's situation did not become a subject of conversation till about midsummer.

Ques. 10. When the Commissioners came, in the year 1820, to examine the work done by you under Shepherd's contract, did you not represent to them that a large sum, say 15 or 21,000 dollars was due you? or, if not that sum, then state what sum; and did you not request them to give you an order on Government for that, or some other sum, to enable you to go on? or if not, what did you say in that particular?

Ans. In 1820, when the Commissioners first came on, I did state to them that there was, I supposed, 10 or 15,000 dollars coming to me, and that I wanted some of it, at least to help me to settle my business; which would have been the case if the measurement made by Thompson had held out, as it now appears by settlement made with Col. Shepherd: of the correctness of his measure I had then no doubts, not having measured any of it myself.

Ques. 11. Late in 1820, did you not refuse to go with Shepherd and meet the Commissioners at Alexandria? and, if so, state for what reasons, and what advice you gave to Col. Shepherd in that particular.

Ans. Some time in November, 1820, Colonel Shepherd called at Shaw's tavern, where I then boarded, on his way to Alexandria to see the Committee; and, also, he called at the tavern on his return from Alexandria. Whether he asked me to go with him or not, I do not now recollect; I think he did not, however, and that he did not intend to have me go, because he went for the purpose of satisfying the Committee that he had paid me, or nearly, even upon Thompson's measure, of which he gave me no notice, either as he went up or returned. The Committee asked him, as they told me afterwards, whether he had notified me, and he acknowledged that he had not; and that they told him, as they had done when he had made an attempt to do the same thing before, that they could not take it up *ex parte*. I have no recollection of giving him any advice at that time. I certainly could not do it in relation to his business, for he did not inform me what it was.

Ques. 12. Did you not consider yourself benefitted by the alteration of the site of the large bridge by Col. Shepherd's house? and did you not urge that alteration to Shepherd, Thompson, and the Secretary?

Ans. I did not; nor did I ever expect to be benefitted by the alteration of the site of the large bridge by Col. Shepherd's house. I did think, however, that an alteration was necessary, because I thought there was no foundation near the "Hackberry," where the location was said to be. But I never urged it to Shepherd, Thompson, or the Secretary. I wrote to the Secretary, however, giving it as my opinion, that an alteration was necessary, and believed it, without knowing or suspecting that a good foundation might be obtained, and had been obtained, near the same, as the location of 1806.

Ques. 13. Your letter to the Committee, of 19th Oct. 1820, already alluded to, together with the note to you, to which that letter is an answer—state whether the note, and your answer, were not the result of previous verbal communications between them and you. Please to produce, as you have stated to P. Doddridge you would do, the letter aforesaid, together with the note before mentioned, and copies of any other communications made by you to the Committee or the Secretary, to be made a part of the record of your answer in this particular.

Ans. In the course of the examination of 1820, sundry conversations were held between me and the Committee, respecting the manner in which the business of the road had been managed and carried on from the beginning; and, in October of that year, the Committee wished me to state, in writing, what I knew concerning it. I replied that I should decline doing it, unless I was requested in writing to do so. Soon after this, I received the note alluded to, both which I am ready to produce, and every other letter alluded to in the interrogatory, and do consent that they be made of this my answer.

ALEXANDRIA, *October 19th, 1820.*

SIR: Your situation as a contractor for better than three years, engaged, as you were, in daily intercourse and observation, we presume

will enable you to give us important information in relation to the subject, generally, of our examination: as a candid and honorable man, we hope you will have no reluctance in giving us such information as you may possess. Your particular attention is requested 1st. to the general course of the superintendence, 2d, whether any, or what facts came under your observation, which would appear to establish the fact, that a connexion existed between the contractors and any of the public agents of the Government. You will be pleased to detail the particulars of any offer you may have made to change any, and what, locations, and the proposed effect of such changes; and, in general, any alterations which may have been under your observation.

Respectfully, your ob't serv'ts,

A. LACOCK,
THO WILSON,
THO. MCGIFFIN.

I. L. SKINNER, Esq.

Hon. WM. H. CRAWFORD,
Secretary of the Treasury.

SIR: The undersigned is very unwilling to trouble you with the subject of the Cumberland road. He regrets the necessity of doing it, the more because he is not insensible of the fact that you have already had too much of it. There is in this case, however, a paramount necessity, and duty both to himself and others concerned with him. He is a contractor under Shepherd and Paull for the whole of their road, and some part of their mason work; and these contracts have been approved by the late superintendent, according to the law of Congress, and are in his hand writing. In that law, and in all the contracts, there is express provision, that, in case the money shall at any time be withholden by the principal contractors from those who are under him, it shall be in the power of the superintendent to pay it over to such sub-contractors whose contracts have been approved by him. If the Congress have thus early and carefully set a watch over the interests of those who have actually done the work, it should seem to be even more necessary under the particular circumstances of this case, that the same equity should be still kept in view. There is a balance due the undersigned, and he has proposed a settlement with Shepherd and Paull, giving them an election to take as the basis of it, either the late superintendent's measure, which they intend to establish, or that of the committee, Messrs, Wilson and others, as reported; connected with an assignment to the sub-contractors of the right to receive from the Government whatever they may think proper to allow on the surplus measure of Mr. Thompson: both which they have declined. The amount of the sub-contractors' claim on them cannot be precisely ascertained, until it shall be known what principles the Government will adopt in the settlement of these claims.

Upon the ground of Thompson's measure, there might be due from Shepherd and Paull, say from 12 to 15,000 dollars; on that of the committee, two or three only. This communication is not, however, intended to throw any unnecessary impediment in the way of a settlement at the Treasury; much less it is intended to imply any personal disrespect either for Col. Shepherd or Col. Paull. The reasons for making it obviously result from the nature of the case. Will the Hon. Secretary please to be apprised of the foregoing facts, and to accept this as a caution not to pay over to Shepherd and Paull so much of the balance which may be due to them, as appertains to a settlement with the undersigned? The above is, with great respect and consideration, submitted by your obedient servant,

I. L. SKINNER.

January 17th, 1821.

WASHINGTON CITY, 28th February, 1821.

HON. SECRETARY OF THE TREASURY,

SIR: Perhaps it is now a matter of course, that Shepherd and Paull's settlement should be delayed for some time. We are not about to complain of what seems necessary; but there is a distressing hardship in this delay to many of us. We have no doubt, sir, but you will be disposed to mitigate the evil as far as the nature of the case will admit of it; and, therefore, beg leave to suggest that there is one part of it which does admit of relief. The allowance for work supposed by Mr. Thompson to have been done beyond the measure of the committee, and actually paid for in pursuance of his certificate, and upon the faith of it, may be readily ascertained; some gentlemen who are near the spot can do it with little expense, and probably without much loss of time. Indeed it can never be done any where but on the spot. This question is independent of all others appertaining to the case. The settlement of it would not only give relief to the undersigned, but many others: some of us are five or six hundred miles from our families. We are sued and holden to bail upon the result of this settlement.

In this painful situation, one year has passed away, and another will have so passed, unless the above course is adopted. Pray, sir, give your attention to the subject as soon as the weighty and multiplied concerns of your department will allow you to do it.

Very respectfully, your obedient servant,
I. L. SKINNER.

WASHINGTON CITY 9th March, 1821.

HON. W. H. CRAWFORD,
Secretary of the Treasury.

SIR: Knowing that it is highly improper to waste any of your time, by writing to you on speculative subjects, I have heretofore suppressed

my inclination to do it, until my own business made it necessary. My mind had become so disgusted with the subject, that I had wished to avoid coming at all into the controversy between Shepherd and Paull and Thompson and the committee. There has been a strangeness in the whole management, which renders it irksome and almost impracticable to express my views of the case. I was not in the country when the contracts were made: I have had no share in what is called the speculation in them. I entered into the business from necessity, and with upright intentions, and intended to deserve praise instead of censure. It has, however, fallen to my lot to have the greatest share of the trouble without the profits. I have read the report to day for the first time; some of the details to which it refers, I have not seen, and therefore cannot say how far they may affect me, nor how far they may in my own opinion be correct; my confidence in the gentlemen of the committee, would lead me to expect they were so. The answer to the report I have also read; and as it would be improper to express my opinion of its general character, I shall only notice that which regards myself particularly. There are only one or two slants at me, and these not by way of allegation, but insinuation. It seems to be stated that I procured an alteration near Thompson's, which has cost the Government 4,000 dollars. There is at least 4,000 dollars mistake in this particular. The difference of expense is, in my own opinion, and in that of some disinterested persons, in favor of Government. If the committee had been of a different opinion, they would have said so in their report; but they would have been in duty bound, also, to say, that I had procured to be made an alteration below, by Hardisty's, which saved the Government three large bridges—an alteration in favor of the Government of at least 12,000 dollars. The answer, if it said any thing of me, should have said this, and more, that I had attempted alterations to save the Government a much greater amount than this, and failed from causes not within my control. As I now clearly foresee that there may be necessarily some delay in the final settlement of this business, it is with the more anxiety that I desire and request that these points, which can be severed from the controversy, may be brought to a speedy issue. There are, besides Col. Shepherd and myself, many persons concerned, who are unquestionably innocent, sufferers by such a long protracted settlement, and who could be relieved by a partial one. It is desirable, also, as it would cut off the occasion of speech against both Government and the committee. You know, sir, that justice itself may be administered in such rigid terms, as to wear the semblance of persecution. Sir, the extreme necessity of my case is my apology for this frankness; I am ruined, probably, whatever may be the result: my only hope left is, that others may not be ruined by me; my friends on both sides the mountains know that I speak the truth.

I am, sir, very respectfully,

Your obedient servant,

I. L. SKINNER.

Interrogatories to J. L. Skinner, Esq., by Col. Shepherd's Counsel.

Ques. 1st. In relation to the fracas you have spoken, shew answer if all this did not happen after any advice you may have given to Colonel Shepherd or his counsel?

Ans. The fracas happened the 7th June, 1820, of which I had no knowledge till after it occurred. I do not recollect to have given any advice whatever to his council afterwards, nor to him, other than I have before stated?

Ques. 2d. Had you not, before the fracas of which you speak, given advice; and if you did so, to whom, and when?

Ans. I have before said that I did at the commencement of the examination by the committee, and before the fracas, expressed an opinion that we ought to stand aloof from them till we could see their drift; and this opinion I think I expressed to the counsel of Col. Shepherd as well as himself.

Ques. 3d. If, after the fracas at Thompson of which you have made mention, you changed your opinion as to the course Col. Shepherd ought to pursue towards the commissioners of the last year, then state at what time you gave him such views of your change of opinion?

Ans. I did not change my opinion after the fracas, but before, upon the fact of finding that there was probably a great defect in Mr. Thompson's measure, of which, as far as we had gone, I had informed Col. Shepherd before the fracas, and advised him to take measures to satisfy himself.

Ques. 4. At what time, if ever, did you withdraw your advice not to meet the Commissioners of the Government? Was this before the fracas, or after it, and under what circumstances? state the particulars.

Ans. I never did, formally or informally, withdraw my advice respecting the committee. It was before the *fracas* that I had become sensible that an examination of our work was proper and necessary: because, before the fracas, it had become apparent that there was an error, and of such a nature as to raise the presumption, at least, that the whole amount of it would be great. I had notified Col. Shepherd of the state of the case, as far as I understood it, before the committee adjourned in May, and advised Col. Shepherd, as I have before said, to take measures to satisfy himself.

Further interrogatories by the Counsel of Col. Shepherd.

Ques. 1. Did you not state to the Secretary of the Treasury of the United States, that, so far as you were concerned, you were satisfied with the admeasurement of the committee acting the last year?

Ans. I stated to the Secretary of the Treasury of the United States, that I believed the measure was fairly and honestly made, but that I did not suppose it was strictly accurate; nor could it be made so by any body, now the work was buried up with the fillings.

Ques. 2. Did you not state to the Secretary, both verbally and in writing, that you thought, if a remeasurement were made, the result, would be as likely to happen in favor of the Government, as of the contractor? and that therefore you would be satisfied to have your claims adjusted by that measurement?

Ans. I did say this to the Secretary, and that I had found the remeasurements against me, in two or three instances when we had made the experiment. I also stated to the Secretary that I was willing to have my claim adjusted by that measure: provided, the Government would allow me the amount I had paid out on the surplus measure of Mr. Thompson, in pursuance of his certificates, and upon the faith of them.

Ques. 3. If you made such declarations to the Secretary of the Treasury, were not such declarations concealed from Col. Shepherd or his counsel: and have you not denied the fact of your having made these declarations to the Secretary since that period?

Ans. They were not concealed from Col. Shepherd or his counsel. One of the letters which I wrote to the Secretary on my own business, I showed to Mr. Hammond, at Washington, before I sent it; and also kept it back two or three days at his request, lest it might interfere with any of Col. Shepherd's arrangements: also, I was present at Mr. Clay's lodgings with Col. Shepherd and Mr. Doddridge, when I expressed, without reserve, the same sentiments I had expressed to the Secretary: nor have I, at any time or place, made any statements inconsistent with those contained in the foregoing answers.

Sworn and subscribed by me.

I. L. SKINNER.

Bartholomew Cosgrove examined on the part of Shepherd.

Has seen the double culverts between this (Mrs. Gooding's) and Bentley's as full of water as they would contain, from a gust of rain: has seen the one first below Fay's bridge so full that the water rose above the mouth, or the openings in the culverts: never saw the water rise as mentioned above but once, and that was in the Fall of 1819: did not examine to see whether the upper end was obstructed by any thing: does not know the size of the openings: vented a large current from the lower mouths. He thinks there are three small ravines which are intended to be vented by this double culvert. At one of these ravines the ground is lower than the channel which is to convey the water to the end of the culvert. He never saw the water run over the road at this place: took notice of the double culvert first east of Fay's bridge, at that time, which was equally full: the ravine which is intended to be discharged by this double culvert strikes the road three or four rods west of the culvert. The water does not partially discharge itself in the run at the bridge: does not know the size of the openings, nor that any channel has been made to carry off the water below the culvert and road: did not particularly notice any

others in time of flood. He recollects seeing a culvert taken up west of Fay's bridge, where a concave was afterwards placed: does not know whether single or double, nor by whose orders it was taken up. He thinks there is a natural channel or spring run near the 2d double culvert west of Fay's bridge: the distance between these double culverts is about eighty rods: has lived with Col. Shepherd, (and is now living on his place) for three years and five months: is not now in his employ.

Sworn and subscribed 10th August, 1821.

BARTHOLOMEW COSGROVE.

Richard Sinit examined on the part of Col. Shepherd.

Assisted in building the culvert at Woods' narrows, and the wall erected at the end of it: built it for Steinrod: the road slipped, and the culvert was rendered useless: a part of the stone remained in the mud, and a part were used in building the great wall: three or four wagon loads of the west part of the culvert slipped into the creek, and were not used. In Steinrod's contract, parapet walls were built at the ends of the culverts, and were taken down, by whose order he knows not. The price of stone, delivered at the narrows, was fifty cents per perch: the price for quarrying stone at his bridge was fifty cents: performed the work for Steinrod by the perch, at \$1 20 per perch, witness finding all the materials: he does not know either the length, height, or thickness of the end wall: built part of the large wall for Steinrod at \$1 50 per perch, finding all the materials. This part was at the end next Steinrod's house.

Thomas McGarr examined on the part of Col. Shepherd.

Helped to build the deep hollow and double hollow bridges: tie-walls were built in both: There are six tie-walls in the deep hollow bridge—does not know their height—are five feet thick—does not know their length: there are four tie-walls in the double hollow bridge: five feet thick—does not know their length or height: were built according to the directions given by Mr. Thompson, the then superintendent: those bridges are paved underneath the arches, and sanded. The wall was commenced and built at the brick block house bridge, 55 feet long, 4 feet high, and 5 feet thick: it was measured by Mr. Thompson, in 1818: witness assisted in the measurement, and it was afterwards discontinued, by Thompson's orders: the stone was taken up, and built in the bridge. Thompson told him to take them up, and he would allow him quarriers' measurement, as he would not have them there; has never settled for those bridges: witness, together with Clarke, Jordan and McGarr, engaged to build the deep hollow, the double hollow, and the block house bridges, for eighty cents per perch, Col. Shepherd finding all the materials on the ground: the work has been completed since the Summer of 1819. The block house bridge was never fully measured by Thompson: he measured the walls up to the spring of the arch, and no more; this was the all of 1818: Thomson did not actually measure those parts of the

walls which were under the surface of the ground, but received the heights and thickness from the information of the witness : he received the bill of this admeasurement from Thompson : he does not think this bridge was filled in, and the road stoned, before Thompson's removal : they took down one of these abutments, two feet six inches in height, three feet thick, and forty-one feet in length. Thompson had previously directed the height it was to be built, and marked upon the stone to which it was to be taken down, but made no memorandum of the height, length, or thickness of the wall so directed to be taken down. Witness then told Shepherd that he (witness) must be paid for the work, and Shepherd said that the Government should pay him. They have never made out their claim preparatory to a settlement with Shepherd : no person had any memorandum of the amount of work taken down in the abutment, but witness, who has lost the paper containing it. He confidently recollects the height, length, and thickness : the materials were put in the other abutment : obtained the payments, from time to time, from Shepherd, without having any measurement or estimate from Thompson : witness was not in the habit of going for money : though a party to the contract, his name was not in the contract.

Sworn and subscribed 10th August, 1821.

THOMAS MCGARR.

Henry Jourdon examined on the part of Col. Shepherd.

Was a partner of McGarr, Clark & McGarr, and assisted in building the deep hollow, the double hollow, and the block house bridges. There were six tri-walls in the deep hollow, but does not recollect how many in the double hollow bridge : believes they were ten feet long, and five feet thick : does not know the height : were started in a bottom with the level of the wall, as near as they could come to it : were built by the directions of the superintendent : the three bridges are paved under the arches, and sanded : knows that Thompson directed a wall at the block house bridge to be taken down, after it was built four feet : is not positive of the thickness or length : Thompson had directed it to be built : told him to take it down because it should be built that length : the stone were put in the rest of the bridge. In the Fall or Winter of 1817 they had a settlement with Col. Shepherd, at which time they presented Shepherd with a statement of the measurement, from Thompson; and he thinks Shepherd had also a statement, but is not certain : does not know that they had the statement at the settlement, but believes they had : Shepherd knew as well as they what work was done. Pearson measured the tri-wall in 1817.

Sworn and subscribed 10th August, 1821.

HENRY JOURDON.

Robert Clark examined on the part of Col. Shepherd.

Was a partner with McGarr and Jourdon, and afterwards McGarr, and assisted in building the deep hollow, the double hollow, and the block house bridges. There were six tri-walls built in the deep hollow, and four in the double hollow bridges: were commenced near upon a level with the foundation: does not recollect the height: they were so long, and five feet thick. The bridges were all three paved under the arches, and sanded: a wall at the block house was built by Mr. Thompson's orders, four feet high, five feet thick, and fifty-five feet long: it was principally taken down by the witness and his partners, and the stone used in the bridge. Mr. Thompson took the dimensions of this wall, and said he would see them paid for it. He did not actually measure, but received the information of the dimensions from witness, who had measured the depth, thickness, and length. In the Fall of 1817, witness called upon Mr. Thompson to get the measurement. The measurement had been made by a certain Pearson: the heights were given in by the witness to Pearson, who measured the length and thickness on the top of the wall: he and Thompson authorized Pearson to measure the work. When witness obtained the statement from Thompson, he took it to Shepherd, who also had a statement of his own, as he thinks, and is pretty certain. Shepherd and they then settled upon that statement, which embraced all which had been done that season. At the time of settlement, did not pay up the amount of the work, but retained a part (about 270 dollars) for the completion of their contract: they have never completed those three bridges: did some work on the block house bridges in 1818: have received some money from Shepherd, for which they gave their due bill, to be settled out of their claim for work. Pearson was a bridge builder, and measured his own work, as witness believes. The measurements made in the Fall of 1817 were considered by witness complete, so far as they went: he knows that Thompson had the notes of the measurement of the block house bridge up to the spring of the arch, as made in 1817, and gave witness a statement from those notes, upon which his settlement was then made with Shepherd. There were 2 feet 6 inches in height, 3 feet thick, and 41 feet in length, taken down by Thompson's direction, from an abutment in the block house bridge, which had been built by his orders. The stone were used in the other abutment.

Sworn and subscribed 10th August, 1821.

ROBERT CLARKE.

John Adams examined on the part of Col. Shepherd.

Built the bridge across Lee's run, in connexion with Livingston: it was built to a level with the top of the arch: does not know the length or height of the wing walls. Thompson made a bill of the measurement, and took the work off their hands; and they were paid

by Col. Woods, with whom the contract was made: he knows Woods was acting for Col. Shepherd: the materials were furnished on the ground by Col. Woods: the price paid witness and partner, for laying the stone, was seventy cents per perch: were stopped from finishing the bridge, and were employed by Daniel Steinrod to take it down, and place it where it now stands, in the form of a concave sewer and foot-bridge: took it down, and put it where it is, for one dollar per perch: built the culvert for seventy cents. There is a long wall, east of the foot-bridge, built up to the surface of the ground, the object of which is not known to witness: if witness had found all the materials, he would have charged three dollars per perch. The price was $12\frac{1}{2}$ cents per bushel for lime: the hauling was the only expense for the sand.

Sworn and subscribed 10th August, 1821.

JOHN ADAMS.

Alexander Petit examined on the part of Colonel Shepherd.

Has lived where he now does, near Colonel Shepherd's, fortwenty-six years, and is acquainted with the streams over which the road passes in Virginia. The seasons have been dry, compared with former seasons, for three or four years back. In 1817 it was somewhat of a wet season—but only one considerable freshet. Before the last three years the seasons were much wetter, and the waters much higher. Has seen some of the double culverts, and thinks they are too small. The principal objection is that they will easily fill up, and there is not room enough to clear them out. They might, perhaps, be large enough to vent the water if there was no obstruction. Some of them he thinks not large enough without any obstruction. A single piped culvert, near four feet span, would be better than a double culvert, with the same extent of openings in two pipes. Has never examined the culverts particularly, nor does he know the extent of the openings. It is always better to pass the ravines under the road, as soon as they come in contact with a culvert or bridge of a suitable size, than to conduct one or more along side of the road, and then discharge them by a double culvert, or bridge of double the size, which each, separately, might require, unless where the ground might be sound or strong. Has never had any experience in making and keeping in repair turnpike roads, but has much experience in making common roads.

Sworn and subscribed 10th August, 1821.

ALEXANDER PETIT.

John Thornburg, examined on the part of Colonel Shepherd.

Was born thirty-four or thirty-five years since, at Wheeling creek, at Colonel Shepherd's, and lived on Little Wheeling ever since. From five years back to twenty-five years back, the seasons have been much wetter, and the streams rose much higher than since that

period. Has seen the culverts built on Shepherd's contract. Some, he thinks, are large enough to discharge the water which he has seen, and others he thinks are not. He never considered any of the culverts unnecessarily large. The water from these ravines, or breaks in the hill, is discharged by the double culverts first west of Fay's bridge.

James Arbuthnot, examined on the part of Colonel Shepherd.

He thinks the double culverts are about right; sometimes they would vent all the water, and sometimes they would not. Does not think any of them unnecessarily large. He is not a judge of such business, and therefore cannot say which would be best, a single culvert of four feet span, or a double culvert, each two feet span.

Sworn and subscribed the 10th August 1821.

JAMES ARBUTHNOT.

John M'Clain, examined on the part of Colonel Shepherd.

He lived about twenty-five or twenty-six years on Little Wheeling creek. The former seasons were a great deal wetter than for the last three or four years. For four or five years previous the waters rose higher. If as much water would come now as formerly, some of the culverts would not discharge half the water. Does not expect any of them are too large.

Sworn and subscribed the 10th of August, 1821.

JOHN M'CLAIN.

Francis Melton, examined on the part of Colonel Shepherd.

Hired with Colonel Shepherd from the time he commenced making the road until he finished, and still lives on a branch of Wheeling creek, about four miles above Colonel Shepherd's. Has seen the water running over the road, in consequence of the culverts not being of sufficient capacity to vent it, from three to four inches deep. This was at the culvert at Thompson's house. Witness was there at the time of the freshet.

Sworn and subscribed the 10th August, 1821.

FRANCIS MELTON.

John Fay, examined on the part of Colonel Shepherd.

Has lived on Middle Wheeling, about four miles from Shepherd's, for upwards of thirty years: finished about 260 rods of this road, and has worked on it before this job. In his opinion, several of the culverts were placed where they ought not to be placed. He means particularly the double culvert above Fay's bridge. He thinks a single culvert of six feet span would have been necessary some rods west of where it is now placed: one culvert of four feet span at the

proper place would have been better than the double, where now placed. Simmons has turned the run along side of the road in a different direction from the double culvert. It was shaped out for a concave sieve, and afterwards changed. He considers that a single culvert of four feet span would be much better than a double one of two feet each. They are not so liable to be choked, and can be more easily cleaned out.

Re-examined, 22d October, 1821.

Has seen a wall that was commenced at the lower end of Thompson's place in sight of his house—always understood it was erected by Thompson's directions—the length was between sixty and seventy-five feet; the depth was about two feet; and thickness between five and six feet—was raised at the lower end highest—average from three and a half to four feet high. It was taken up and removed. Hauled stone for the Fay bridge and the bridge at Shepherd's house—were hauled from different quarries—hauled four perches per day from the Wild Cat quarry to the Fay bridge, with a four horse team. There were hands at the quarries, who helped to load, and a hand at the bridge, who helped to unload. There were three other quarries, from which four loads per day were hauled. There was about one half of the whole contents hauled from these quarries. For the balance, about six perches per day were hauled. To the bridge at Colonel Shepherd's house ten or twelve loads per day were hauled from the quarry back of the orchard, and more than one-half were hauled from this quarry—from the other quarries about five loads per day were hauled—the price per day was four dollars twenty-five cents. The expenses of the wagon, team, and driver, for the hauling of the whole stone in the two bridges, would be at least seventy-five per perch. In opening the quarries, and making the roads to the quarries, Shepherd must have expended considerable sums of money; how much, he knows not. In relation to the expenses of quarrying, he has no general knowledge, and can give no estimate.

Sworn and subscribed this 22d October, 1821.

JOHN FAY.

Interrogatories to Jehn Fay on the part of Shepherd.

Ques. 1st. At the sales of the road and mason work on the western division of the United States' road, made at Wheeling, were you present? and will you state what plans for the four large bridges were exhibited, if any, and what was said in relation to the arches?

Ans. I was at Wheeling on the day of sale—was not in the room where the Commissioners were—saw the plan of the four bridges, as I understood; it was either posted up at Knox's Old Stand, or saw it in some person's hand. I noticed it particularly, because it was new to me, never having seen the plan of any such bridges. It was public, and talked of as the plan of those bridges; but who said it was

the plan, I do not recollect. I mean, who the person was who was talking to me about those bridges, I do not recollect. It appears to me that the plan was nearly such as the bridges now erected; and that there were three arches to each bridge. If it had been a single arch, I think I should have recollected it.

Ques. 2. If any public notice of the construction of the arches was made, please state what was that notice, and what the plan.

Ans. It was late when I went to Wheeling; was not in the room at all; and I do not recollect to have heard any public notice on the subject.

Ques. 3. When, by whom, and how, were you first made acquainted that the road would be taken along the creek route?

Ans. I was at Alexandria on the day of the sales there; and when I went there I heard it publicly talked of that the road was to go down the creek. The reason why I recollect so particularly was, that they were laughing at a man of the name of Pearson, who it was said was about buying steelyards to weigh the stones on his land. This was at Bell's tavern, in Alexandria. I was not at the house where Hallan now lives, where the Commissioners were. It appeared to be publicly understood there, and was the first time I had heard of it. I may have been in the house, but not in the room where the Commissioners sat. Bell's house and this are across the street, opposite to each other.

Ques. 4. Whether you saw William Hawkins, the assistant superintendent, and John Mayes, measuring and examining the road along the creek route, and what was his (Mayes) conversation and behavior?

Ans. After the removal of Thompson, I saw him, William Hawkins, the assistant superintendent, measuring the width of the road. John Mayes was with him. I asked if they had measured any of my road. They said they had, and it was not wide enough. I said I wished to have seen them when they were there, to have seen where it was deficient. Mayes said that any person could measure twenty feet, and eighteen inches in the middle, and twelve inches at the sides, and that was all that was wanted, and that I could do as well as they could. Hawkins said he had shewn my hands where it was deficient. I went and got an exact measure, and measured it for myself, and where I found it insufficient I supplied the deficiencies.

Interrogatories exhibited to John Feay on the part of the Government.

Ques. 1. In regard to the plan of the bridges, do you know who it was informed you that the plans you saw were for the four large bridges?

Ans. I think it was Church who gave me the information.

Ques. 2. Did you go to Wheeling with a view to take any contract, or did you make any inquiry of, or heard, Colonel Williams, or Josias Thompson, say any thing upon that subject?

Ans. I had some thoughts of making a small piece of road second handed, and went to see about it. I made no inquiry of Williams or

Thompson upon any subject, nor did I hear any thing said by either, touching those plans, or any other subject.

Sworn and subscribed, November 8, 1821.

JOHN FEAY.

John Gilchrist examined on the part of Colonel Shepherd.

Finished the bridges over Good's run for Colonel Shepherd. The greater part of the stone were quarried, and he hauled and laid them for two dollars fifty cents per perch; laid to the amount of 159 perches, embracing the parapets. At this bridge a pavement was made by Thompson's orders, and was taken up and replaced by him. He took it up, dug down and replaced it, for 35 dollars. The price per perch for parapets is much more than the Government price of the bridge. He would suppose the first pavement might be worth 40 dollars.

Benjamin Gassaway examined on the part of Colonel Shepherd.

A man by the name of Dugan commenced the bridge over Good's river. How much he did, he knows not. Dug some foundation, and laid some stone. Boarded with witness, and remained from 3 weeks to one month. Had with him a stone mason and tender. He thinks he was there about one month. Quarried no stone to his knowledge. He said he had received 65 or 70 dollars from Shepherd, and had given up the bridge to Stewart. He had stated that he was unable to pay his board until he would receive pay from Shepherd. Went to Shepherd, and returned with money to pay his board, at which time he stated what he had received.

Sworn and subscribed, October 22, 1821.

BENJAMIN GASSAWAY.

John McClane re-examined on the part of Colonel Shepherd.

Saw a wall at the lower end of Thompson's place, which was commenced—does not know the length. It might have been about 60 feet—it might have been 2 feet thick—it was intended to keep the creek from coming to the road—raised to the surface of the ground—might have been 2 feet high. There had been a good many stone hauled to the place, and some more taken out of the creek, intended for that purpose. The wall was taken up principally. He believes the upper parcel was taken to the road by Mr. McHemify, and some taken to the side wall at "Keefe's" narrows—does not know whether he was benefitted or not by the subsequent use of the stone. He has heard Thompson say that a wall must be built there. Does not know that he directed its removal. It was in sight of Thompson's house. The stone were got mainly out of the creek—some close by, and those farthest about 30 rods from the place where the wall was commenced. A four horse team would haul about twenty perches per day—would re-

quire the driver and three hands to load. He thinks two horses and a cart would haul as much.

Sworn and subscribed, October 22, 1821.

JOHN McCLANE.

Philip Doddridge, Esq. examined on the part of Colonel Shepherd.

At the house of Colonel Shepherd, on the evening of the 29th April, 1820, he wrote the letter A, which is a rough draft of a letter to be sent to the Commissioners, and which was copied by Mr. Caldwell, with the additions and improvements mentioned by him. The draft or copy so made and mentioned, is paper marked B. That he joined Mr. Caldwell in advising Colonel Shepherd to send that letter, and join in the inquiry; and that he frequently urged Shepherd to do so. He further states, that Mr. Skinner, more than once, urged him, Doddridge, against the course, and advised that no notice should be taken of their proceedings; among other things, he said it was degrading—it was begging justice instead of demanding it as a matter of right; or at least he was afraid it would be considered so. He left Colonel Shepherd in the full persuasion that the course advised by him and Mr. Caldwell would be taken, and promised to return in a short time, and aid in the inquiry: he returned in a short time, and learned, with some surprise, that the letter had not been communicated; and from some conversation he had with Colonel Woods, in Wheeling, he supposed him to be the cause of the letter not being sent. He then met with Colonel Shepherd at Thompson's office; being feeble in his right hand, he dictated paper C, which was written by Thompson, as a letter to be sent to the Commissioners. The paper marked C, he believes to be that letter so written. He thinks, but is not positively certain, that Mr. Skinner was there present. After the letter was written, he advised Shepherd to take it home, have it copied by his clerk, and send it to the Commissioners, and to act upon it. He took him out privately; and, from recollecting the conversations between himself and Colonel Woods, in Wheeling, and Mr. Skinner's earnest advice against the course, admonished Shepherd against permitting the advice of Colonel Woods, Mr. Skinner, or any other person, to change his course from sending that letter and acting upon it. He then told him, in substance, that, unless he did so, and meet the Commissioners, an unfavorable report was to be looked for in the nature of things. They were the Commissioners of the Secretary of the Treasury, and therefore possessed his confidence; and that, in the absence of all explanation on his part, a report would be made, founded upon *ex parte* evidence: where the evidence of facts might appear doubtful in themselves, his omission to give explanations would give weight to them, and would probably influence their decision. If their decision should be against him, his redress would be by an application to the Secretary of the Treasury, or perhaps to Congress; that he would thus be making himself a party in a controversy with the Government; and that whoever did so had great odds against him; and

that he would be especially in that situation, as he would have the weight of that report against him. Shepherd assured him that he would send it, and he left him under that impression; and that he was ignorant, for a long time, that any other course had been taken. He told him, at the same time, that the opinion of his friend Samuel Sprigg, Esq. was the same. At this time, he was most fearful of the influence of Mr. Skinner, knowing his interest in the contract. In any advice which Colonel Woods gave to him, he appeared to give the advice as the friend of Colonel Shepherd, and to him as the counsel of Shepherd. He afterwards had a conversation with Colonel Woods, in which he, Woods, assured him that he did not know what had been written or sent to the Commissioners, and that he had never advised Shepherd to pursue any other course than that advised by Shepherd's counsel, or any other course whatever.

October 25, 1821.—Witness further deposes that, within the last and present week, he has called upon Mr. Thompson at his own house, for the purpose of obtaining his attendance, as a witness, to be cross-examined by the committee, four or five times; that he did so at the earnest solicitations of Colonel Shepherd, and so often, that it became disagreeable to witness; and declined calling upon him again, though urged to it by Colonel Shepherd, who then engaged Alexander Caldwell, Esq. to do it. Until yesterday, the reason given by Mr. Thompson for not attending, was the indisposition of his wife, which he stated to be such that witness thought him excusable. On yesterday, hearing that Mrs. Thompson was much better, witness, in company with Mr. Caldwell, called on him again, and urged him to attend. In some of the conversations of the witness with him, he informed him that he understood that he, Mr. Thompson, intended to vindicate his conduct as superintendent, with the Government; and that his refusal to attend and submit to a cross-examination, would be an unfavorable item in the vindication. This argument was also used in the first instance to attend on the part of Shepherd, which he found him unwilling to do on first examination. On yesterday, he assigned no other reason for his refusal to attend, other than his unwillingness to be examined by the present committee, and particularly by one of them, General Lacock. He was told, that, in his opinion, the committee would not separate; and asked him whether he would be examined at his own house, provided the committee would come there, in company with witness and Mr. Caldwell, the counsel of Colonel Shepherd? He answered that upon no terms would General Lacock be permitted to come to his house. In his objection to General Lacock, he neither stated nor intimated any new ground of objection. Thompson asked witness whether he considered his attendance very important to Colonel Shepherd. Witness told him he did not know whether it would be so or not, but intimated to him his own situation. The reason for telling him that he did not know that his attendance would be important to Shepherd, was, that he did not know what might come out on his cross-examination. Witness desired, and yet desires, to examine Mr. Thompson as to those points, two of which escaped

his attention on his former examination, and one of which came to his knowledge since. After he told witness he would not attend, he was asked to exhibit his check-book for the payment of mason work, to see the entries of checks paid to Daniel Steinrod for mason work done under Shepherd's contract. The paper hereto annexed, endorsed by the witness, in his own hand writing, "P. Doddridge," contains a copy of those entries, and all that can be found in the check book touching that account. The points to which he wished to examine him are, 1st, to prove the plans of the large bridges in witnesses possession, to show when made out, and whether they were exhibited at the sale of the contracts; whether the width "41 feet" is in his hand writing, and was written on it at the time the plans were made; and whether he made the contracts for bridges between the Virginia line and Washington; and whether those bridges are constructed in the same way: 2d. To prove the specific contracts between Shepherd and Steinrod for mason work; and whether, for part of that mason work, Shepherd did not abandon the whole Government price to Steinrod; and whether he did not assign, as a reason for doing so, that he considered the work unnecessary, and that he would have nothing to do with it. The third point was to prove the actual payments made to Steinrod on account of his mason work done under Shepherd's contract.

Interrogatories exhibited to P. Doddridge, Esq. on the part of the Government, and his answers. 20th Nov. 1821.

Ques. 1. Was it not at your instance, and conceding to your proposition to the Treasury Department, as the counsel of Col. Shepherd, and was he not then informed, and did he not approve of it, that instructions were given to the Commissioners by the Secretary of the Treasury, that, in taking the testimony, the rigid and strict rules of evidence, which govern in courts of law, should not be observed by them, both for and against Col. Shepherd?

Ans. To the first, he answers, that his letter to the Secretary, on which the present proceedings are predicated, can form his best answer. The witness does not recollect that he advised that the rules of evidence should be relaxed in the manner mentioned in the first interrogatory.

Ques. 2. When examining the witnesses on the part of Shepherd, did you not premise by informing them of this fact, and as an explanation why you put questions which sought the opinions and belief of the witnesses?

Ans. Yes.

Ques. 3. Did not Thompson, during all the consultations at which you was present, in relation to the policy of meeting and co-operating with the committee, give his advice and opinion, that Shepherd ought not to meet or co-operate with them? Did not Col. Woods give you similar advice?

Ans. I have had but few consultations with, or in the presence of,

Thompson, and no consultations with him as counsel. The second letter from Shepherd to the Committee, framed by me, as stated in my former examination, was prepared in Mr. Thompson's office, and appeared to meet his approbation. I do not recollect that he ever advised in favor of the course I recommended, or that he advised against it.

Ques. 4. Was not the answer on behalf of Col. Shepherd to the report of the committee of last year, examined and signed by you as one of his counsel, before it was submitted to the Department?

Ans. Yes: and this the Secretary knows from me already, as well as the final disposition of that answer made by me. There never was any sort of concealment of the answer made by me, as Mr. McGiffin, one of the committee, knows.

Ques. 5. What did Josias Thompson swear before Messrs. Henry Baldwin and Samuel Spriggs and yourself, as arbitrators between Shepherd and Skinner, touching the proposition of Skinner to avoid the four special contract bridges? State particularly whether he did not say that he had communicated with the Department on the subject.

Ans. Witness cannot precisely recollect that Mr. Thompson used the language imputed to him in this interrogatory, in respect of the change of the four contract bridges. He did say, that, in relation to this subject or some other, he had corresponded with the Department. Mr. Shepherd and lady both appeared irritated and indignant, as if some new disclosure was made, stating that now they would know their friends from their foes. The witness is not confident whether this alluded to the bridges, to culverts, or the change mentioned in the interrogatory, or to both: but he believes it related to the change of the location, so as to avoid the four special contract bridges.

Ques. 6. Did not then Shepherd appear in, or affect, a great passion at Thompson and Skinner, for what he termed their underhand and secret proceedings, touching this matter?

Ans. This question is answered in my answer to the fifth interrogatory.

Ques. 7. When you offered yourself as a witness on the part of Col. Shepherd, particularly in relation to your own views, course, and advice, as the counsel of Shepherd, were you not distinctly informed by the committee that you would thereby place yourself in their power, to be cross-examined in the same manner as other witnesses, notwithstanding your situation as counsel?

Ans. The witness states that the committee told him that he would be liable to be cross-examined, and he so considered himself, and so does now.

Ques. 8. In relation to your efforts to obtain the attendance of Thompson, for the purpose of further examination and cross-examination, did you not ultimately become convinced that he had been insincere, and that his reasons were pretexts to evade a cross-examination?

Ans. In my conversations with Mr. Thompson, since the facts alluded to in my former examination, and not before, I have been im-

pressed with a belief, that his excuses were pretexts to avoid a cross-examination, and that is my present impression. This impression is not founded on the facts already stated, and one that happened at the last attempt to procure his attendance; but this opinion is solely derived from his professional explanations, and from a further attempt to procure his attendance; in whose favor the conduct of Thompson to elude a cross examination is intended to operate, if that be his only motive, the witness is entirely ignorant. And the mind of the witness is left very doubtful on this point, from other circumstances, disclosed to him by Mr. Thompson at the last interview.

Ques. 9. Were not the interrogatories Nos. 8 and 9, on the part of Col. Shepherd, to J. L. Skinner, Esq. which sought a disclosure of a bribe, said to have been offered to Josias Thompson, Esq. superintendent, by said Skinner, to procure a change of location from Morrison's Point to Gilmore's mill, furnished to you in writing by the said Josias Thompson? and was it not at his instance that those interrogatories were put to Skinner?

Ans. I think on my last visit to Mr. Thompson's house, Col. Shepherd came there before I left the house, and left the house with me; after proceeding a few paces from the house, Mr. Thompson called me back: Col. Shepherd was returning with me, and when we met Mr. Thompson, he gave Col. Shepherd to understand that he wished to speak privately with me. Shepherd went on home, and I remained in Mr. Thompson's house for some time: while there, Mr. Thompson disclosed to me the matters of fact alluded to in the questions stated in this interrogatory. This he did gratuitously, and drew up the questions mentioned in this interrogatory in his own handwriting, requesting me to put them to Col. Skinner, if the other testimony given by that gentleman should appear to bear upon him, Thompson. When, or before I propounded these questions alluded to, I made Mr. McGiffin acquainted with the facts I here state: considering the case in which I was to use them had occurred, I proposed the questions. At the same time, Mr. Thompson gave the information, which in substance led to the interrogatories propounded by me to Kerlen. My statement of the facts alluded to, and which I have stated to have been made known to Mr. McGiffin, were not made known to him, until I saw it proper, from the nature of the subject, to make them known to him. In fact, the previous examination had shown this. I further state, that the letter from me to the Secretary of the Treasury, on which the present proceedings are founded, was presented to the view of Col. Shepherd, and was to him fully explained, and was by Col. Shepherd fully assented to.

P. DODDRIDGE.

It is admitted by Col. Shepherd, that the purchase of the farm on which Thompson lives was made before the sale of the road and mason contracts, at Wheeling, and before the said Craig knew the fact that the road would pass through his farm along the creek.

P. DODDRIDGE.

20th November, 1821.

Alexander Caldwell, Esq. examined on the part of Col. Shepherd.

Recollects copying the paper marked A, altering somewhat the phraseology, without changing the substance as a letter, to be addressed by Col. Shepherd to the Commissioners, Messrs. Lacock, Wilson and McGiffin, in answer to a communication from them. That he and Mr. Doddridge both then advised him to send that letter, and join the commissioners in the inquiry, and left it with an expectation that it would be sent. Does not recollect that Mr. Skinner was then at Shepherd's; Thompson was. Has been acquainted with Shepherd, on Wheeling creek, for 30 years. Has frequently passed over the road made by Col. Shepherd, and thinks the road, connected with the mason work, superior to any he has ever seen. For fifteen years, he has been intimately acquainted with Col. Shepherd. Has never known any person who entertains so much company, who does it more exclusively within his means, and from the industry and frugality of himself and wife. The general character of Col. Shepherd, as regards openness, fairness, and candor in dealing, is good, and also a man of truth and veracity. From his personal knowledge of Col. Shepherd, and of his general character, he would consider him incapable of forming a corrupt agreement with Mr. Thompson, or any other person. He believes the profits of his farm and mills, and the labor of himself and slaves, have been devoted to the execution of his contract. His estate is one of the most productive in the country; his merchant mill had been profitable, and during this period might have been more than ordinarily so, and was exclusively devoted to the completion of his contract. During that period, he made no flour for exportation. He knows no fact or circumstances from which he could believe there was any improper connexion between Col. Shepherd and Mr. Thompson: within the first two years of the contract, the families were intimate; within the last year of it, he understood there was a misunderstanding between the families, but never knew of any between Col. Shepherd and Mr. Thompson. He has heard Shepherd complain that Thompson did not give him drafts to a sufficient amount, when he, Shepherd, supposed he had earned them; and has heard him complain that Thompson had ordered him to do work, and afterwards take it down again: and that he was tighter with him than others. At the commencement of the contract, Col. Shepherd was considered wealthy, possessed of a large real and personal estate, and not extensively embarrassed. If he should fail in receiving his claim upon Government, he would, in his opinion, be worse by the contract.

Continued, 26th October, 1821.

That, during the last and present week, at the request of Colonel Shepherd, this deponent called three times at the house of Josias Thompson, twice in company with Mr. Doddridge, and requested his attention before the Committee, to undergo a cross-examination. At

the two first visits, Mr. Thompson excused himself, on account of the indisposition of his wife, alleging that he thought it unsafe to leave her. Witness was satisfied with the reasonableness of these excuses. At the third visit, which was on the 24th instant, Mrs. Thompson was much better. Mr. Doddridge inquired of Thompson, in presence of witness, whether he could now attend before the Committee. His answer was, he could not; and assigned, as a reason, that he had declined having any intercourse with the Committee, from their first appointment, and had refused to receive communications through them from the Secretary; but said, if Mr. McGiffin would call at his house, with Mr. Doddridge, or witness, he would submit to a cross-examination. Witness understood him to refuse to admit Mr. Lacock to accompany Mr. McGiffin. Witness was not present during the whole of the conversation, at this time, that took place between Mr. Doddridge and Mr. Thompson. Witness believes Colonel Shepherd was sincere, as witness was, in desiring the attendance of Thompson. Witness recollects Mr. Thompson stated another reason for not attending, which was, that he had appeared before the Committee as a witness, and that they then had an opportunity of examining him. Witness informed him that the Committee did not examine any of the witnesses on their first appearance, but reserved the right of doing so after the examination on the part of Colonel Shepherd should be closed. Mr. Thompson said he could not think of appearing before them again; that he considered himself ill treated. Witness did not understand Thompson's alluding to what took place at the previous examination before the Committee. Witness recollects hearing Mr. Doddridge tell Mr. Thompson his refusal to appear before the Committee would be an unfavorable circumstance in the justification he understood he, Thompson, intended to make of his conduct as a public officer to the Government. He said he meant to make such a justification, and asked to have as little as possible to do with the Committee; that it would not be through them he should do it. Witness further states, that the paper herewith filed, with his name, "A. Caldwell," endorsed thereon, in his own hand writing, is a copy of the original given to him by Daniel Steinrod, on the 25th instant, to be submitted to Colonel Shepherd for his signature. Steinrod said, that, by this paper, Shepherd would give up all claim he had on him for deficiency of mason work; he then would be a good witness for him; he then would have no interest; that Mr. McGiffin had said, when he was previously examined, that he was interested; that, as he might have claims on his sub-contractors, this paper would release their interest also, so that they could be witnesses. Steinrod stated, he did not consider that Col. Shepherd had any claim on him; but his witnesses might die, but the paper referred to would not. Witness further states, that the abstract marked "O," signed "Josias Thompson," is his hand writing; that the endorsement thereon, in the form of a certificate, is also the hand writing of the said Josias; that the signature thereto, "Daniel Steinrod," is the hand writing of the said Daniel.

Interrogatory exhibited to Alexander Caldwell, Esq. on the part of the Government, and his answer thereto, the 20th November, 1821.

Ques. Is not your opinion of the merits of Colonel Shepherd's claim changed, since your examination in chief?

Ans. It is.

A. CALDWELL.

Interrogatories exhibited to John Mayes, on the part of the Government, and his answers given—October 31st, 1821.

Ques. 1. Were you present, and when, at a conversation between William Hawkins and Josias Thompson, touching the location of the national road from Alexandria to Wheeling? What inquiry did Hawkins make of Thompson, and his answer?

Ans. I was present when William Hawkins called upon Thompson, and asked him whether the road was to be made on what is termed the "Hill" location, or along the creek. Thompson replied that the road would be made on the hill route; that the intention of running the route along the creek was only to show the shape and meanders of the water courses, and also to frighten those who owned lands on the other route into a release of the privilege of passing through them, and taking materials; that there was no intention of making the road along the creek. This was on the Saturday when the road between Claysville and Alexandria was sold at the latter place, preceding the Monday on which the balance of the national road was to be disposed of at Wheeling. The object of the inquiry on the part of Hawkins and myself, was in order to examine the ground, with a view to take a part of the road.

Ques. 2. In consequence of the information thus given by Thompson, did you examine what is termed the "Hill" route, and go to Wheeling to bid for a part of it? What was your information at Wheeling, and what your conduct in consequence of it?

Ans. In consequence of the information given by Thompson, I did examine a part of the "Hill" route, and went on to Wheeling, to propose for the part between the carding machine, in Alexandria, and the State line. On my arrival at Wheeling, I was informed that the road was to be made on the creek route; and, from not having examined that route, I did not make any proposal, which I would otherwise have done. I then believed, and stated, at Wheeling, that belief, that there was some juggling in the business. The sales were closed some time before sun down.

Ques. 3. Did you intend to propose for any, and which of the bridges?

Ques. 4. What inquiry did you make, and of whom, as to the size or span of the arches? what was the reply? and were you hence deterred from bidding?

Answer to the 3d and 4th interrogatories. I had intended to bid for some of the mason work, and had in view the four large bridges.

Finding it stated in the notes, that two of these were to be arches of 100 feet chord or span, and two of 75 feet each. I asked Colonel Williams, the Commissioner, whether those bridges would not be made with two or more arches, instead of one, in each case. He said no, it could not be done or allowed; but that they must be erected as stated, viz: two of them each an arch of 100 feet chord; and the other two with each an arch of 75 feet span. I was unwilling to run the risk of building arches of this size; and, in consequence of this information, I declined bidding. These were selling by the lump, or a precise sum for each bridge, and not by the perch.

Ques. 5. Did you make any proposals to Shepherd to build any, and which of his buildings? State any thing which took place on that subject.

Ans. I went to Shepherd, some time in 1818, with a view to contract with him for the building of the two bridges, one east, and one west of Bentley's tavern. Shepherd was not at home, and Mrs. Shepherd directed me to go to Mr. Thompson, and bargain with him; that he knew all about it, and, whatever he did, they would be satisfied with. I did not happen to meet Thompson at this time. I called a second time, and, on my way, saw Thompson, who told me he had power to contract, but I had better see Shepherd. I went to Shepherd's for the same object, and found Colonel Shepherd at home. After making my business known to him, Colonel Shepherd told me to go to Mr. Thompson, and make a bargain with him; that whatever he, Thompson, did, was good. I then went to Thompson, who told me he, Thompson, had made a provisional agreement with a Mr. McHire; that he, McHire, had, until a particular day, to be on or off; and that, if he did not take them on that day, if I would then call, he would contract with me for the building of those two bridges. I did not call again on either of them.

Interrogatories on the part of Colonel Shepherd, 6th November, 1821.

Ques. 1. Were you present at Wheeling on the day of sales of the road? at what house? and did you not request Colonel Williams to allow you to put in a bid or proposal after the bids were made known?

Ans. I was at Wheeling on the day of the sale of the road. I arrived there between one and two o'clock, P. M., as near as I can recollect, and remained until the sale was over. I did not ask permission of Colonel Williams, or any other person, to put in a bid or proposal after the bids or proposals were made known.

Ques. 2. At the sales at Alexandria, was it not made known that the road was to pass down the creek route?

Ans. It was not made known to me at Alexandria, at the sales, that the road was to pass down the creek route. On the contrary, as I have before stated, Thompson told William Hawkins and myself, distinctly, that there was no intention of taking the creek route. Late on that night, I heard Colonel Williams say, that, if the owners of the land on the "hill" route would not release, he had a cure in his

pocket; but made no explanation or further intimation of what that cure was.

Sworn to and subscribed, this 6th November, 1821.

JOHN MAYES.

Interrogatories exhibited on the part of Government to William Hawkins, and his answers thereto, given 1st November, 1821.

Ques. 1. Had you any conversations with Josias Thompson, the superintendent, respecting the location of the National road from Alexandria to Wheeling? When and what inquiry did you make of Thompson, and his answer?

Ans. On the Saturday of the sale of that portion of the United States road from Claysville to Alexandria, and preceding the Monday on which the balance was disposed of at Wheeling, I called on Mr. Thompson, in company with John Mayes, to ascertain what route, "the hill" or the creek, was to be disposed of, having previously understood that a survey had been made along the creek, and heard it intimated that the road was to go there, although the publication or notification of the sales designated the "hill route." I asked Mr. Thompson which route was confirmed, and whether there was any intention of taking the road down the creek from Alexandria. He said that the "hill route" was the one upon which the road was to be made, and that there was no intention of going down the creek. In regard to the survey which it was said had been made, he said, that, as they had no particular business, they had made the survey merely to show the water courses in their draft, in order to satisfy the Government that the ground north of their location was impracticable from Alexandria to Wheeling; and repeated the road would be sold on the hill location. There never was any intention of making the road along the creek. The object of making the inquiry, which was disclosed to Thompson at the time, was this: John Mayes and myself intended to propose for part of the road, particularly that between the carding machine in Alexandria and the State line. I had examined a part on the hill route, and intended to examine the other if I had ascertained there was any intention of taking the road there. I did not go to the sales at Wheeling; John Mayes did.

Ques. 2. Did you make a proposal to contract for some mason work on the National road between Alexandria and Washington, and when? And had you, about that time, any conversation with Thompson on the propriety or impropriety of public agents being concerned in those contracts? If so, state fully all the conversation you had in relation to this subject.

Ans. Some time in the Summer of 1817, probably in July, I was informed by Mr. Thompson that the Government had directed side walls to be built where the filling exceeded six feet; that there would be a number between Alexandria and Washington; and that I had better bid for them. I concluded I would, and either gave him a written proposal, or informed him of the sum per perch for which I

would build them; and, from what passed, supposed the contract, in form, would be executed in a short time. In a few days, I learned that Thompson had contracted with a certain Zadock Patch for a part of them. I called on Thompson to ascertain the fact. He confirmed the report. I told him I would withdraw my proposal, and not take any of them, as those given to Patch could be built for less money, as the stone was more convenient than many of those which remained. He advised me to take them, and said that a great profit might be made; that he would make more money by a job of this kind than by being superintendent; that he would relinquish his office, and make roads and bridges himself, were he not under particular obligations to see that part of the road completed which was commenced. He further said, that he wished he could be concerned in a contract of this kind; that there would be no harm in it, provided the work was well done, though he were superintendent, if no person knew he was concerned; but, if it were known, the people, or the public, would make a great noise about it.

Ques. 2. Did Thompson, at any time, express to you great fears and apprehensions that Colonel Shepherd would be ruined by his contract with the Government? If so, state when and what was that conversation?

Ans. During the first Summer after Colonel Shepherd entered into his contract, I have heard Thompson frequently, indeed at almost every interview we had, state that Shepherd was the worst manager he had ever seen; that he would lose by his contract; that he had already sunk 5,000 dollars on some small bridges he had built; and that he would undoubtedly break. He said Shepherd had purchased out Colonel Paull's interest for 8 or 9,000 dollars; but that he would never make that sum out of it; and he, Thompson, would not sanction the contract as superintendent. I told him, at last, that it was all a whim: he could never make me believe such stuff; and that I knew Shepherd must make a great profit; and that I would give and secure to him 20,000 dollars for his contracts. After this, I do not recollect ever to have heard Thompson complain of Shepherd's management, or express any apprehensions of his breaking by the contract.

Ques. 4. Were you appointed assistant superintendent under Thompson, and when? and how long did you continue?

Ans. In the Fall of 1817, or winter of 1817-'18, I was appointed assistant superintendent, remained in that situation until Thompson's removal, and was continued by Skinner.

5th. Are you of opinion that a connexion existed in interest between Thompson and Shepherd, touching the road and mason contracts? If so, state what circumstances and facts induced you to come to that conclusion.

Ans. From the time of the sale of the road and bridges at Wheeling, I was under strong impressions that some secret and sinister connexion existed between Thompson and Shepherd. Some of the facts and circumstances that induced this impression are already stated;

and would be impossible for me, at this time, to pretend to recollect every one. The following, however, I now distinctly recollect: 1st. On the return of John Mayes from Wheeling, I was informed by him what had occurred there. The details are fully related in his deposition. 2d. I had also been informed by Hardisty and others of the trips which had been taken up the creek, before the sale, by Paull & Shepherd—of Paull's attempt to purchase Hardisty & Pursley's lands. In 1817, I assisted, at the request of Mr. Thompson, in tracing and fixing the location along the creek, from Morrison's point to Alexandria; and finding many of the distances mentioned in the notes very inaccurate, particularly in passing through fields, I asked young Mr. Williams, the then assistant superintendent of Mr. Thompson, who was setting down the notes of the survey I was making, how this happened. He said that when they were making the location along there, they did not wish the people to see them, or, if they did, to know what they were about: they ran along creek, took the courses across the fields, and, in some measure, guessed at, or made allowance for, the distance. 4th. I observed that Shepherd was making very few single culverts, and, in lieu of them, was making double ones, which I understood was to be charged to the Government, when single ones would have answered every purpose—would have been better; and, in other places, no culverts were created where they evidently were necessary. This I did, and still believe an evasion of his contract. 5th. In the Fall of 1818, as assistant superintendent, I was aiding Mr. Thompson in making out the estimates in detail of what sum would be necessary for Congress to appropriate to complete the contracts. After we had gone through the particular contracts, and designated the probable contents of the different bridges, and set down the contract price, I observed that Mr. Thompson added 40,000 dollars to the 40,002 dollars, the contract price for the 4 large bridges. I asked him why he added that sum. He said there had been some mistake in making the contract for those bridges. They were only one half as large as they ought and must be, and that double the contract price must be paid for them. 6th. The change of the location of the bridge near Shepherd's house, under all the circumstances, made a strong impression on my mind, especially as I had called on Thompson at the instance of Mr. McGiffen, who wrote me from the city of Washington to do so, in the Spring of 1818, and told him, or showed him the letter in which it was stated, that, if he, Thompson, made this alteration, he would be removed from office, and because the change itself is so evidently made in subserviency to the private interest of Shepherd, and in disregard of that of the public. I do not, at present, recollect any other particular fact which induced my opinion of a connexion.

Interrogatories to William Hawkins, by the Counsel of Colonel Shepherd, and his answers.

Ques. Do you know of any direct fact of the superintendent, Thompson, having a share in the profits of any contractor, or in any agency

whatever, touching the money concerns of any contractor, or in the sales or exchanges of any drafts or bills of exchange drawn by him or any other agent of Government for, or on account of, the mason or road contracts between Washington and Wheeling, or east of Washington? If you have any such knowledge, state the particulars.

Ans. I know of no direct fact of Mr. Thompson having a share with the profits of any contractor or sub-contractors on the United States' road, or in the sales of any drafts or bills of exchange drawn by him or any other agent of Government.

Ques. 2. What bid did you and Hardisty make at Wheeling?

Ans. I believe it was 44 dollars per rod.

Ques. 3. While acting as assistant superintendent, and while Mr. Thompson was in office, did you not give a certificate of the performance of his (Shepherd's) contract, or of its being nearly performed, and afterwards refuse to recognise that fact? and if you did so, state your reasons for so doing.

Ans. I never did give a certificate of the performance of Shepherd's contract, while Thompson was in office. A considerable time after his (Thompson's) removal, I gave Skinner a line, stating that I considered the stone part of Shepherd's road completed: but, to my recollection, I never have been called on to recognise that fact, and therefore could not refuse.

Ques. 4. Have you any knowledge of the reasons of Mr. Thompson's removal from office, other than you have before mentioned?

Ans. I have not.

Ques. 5. Have you any recollection of a letter of instruction from Mr. Thompson, touching the finishing of the road east of Alexandria, written for your government, and that of the contractors, shortly before Thompson's removal from office?

Ans. I have.

Ques. 6. Did that letter of instructions, or any other act of Mr. Thompson's, induce you to form or declare your intention to retire from office? and if so, state whether you were advised to remain; and if so, state by whom, and for what reasons?

Ans. The letter did not induce me to form or declare my intention to retire from office; but, in consequence of the equivocal and uncertain instructions of Mr. Thompson, a considerable time before the date of that letter, I had some thoughts of declining. I named it to Mr. McGiffin: he said I had better continue; that, if I should decline, there would not be any person on his contract to give instructions; that he would have to do as he had done before my appointment, to hire some person to take grades, measure, &c.

Ques. 7. What was the import of the letter aforesaid? Did it not point out what was necessary to be done on each section? Did it not require a great amount of additional labor yet to be done?

Ans. The letter contained general instructions of the manner, and what it would require to finish Mr. McGiffin's contract; it pointed out what was to be done on each sub-contract, which was considerable.

Ques. 8. At the time when Mr. McGiffin requested you to remain, as you have stated, did you or did you not understand, from him or otherwise, that a change would be made in the principal office?

Ans. I did not understand, from Mr. McGiffin or otherwise, at any time, that a change would be made in the principal office?

Ques. 9. Is the paper now shown to you, the bid put in by you and Hardisty, the bid to which you allude, in these words? "We will make section 18, western division of the United States' road, to the pleasure of the superintendent, for forty-four dollars per rod, and complete the same by the first January, 1819.

WILLIAM HAWKINS,
RICHARD HARDISTY."

Ans. The bid was not handed in by me; I wrote it, and gave it to Hardisty. The paper now shown, I believe, is the bid I wrote for Hardisty to put in. I have no recollection of signing any other.

Interrogatories on the part of Government.

Ques. 1. Previous to the letter of instructions from Thompson, to which you refer, was there not an examination of Mr. McGiffin's contract? At whose instance, and by whom made? State, generally, all you know on this subject.

Ans. Previous to the letter of instructions forwarded to me by Mr. Thompson, I frequently heard Mr. McGiffin say that he would have an examination of his road; that he did not believe it to be the width, depth, &c. required by the contract. Accordingly, I was requested to attend at Alexandria, on a day appointed for the purpose of commencing said examination. Mr. McGiffin came early in the day, and we commenced the examination. Some time in the day, we were joined by Mr. Thompson, who left us that night, or early in the morning, and did not again join us until the work was finished. Mr. McGiffin, Keilen, (who was then doing business for Thompson,) and myself, continued the examination until we went over the whole of McGiffin's contract. The examination, I always understood, was made at the particular instance and request of Mr. McGiffin. He took down, in detail, the state of the road, from which I believe and have no doubt, Thompson's letter of instructions to me was made.

Ques. 2. After the receipt of that letter of instructions, did not Thompson pass over the road with some of McGiffin's sub-contractors? Did you receive instructions afterwards in parol or in writing? if in parol, by whom and what were they, and what your answer?

Ans. I do not recollect of seeing Mr. Thompson on the road after I received his letter of instructions. I understood, I think, from Capt. Loomis, that he had been on his road. I received instructions from Thompson, through Captain Loomis, that I need not live up to the particular letter of my instructions; that I might dispense with

stoning a part, and wished me to direct him to gravel a part of his road. I told Loomis I would not depart from my instructions without written directions. Loomis went to Thompson, but did not bring me any written directions. I think he told me Thompson would be up in a few days; and I understood Thompson was to pass two or three miles of Loomis' road the very day that he was removed from office.

Ques. 3. Had the sub-contract of Loomis and Co. been accepted and passed at that time, and in the state it then was? Would it not now have been impassable for heavy wagons?

Ans. Had Loomis and Co.'s sub-contract been passed and accepted at that time, I believe it would have been impassable for heavy loaded wagons at this time.

Ques. 4. Relate all you may know touching the fact of Thompson's intention to accept of that sub-contract, and when.

Ans. I believe I have already stated all that I know as to Thompson's intention to accept of that contract.

Questions by Shepherd's Counsel.

Ques. 1. Is it your opinion that Mr. Thompson shared profits with any of the contractors on the road from Washington to Wheeling, either directly or indirectly, on the contracts or sub-contracts, or in the sale of any draft or drafts, or exchange, or otherwise, to any amount, or in any manner? If you have any suspicions of this kind, please to express the reasons of this suspicion.

Ans. I have already stated my apprehensions of Thompson's being connected with Col. Shepherd; and have very strong suspicions of his being connected with Paull, Woods, and Steinrod. I do not recollect of having any conversation with him on the subject of the sale of drafts, and never had any suspicion or formed any opinion on this subject.

Ques. 2. In what sort of bank paper were the laborers paid under Mr. McGiffin's contract? In what sort of paper were the debts due from the Government paid? Were not the payments made to the laborers in country bank paper? And if so, what was the difference between such paper and the Government paper? In exchange for the Government debt, was not other paper of less value bought up, and paid to the hands by the principal contractors, or any of them, or is not such your opinion? If you are of this opinion, state your reasons for this opinion. In particular, have you not knowledge of the fact, or have you not reason to believe, that such was the course of business followed by Mr. Thompson? And what have you at any time heard Mr. McGiffin say in respect to the sale of such drafts or checks? Or, if you have not heard Mr. Thompson say any thing on this subject, what have you heard Mr. McGiffin say? What have you heard any other contractor say?

Ans. I know but little of the payments made by Mr. McGiffin, but, so far as I do know, they were sometimes in the common paper of the country, and sometimes in silver; and I know that he was very particular in paying his laborers in good money, and such as would suit

the particular purpose for which they wanted it. I knew of one case in which he sent 100 or 150 dollars by Samuel Caldwell to some of his laborers, which was exchanged, by some means, for Ohio paper. McGiffin made inquiry for, and collected all he could, and gave in exchange such paper as answered their purpose. I am not able to state what was the difference between such payments and Government paper. I do not know that paper of less value was bought up. My opinion as relates to Mr. McGiffin was, that he frequently had to borrow money from the storekeepers and banks to pay his laborers, and would pay them with drafts. I do not recollect of ever having any conversation with Mr. McGiffin on the subject of the sales of such drafts or checks.

Ques. 3. At what time, and about what, did a misunderstanding begin between Thompson and yourself, if there ever was such a misunderstanding? And at what time between Shepherd and yourself?

Ans. There never was any misunderstanding between Mr. Thompson or Mr. Shepherd and myself.

Ques. 4. In what paper or money were the sub-contractors under McGiffin paid? If in country bank notes, what was their value compared with the notes of the bank of the United States? To be more particular, were there any means used to exchange those papers; and if there were such means, what were they?

Ans. So far as it came to my knowledge, McGiffin's sub-contractors were paid in specie, and the current bank paper of the country, such as suited the laborers; what the difference in value was, between such payments and the notes of the bank of the United States, I know not. I know of no means used to exchange these notes; there was a difference in value between the notes of the country bank, and those of the United States bank. I have frequently heard McGiffin ask his sub-contractors, what particular kind of money would suit them, and would pay in such money as they wanted.

Sworn and subscribed 7th November, 1821.

WILLIAM HAWKINS.

Interrogatories exhibited to Richard Hardisty, on the part of the Government, 1st day of November, 1821.

Question 1. When Col. Williams and Josias Thompson were running a line up Wheeling creek, near your house, what did Williams then say was the object of running that line, and when was this?

Answer. In the Fall of 1816, shortly before the sales of the national road, Col. Eli Williams and Josias Thompson, with their hands, were surveying along the creek, near my house, where I then lived; after they had passed up above it some distance, Col. Williams returned near my door: we spoke, and he observed that they were idle, waiting for some answers or instructions from the Government, and were employing themselves taking the meanders of the creek. I then supposed the statement of Williams to be sincere, and that he had disclosed the true object; since, however, the road was placed there,

without any other location or survey known to me. I have believed, and still do believe, that his object was to conceal his real design of making the road along the creek.

Ques. 2. Were you employed, when, and by whom, to procure releases of the privilege of the road to pass, and to take materials? State all that took place touching this subject.

Ans. On the Sunday before the sales at Wheeling, Ninian Beall called on me with a paper, said to be from Col. Williams, and which was a release of damages for taking the road through the lands of individuals, and of materials for the road, as I believe, and said I must go with him early the next morning, and get it signed by the owners of land along the creek: that, if this release was obtained, and taken to Wheeling before 12 o'clock, the road would be taken along the creek instead of the "hill route." I accordingly accompanied Mr. Beall on Monday morning, and we obtained as many signatures to the release as we could; we could not obtain all, some refusing to sign, and others who owned lands there, not living near enough to be called on in time to return to Wheeling; we went on to Wheeling, and arrived there about one o'clock, P. M. I did not go into the house where the Commissioner Williams was; Bell did, and immediately after came to me, and told me the road was sold out, and that it was to go along the creek, instead of the "hill route." I then believed there was some juggling in the business, and that at all events it was wished to place the contract in as few hands as possible; some time before the sale of the road, Col. Paull and Shepherd passed along the creek a number of times: this was not the usual road then travelled, nor do I recollect to have seen Paull pass that way before. Col. Paull wished to purchase my land, and I have understood made proposals to James Pursly to buy his land, further up the creek, and near Alexandria; he gave as a reason that his wife was sickly, and he wished to come to this part of the country where he could hold slaves. After the road was decided to be taken along the creek, I, from these circumstances believed, and still do believe, that Paull and Shepherd were informed that it would be made there.

Ques. 3. What opinion have you formed, and from what circumstances, as to an improper connexion between Thompson and Shepherd?

Ans. From all I have seen and observed—part of the circumstances I have already detailed—and from seeing Thompson and Shepherd so much together, and Thompson's care of Shepherd's interests in the making of some contracts; from sham quarrels, as I supposed, so frequently happening between them, and they still being on good terms, I have believed, and frequently heard it talked of, that there was an improper and secret understanding or connexion between them. This is merely an opinion.

Ques. 4. Were the contents of the little bridge built by you near your large bridge, entered in Thompson book of measurement? If not, what reason did Thompson give you for not entering it?

Ans. I built this and the large bridges under a contract with Skinner, who had taken a large contract for mason work from Shepherd. I had previously advised Thompson to erect a culvert there, and he seemed at one time to consent to it, and told me I might. In the interview, however, he observed that he did not know how it might affect Shepherd's contract; that he would examine his notes and see; and parted with me, telling me that he would send me written directions on the next day. He did so, and the order was to build a small bridge. I commenced; had raised the abutments, and put on the centres; and he said it must be raised higher. I took down the centre posts, and put in longer or higher ones, and built the arch as then directed. After it was completed, I was ordered to take it down, and build a double culvert: I refused, and said I would have nothing more to do with it. Skinner afterwards took it down, and converted it into a single culvert. When Skinner and myself attempted to settle, he refused allowing me for this little bridge, giving as a reason that it was not contained in Thompson's report, or book of admeasurements. I called on Thompson; stated to him what Skinner had told me. He shewed me a book of admeasurement, as I supposed, in which it was, and gave me an abstract; but stated that he had not reported it to the Government, because Skinner had disobeyed his orders, and had made it a single instead of a double culvert.

Ques. 5 State every thing you may know, touching the contract made with Steinrod for the section of road originally taken by Coffield?

Ans. After the man, for I do not recollect his name, who had taken the road from the east foot of Wheeling hill to Good's run, had left it, I was informed by Thompson that it was to be disposed of, and, in connexion with Mr. Hawkins, put in a bid at either about 39 or 44 dollars per rod, I am not sure which, but believe it was 44 dollars; a few days afterwards, Thompson told me Steinrod had taken the contract. I asked the price, and he told me 36 dollars per rod; of this I am not positively certain, but it is my belief. I never knew or had any information that it was open for proposals after the day I bid. Had I supposed that it would have been permitted to be made where it now is, I would have done it for, at most, 30 dollars per rod.

I consent that the testimony of Hardisty's be now considered as closed, and be good without his further attendance. It being conceded on the part of the Government, that the bid of Hardisty was 44 dollars per rod.

P. DODDRIDGE.

20th November, 1821.

Interrogatories on the part of Government, exhibited to William Witham, Esq., and his answers thereto, taken 8th November, 1821.

Question 1. Did you see Col. Eli Williams and Josias Thompson surveying along the creek near your house? When? and what did either of them say was the object of that survey?

Ans. In the Fall of the year, before the sale of the road, Col. Williams came to my house, and asked permission to pass through my fields, towards Alexandria: the surveyor, but I do not think it was Thompson, and hands, were along. He said they were taking the meanders of the creek, in order to connect it with the other survey or location of the road.

Ques. 2. When and by whom were you first informed that the road would be made along the creek?

Ans. On the Monday morning after the sale at Alexandria, and on the day that the road was sold at Wheeling, Ninian Beall and Richard Hardisty called upon me, and presented a paper, purporting to be a release of damages for the road to pass, and for materials. I signed it; this was the first information I received that the road was to pass along there.

Ques. 3. Between the period of the survey and the sale of the road, did you see Woods, Paull, and Shepherd, or either of them, pass up and down the creek; and was it the usual route?

Ans. I never saw either of those gentlemen pass that way before the road was sold, to my knowledge; it was not the usual route travelled.

Ques. 4. Were you at the sale at Alexandria? and did you not hear any thing about the road passing down the creek?

Ans. I was at the sale at Alexandria, and heard nothing of the road passing down the creek. John Mayes told me he had heard Williams say, if Pearson did not relinquish, he did not care a damn, he had a cure in his pocket. I saw Pearson, and told him what I had heard, and he said he did not care a damn. I felt a great interest in the road passing near me, and if I had heard of it being likely to come near me, I should certainly have recollected it.

Sworn and subscribed the 8th Nov. 1821.

WILLIAM WITHAM.

Interrogatories exhibited to James Pursley, on the part of Government, and his answers thereto, 8th November, 1821.

Ques. 1. Did you see Col. Williams and Josias Thompson making a survey along the creek near your house? When? What did either of them say was the object of making that survey?

Ans. In the Fall, before the sale of the road, I saw Williams, a surveyor, and his hands, passing along the creek, near my house: I do not think Thompson was along. I went down to them, and asked what they were doing; I don't think they made me any answer. Witham was there, and told me what he has already stated—that they were taking the meanders of the creek, to connect it with the other location.

Ques. 2. Between that period and the sale of the road, did you see Col. Paull, Woods, or Shepherd pass along by you? And was this the usual route at that time? and did either, and who, offer to buy your land?

Ans. Between this period and the sale of the road, Col. Paull called on me, and offered to buy my land, and we had agreed about the

price of the land on which I lived ; I declined selling that place, unless I sold another place down the creek. He said he would rather not have that, but finally said he would take that also. He asked whether it laid on the creek, and was told it was thirty rods from it. Paull said he would rather it was on the creek ; if it was, a few hundred dollars would be no object to him. Upon his stating this, I began to think there might be something under it. I finally told him I would not close the bargain till I had consulted my brother : he insisted on closing it then ; that, if he did not get mine, he had his eye on other places, and mentioned Hardisty's and Williamson's. Col. Shepherd was not in company with Paull, nor did he even make any offer to buy my land ; think I saw him pass along there, but don't know certainly whether it was before or after the sale. On the day of the sale of the road at Alexandria, Col. Woods called on me, and wished to know whether I intended to let Paull have my land. I told him I would write to him, Paull, at St. Clairsville, and let him know in a few days : we went to Alexandria together.

Ques. 3. When, and by whom, were you informed first that the road would be made on the present route ?

Ans. After I went to Alexandria, on the day of sale, Samuel Buchanan came to me, and told me the road would come by me, up the creek. I said I reckoned not : he said it would : I repeated what he had told me, frequently, during that day, and heard him tell others, but never knew how he came by the information.

4th. What was the number of acres in each tract ; and was not the price offered by Paull a good one, without any view to the road ?

Ans. There is about 150 acres in the place on which I live, and there is about 112 acres in the other. The price offered was a good one, say 20 dollars all round for both, per acre ; without any view of the road. I don't think it was more than a good price for the house place. I would have taken less for the other.

Questions on the part of Col. Shepherd.

Ques. 1. In all your conversations with Col. Paull and Woods, or either of them, had Col. Shepherd any thing to say or do, or was he present ? As to the price offered you for both tracts of land, by Col. Paull, considering the value of money and lands at that time, was the price offered you extravagant ?

Ans. Col. Shepherd never was present, nor had he any thing to do, so far as I know, with the propositions or conversations of Paull or Woods ; the price, I think, was a little extravagant for one, but not for the home place ; taking them together, I think it was a little so. I don't now distinctly remember that he was to give me 20 dollars per acre for both places : the house place I know was to be at that price. |

Sworn and subscribed the 8th November, 1821.

JAMES PURSLEY.

Interrogatories exhibited to William Hall on the part of Government.

Ques. 1st. Did you see Col. Eli Williams and Josias Thompson running a line near your house? When, and what did either of them say was the object of running that line?

Ans. In the Fall of the year 1819, I think about seeding time, I saw Williams and Thompson running a line near my house; neither of them disclosed to me the object of running that line.

Ques. 2d. When, and by whom, were you first informed that the road was to pass where it is made, near your house? Were you applied to, and by whom, to purchase your land; and when?

Ans. On the day of the sale of the road at Wheeling, I was, for the first time, informed that the road would be made where it now is, by Ninian Beall and Richard Hardisty, who presented a release, which I signed. On the Thursday preceding the Saturday on which the sale of the road was made at Alexandria, Col. Paull called on me, and wished to purchase my land; he offered me 18 dollars per acre, and I offered to take 20 dollars per acre. He went away, and was to call next morning; he did call, but I was absent, and did not see him till after the sale at Wheeling and I was informed the road would pass by me. He never afterwards mentioned the subject to me. As soon as I found the road was to pass where it now does, I believed, and still believe, that Paull was apprized of it before he made the offer to buy my land. I asked the 20 dollars per acre, supposing and believing the road would pass the "hill route," and would not have taken less. If I had known the road was established where it now is, I think I should have asked between 30 and 40 dollars per acre.

Sworn and subscribed 15th November, 1821.

WILLIAM HALL.

Questions to William Hillen on part of Shepherd.

Ques. 1. While Josias Thompson was in office, as superintendent, were or were you not employed as a clerk in his office; or, if not, how employed? It at all employed by him on his business, when did that employment commence, and when terminated?

Ans. I was employed as a clerk in the office of Josias Thompson, late superintendent: commenced in September, 1818, and left his employ in November, 1819.

Ques. 2. Have you, at any time, heard conversations between Thompson and McGiffin, touching the right of McGiffin to receive drafts or draw money from the Government? if you have, then state particularly what these conversations were, when they happened, and every thing attending them.

Ans. I have never heard any conversations between Thompson and McGiffin, respecting the right to draw money from the Government. I have heard Thompson say, about the time the appropriation was likely to run out, that he had given McGiffin a draft for a large sum of money, I believe about 30,000 dollars, to enable him to go on with

his contract : at the same time, said that he knew the money was not coming to him.

Ques. 3d. If you heard any thing touching such drafts or checks for money, or touching their sale or discounts, and touching the profits of such sale or discounts, then state particularly what you have heard, and when, and from whom.

Ans. I recollect Col. Shepherd getting a draft in the office after he had received it. Thompson asked him if he was going to get the cash for it at Wheeling. Shepherd replied he believed so. Thompson told him he had better sent it on to Washington, for he knew how he had been treated in Wheeling. Shepherd said he had no person to send it with to Washington. Thompson then said he would send his son, and it should not cost him any thing. Shepherd took the draft away with him.

Ques. 4. If you have at any time heard any thing said in the office respecting Shepherd's right to draw money, when brought in competition with McGiffin's right, then state what you have heard on this particular, when, and from whom, and on what occasion.

Ans. I have never heard any conversation touching the right of McGiffin or Shepherd to draw money.

5th. Under any circumstances, and when, to whom, and for what purposes, have drafts been given before due or earned? If you know of any such circumstance, state the particulars.

Ans. I know nothing touching this subject; except what I have related in my answer to the 2d interrogatory.

Interrogatories to witness on the part of Government.

Ques. 1. You state you were in the employ of Thompson, as a clerk or assistant. Did not a difference occur between you and Thompson, and if so, what was that difficulty in relation to the amount of your pay, and especially as regarded compensation for your assistance, in tracing the location between Washington and Brownsville? By whom was this controversy settled? By whom, and when paid the balance due you?

Ans. There was a difficulty occurred between Thompson and myself, regarding my pay. When I first engaged with Thompson, I was to be paid according to my merit. We started to locate the road from Brownsville to Washington; and after it was finished, he left me at Washington to survey on from that to Wheeling; and when it was done and presented him with the notes, he seemed pleased with them. I remained with him, and shortly afterwards he made out his quarterly return, in which he charged, on account of incidental expenses, four dollars per day, for my services for the term of twenty-eight days—the time from which we went on to Brownsville, and returned to Wheeling; and I receipted to him at that time for the money, as it was necessary for him to send on the receipt. He accompanied the quarterly return with a letter, stating to the Secretary that he had engaged me as an able assistant. I continued with

him in his office till his removal—we then made out the returns again, in which he charged on the same account of incidental expenses, three dollars per day, for my services, for all the time which was not embraced in the former account and receipt; I receipted for this also. When he was removed, it became necessary for me to seek other employ, and he and myself came to a settlement. Thompson drew up my account, in which he allowed me one dollar and a quarter for the twenty-eight days, and one dollar and a half for the remainder of my time. I would not agree to this, and claimed the sum he had charged the Government on my account. He refused to allow me this sum, telling me he had not settled his affairs with the Government, and did not know whether they would allow him even it for these charges or not; I told him I did not think he ought to have charged the Government with these sums unless he thought it just. If I was not entitled to that amount, he ought not to have charged it. If I was entitled to it, I ought to be paid. He told me he would do nothing else, but that, viz: allow me the § 1 25 and the § 1 50, or I must await the result of a settlement between him and the Government. I withdrew from him, and after consultation I was advised to see him. He met me some time afterwards, and told me he would not, for any consideration in the world, have any misunderstanding with me, and that surely he and myself could settle the business ourselves. I told him I had no objections, and wished it settled in a fair and honorable manner. He said he had no money or means of settling with me, but he would give me his notes or security, or any property he had. I told him this would be of no use to me, as I was in want of necessities for my family, and I could get nothing for such security. He then told me he expected to get some money from Shepherd, and that he would then pay me; or if I would go to Shepherd, and ask him, he, Shepherd, would let me have some on his account. I waited on Shepherd, and related the whole transaction to him. He told me he could not let me have any money on his account, there was nothing coming to him, but that Thompson was considerably in his, Shepherd's, debt. I went back to Thompson, and told him the conversation between me and Shepherd. He then told me to wait and he would see Shepherd himself; I did wait some time. In a few days, Thompson and myself went to Shepherd's together; we then settled our business, and Thompson allowed me the sum he had charged the Government for my services. He had sold a horse for sixty dollars, and had a note, which I got in part; the balance was settled by Shepherd for Thompson. This took place after the appointment of the committee of examination, and about the time they were coming on here. I don't know, but I expect Thompson and Shepherd had their notice of their appointment, and that they were coming on.

Ques. 2d. What do you know and what have you heard Thompson and Shepherd, or either of them, say, in regard to the ownership of the tract of land on which Thompson resides?

Ans. I do not recollect to have heard Thompson or Shepherd say any thing in regard to the ownership of the tract of land on which Thompson resides.

Ques. 3d. What do you know of the payments made to Krepps, on account of the contract of Gomly and Bond; did Krepps receive all the money for which he gave receipts?

Ans. When posting up Thompson's cash book, I discovered that a draft for \$1,000, on account of either the contract of Gomly and Bond, or on account of Gomly's contract, I am not sure which way it was, had been drawn, and that the amount had been divided, and \$500 charged to each contract. I asked Thompson how I would dispose of this on his book; he told me to let it stand, as it was \$500, and \$500 to the other contract. He said that when he drew the draft, he thought it had been coming to that contract, but afterwards found it would not bear it; that the one contract would bear it, and the other would not. Thompson said, that, in point of fact, Krepps, who had stepped into the shares of one of them, would loose that money; but he, Krepps, knew nothing about it.

Sworn and subscribed, the 19th November, 1821.

WILLIAM KILLEN.

WASHINGTON, *January 19th, 1822.*

The Hon. W. H. CRAWFORD :

SIR: In obedience to your instructions, bearing date the 27th April, 1821, we have taken the testimony of such witnesses as Col. Shepherd thought proper to produce, and also such as we deemed necessary, and whose attendance we could procure, on the part of the Government. Under all the circumstances of this case, we have not judged it necessary or proper to add one word of explanation or comment. The characters, standing, and relative connexions of the different witnesses, are pretty clearly developed in their own testimony.

We are, respectfully,

Your obedient servants.

A. LACOCK,
THOMAS MCGIFFIN.

Testimony in relation to the claim of Col. Moses Shepherd, taken in the presence of the Commissioners on the part of the United States, and in presence of Col. Shepherd and his counsel.

Personally appeared before me, Josiah Chaplin, a Justice of the Peace for the county of Ohio, William Killen, who, being duly sworn, deposes and says, that he acted as an assistant and clerk to Mr. Thompson, from 1818 to 1820: that he measured a portion of the mason work within Col. Shepherd's contract, a part in conjunction

with Mr. Thompson, and the balance was measured by Mr. Thompson : that the calculations were all made by himself : the major part of the work was measured in conjunction with Mr. Thompson : says, further, that he believes the calculations were correct ; says that the subcontractors were in the habit of calling, as the work progressed, for abstracts from Thompson's books, for the purpose of drawing their money from Col. Shepherd ; Mr. Thompson and himself, when engaged in measuring the work, were in the habit of removing the earth from the foundation, for the purpose of ascertaining the exact quantity of work completed : when we could not arrive at certainty in this particular, we were in the habit of requiring affidavits, as to the quantity, from the hands employed. Believes that the measurement made by himself, and that made in conjunction with Mr. Thompson, was correct. In all the work measured by himself and Mr. Thompson, in conjunction, witness carried the tape and made the calculations.

Cross-examined.—Witness says that the amount of work measured by himself was very trifling : says that they were in the habit of measuring the work as often as every other week. This measurement, however, was not relied upon as correct. It was the final measurement of the work upon which we relied. The final measurement was made when the work was nearly completed. This final measurement was made shortly before the removal of Mr. Thompson from office. In order to arrive at accuracy in the final measurement, in many cases we removed the earth from the foundation, to the distance sometimes of six feet. This was done when we had any doubt as to the accuracy of our first measurement. Mr. Thompson, in no instance to my knowledge, received the work from the subcontractors without an actual measurement by himself. In some cases, Mr. Thompson received the measurement from the masons, for the purpose of enabling them to draw money. The four contract bridges were measured by Mr. Thompson and myself, after they were completed. At the bridge near Col. Shepherd's, I suppose the foundation must be six feet below the surface ; the earth, however, has since been removed by the creek ; it may be more. I am not able to recollect the exact depth ; the foundation rests upon the rock. This bridge was measured by Mr. Thompson and myself, in 1820,* before the removal of Mr. Thompson. There was a small portion of the light side walls finished agreeably to the original contract, previous to the receipt of the directions to substitute heavy stone coping and clamping ; but in no instance was the alteration made when the work had been thus finished, to my recollection. The culvert near Shepherd's house was never altered after it was first built, to my recollection. The culvert and wing wall mentioned in the third item of Col. Shepherd's account, were not measured by Thompson nor by deponent : does not know why it was not measured. The wall which forms the fifth item of Col. Shepherd's account was ragged off after it was

* The witness has mistaken the date of Thompsons removal : it was in 1819.

finished, by the direction of Thompson. The length of the wall will appear from the returns now in the office of the Secretary of the Treasury. As to the extra expense, thereby incurred, deponent cannot say. Deponent says, that, at the time of the last measurement made by Thompson and himself, the wing wall and culvert near Shepherd's, which constitutes the third item of his account, were not finished; very little, however, remained to be done. There are two culverts at Thornburgh's, and one at Killen's. These culverts were never altered or removed to my knowledge. The location of the bridge near Col. Shepherd's was changed after the contract was entered into; deponent believes for the purpose of getting a foundation. We made an experiment when the bridge was first located, but no foundation was found short of nine feet. I once heard a conversation between Col. Williams and Mr. Thompson, in relation to the location of the road along the creek from Alexandria to Wheeling, and they observed that the creek route was preferred, on account of the materials and the water; this was in 1818.

WILLIAM KILLEN.

Testimony of Francis Melton.

Francis Melton, first being duly sworn, deposes and says: that he made 456 dowells for Col. Shepherd, which were all used in the erection of the three bridges built by Col. Shepherd on the National Road. These dowells would weigh from three-quarters to a pound each. Iron was worth at that time, per hundred, by the ton, twelve dollars and fifty cents: for a small quantity of it, he gave seventeen cents per pound, by the hundred. Deponent worked for Col. Shepherd by the day, at one dollar per day and found. With suitable iron, deponent could make one hundred in a day; but suitable iron could not be obtained. The dowells were worth, at that time, thirty-seven and a half cents each; they could now be made for half the money. Deponent counted the dowells before January, 1825; since that time, some of the dowells have been knocked off together with the coping.

FRANCIS MELTON.

Testimony of John Gilchrist.

John Gilchrist, being duly sworn, deposes and says: in 1820, at the request of Col. Shepherd, he accompanied the Commissioners appointed by the United States, to examine and measure the mason work executed by Col. Shepherd. The Commissioners commenced at the bridge near Mrs. Gooding's: in measuring that bridge, we found it to fall short of the measurement made by Thompson. Since that time, I have examined the measurement made by Thompson, and I am satisfied there was more work than was allowed by the Commissioners. The mode adopted by the Commissioners, was, to dig a few feet down, and then to drive an iron bar down on the insides of the

walls, until it reached an offset, or was stopped by some other obstruction. This I consider, at best, but guess-work, always going to lessen, but never to increase the measurement. The iron bar, driven down with great force, with a large sledge, and being short at the point, striking on an opening in the wall, or among small stones used for filling up the vacancies, would penetrate some depth below the offset, before its progress was stopped. There was a rule adopted by the Commissioners, which, I think, was highly unjust, and greatly affects the interest of the contractor; when their iron bar was too short to reach the offset, in order to ascertain the height of sections, and their thickness, instead of taking the dimensions, agreeably to the notes furnished them by the superintendent, when they found a section fall short in the upper part of the bridge, where it could be ascertained more easily, they would lessen all the other sections of the bridge, in the same proportion or ratio with the sections measured at the top: this was done by them without taking the trouble to sink or go down, so as to ascertain the true measurement of the sections below. In one of the bridges, situate west of Mrs. Gooding's, and not far from her house, the Commissioners reduced some of the walls considerably, without any certainty of their being correct. When I remonstrated, they appeared hostile, and said I had no business to dictate to them, or to interfere with their measurement: they further said, that all I had to do was to take down the notes as they did. In 1821, accompanied by Mr. Coulter, the bridge was remeasured by us, in the presence of Messrs. Lacock and McGiffin, and we made it ninety-four perches more than the Commissioners made it. This bridge was never measured by Thompson, and I understood from Col. Shepherd and others, that it never had been measured, and that there were no notes in existence in relation to it. Deponent further states, that himself and Mr. Lawrence accompanied the Commissioners in 1820, when the bridge west of Lartie's, the bridge west of Mrs. Goodings, the bridge opposite Mrs. Gooding's, the bridge over the mill-race, the bridge at Shepherd's house, the bridge at Mrs. Foy's, and the two bridges near Bentley's, were measured. In measuring these bridges, we ascertained, that, in some instances, when we could ascertain with certainty, it fell short of Thompson's measurement in thickness; in some of the sections they agreed, and in one instance it overrun. In the Fall of 1820, Lawrence and myself completed the measurement of walls, which were left unfinished by Thompson, consisting principally of parapets and foot bridges. For the work thus measured by Lawrence, himself, and the Commissioners, Col. Shepherd acknowledged to deponent he had been paid by the Government. Deponent further states that the following are the items which he referred to as being paid for, viz: the foot bridge over Robert's run, the foot bridge over Morrison's run, the foot bridge over Shields' run, the foot bridge below Hardisty's saw-mill, a part of the side wall or foot bridge above Hardisty's saw-mill, walls above the arch on Faris's mill-race, the bridge over Wheeling creek, at Faris's fulling mill, beginning at the spring of the arch, the parapets of the bridge east of Faris's, the parapets of a bridge west of Faris's,

part of a bridge over Bell's run, from the spring of the arch, amounting in all to 3122 perches 20 feet and 10 inches. Deponent further says, that the foregoing items were admitted by the Commissioners, as he understood from Col. Shepherd. Deponent further states, that, in 1821, himself and Mr. Coulter, the one chosen on the part of the Government, and the other on the part of Col. Shepherd, measured one wing wall or extension at the bridge west of Mrs. Gooding's, (not measured by Thompson,) one culvert east of Mr. Shepherd's store, the side wall at the west end of the bridge by Shepherd's house, one two pipe culvert on Thornburgh's land, one large culvert at Craig's Narrows, one three pipe culvert in Good's lane, one three pipe culvert at Smith's, one three pipe culvert on Thornburgh's land, one three pipe culvert east of Foy's bridge, one three pipe culvert within the side wall at Keefer's Narrows, one three pipe culvert on Craig's spring branch. Col. Shepherd acknowledged that he had been paid for the above mentioned items according to the measurement of Messrs. Gilchrist and Coulter, but claims to be paid according to Thompson's measurement. Deponent further states, that he understood that the work thus measured by himself and Mr. Coulter, fell short of the measurement made by Thompson: thinks that they were not furnished with Thompson's notes. Deponent further states, that he assisted the Commissioners to examine the site fixed on by the locators of the road at the "Hackberry." It is the opinion of the deponent, that there was no suitable foundation for a bridge at that place. At the eastern end, or where the bridge was to stand, they drove an iron rod or bar 18 feet below the bed of the creek, without finding any rock; on the western part or end of the bridge, they sunk the bar seven feet eight inches below the bed of the creek, and then they struck a rock. This sounding was about 25 feet nearer the hill, than where the abutment would have stood. It would have been deeper to the rock at the place where the western abutment would probably have been placed. Deponent states that he run from the Hackberry the course and distance on the original location to the present road; he then measured the road from the same point to the point in the road where the old location intersected. He found the present road to be thirty-eight and one half perches more than the original location; the Commissioners made the difference fifty-three perches. This deponent has heretofore given a deposition, which, on this point, he refers to for greater certainty. He has not in his possession either the notes or calculation. Deponent says that Col. Shepherd sustained a loss by the error of the Commissioners in their measurement of \$406. (This sum is less by one hundred and two dollars and fifty cents, than is exhibited in the second item of Col. Shepherd's account.) In relation to the culvert and wing wall near Shepherd's house, and which constitutes the third item in his account, deponent states, that this part of the bridge the Commissioners refused to measure in his presence, giving as a reason that it extended without the bounds of the United States' road. There is, at this point, a junction between the United States' road and a county road, at the east end of the bridge. The wing wall is thrown back to receive the county road. Had no

road intersected at this point, the wing wall would have been carried round the course of the road, in proportion to the northeast wing, which would have been of greater magnitude than the present wing wall. Deponent thinks that the culvert at this point is necessary. If it had not been located at that point, it would have been necessary to have built one at some other place on the road. If, however, the wing wall had been carried round, as before suggested, the culvert might have been dispensed with. The expense, if this course had been pursued, would not have been lessened, but rather increased. There are, in this culvert and wing wall, according to the measurement made by deponent, 116 perches 11 feet 6 inches, amounting to the sum of \$ 378 60, at \$ 3 25 per perch; this sum is \$ 597 50 less than the amount charged by Col. Shepherd, in the third item of his account. Deponent further states, that the wall at Keefer's Narrows has the appearance of having been ragged off. The wall is about two feet coping. In reference to the bridge called by the Commissioners "*the broken-back bridge*," and for which Col. Shepherd claims an allowance in the sixth item of his account, deponent states that he has examined this bridge, and found it bulged at the side walls above the arch. It has been in this situation for several years; is of the opinion that the bulge does not increase. He is also of opinion, that the materials and workmanship are good. States further, that the bulge was produced in consequence of the side walls having been of insufficient thickness to sustain the very deep filling on that bridge, which was made principally of heavy clay. Deponent states that in his opinion there is no immediate danger of the bridge falling. The stone used in the construction of this bridge are not of as good quality as the stone in the two large bridges. They are as good, however, as the stone used in the construction of most of the other bridges. Deponent further states, that he has measured the heavy coping on the following bridges, and found the amount thereof as follows: the bridge over Wood's run 466 feet; Deep Hollow bridge 257 feet; Blockhouse bridge 225 feet; bridge west of Carter's 219 feet two inches; bridge west of Gooding's 178 feet five inches; bridge at Gooding's 204 feet; Broken-back bridge 162 feet eight inches. It is to be understood that the amount thus stated is running measure, and amounts in all to 1,712 feet three inches. This coping, deponent states, is dowelled with locust pins. Deponent did not know, of his own knowledge, that all this coping was dowelled, but saw some of the work dowelled in the manner stated, but presumed that it was all dowelled. Deponent states that the stone, or the greater part thereof, used in coping on the "*Deep Hollow bridge*," are not of good quality. From the action of the air, or from some other cause, they are crumbling. Deponent believes that the balance of the coping is good, though he has not examined it recently. Deponent further states, the bridge at Good's, the Double Hollow bridge, the bridge at the foot of Wheeling hill, and the bridge over the Race, are all coped with flag-stone, from four to six inches in thickness. Deponent states that the copings on these bridges are of the common flag-stone, dressed and jointed. This deponent further states, that while Smith and him-

self were finishing the side walls at Good's place, the Superintendent, Mr. Thompson, directed them to take up the cording, or pavement, under the bridge, and sink it about eighteen inches, so as to permit the water to pass out of the run, without backing it over the bottom. It was so done, and Shepherd paid deponent and Smith thirty dollars for the same.

In answer to interrogatories put to him, deponent says, that the mode adopted by the Commissioners, when the mason work was measured, and the mode adopted by deponent and Lawrence, when the work was remeasured, were not such as to enable them to arrive at any degree of certainty. It was in a great measure *guess-work*. In many instances where the work had been previously measured by Mr. Thompson, we found it to fall short of his measurement. From the fact, that, in measuring work, when we could arrive at considerable, and the measurement made by us not agreeing with the measurement reported by Thompson, it is my opinion that Mr. Thompson was in the habit of receiving the statements of the workmen, as to the quantity of work done. In some instances the measurement made by us agreed with that made by Mr. Thompson; in some it fell short, and, in one instance, it over-ran a small amount. Deponent states, that he declined co-operating with the Commissioners when they were engaged in measuring the mason-work, at the request of Col. Shepherd, who assigned as a reason, that the Commissioners appeared hostile to him. Deponent further states, that he is well acquainted with Mr. Coulter, the person employed by the Commissioners to measure the work, and believes that he is a skilful and experienced measurer, in whose accuracy reliance might be placed. Mr. Coulter was engaged in the Fall of 1820. Previous to that time, Mr. Hawkins was engaged with the Commissioners. Mr. Hawkins, also, was a pretty good measurer; but the same reliance could not be placed upon his accuracy, not being a practical mason. Deponent says, *that he has heard the Commissioners say*, that they believed there was a secret understanding between Col. Shepherd and the agent of the Government, and that they expected to prove it. Does not recollect to have heard any other person express that opinion. Deponent has had a good deal of conversation with Col. Shepherd, but never heard him say any thing which induced him to believe that such secret understanding existed. Deponent further says, that, in measuring the wall east of Steinrod's houses, after it had been measured by the Commissioners, he found it to overrun considerably. Deponent does not know whether that fact was ever made known to the Government. Deponent further states, that, after himself and Lawrence had measured one of the bridges, after it had been measured by the Commissioners, and found it to exceed their measurement, and so stated to Hawkins, he replied that he did not see how that could have happened, as Gen. Lacock had required him to make an allowance, as deponent was to come after them. Deponent further says, that the coping on the bridge opposite Mrs. Gooding's would have been worth two dollars per foot, and the balance of

the coping one dollar per foot, provided Col. Shepherd had been apprised that the work was to be so finished at the time he commenced. Deponent thinks that the coping on the bridge opposite Mrs. Gooding's might have been done in as substantial a manner as the coping on the other bridges, at the same expense, that is, at one dollar per foot. It would not, however, have been equal to what it now is. Deponent says further, that the expense would be increased, if the stone had to be quarried for that purpose alone. Whether such was the fact in this case, deponent does not know. Deponent cannot say how much the cost of coping would be increased, because he does not know the quarries. But, from his knowledge of the quarries in that neighborhood, should say that the expense would be doubled.

In reply to an interrogatory by the counsel for Col. Shepherd, deponent says, that, when he spoke of the plan adopted by him and others, in measuring the mason work, as not being one calculated to arrive at certainty, he did not intend to apply it to work left unmeasured by Thompson. That was above ground, or near the surface, and easily ascertained.

JOHN GILCHRIST.

Question. Did you not discover from Thompson's notes that the abutments of the bridge opposite Mrs. Gooding's had been measured and allowed by him twice in his calculation?

Answer. I did discover that the abutments had been measured twice in Thompson's notes. It might have happened by mistake.

JOHN GILCHRIST.

Testimony of Josias Thompson.

Josias Thompson being first duly sworn, deposes and says, that he was appointed superintendent of the national road, late in the Fall of 1816, and received his instructions the May following, and continued to act in that capacity until November, 1819. In relation to the alteration of the wall, which forms the fifth item of Col. Shepherd's account, deponent says, that, after the wall was built, he requested the road maker to rag off the wall to about two feet thickness at top. In lieu of carrying the wall to the height originally determined upon, a concave pavement was made to carry off the water, and prevent injury to the wall. The length of the parapet thus taken off was five hundred and thirty-nine feet, amounting to 48 perches 12 feet. This alteration was made by the road maker, and not at the expense of Col. Shepherd. This wall was included in my admeasurement. Does not know whether Col. Shepherd has received pay for it or not. Deponent further says, that he directed an extension of a wing wall at the "Block House Bridge." This work was commenced, and then discontinued. Deponent does not recollect what amount of work had been done, when he directed it to be discontinued. This bridge was only partially measured by deponent. Says that this wall was discontinued in consequence of instructions received from the Secretary

of the Treasury to lessen the mason work as much as possible; and deponent thought it might be dispensed with at that place. Deponent says, he ordered a wall to be built at the lower end of his plantation. After the receipt of the instructions before alluded to, and after very little of the work had been done, he ordered it to be discontinued. A considerable quantity of stone had been hauled to the spot. Some of them were taken by the road makers, some of them by Col. Shepherd, and some of them were buried in the sand by a heavy freshet in the creek. Wing dams were afterwards used in place of walls. This wall forms the fourth item of Col. Shepherd's account. Deponent thinks about one half of the stone were buried in the sand. Deponent has no knowledge of any of these stones having been used for the benefit of the United States. Deponent does not certainly know that any of these stones were afterwards used by Col. Shepherd, but his impression is that they were. The excavation for the foundation was about sixty feet in length. The length of the wall 50 feet. It was four feet deep, and five feet in thickness, and contains *forty perches*, and, at \$ 3 25 per perch, amounts to \$ 130. Deponent cannot speak with certainty as to the quantity of stone remaining after the wall was discontinued, but thinks there was about twenty perches; none of those were taken, to the knowledge of deponent, for the use of the United States. Deponent further states, that for putting in dowells, he gave ten cents each. Deponent further states, that the bridge called by the Commissioners the "Brokenback bridge," was built according to his directions.

In answer to interrogatories on the part of the United States, deponent says, that he measured the mason work embraced in Colonel Shepherd's contract as it progressed. These admeasurements were partial, and were relied upon as being correct. When it was not practicable to measure the foundation, deponent required the affidavits of the men employed in building the work. These men were sometimes employed by the day, and sometimes were sub-contractors, and interested in the amount. This was done in the foundation of four or five bridges. Deponent made only partial admeasurements of the bridge at Bentley's. This was done for the purpose of enabling Colonel Shepherd to pay his workmen, and at his request. After the bridge was finished, deponent measured the bridge at the request of Colonel Shepherd, and made return to him. No return was made by deponent to the Government.

Question by Counsel. Was the *offset at the bar* of the bridge near Carter's house, on the outside thereof, directed to be built by you?

Answer. Deponent says that some alteration was made in the location of the bridge, but that an allowance was made Colonel Shepherd in the measurement.

Ques. After the bridge built at Good's was finished, did it not become necessary to remove the pavement under the arch, and dig the foundation deeper, in order to give free entrance and passage to the water?

Ans. It did.

Ques. After you gave directions to Colonel Shepherd, to have all the walls coped with heavy stone, and well clamped, what amount of work had been done agreeable to the original contract?

Ans. But little work had been done.

Ques. Did the erection of the wing walls at Shepherd's house lessen the expense to the United States, and were they not of essential benefit to Mr. Shepherd?

Ans. The expense of the wing walls is about the same, by the mode adopted. There is a county road leading down by Wheeling, and intersects the national road at the throat of the bridge. If any other course had been pursued, the wing walls would have obstructed the county road. It is of essential benefit to Colonel Shepherd. Colonel Shepherd was interested in having the county road intersect the national road at that point, and so, in the opinion of the deponent, were the public generally.

Ques. What extent of wall was built at the "Blockhouse bridge" by Colonel Shepherd, and why was it discontinued?

Ans. I do not know what extent of wall was built at that bridge. It was ordered to be discontinued in consequence of the orders of the Secretary to lessen the mason work.

Ques. Was there a culvert constructed by Colonel Shepherd at Thornburgh's, at Bentley's, and at Killen's? Were they taken up by your directions when completed? if so, for what reason? Were they measured? and, if so, what was the amount?

Ans. There were small culverts erected at each of those places. They were taken up by my directions, for the reason that the water could be better conducted over the road in a concave. They were never measured.

Ques. Was the bridge at Mrs. Fay's taken down by your order, and directions given to enlarge it? If so, what progress had been made towards its completion at the time these directions were given?

Ans. I have no recollection of any part of the work having been removed. The abutments and piers were raised higher than was contemplated in the original plan.

Ques. Did you measure the work at the bridge near Mrs. Gooding's, (her former residence,) as it progressed, and are you of opinion that your measurement was correct?

Ans. I did measure the work as it progressed, and am of opinion that the admeasurement was correct.

Ques. Was the location of the bridge near Colonel Shepherd's changed by your orders, after the work had commenced? If so, why was it thus changed? and what amount of work had been done, when this change was directed?

Ans. The site of the bridge was changed by the directions of the Secretary of the Treasury. No work had been done. There were some stone hauled upon the ground, but they were convenient for use at the present location. No extra expense was incurred in consequence of the change of the site of the bridge.

Ques. Was not the road from Alexandria to Wheeling originally located on what was called the "Hill Route?" and was not public notice given, that proposals would be received for making the road on that route, on a certain day, at Wheeling?

Ans. The original location of the road was on the "Hill." Deponent does not recollect whether the notice for the receipt of proposals specified the route. I am under the impression that it did not.

Ques. How long previous to the day of sale was the "Creek route" examined by yourself and Colonel Williams?

Ans. The Creek route was examined in the Summer of 1816. The sale was towards the last of December, the same year.

Ques. At what time was the alteration determined upon? and was public notice given of such alteration in the location of the road?

Ans. The alteration in the location of the road was determined upon, at the city of Washington, in the Fall of 1816. The alteration in the location of the road was not made public until the Saturday evening previous to the sale of the road, six miles west of Alexandria. The reason why notice was not given as to the change in the location of the road, was, the apprehensions of Colonel Williams, that the persons owning land on the creek would not release it to the Government.

Ques. Was information given, as to the alteration in the location of the road, to any person or persons? If so, to whom, and at what time?

Ans. Information was given to Mr. Campbell, Mr. Baird, and Mr. McGiffin, of Washington. I believe that Colonel Paul was also informed of it.

Ques. Was not the road between Claysville and Alexandria sold on the Saturday preceding the Monday on which the balance of the road was sold at Wheeling?

Ans. I think it was.

Ques. Had you a conversation with any one at the time of the sales at Alexandria in relation to the location of the road? And did you not say that the road would be made on the "Hill?"

Ans. I have no recollection of having such conversation. It is possible, however, that I might, as that idea was held out.

Ques. At the time the "Creek route" was examined by yourself and Colonel Williams, shortly before the sales at Wheeling, were you inquired of as to the object, and what reply was given?

Ans. The examination was made in the Summer, as before stated. Our only object in examining that route was for the purpose of the location of the road, and, if inquired of as to the object, that reply was given. We did not always give direct answers, as we were frequently teased.

Ques. Was it not originally stated in your notes, or the notes of Colonel Williams, that two of the bridges contracted for by Colonel Shepherd were to be arches of 100 feet chord or span, and two of 75 feet span? And were you not inquired of whether those bridges would not be made with two or more arches, instead of one, and what reply was given?

Ans. It was originally stated in our notes, that two of the bridges were to be of 100 feet span, and two of 75 feet span. I do not recollect of having been inquired of in relation to the arches. On reflection, deponent thinks that the plan of these bridges was originally drawn with three arches, and exhibited at the sales. The sales were conducted by Colonel Williams, and the contracts made by him. As Superintendent, deponent considered himself authorized to change or alter the plan.

Ques. After the contract between Colonel Shepherd and the Government was entered into for the erection of those bridges, were you empowered by Colonel Shepherd to sub-contract for the building of all or any of them? Was application made to you for that purpose? If so, by whom, and what reply was given?

Ans. I never was empowered by Colonel Shepherd to make contracts for the building of those bridges, or any of them. Nor was I ever applied to for that purpose.

Ques. Did you ever intimate to any one that you would like to be engaged in some of the contracts for mason work, or in building the road? and did you observe that there would be no harm in it, if it was kept secret?

Ans. I never did.

Ques. Did you ever say that Colonel Shepherd was a very bad manager, and that you would not sanction the contract between him and Colonel Paul?

Ans. I do not recollect that I said I would not sanction that contract. Thinks it probable he did say Shepherd was a bad manager.

Ques. When the route along the creek, from Morrison's point to Alexandria, was examined by yourself and Col. Williams, was not the *object of such examination* withheld from the owners of the land on that route?

Ans. I do not recollect that we were inquired of by any one, in relation to the subject.

Ques. Were there not double culverts built by Col. Shepherd when single culverts would have answered the same or better purpose? and did not Col. Shepherd receive or claim an allowance for such unnecessary work?

Ans. I consider all culverts as unnecessary, and as a nuisance. There may have been instances where single culverts would have answered the same purpose as a double one. As they are, they are not sufficient to carry off the water. Deponent recollects no instance where a double culvert was erected without his directions. Sewers, he thinks, would have answered a better purpose. Col. Shepherd claimed an allowance for all culverts of four feet span. Under four feet he was entitled to no allowance, with the exception of the culverts on Steinrod's contract.

Ques. In making out the estimates, in the Fall of 1818, of the sum that it would be necessary for Congress to appropriate for the completion of the contracts, did you not add \$40,000 to the \$40,000 which was the contract price for the four large bridges? and did you

not observe at that time, that there had been some mistake in making those contracts, and that double the sum must be allowed?

Ans. The contract price for the four large bridges was \$40,000. I recollect of making a mistake, and of putting them down at \$80,000. By the contract, these bridges were to be 16 feet capacity. They were enlarged by my directions, so as to give them 36 feet capacity. By this alteration the side walls remained the same. The arches, abutments, and piers were lengthened; this was all the additional expense incurred. Deponent cannot say what the entire expense would be.

Ques. Did you measure the foundation of the bridge over Wood's run?

Ans. I did not measure the foundation of that bridge until after the bridge was finished. There was a fraud practised by the workmen in building that foundation. I required a frame work of wood to be sunk ten feet. After the earth was removed, for the purpose of sinking the frame, it was, as deponent believes, filled up by the workmen in the night; and it has been since ascertained that the top of the frame was not more than four feet below the surface. Deponent has reference to the foundation for the pier. Col. Shepherd was allowed for this foundation as mason work.

Ques. Has not that bridge since given way, and was it not in consequence of the fraud practised by the workmen, as before stated?

Ans. I have never examined it since, and cannot say.

Ques. Is not the bridge, called by the Commissioners the "Broken-back Bridge," bulged at the side-walls above the arch? and would it have thus bulged, if it had been built in a workmanlike manner, and of good materials?

Ans. The bridge is bulged at the side-walls above the arch. I do not think it was owing to any defect in the workmanship or materials. The bulge is in consequence of the filling being too heavy for the thickness of the walls.

Ques. Are the stone used in the construction of this bridge of as good a quality as those used in the construction of the other bridges?

Ans. I think they are.

Ques. Are the stone used in coping on the "Deep Hollow Bridge" of good quality, and such as were required by your instructions?

Ans. They are not of good quality. At the time they were used, I supposed them to be of the best quality.

Ques. Are not the stone used in coping the bridge at Good's, the Double Hollow Bridge, the bridge at the foot of Wheeling Hill, and the bridge over the race, the common flat stone, for which the contractor would not be entitled to receive extra allowance? And has not Shepherd received, or does he not claim to receive, extra allowance for the coping on those bridges?

Ans. I do not know what Shepherd claims. The stone used in coping those bridges are the common flat stone, with the exception of the coping of the bridge over the Race, that is, the cut saddle back coping down in the best style. In that particular, more work was

expended (in reference to the bridge over the Race) by the contractor; than was required by deponent.

Ques. Do you not believe, that had Col. Shepherd been a prudent man, and a good manager, he would have realized a large sum from his contracts with the Government? If so, state the probable amount?

Ans. Col. Shepherd's contract was a profitable one. I cannot say what amount might have been realized from it.

Ques. Do you know that Col. Archibald Woods, or any other person, (and if so, state whom) was concerned, or in any way interested, in the contract made between Col. George Paul and Col. Williams, in relation to the Cumberland Road. And did he subsequently become interested in the contract when transferred to Shepherd?

Ans. I do not know that he was interested in the contract made by Col. Paul with Col. Williams. Deponent states, that after the contract entered into by Paul, Col. Woods was engaged in constructing the mason work. I became dissatisfied of the manner in which the work was constructed, and ordered him off the road. This dispute took place while the work at the bridge at the foot of Wheeling Hill was going on. Subsequently, some difficulty occurred between Woods and myself, while the work on the bridge at Good's place was progressing. I then addressed a note to Col. Shepherd, requiring him to remove Woods from the road, or, in case of his refusal, I would arrest the work, and should have considered it my duty to have put the work into the hands of others. My impression is, that this communication was made in writing, but am not positive. The work which Woods was engaged in constructing was the bridge at the foot of Wheeling Hill, the bridge at Lee's run, afterwards pulled down, the road changed about the width of the road, and a sewer, substituted, the bridge at Woods' Run, and the bridge at Good's place. None of these bridges were finished at that time. I do not know that any other person was, at any time, interested in this contract.

Ques. From all the circumstances within your knowledge, are you not of opinion that Col. Woods was interested in that contract?

The Counsel of Col. Shepherd objects to the opinion of witnesses being taken or inquired of, to prove facts; and says that the witness has no right to answer the question.

The witness declines answering the question. He objects to giving a matter of opinion, as testimony. Says he knows no other facts than those already stated.

Ques. From all the facts and circumstances within your knowledge, are you of opinion that there was a private contract between Col. Shepherd, or others of the contractors, with Col. Williams, or other agents of the Government?

The Counsel of Col. Shepherd is willing that the witness should state any facts within his knowledge, but objects to the opinion of the witness being taken.

Ans. I know no facts, and decline giving my opinion as evidence.

Ques. Do you consider Mr. Hawkins an experienced and skillful measurer ?

Ans. I consider him quite competent.

Interrogatories by Col. Shepherd's Counsel.

Ques. Where was Col. Williams at the time the President determined on the change in the location of the road from Alexandria, and where was he at the time of the publication of the advertisement for selling out the road ? when did he arrive at Brownsville to attend to such sale ? and when were men sent on to obtain the assent of the landholders on the Creek route, to the making of the road on said route, and for taking materials for the same ? and at what time was such assent obtained and made known to Col. Williams ?

Ans. Col. Shepherd resided in Georgetown, and I believe he was in the District of Columbia at the time the alteration in the location of the road was agreed upon. At the time of the publication alluded to, I suppose he was in Washington City, as the advertisement first appeared in the National Intelligencer. The same notice appeared in the papers in this section of the country. He arrived at Brownsville late in the evening of the 15th of December, 1816, the night before the sale. Men were sent on to obtain the assent of the landholders from Washington, Penn. on the evening of the 18th, or morning of the 19th of the same month. The agent was met by Col. Williams late on Saturday evening of the 21st. On the Monday following the sales were held at Wheeling.

Question by the same. Why, if you deem culverts useless, or not equal to sewers, did you continue to have them constructed on that part of the road under your care ?

Ans. I did not feel myself authorized to make the change, without the consent of the Secretary of the Treasury.

Ques. by the same. In making the first or partial admeasurements, were you so particular in being correct, that you could rely upon them in your final admeasurement ?

Ans. In such part of the mason work as would be inaccessible, when the work was finished, and a final measurement made, we were particular. In such cases, the notes of the partial admeasurements were preserved. In some few instances, where the depth of the foundation could not be ascertained, I was in the habit of receiving the amount from the men engaged in building the same under oath.

Question on the part of the Government. Were the gentlemen to whom the change in the location in the road was communicated requested to keep that fact concealed from the public ?

Ans. They were requested to conceal that fact, until the assent of the landholders was obtained.

JOSIAS THOMPSON,
Late Superintendent.

Deponent further states, in explanation of what he has already stated in relation to culverts, and the reason why he continued to con-

struct them, after having become satisfied that they were useless. that he corresponded with the Secretary of the Treasury upon that subject. At first, the Secretary agreed to substitute foot-bridges and sewers for small bridges and culverts, but shortly after, I received another letter from the Secretary, enclosing one from the Superintendent, Mr. Shriver, objecting to foot-bridges and concave sewers, and the Secretary requested me to reconsider the subject. I then wrote to him that I should proceed on the original plan, unless he would determine between Mr. Shriver and myself; after which I received no further instructions upon that subject.

JOSIAS THOMPSON,

Late Superintendent.

Testimony of Jesse C. Smith.

Jesse C. Smith, having first been duly sworn, deposes as follows :

Question. Are you acquainted with Lincoln D. Chamberlin; if so, is his reputation for truth and veracity as good as that of men in general?

Answer. Public report says that, in common conversation, he is given to exaggeration. I cannot say whether his oath would be relied upon: I have not sufficient knowledge of him to answer as to his credit when under oath.

Ques. Do you not believe, that, with common prudence, Col. Shepherd would have realized a large sum from his contracts with the Government, in relation to the Cumberland Road; if so, state the probable amount?

Ans. So far as I am acquainted with his contracts, if Col. Shepherd had received his pay, it would have been a profitable contract.

Ques. Have you not heard, or do you not know, that there was a private contract between Col. Shepherd, or others of the contractors, and Mr. Thompson, or other agent of the Government?

The Counsel of Col. Shepherd objects to the witness giving hearsay evidence.

Ans. I know of no facts in relation to such contract, and I decline answering as to what I have heard.

Ques. From all the circumstances within your knowledge, do you not believe that there was a private contract between Col. Shepherd, or others of the contractors, and Mr. Thompson or other agent of the Government?

The Counsel of Col. Shepherd objects to the opinion of the witness being taken or inquired of, to prove facts.

The witness declines answering the question.

JESSE C. SMITH.

Testimony of the Hon. Alexander Caldwell.

Question. Have you not, heretofore, been engaged as counsel for Col. Shepherd, and conversant with his contracts with, and claims upon, the Government?

Answer. I was engaged as counsel for Col. Shepherd, and have examined his contract.

Ques. Do you not believe, that, had Col. Shepherd conducted his business with common prudence, he would have realised a large sum upon those contracts? and, if so, will you please to state the probable amount?

Ans. I think his contracts were of such a character that he might have realized something clever from them. I cannot state the probable amount.

Ques. Are you not of opinion that the sum heretofore appropriated by Congress was a full and generous compensation for all the *extra labor* expended, and expense incurred, by Col. Shepherd, over and above what was required by his contract?

Ans. In my opinion it was.

Ques. Have you not heard, or do you not know, that there was a private contract between Col. Shepherd, or others of the contractors, and Mr. Thompson, or other agent of the Government; and have you not seen such a contract in writing?

The Counsel of Col. Shepherd objects to the witness answering as to what he has heard, except it was heard from Col. Shepherd.

Ans. I have not heard from Col. Shepherd, or from others implicated, any thing in relation to such private contract, nor have I seen any written contract between them.

The witness declines stating what he heard from others, in consequence of the objection of Col. Shepherd's counsel.

Ques. From all the circumstances within your knowledge, are you not of opinion, or do you not believe, that there was a private contract between Col. Shepherd and Mr. Thompson or other agent of the Government?

To this question the Counsel of Col. Shepherd objects, for the reasons already stated, and the witness, therefore, declines answering.

A. CALDWELL.

Testimony of Jacob Atkinson.

Question. Were you not employed as a clerk in the store of Col. Shepherd, and familiar with his contracts in relation to the Cumberland Road, and the manner in which his business was conducted?

Answer. I was employed as a clerk to Col. Shepherd; am familiar with his contracts with Government, and the manner in which his business was conducted.

Ques. Are you not of opinion, had he managed his business with common prudence, that he would have realised a large sum from those contracts?

Ans. My opinion is that he would, had he managed with prudence.

Ques. Did you not understand from Col. Shepherd, and from Thompson, or from either of them, that, if the location of the bridge from the "Hackberry" was changed to its present location near Shepherd's house, and for which he claims an allowance in the second and

third items of his account, all the extra expense thereby incurred was to be sustained by Col. Shepherd, and that no charge whatever was to be made against the United States?

Ans. I have understood from Col. Shepherd, that he agreed to make the difference in the road and be at the expense of bringing the water from the creek under the bridge, except ten or twelve hundred dollars, which the Secretary of the Treasury agreed to give towards cutting a canal.

Ques. Could not the bridge, as now located, have been built at less expense to the contractor than at the "Hackberry;" and was not the change, otherwise, of essential benefit to Col. Shepherd?

Ans. I should think the bridge could have been built at less expense at its present location, and is an accommodation to Col. Shepherd.

Ques. If public convenience had been consulted, would the bridge have been located where it now is?

Ans. I suppose the bridge could have been located at a point so as to shorten the distance upwards of thirty rods.

Ques. Are you not of opinion, from the circumstances within your knowledge, that a private contract existed between Col. Shepherd, or others of the contractors, and Mr. Thompson, or other agent of the Government?

The Counsel of Col. Shepherd objects to the opinion of the witness being taken; witness has a right to state facts, but not his opinion.

Ans. I know of no facts, and decline giving my opinion.

Ques. Do you not know or believe, that Col. Paul, Col. Shepherd, and Col. Woods, were connected in interest, in the contracts for the mason work, and for constructing the road?

Ans. I understood from Mrs. Shepherd, that Col. Paul and Shepherd were equally interested in the contracts for mason work and road. That Shepherd bought Paul's interest. He also stated that Paul would have taken \$ 5000, but they supposed the contract would be a profitable one, and gave him (Paul) \$ 8000. I do not know that Col. Woods was interested. I do not know the fact, but suppose that Franklin Woods, the brother-in-law of Paul, was the assignee of one of the notes for \$ 3000; for what consideration I know not.

Ques. Have you not heard from Franklin Woods, that a connexion in interest existed between Col. Shepherd and some agent of the Government?

To this question, the Counsel of Col. Shepherd objects, as going to prove hearsay declarations.

The witness declines answering the question.

Ques. During the investigation made by the Commissioners in behalf of the Government, was there not a continual intercourse and consultation between Shepherd and Thompson, and others interested; and who were they? State all you know upon this subject.

Ans. There was no extraordinary intercourse between Shepherd and Thompson at that time, to my knowledge.

JACOB ATKINSON.

Testimony of William Chaplin, Esq.

Question. Do you not know, or have you not heard, that there was a private contract between Col. Shepherd, or others of the contractors, and Mr. Thompson, or other agent of the Government; and have you not seen such contract in writing?

The Counsel for Col. Shepherd objects to this question, for the reasons already stated.

Answer. I have seen no such contract, nor have I heard that such contract was made. I have understood that Col. Marshall had made such a representation to the Government; and from that a rumor arose that such a contract did exist.

Ques. From all the circumstances within your knowledge, do you not believe that there was such a contract, understanding, or agreement, between Col. Shepherd, or others of the contractors, and Mr. Thompson, or other agent of the Government?

To this question, the Counsel of Col. Shepherd objects, for the reasons stated.

Ans. I do not.

Ques. Were you not a contractor for constructing a portion of the Cumberland Road; and did you not agree with Mr. Thompson; and did you not understand from him, that others of the contractors had agreed to cord or pave the road, without an extra allowance being made on the part of the Government, or claimed on the part of the contractor?

Ans. I was a contractor for building a portion of the road. In the Spring of 1817, before I commenced work, or before I had commenced stoning the road, Thompson called upon me, and stated the advantage there would be in cording or paving the road, instead of stoning it in the manner described in the contract, and asked me if I was willing to cord the road, instead of breaking the stone in the manner described in the contract. He also stated that he had called upon other contractors, who had agreed to cord the road without additional expense. I consented then to cord mine, without any additional charge. None of the contractors had at this time commenced cording. At the time this conversation took place, the contract for that portion of the road afterwards constructed by Mr. Steinrod, was in the hands of the original contractor; and Mr. Steinrod entered into this contract some time afterwards, and during the year 1817. I suppose that Mr. Steinrod must have known at the time he took the contract, that the road was to be corded. He had frequent opportunities of seeing the manner in which the road was to be constructed, before he took the contract.

WM. CHAPLIN.

Testimony of Major John Good, under oath.

Ques. Is the reputation of Lincoln D. Chamberlin, for truth and veracity, as good as that of men in general?

Ans. I know nothing of the man.

Ques. Do you not know, or have you not heard, that there was a private contract between Col. Shepherd, or other of the contractors, and Mr. Thompson or other agent of the Government, to share in some ratio the profits of their contracts; and have you not seen such a contract in writing?

The counsel of Col. Shepherd objects to the witness answering the question, for the reasons already stated.

Ans. I do not know, nor have I seen such a contract. As to what I have heard, I decline answering, in consequence of the objection of the counsel for Col. Shepherd.

Ques. From all the circumstances within your knowledge, do you not believe that there was such contract, understanding, or agreement between Col. Shepherd, or others of the contractors, and Mr. Thompson, or other agent of the Government?

The counsel of Col. Shepherd objects to the question being answered, for the reasons stated.

The witness declines answering the question.

JOHN GOOD.

Testimony of the Hon. A. Caldwell.

Question on behalf of the United States. Were you not called upon by a son of Col. Eli Williams, and consulted as to the propriety of bringing a suit against Col. Shepherd, upon some contract or agreement growing out of, or in relation to, the Cumberland road. If so, will you please to state the time when, and what advice was given. State, also, if Col. Shepherd has not since paid said Williams the whole or a part of said claim.

Ans. About three years since, a son of the late Col. Williams called on me in Wheeling, and stated that he had business to transact with Col. Shepherd, which, if not adjusted, he should have occasion for my professional services, and inquired whether I would be at liberty to undertake for him. I informed him that I was at liberty, and would engage for him. He said he would see Col. Shepherd that day, and if the subject should not be adjusted, he would see me the next day. He did not call on me again. He did not state the nature of his business, nor do I know to what it related.

A. CALDWELL.

Testimony of I. L. Skinner, Esq. examined in behalf of the United States.

Ques. Have you not heard, or do you know, that there was a private contract between Col. Shepherd and Mr. Thompson, the superintendent, to share in a certain ratio the profits of said contract; and have you not seen such contract or agreement in writing?

Ans. I have heard that there was such a contract, or in other words, that there was some kind of partnership between Shepherd and Thompson. I have never seen such a contract in writing, nor do I know that one existed.

Ques. From all the circumstances within your knowledge, do you not believe that there was such contract, understanding, or agreement? If so, state particularly all you know upon the subject,

Ans. I decline answering the question.

I. L. SKINNER.

WASHINGTON COUNTY, }
District of Columbia, }

Sworn to before me, one of the Justices of the Peace for the county aforesaid, on the 15th Feb. 1827.

C. H. W. WHARTON, J. P.

Testimony of Thomas McGiffin, Esq.

Interrogatories on the part of the United States. Ques. Do you not know, or have you not heard, that there was a private contract between Moses Shepherd and the superintendent of the Cumberland Colroad, to share in a certain ratio the profits of said contract, and have you not seen such contract in writing?

Ans. I do not know the fact of any private contract, but I have heard that one did exist between Col. Shepherd and the superintendent of the Cumberland road, to share the profits. I have never seen such contract in writing, although I have been informed such was the fact.

Ques. From all the circumstances within your knowledge, do you not believe that such contract, agreement, or understanding existed?

Ans. I have frequently, and in writing to the Treasury Department, expressed my opinions in relation to this matter, and therefore would respectfully refer to those opinions, thus expressed, as my answer to this question.

Ques. Were you not a commissioner on behalf of the United States, appointed for the purpose of investigating that subject, as also to ascertain the amount of mason work constructed by said Shepherd? and was not such work measured by you, or under your directions and superintendence? and do you not believe that the admeasurement so made was correct?

Ans. I was a commissioner on behalf of the United States, and the mason work was measured by me, and under my directions and that of the other commissioners; and I do believe that admeasurement to be substantially and essentially correct.

THOMAS MCGIFFIN.

Testimony of N. P. Atkinson.

Interrogatory in behalf of the United States. Did you not call upon the Secretary of the Treasury in 1819, at the request of Col. Shepherd, and submit to him a proposition to change the location of the bridge from the "Hackberry" to its present location near Shepherd's house, and for which he claims an allowance in the first and second items of his account? and did you not state distinctly, as the

agent of Col. Shepherd, that, if the change should be made, the contractor should be at all the extra expense, and that no charge whatever should be made against the United States?

Ans. I did call upon the Secretary of the Treasury in 1819, as the agent of Col. Shepherd, and submitted to Mr. Crawford a proposition to change the location of the bridge referred to. Three different plans were submitted to Mr. Crawford, for his consideration; and, as the agent of Col. Shepherd, and by his direction, I stated to the Secretary, that, if either of those propositions should be agreed to by him, all the extra expense should be sustained by the contractor.

NATH. P. ATKINSON.

CLERK'S OFFICE, HO. REPS. U. STATES.

Washington, March 5th, 1827.

The writing contained on the foregoing 24 pages of foolscap paper is a true copy from the original, forwarded from the Department of the Treasury to the House of Representatives of the United States.

S. BURCH,

Chief Clerk of the House of Representatives.

1. Do you not know the nature and extent of the contract between Col. Moses Shepherd and the United States, in relation to the Cumberland Road, and the amount of work constructed by Shepherd under such contract?

2. From your knowledge of the manner in which that work was constructed, and the amount Shepherd has already received from the Government, are you not of opinion, that the sum thus paid him was a full, ample, and generous compensation for all the work performed by Shepherd?

3. Have you not heard, or do you not know, that there was a private contract between Col. Shepherd, or others of the contractors, and Josiah Thompson, or other agent of the Government? and have you not seen such a contract in writing?

4. From all the circumstances within your knowledge, are you not of opinion that there was a private contract, understanding, or agreement, between Col. Shepherd, or others of the contractors, and Josiah Thompson, or other agent of the Government, to share in a certain ratio the profits on said contract?

DAUPHIN COUNTY, }
Commonwealth of Penn. } ss.

Before me, a Justice of the Peace in and for the said county, personally came Abner Lacock, and being sworn according to law, deposeth and saith:

In answer to the first interrogatory. That Col. Moses Shepherd had a large contract for making a portion of the Cumberland road, and

likewise the bridge; the precise nature of the contract he does not now recollect, nor the amount of work done; he, this deponent, with Messrs. McGiffin and Wilson, was appointed to examine the work. This duty was, by them, performed with great care, and, as he believes, with accuracy, and to their report he refers; in it will be found all the facts in detail that are connected with the transaction.

To the second interrogatory, he answers: That, from the manner in which the work was done, he is well satisfied that Col. Shepherd would have received an ample compensation, had he been paid agreeably to the adjustment and settlement of his claim, as made by the Commissioners above mentioned.

This deponent does not recollect of having seen a contract between Josias Thompson, the Superintendent, and Col. Shepherd, in relation to the Cumberland road. The manner in which the road was located to accommodate Shepherd, and prejudice the public interest, the unnecessary increase and expense of bridges, the evidence taken by the Commissioners in presence of Shepherd and his Counsel, the refusal of some to answer questions touching the fraud, together with the subsequent declarations of one or more creditable witnesses that had knowledge of the contract between Shepherd and Thompson, all conspired to remove every doubt upon the mind of this deponent, of the existence of such a contract, and a design to defraud the Government. For a detail of all the facts and circumstances connected with the case, he must again refer to the report and correspondence then made and carried on between the Commissioners and the head of the Treasury Department.

A. LACOCK.

Sworn and subscribed, February 19, 1827, before me,

J. MONTGOMERY.

WASHINGTON CITY, *February 23d, 1827.*

SIR: In pursuance of your instructions of the 11th of January, I proceeded to Wheeling, in Virginia, and entered immediately upon the discharge of the duties you were pleased to assign to me. In conformity with those instructions, I have procured the depositions of the Hon. Alexander Caldwell, Major John Good, William Chaplin, Esq. Thomas McGiffin, Esq. Gen. Abner Lacock, and I. L. Skinner, Esq. gentlemen whose names were furnished me, and upon whom I was directed to call for that purpose. The attention of these gentlemen was principally directed to the alleged private and corrupt contract, between Col. Shepherd and the Superintendent of the Cumberland road. It will be perceived, by referring to the testimony of these gentlemen, that Judge Caldwell, Mr. Skinner, and Major Good, refused to answer certain interrogatories in relation to that fact, in consequence of the objection urged by the Counsel for Col. Shepherd. Subsequently, however, Major Good informed me, that, had he answered that interrogatory, he should have expressed his belief in the existence of such contract or agreement. I was also directed by your

instructions to call upon and procure the depositions of Col. Woods and Philip Doddridge, Esq. Soon after my arrival at Wheeling, I addressed a note to Col. Woods, stating the object of the Government in instituting the inquiry, and requesting him to inform me if it would be agreeable to him to depose as to the facts within his knowledge. To this note, as also a second, to same purport, I received no reply. I then sought and obtained an interview with him, and was told, in rude and uncivil language, that he would not submit to an examination, assigning as a reason that the conduct of the former commissioners had been such as to give him great offence, and that he had understood that I was pursuing the same course. I related this circumstance to Mr. Sprigg, the counsel for Col. Shepherd, and who had been present during the whole examination; and he voluntarily proffered to testify, that, as regarded myself, there had been nothing that would justify those remarks, and that he was satisfied of the correctness of the course I had pursued. It will be recollected that Col. Woods is the father-in-law of Col. Paul, (the original contractor for that part of the road constructed by Shepherd;) that his son, Franklin Woods, was supposed, and no doubt had considerable agency in this business; and that it was also very generally believed that Col. Woods himself was interested in that contract. It is not uncharitable, therefore, to infer that other and different reasons induced him to withhold his testimony. On my arrival in this city, I called upon Mr. Doddridge with a like request, and received for answer, that, as he had formerly been employed as counsel for Col. Shepherd, he did not consider himself at liberty to disclose any facts that had come to his knowledge, and he therefore declined giving his deposition.

I have, also, the honor to state that, by an agreement between the counsel for Col. Shepherd and myself, certain witnesses were re-examined, with the understanding that their depositions heretofore taken should be withdrawn. The names of the witnesses thus examined in pursuance of that agreement, are, William Killen, Francis Melton, John Gilchrist, and Jonas Thompson.

As this subject appears to be involved in doubt and mystery, I beg leave to submit a brief review of the testimony, as applicable to the particular items of the account presented by Col. Shepherd, and other matters connected with this subject.

The first item in that account is for "coping," &c. charged at \$2,629 00. In support of this item he offers the deposition of Gilchrist. The amount of coping proved by this witness is 1,712 feet, and would be worth, according to his testimony, \$1,712. It will be observed, however, that the same witness testifies that the coping on the "*Deep Hollow bridge*" is not of good quality. It is a fact that the stone used for this purpose, on that bridge, are fast decaying, and at no distant period must be replaced. Upon principles of equity, as well as by the express terms of his contract, he can claim nothing for this work. It contains 257 feet; deduct then \$257 from the \$1,712, and the first item is reduced to \$1,455. By referring to the testimony of Thompson, it will be perceived that a fraud was practised upon the

Government in the erection of the bridge over "Wood's run." No foundation was found at the distance of ten feet: the workmen were then directed to sink a wooden frame that depth, and erect their mason work upon it. This, however, according to the testimony of Thompson, was not done; the earth was replaced in the night by the workmen, the frame sunk three or four feet, and yet Shepherd was allowed for the whole as for *mason work*, calculating it at *ten feet*. It is a fact, that the person who was employed in building this bridge, as a sub-contractor under Shepherd, *boasted* of the fraud he had practised. It will be recollected that this bridge has since fallen down, and that the Government has paid \$ 375 for repairs. The Government would still be the loser, should they offset the injury they have sustained in the erection of this bridge against the balance of this item of Shepherd's account.

The second and third items of this account amount to the sum of \$ 1,483 50. By the testimony of the same witness, (Gilchrist,) who, it will be observed, was employed by Shepherd to measure this work, this sum is reduced to \$ 784 60. But it is clearly established, by the testimony of the two Mr. Atkinsons, that he is not entitled to a farthing. It will be recollected that the original location of this bridge was at the "Hackberry." In 1819, as appears from the testimony of N. P. Atkinson, a proposition was made to the then Secretary of the Treasury, to change it to its present location near Shepherd's house. This gentleman states, under oath, that the proposition submitted to the Secretary, by him, as the agent of Colonel Shepherd, was, that, if the Secretary would agree to the proposed change, it should not be attended with any additional expense to the United States. Mr. Jacob Atkinson, who was the Clerk of Colonel Shepherd, states, that he understood from Colonel Shepherd, that he agreed to make the difference in the road, and be at the expense of bringing the water from the creek under the bridge, provided the Secretary would appropriate ten or twelve hundred dollars. This was done, and the money paid. By referring to Mr. Crawford's letter to Thompson upon that subject, it will be perceived that such clearly was his understanding. Again, this witness states, further, that the bridge could have been built at less expense, where it now stands, than at the first location, where Shepherd was bound by his contract to have built it; and that it was otherwise of essential benefit to Colonel Shepherd. The wing wall, which forms a part of this item, was rejected by the Commissioners, because they considered it as unnecessary off the road, and apparently built for Colonel Shepherd's individual convenience.

The next item in this account is for a wall ordered by the Superintendent, partly completed, and discontinued, and the materials taken by the Superintendent for other purposes, and amounts to \$ 975. This charge is attempted to be supported by a man by the name of Chamberlin. No reliance can be placed upon the testimony of this witness. He is directly contradicted by Thompson, and by other witnesses; and a reference to his deposition will satisfy any man that he was evidently swearing to the best advantage. Thompson states that this

wall contained forty perches, which, at the contract price, amounts to \$ 130 ; and that none of the stone were made use of for the benefit of the United States.

In relation to the fifth item of this account, it will be perceived, by referring to the testimony of Thompson, that the alteration in this wall was made by the *road maker*, and not at the expense of Shepherd ; and that the *wall* was included in his admeasurement of Shepherd's *mason work*. If it be true, as stated by Thompson, that the "*alteration*" was made by the road maker, and at his expense, and that Shepherd has credit for the *mason work*—upon what is this charge founded ? There is no doubt but that the *road maker* has already been paid for making this "*alteration*."

The next, and most important item in this account, is for the difference between the measurement made by Thompson, and approved by him, and the measurement of the Commissioners. This item amounts to \$25,409. It becomes important, in the investigation of this charge, to ascertain, in the first instance, whether the admeasurements made by Thompson, which he is pleased to call "*partial measurements*," were made with a *view to accuracy* ; and whether reliance can or ought to be placed upon such admeasurements. In relation to this subject, there are no two of Shepherd's witnesses that agree. It is stated by Thompson, that he measured the work embraced in Shepherd's contract as it progressed. That, although these measurements were "*partial*," they were nevertheless "*relied upon as being correct*." If it be true, as stated by him, "*that the mason work embraced in Shepherd's contract was measured as it progressed*," why did it become necessary, in any instance, to receive the amount of work from the *sub-contractors*, (*who were interested*) requiring them to make oath as to the quantity ? But this statement is contradicted, in part, by his clerk and sub-agent, Mr. Killen. He states that the major part of this work was measured by himself and Mr. Thompson ; that he carried the tape, and made the calculations ; and that they measured the work as often as *every other week*. And he states, distinctly, that these "*partial admeasurements were not relied upon as being correct*." "*It was the final admeasurement*," says Mr. Killen, "*that was relied upon as being correct, and that was made when the work was nearly completed*." He states, further, that in "*no instance did Thompson receive the measurement from the sub-contractors, unless it was for the purpose of enabling them to draw money*." In this, he differs from Mr. Thompson, who admits the contrary. Again, he says, that the bridge near Shepherd's house was "*measured by himself and Mr. Thompson in 1820, and before Thompson's removal from office*." It will be recollected, however, that Thompson was removed in September, 1819. Mr. Gilchrist, who is a practical mason, and who has re-measured much of the work, at the instance of Shepherd, that had been previously measured by Thompson, states that, in measuring work, where they could arrive at considerable certainty, he found Thompson's measurement to be erroneous ; and, from that fact, he infers that Thompson was in the habit of receiving the statements of the work-

men, as to the quantity. He states, also, that, in measuring the bridge opposite Mrs. Gooding's, he discovered, from *Thompson's notes*, that the abutments had been *twice measured and allowed by him*. These are Shepherd's own witnesses, and upon whose testimony he relies to support this important item of his claim. It is not for me to say whether it is sufficient. I beg leave to state, however, that all the witnesses concur in the opinion that Messrs. Coulter and Hawkins, the persons employed by the Commissioners to re-measure this work, were experienced and skilful men, in whose accuracy perfect reliance might be placed. Mr. McGiffin deposes that the mason work measured under the directions of himself and the other Commissioners, was "*substantially and essentially correct.*" General Lacock also testifies, "*that the work was measured with great care, and, as he believes, with great accuracy.*"

As to the last item of thirty dollars, Mr. Thompson says, that it became "necessary to remove the pavement under the arch of the bridge at Good's, and dig the foundation deeper, in order to give (*in the words of the contract*) *free entrance and passage to the water.*" Clearly, then, there is no equity in this charge; it was simply doing what his contract compelled him to do. It may not be improper to remark, also, that Judge Caldwell, who was of counsel for Colonel Shepherd, and conversant with the whole of this business, has declared, in his first deposition, that the sum heretofore appropriated by Congress was a full, ample, and generous compensation for all the extra work over and above that contracted for. This will apply, not only to this item, but to most of the others.

As to the supposed private contract between Colonel Shepherd and others of the contractors and the Agents of the Government, some additional evidence has been obtained. The facts detailed by Thompson, in relation to the change in the location of the road from Alexandria to Wheeling, are worthy of consideration. I have already stated, that the witnesses, who were supposed to be conversant with the facts and circumstances, refused to answer the interrogatories put them. To deter them, they were told, both by Shepherd and his counsel, that they would render themselves *liable to actions for slander*. By referring to the second deposition of Judge Caldwell, it will be perceived that a fact is related by him, which seems to throw some light upon the subject. I made all the inquiry possible, in order to obtain further information as to the nature of the claim in the hands of the son of Colonel Williams (the former Superintendent of the road) against Colonel Shepherd. The inquiry could be pressed, probably, with better success in the vicinity of Hagerstown.

I have the honor, also, to submit the testimony taken touching the claims of Daniel Loomis. By reference to that testimony, it will appear that he was a sub-contractor under McGiffin, in constructing the road. This *sub-contract* was never recognized by the Superintendent; consequently, there was no *privity of contract* between Loomis and the United States. The payments were all made to McGiffin, and when the last payment was made, Thompson swears that little or no-

thing remained due upon the contract. The controversy, then, is between Loomis and McGiffin. As to the allowance which he claims for "cording," it is clearly established, by the testimony of practical masons and experienced road makers, that it was attended with no additional expense. Testimony, as to this fact, could be multiplied to almost any extent. I am aware that there are those who entertain a different opinion; but the weight of evidence is as I have stated. For the mason work on that section of the road, Loomis was an original contractor. It would appear from the testimony that a portion of that work has not been measured; the amount that remains unmeasured can be easily ascertained.

In a former communication, I had the honor to state that Daniel Steinrod had withdrawn his claim. It will be unnecessary to add any thing to the remarks I then made, except that it was understood and agreed that the note addressed to me by him, and a copy of which I then communicated, was to be considered as a formal relinquishment of all claims against the United States growing out of his contract, and that it was not to be again presented.

All of which is respectfully submitted.

JAMES COLLIER.

HON. RICHARD RUSH, *Sec. of the Treasury.*

EIGHTEENTH CONGRESS, SECOND SESSION.

Report of the Select Committee to whom was referred the case of Moses Shepherd, accompanied by a bill for his relief.

FEBRUARY 8, 1825.

Read, and, with the bill, committed to a Committee of the Whole House.

The Committee to whom was referred the petition of Moses Shepherd, have had the same under consideration, and have come to the following report:

That the report made by the Committee to whom the same subject was referred at the last session contains, according to the view of this Committee, a just exposition of the merits of the claim, which they refer to as the grounds of this report. In addition to the same, they would add, that the Secretary of the Treasury, in answer to the resolution adopted at the last session upon that report, admits the position assumed by the Committee, that the Government ought to be bound by the acts of its agent, unless they were fraudulent, and Shepherd privy to the fraud. But this Committee do not agree with the Secretary in his conclusion, that Shepherd was in partnership with, or privy to any fraud of the agent; so far from it, the evidence, to their

minds, is satisfactory, that Shepherd has acted with fairness, and without collusion of any sort, with the agent; and that the whole of the work he performed, he executed under contract and directions of the agent of the Government: that, as it regards the report of the Commissioners, it seems to the Committee, when compared with all the circumstances and evidences, is not to be much relied on; that the Committee cannot suppose, as the Secretary of the Treasury has done, that the evidence of the said Commissioners can be material: it is fairly to be presumed that they stated all they knew, at least all that tended to operate against Shepherd's claim; and it is scarcely presumable, from the temper and tenor of the report, that they would swear to more against Shepherd's claim, than they were willing to disclose as Commissioners: on the contrary, it may be inferred, if cross examination is valuable in eliciting the truth, by a full disclosure, pro and con, that Shepherd might reasonably hope to obtain a further elucidation of his claim, or to relieve it from some of the shades which the report of that Commission has cast upon it. But the Committee are of opinion, that there is sufficient evidence of the justice of his demand, in the facts of his having performed the labor, under the agents of Government, fairly, and without fraud; and the objection, that he has cleared 80,000 dollars by his contracts, cannot lie, as there is no satisfactory evidence of the fact; but there is abundance of evidence that he has, instead of making, sunk money by his undertakings: but, whether he has made or lost, is no criterion by which to adjust the accounts of an individual, under fair contract and stipulated prices. The one has agreed to give, the other to do and receive; and by their contract each is bound, unless fraud or misrepresentation is shown; neither of which, in the opinion of the Committee, has been done. They therefore report a bill for his relief, upon the principles of the former report, and the account made up at the Treasury Department.

The Committee on Roads and Canals, to whom was referred the Memorial of Moses Shepherd, report:

That, on the 17th day of February, 1817, said Shepherd entered into a contract with Eli Williams, the agent of the Government of the United States, to make and construct certain mason work on the Cumberland Road, between the town of Alexandria, and the east foot of Wheeling Hill.

The contract is in writing. The substance of the contract is expressed in the following extracts from the agreement, to wit: to build and complete, in a workmanlike manner, two large bridges below the forks of Little and Middle Wheeling, each of which are to be arches of 100 feet chord, and twenty feet wide, at \$10,630 each, and two bridges over Little Wheeling, at Bentley's, each of 75 feet arches, and twenty feet wide, at \$9,371 each. And also to make and construct all other bridges, culverts, and other mason work, between the east foot

of Wheeling Hill and Alexandria, at three dollars and twenty-five cents per perch. It is understood and agreed, by the contracting parties, that, in case the size and dimensions of either of the four bridges herein specially contracted for shall be altered or enlarged, a proportionable allowance shall be made and paid for by the United States.

That Josiah Thompson was appointed by the President of the United States superintendent of the western section of said road, within which was Shepherd's contract; and that, by the terms of the contract between Shepherd and the Government, connected with the instructions given by the Secretary of the Treasury, under the directions of the President, to the superintendent, he was constituted the sole judge of what mason work was necessary to be made, the manner, sufficiency, and where it should be placed upon the road. That the superintendent was made the agent of the Government, to measure and determine the quantity of work completed, and to pay for the same, by drawing drafts upon the Treasury. That Thompson was continued in office, in the full exercise of all the above powers, until the 5th of October, 1819, when he was removed from office. That Shepherd, between the time of entering into the contract and the removal of Thompson, for the purpose of enabling himself to comply with his contract, entered into contracts with a great number of persons, to do certain parts of the work, directed to be done by the superintendent, and, as a part of his contract with the sub-contractors, it was stipulated that they should be paid, upon producing the certificate of the superintendent of the quantity done and accepted. In this manner, Shepherd proceeded with the work, according to the direction and measure of the superintendent, and had completed and paid for a great portion of the mason work judged necessary by the superintendent to the completion of said road before the removal of Thompson; the superintendent, as the agent of the Government, from time to time making payment as aforesaid for the work, as it progressed, either to Shepherd or to his sub-contractors.

That, upon the 30th of November, 1819, the President of the United States appointed A. Lacock, T. Wilson, and T. McGiffin, Esquires, Commissioners, to go upon the said road, and to generally examine into the conduct of Thompson, as the agent of the Government, and to report.

These Commissioners re-measured all the mason work which had been made by Shepherd and his sub-contractors, and which had been previously measured and accepted by the late superintendent; and reported that there was less, by 8715 perches, than had been returned by the late superintendent. They also state, that they find that Shepherd had paid to sub-contractors, on Thompson's erroneous measurement, over what was due upon the actual measurement made by them, the sum of \$7640 41. They also report, that they reject one, two, and seven three-pipe culverts, as being unnecessary, or properly coming within the contract for constructing the road, extension of wing wall west of Gooding's, culvert east of Shepherd's store, wing wall west end of the bridge at Shepherd's, as unnecessary, although built by

the direction of Thompson ; in all amounting to 1048 $\frac{1}{3}$ perches ; cost, at contract price, \$ 3,407.

The Commissioners further report, that for defective workmanship and materials, as stated in the paper marked G, 749 $\frac{1}{3}$ perches, costing \$ 2,427 42, at contract price. This work had been accepted by Thompson, and paid for by Shepherd to his sub-contractors. They also rejected a brace wall erected at the bridge, east foot of Wheeling Hill, amounting to 305 perches, according to Thompson's measure, not measured by them ; and also four culverts, represented to be in Skinner's part of the road, not measured by the Commissioners, by Thompson's measure, 219 $\frac{1}{2}$ perches. This work was made as directed by Thompson, and by him approved. They also rejected as unnecessary, and refused to measure, the pavement at Good's Run, the pavement at the deep hollow bridge, six tie-walls in the deep hollow bridge, and two tie-walls in the double hollow bridge, amounting, agreeably to Thompson's measure, to 269 $\frac{1}{2}$ perches, at the contract price 807 dollars 40 cents. That, in the settlement of Shepherd's account at the Treasury Department, so far as your Committee can discover, all the above-mentioned parcels of work, paid for and made by Shepherd, as directed and approved by the late superintendent, were rejected, which, in the opinion of your Committee, was incorrect and unjust, as respects Shepherd. The Committee agree that all sums of money paid out by Shepherd to sub-contractors, upon Thompson's measurement, are legal and proper charges against the Government. That Shepherd is entitled to be paid the contract price for the construction of all bridges, side, tie, and brace walls and culverts, that exceed four feet, and all culverts that have more than one pipe, if directed to be made by Thompson, the agent of the Government, whether the same be necessary or unnecessary, properly or improperly located up on the road.

These conclusions are made upon the belief and admission that Shepherd was in no way connected with, in interest, or conniving with the superintendent in his errors and frauds upon the Government, if he was guilty in these particulars.

Your Committee further report, that the Commissioners appointed to examine into the conduct of Thompson, as superintendent, have frequently, in their general reports and communications to the Treasury Department, suggested that Thompson and Shepherd were connected, in interest, in the contract of Shepherd, and, in consequence thereof, much unnecessary mason work had been made, and other frauds practised upon the Government. Your Committee have examined all the suggestions and arguments of the Commissioners, which are very voluminous, in connexion with all the facts and evidences developed in the examination, and they are not able to find any direct evidence to fix the charge upon Shepherd, or circumstantial evidence whereon to found a probable or strong suspicion of his improper or unlawful association with Thompson, for the purpose of defrauding the United States.

Your Committee further report, that the Commissioners, in giving a construction to the special contract for building the four larger bridges, have determined that the definite term of the contract, twenty feet wide for the dimensions of the bridges, is applicable to the passage over, or capacity of them, between the parapet walls, which, in fact, is making the contract extend to the erection of bridges of more than twenty-four feet wide, from outside to outside.

The committee are of opinion, that there is no uncertainty or ambiguity in the contract in this particular; and that the true construction of the contract is, that the bridges are to be, including the walls, twenty feet wide.

The Commissioners also determined the construction of the contract to be, as respects a bridge to be built with arches of one hundred feet chord, first, that it means a bridge to consist of a single arch; but they give up this opinion, upon the evidence of the superintendent, that it was not the intention of the parties to the contract to have the bridge so constructed, but that it should be erected with three arches, amounting, together, to one hundred feet chord; thus admitting the intention of the parties to the contract to explain this doubtful and ambiguous part of the instrument.

The Committee admit it to be a correct principle, that, whenever the construction of an instrument is to be made, which is ambiguous, from the terms employed, and thereby rendered difficult to discover the real intentions of the contracting parties, to resort to the acts and declarations of the parties that tend to give the sense in which they understood the terms used in such instrument. They conceive it to be equally correct, to receive the after mutual construction of the parties, to explain such an instrument, or the subsequent explanation given to it by the party for whose benefit it is made, as obligatory upon himself; and that, when a party, so in interest, shall have adopted a construction, and it had been acquiesced in and executed by the other party, each are bound thereby.

The Commissioners, in giving a further construction to the part of the contract now under consideration, adjudge that wing walls, to a reasonable extent, is included in the term bridge, as contained in the contract; and that it would, of course, be within the discretion of the Superintendent to determine their extent. Upon this principle, they add 2,902 perches, add 16 feet of wing walls, directed to be built to the four special contract bridges, and consider it as a part of the bridges contracted to be built for 40,002 dollars, at twenty feet wide. The Superintendent directed the bridges to be built forty-one feet wide instead of twenty. The Commissioners, upon their first rule of construction, allowed the increase or extension to be only sixteen feet, for which they recommend the payment for such extension, the sum of \$11,409 64, according to the contract, as they determine, having found the rate of proportion by adding the above-mentioned wing walls as being a part of the bridges. Your Committee, from the following state of facts, in connexion with the contract, have come to a different rule of construction and conclusion.

It appears that Thompson was present at the public sale of the work which Shepherd contracted for at Wheeling, in December, 1816, then being the assistant and surveyor for Williams, and did, probably, understand the intention of the contracting parties. That the proposals of Shepherd were sent to the Treasury Department, for the sanction and approbation of that officer; that he returned his assent, and directions to close the contract, dated the 6th February, 1817, and the same was done, in writing, February 17th. That Shepherd, the Spring following, commenced the work, under the direction and superintendence of Thompson, the agent of the Government. Thompson, on the 15th of August, 1817, if not at a prior period, determined and directed that all the bridges should be made forty-one feet wide; that he, on the 4th of March, 1818, made a plan, specifying the form, extent of abutments, firm arches, and parapet walls; and added thereto twelve feet of wing wall, at each end, finished by a turn or spur wall for the two bridges near Bentley's; and one in the same manner, the 5th of March, 1818, for the two bridges below the mouth of Middle Wheeling. That Shepherd went on with the work, according to the plans so furnished, and had begun to turn the arches in some of the bridges, when, in August, there was an unusual rise of water in the creek, which so much exceeded the anticipation of the Superintendent, that he thought it prudent to enlarge the capacity of the bridges for the passage of the water; and, thereupon, he directed Shepherd to raise the abutments and piers about three and a half feet higher than stated in the plans. That Shepherd took down a part of the work, so as to be able to comply with Thompson's instructions, and completed the bridges agreeably to the plans and directions. After the plans were made out, and the work commenced, the superintendent directed the extension of the wing walls, and, at what is called the Fay bridge, the wing wall was extended several rods, not merely to protect the falling of the road, but for the purpose of turning a creek along the side, and save the expense of a bridge over the same. It was first the intention of the superintendent to have turned the creek, by a cut across the land of Mrs. Fay, into the main creek below the bridge, and thus have saved the expense of extending the wall or bridge: her objection to that course created the necessity for one or the other.

Thompson's endorsement on the plan furnished to Shepherd is in these words: "Plan for Colonel Shepherd's two large bridges, below the mouth of Middle Wheeling, shewing all the dimensions, drawn to a scale of an eighth of an inch to the foot."

A Government can only act by its agents; and when an authorized agent acts within the scope of his authority, the Government are bound, to the extent of an individual acting for himself would be under similar circumstances. The abovementioned acts of the legally constituted agent amount to an actual and practical construction of the contract by the Government, (admitting it to be ambiguous from the general terms used,) and the acquiescence and execution of such construction by Shepherd, in the opinion of the committee, is a binding

construction and exposition of the contract, not to be controverted or avoided, at this time, by either party, only by the proof that it was made by a fraudulent combination between Shepherd and the agent.

Therefore, the committee report, that the plans of the bridges made by Thompson furnish the rule and data, as to extent in height and form of the bridges, upon which the amount due Shepherd for the four special contract bridges is to be ascertained; and that the wing walls, beyond what is specified in the plan, rightly come under the other part of the contract, "or other mason work," for which he is entitled to be allowed \$3 25 per perch. Upon these principles, the cost of these bridges, and the extension of the wing walls according to the measurement of the Commissioners, is as follows, to wit:

The four bridges, 20 feet wide, containing 5,944 perches	\$40,002 00
The extension in width 21 feet, containing 3,311 perches	22,289 13
The increased wing walls, 2,902 per. and 16 feet, at \$3 25	9,459 04
	<hr/>
	71,750 17
The Commissioners' estimate of the same	51,411 64
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The difference between the two modes of calculation, in favor of Shepherd	20,338 53
To which add the sum paid by Shepherd, on the erroneous measurement of Thompson	7,640 41
Add rejected work by Commissioners, as stated in report	3,407 00
Add the sum deducted for defective work, &c.	2,427 42
Add also rejected work, not measured by the Commissioners, by Thompson's measurement, 794 perches, at \$3 25 per perch	2,480 50
	<hr/>
Making a difference in favor of Shepherd, upon the principles adopted by the committee, and those adopted by the Commissioners, of	36,293 86
By the settlement, at the Treasury Department, of Shepherd's account, there is a balance against him, of	3,810 03
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The balance due Shepherd is	\$32,483 83

The Commissioners report a mistake in the measurement of the bridge west of Mrs. Gooding's, of 94.07 perches, unfavorable to Shepherd, not credited, in their report, to him, amounting to 306 dollars and 31 cents; also, in the calculation of the bridge over Shepherd's mill race, of \$155 19, which the committee cannot determine whether these sums have or have not been credited to Shepherd, in the settlement above referred to. There is also a claim made by Shepherd for 1000 dollars promised him by the Secretary for turning the creek through what is called the canal route, at the bridge near Shepherd's house, which appears not to be passed to Shepherd's credit. These are also items recommended to the consideration and explanation of the Secretary.

And the committee recommended the adoption of the following resolution:

Resolved, That the Secretary of the Treasury be directed to make up the account of Moses Shepherd, for the work done on the Cumberland road, upon the principles adopted by the committee in the preceding report; and if he should, from the facts and evidence known to him, applicable to the rights of the parties, differ in opinion with the committee, in part or the whole, then, in that event, also, state the account as to him shall appear right in equity and justice, the contract considered; and that he transmit the same to this House, at the beginning of the next session of Congress, with all the evidence and documents in his possession, that he may deem necessary to a fair and full investigation of the claim of the petitioner.

Attest:

M. ST. CLAIR CLARKE,
Clerk House of Representatives U. S.

STATEMENT exhibiting the claims of Moses Shepherd, a Contractor for building bridges, &c. on the Cumberland Road, for which he appears entitled to credit, conformably to the report of the Committee of the House of Representatives upon his petition, the order of the House thereon, of the 17th May, 1824, and the directions of the Secretary of the Treasury endorsed thereon, viz:

Amount allowed for four large bridges, for increase of their size, viz:		
Three thousand three hundred and eleven perches, at the rate of \$ 40,002 for 5944 perches	\$ 22,282	41
And two thousand nine hundred and two perches sixteen feet, wing-walls, at \$ 3 25 per perch	9,433	60
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	31,716	01
Deduct amount placed to his credit, per report No. 45,520, for said increase	11,409	65
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		20,306 36
Amount of sundry sums paid by said Shepherd to certain sub-contractors, upon the measurement of J. Thompson, superintendent, more than their work would have amounted to by the measurement of the Commissioners, as per page 1, statement A. herewith	-	7,640 41
Amount allowed by the committee for work which was rejected by the Commissioners, as per page 2 of statement A. herewith, ten hundred and forty-eight perches eight feet eleven inches, at \$ 3 25 per perch	-	3,407 17
Amount allowed by the committee for work, which was deducted by the Commissioners, (at foot of the ab-		

stract of work, filed with report No. 45,520,) for defective workmanship, seven hundred and forty-nine perches twenty-three feet five inches, at § 3 25 -	2,437 32
Amount allowed by the committee for work which had been rejected by the Commissioners, (as per abstract of work filed with report No. 45,520,) as follows:	
	<i>per. ft. in.</i>
Entry No. 7, in said abstract	159 14 0
Entry No. 9, in do.	176 7 10
Entry No. 19, in do.	197 1 1
and deduction at foot of abstract	262 8 8
	<hr/>
Making together	795 6 10
which, at § 3 25 per perch, is	- 2,584 64
Deduct amount placed to credit of M. Shepherd, in report No. 45,520, for part of the last item of two hundred and sixty-two perches eight feet eight inches, at § 1 25 per perch - - -	327 93
	<hr/>
	2,256 71
Amount short, entered in abstract of work done, filed with report No. 45,520, at entry No. 14, for bridge west of Mr. Gooding's, as per page 5 of statement A. herewith, ninety-four perches seven feet, at § 3 25, (see paper marked E.) - - -	306 42
Amount short, entered in said abstract, at entry No. 17, for bridge across Shepherd's mill-race, arising from error in the calculation of the contents of the arch of said bridge by the Commissioners, (see statement E. and page 6, of statement A. herewith,) forty perches, at § 3 25 per perch - - -	130 00
Amount allowed to him by the Secretary of the Treasury, for turning the creek at Hackberry Bridge, as appears by the copy of J. Thompson's letter, of 14th June, 1819, marked B. and the letter of the Secretary of the Treasury to J. Thompson, dated 9th of June, 1819, not heretofore placed to his credit -	1,000 00
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	37,484 39
Deduct the balance with which he is charged on the books of the Treasury, per report No. 45,520 -	3,810 03
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Leaving this sum apparently due to said Moses Shepherd - - - - -	\$83,664 36
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Examined. R. HARRISON.

Auditor's Office, January 18, 1825.

WM. PARKER.

STATEMENT.

The amount of Mr. Shepherd's claim, as per Commissioners' statement C, is	-	-	\$360,318 03½
Add amount short, extended in charge for making road at No. 61, statement C,	-	-	174 52
Amount credited in the preceding statement for stationery and work not in the contracts	-	-	55 60
			<hr/>
			360,548 15½
From which deduct the following sums, per statement C. :			
Over measure of mortar walls per statement C, including 1 perch at No. 52.			
		6,862 17 6	
Do. dry walls do.		5,157 7 2½	
		<hr/>	
at § 3 25		12,019 24 8½	39,065 00
Overcharge for increased size of the four large bridges. (See statement E,)			19,590 35
Deduction for repairs necessary on a bridge, (See statement F.)			961 00
Deduction for unnecessary extension of the length of the road, (No. 13 C.)			1,490 62½
And for errors in extending the charge on dry walls,		- 19	
Deduction for errors in ditto on mortar walls,		- 4	
		<hr/>	15
			61,107 12½
Deduct sundry credits in lieu of part of the deductions, (as per preceding statement,)			1,503 00
			<hr/>
			59,604 12½
Amount credited in the preceding statement,			<hr/>
			300,904 03
			<hr/>
As Mr. Shepherd has not rendered any account, renders it necessary to take Commissioners' statement C, as an exhibit of his claims.			
The balance due from Mr. Shepherd as per Commissioners' statement C, is	-	-	2,018 15
To which add the following sums, viz :			
Amount of warrants No. 230, dated March 20th, and No. 773, dated 4th August, 1811, paid him, not charged by them,	-	-	11,723 46

Amount overcredited by them at No. 52, for one perch mason work, - - -		3 25
Amount of balance of errors in extensions of compensation for mortar walls, - - -		07
Amount overcredited by them for dry walls, 46 pr. 11 ft. 6 in. at §2 50, -	117 17	
Deduct balance of errors in extension of compensation for dry wall, - - -	21 65	
	<hr/>	95 52
		<hr/>
		13,840 45

From which deduct the following sums,
viz:

Amount of additional compensation of seventy-five cents per perch on 13,141 pr. 0 ft. 1 in. of dry wall, allowed pursuant to the endorsement of the Secretary of the Treasury on his con- tract—the Commissioners having al- lowed only §2 50, and the Secretary has authorized §3 75 per perch, -	9,855 75	
Amount short, extended for charge on making road, No. 61 statement C, -	174 52	
Amount short, extended for their allow- ance of part of deduction No. 8, -	15	
	<hr/>	10,030 42
		<hr/>
		3,810 03
		<hr/> <hr/>

Auditor's Office, April 11, 1823.

WM. PARKER.

Comptroller's Office, May 30, 1823.

LUND WASHINGTON.

NOTE.—In addition to the contracts of Moses Shepherd and George Paul, this statement is accompanied by the following documents, which, as they are in some measure connected with the accounts of other contractors whose work was under the superintendence of Josias Thompson, should be returned to be filed with report No. 40,281. They are as follows:

Book	A,	Measurement of bridges, &c. by Commissioners.
Do.	B,	Do. dry walls, do.
Statement	C,	Of Moses Shepherd's account do.
Do.	D,	Comparative statement of Superintendent's and Commissioners' measurement.
Book	E,	Dimensions, &c. of the four large bridges, and estimate for allowance for increased size.

- Statement F, Estimate for repairing a bridge.
 Do. G, Do. of deductions for defective workmanship and materials.
 Do. H, Account of side pavements.
 Letter I, Messrs. M'Giffin and Wilson, two of the Commissioners, to the Secretary of the Treasury.
 Do. K, Two letters of the Commissioners to the Secretary of the Treasury, and copies of two letters to the Commissioners, one from J. Thompson, the other from Mr. Shepherd.
 Do. L, Letter of January 2, 1821, of Messrs. M'Giffin and Wilson, to the Secretary of the Treasury.
 Do. M, Letter of March 7, 1821, of P. Doddridge, to do.
 Book N, Examinations of witnesses.
 Statement P, Comparative statement of Superintendent's and Commissioners' measurement, &c.

WM. PARKER.

April 11, 1823.

TREASURY DEPARTMENT,

Register's Office, March 4, 1824.

I hereby certify that the foregoing is a true copy of the original on file in this office.

JOSEPH NOURSE, Register.

MARCH 22, 1826.

Mr. STEWART, from the Committee on Roads and Canals, to which was referred the petition of Moses Shepherd, made the following report:

The Committee on Roads and Canals, to whom was referred the memorial of Moses Shepherd, report:

That, on the 17th day of February, 1817, said Shepherd entered into a contract with Eli Williams, the Agent of the United States, duly authorized for that purpose, to make and construct certain mason work on the national turnpike, which contract is in writing, by which he covenants to build the bridges therein mentioned, in the following manner, and upon the following conditions, viz: "To dig the foundations; clear away both above and below such building, sufficient for the free entrance and passage of the water; to build all the walls of such a size and dimensions as may be directed; to cope and point such walls as may require it; to procure materials of an approved quality; and in short, to do every thing necessary for the proper and permanent

construction of the said bridges, in such manner and form as the Superintendent may direct and approve; a good and sufficient number of good and experienced workmen shall be provided, and the work to progress with sufficient speed, so that contractors for turnpiking said road may not be delayed. In admeasurements, the arches only to be measured girt and half girt, all other mason work agreeable to their solid contents, and all openings to be deducted; the workmen shall all move from any one part of said sections to any other, for the purpose of building such buildings as may be most needy; no mason work to be paid for, except such as shall be approved by the Superintendent aforesaid. Should any of the contractors be thrown idle, or any of the men, so that they sustain loss, the sum or damages so sustained in the opinion of the Superintendent, shall be paid to the contractor for turnpikes. If he refuses such payment, the Superintendent of said road is hereby authorized to pay to the said contractor for turnpiking, out of any moneys due, or coming due, to the said Moses Shepherd. The United States, it is understood, is at full liberty to change their locations, and the size of any bridges and culverts, as pointed out in the grading notes, as the Superintendent shall direct." On consideration of the works being so done, it was contracted on behalf of the United States, that he should receive therefor payment "at the rate of \$3 25, for every perch of mason work contained in the arched bridges, and for every perch in any other work, except, at all times, reserving such sum as the Superintendent aforesaid may conceive proper and necessary, to the United States, for the due performance of this contract; which sum, so reserved, shall be paid to said Moses Shepherd, his executors or administrators, as soon as the aforesaid work is completed and approved as before provided."

That Josiah Thompson was appointed by the President of the United States Superintendent of the western section of said road, within which was Shepherd's contract; and that, by the terms of the contract between Shepherd and the Government, connected with the instructions given by the Secretary of the Treasury, under the directions of the President, to the Superintendent, he was constituted the sole judge of what mason work was necessary to be made, the manner, sufficiency, and where it should be placed on the road. The Superintendent was made the Agent of the Government, to measure and determine the quantity of work completed, and to pay for the same by drawing drafts upon the Treasury. That Thompson was continued in office with the above orders until the 5th October, 1819, when he was removed. That Shepherd, between the time of entering into the contract and the removal of Thompson, for the purpose of enabling himself to comply with his contract, entered into contracts with a great number of persons to do certain parts of the work directed to be done by the Superintendent; and, as a part of his contract with his sub-contractors, it was stipulated that they should be paid upon producing the certificate of the Superintendent of the quantity done and accepted.

In this manner, Shepherd, it appears, proceeded with his work according to the direction and measure of the Superintendent, and had completed, and was paid for a great proportion of the mason work judged necessary by the Superintendent to the completion of the said road, before the removal of Thompson. The Superintendent, as the agent of Government, from time to time, making payment as aforesaid for the work, as it progressed, either to Shepherd, or to his sub-contractors.

That, upon the 30th of November, 1819, the President of the United States appointed A. Lacock, T. Wilson, T. McGiffin, Esqrs. Commissioners, to go upon the said road, and generally to examine into the conduct of Thompson as the agent of the Government, and to report. These Commissioners re-measured all the mason work which had been made by Shepherd and his sub-contractors, and which had been previously measured and accepted by the late Superintendent, and reported that there was less, by 8,715 perches, than had been returned by the late Superintendent. They also rejected sundry pieces of work as unnecessary, and made deductions for work considered by them as defective: as to these last, and the enlargement of the bridges, it is unnecessary to say any thing at this time, Shepherd having received payment for them in pursuance of an act passed in his favor at the last session of Congress. He now claims payment for the whole work as measured by the Superintendent, alleging that the measurement of the Commissioners is inaccurate, and that, from the nature of the work, being principally bridges, culverts, tiewalls, and such like, which are covered in and concealed by the road, it was utterly impracticable to measure it accurately at any other time than as it was put up. The United States had not only a Superintendent upon the spot, whose duty it was to examine and measure the work when it could be done accurately, but there were also employed competent persons to assist in the discharge of those duties, who all unite in asserting the accuracy of the original measurement. The memorialist, it appears, also caused some parts of the work, measured by the Commissioners, to be re-measured by different persons at different times, some of whom point out the error in the principle adopted by the Commissioners in their admeasurement, and all make out the work to be much more than the Commissioners did. These measurers unite with some of the workmen originally employed in constructing the work, the original measurers, and others, in giving it as their decided opinion, that the *Commissioners* erred in their measurement, and that accuracy was unattainable after the work was finished and the road filled in. It therefore appears to your committee, that, although possibly the Superintendent may have made inaccurate returns, yet, as the extent of his errors cannot be ascertained, it would be exceedingly unjust to attempt to guess at it, and to compel the contractor to settle upon a mere hypothesis.

As the contractor and his workmen were compelled to abide by the measurement of the Superintendent, the Government, whose agent he was, are precluded from disputing it, without satisfactory evidence of his inaccuracy.

In the prosecution of the work, it was considered expedient by the Superintendent to cause wing walls, heavy coping, and other extra work, to be performed, not included in the original contract; these were, by the instructions of the Secretary of the Treasury, left to the discretion of the Superintendent, who directed the same to be done by the memorialist. In some instances, walls, originally erected, were, by the Superintendent, directed to be removed, and again rebuilt upon a deeper foundation. These accounts of the memorialist have never been presented for settlement, in consequence of the removal of the Superintendent from office; part was not measured by him, and the Commissioners refused to measure it. He also claims compensation for eighteen perches of road, being a mistake in measurement. He claims that inasmuch as, by the express terms of the contract, he was entitled to be paid his whole account so soon as the work was "*completed and approved*," which was in 1819, and, in consequence of the Government failing to fulfil their engagements with him, he has been subjected to much embarrassment by suits, and in other ways, and thereby incurred much expense, and had interest to pay, for which he thinks he is entitled to be reimbursed. All these are matters of account, more proper to be settled by the accounting officers than by this committee, there being no principle to establish in regard to them which has not been settled in other cases. The Committee deem it unnecessary to say anything concerning the compensation for repairing a bridge during the last summer, that having been provided for in the general appropriation bill. They think that the other items of claim should be referred to the Secretary of the Treasury, to be settled upon principles of equity, with instructions to adopt the abstract returned by the Superintendent as the basis of the settlement. They accordingly report a bill to that effect.

No 1.

December 23, 1816.

Col. ELIE WILLIAMS: I propose to contract with the United States, for mason work on the National Road, between Alexandria and Wheeling, as follows: I will make and complete the two large bridges below the forks of Little and Middle Wheeling, each of which are to be arches of 100 feet chord, and twenty feet wide, at 10,630 dollars each, and the two bridges over Little Wheeling, at Bentley's, each 75 feet arches, and twenty feet wide, at 9,371 dollars each. I will also make and complete all other bridges, culverts, and other mason work, at and between the east foot of Wheeling hill and Alexandria, and find all materials, at 3 dollars and 25 cents per perch, and finish the same, as the road contractors may be ready to fill up the abutments.

MOSES SHEPHERD.

No. 2.

*Extracts from the instructions of Josias Thompson, Superintendent, &c.
dated 5th May, 1817.*

“The execution of the contracts, above mentioned, with the several contractors, is left entirely under your superintendence. As every thing cannot be provided for in such contracts, it is expected that in the course of the work some modifications may be found necessary. Thus, there are places, which, from the steep ascent of the hills, along the side of which the road is to be dug, the slope required by the contracts could not be obtained, nor the ditch on the upper side of the road be dug out, or the thirty-two feet preserved for the surface of the road, without such additional and expensive cutting of the hills, and at such depth as cannot justly be required from the contractors. In these, and other cases of a similar nature, you are authorized to permit such deviations from the letter of the contracts, as will be consistent with its true spirit, and on such conditions as will give you an equivalent to the United States, either in an increased breadth of the road, or otherwise, and as it has been usual to adopt on other roads, in similar cases.

You will perceive, that these contracts will embrace all the sewers above ground, the number, form, and dimensions of which are left at your own discretion. For all the culverts and bridges not embraced by the contracts, whether noted in the Commissioners' field notes, or in your opinion necessary, and with the exception of those already contracted for, as stated in the contracts, you are hereby authorized to contract either separately, or for several of them together, and either with one or more persons. You will also make a quarterly return to this office of such contracts as you will have made during the preceding quarter. That return should simply state the name of the party, the work contracted for, and the price agreed on. With respect to lime, you may make a separate contract or contracts, if you think proper.

In addition to the work to be performed by the contractors in conformity with their contracts, and to culverts and bridges, some extra work, such as side walls to support the banks, digging of foundations, &c. will probably be necessary. On that subject, I have to recommend all the economy which is consistent with the permanency of the road, and the diminution of future repairs.

Whereas no inconvenience will arise from delay, it will be best to obtain the previous approbation of the President, by stating to me the object and previous expense. But as these may be cases of no great magnitude, and where delay would be inconvenient, you are hereby authorized to have any such work executed, as will not, in the whole, exceed the average of three hundred and twenty dollars per mile, for extra work. Beyond that amount, you will apply as above mentioned for authority. With respect to all such extra work, you are at liberty to have it executed, either by contract, or by hiring hands by the day or otherwise.”

No. 3.

PHILADELPHIA, *May* 26, 1817.

Col. SHEPHERD—Sir: I see at some of your quarries, flag stone suitable for coping, which your quarriers break up for common purposes; would it not be better to lay by those stones for that purpose, as all the coping must be made of flag stone, and not less than 3 inches in thickness? The parapet wall will be two feet thick, and the coping must project outside at least three inches wide, and completed in as good a manner as those already done on the eastern division of the Cumberland road.

JOSIAS THOMPSON, *Superintendent.*

No. 4.

UNITED STATES' ROAD, *August* 24, 1817.

Col. SHEPHERD—Sir: I have received directions from the Secretary of the Treasury to have all the walls coped with *heavy stone*, and *well clamped*, to prevent them from injury by evil disposed persons. You will, therefore, have all your walls coped with the heaviest stone that can be procured; but, in lieu of clamping, you will have them dowelled with locust pins, of an inch in diameter, or with iron dowells; and where it is not convenient to get heavy stone, you will put in two dowells of iron—three-fourths of an inch, will be large enough.

Your sincere friend,

JOSIAS THOMPSON, *Superintendent.*

No. 5.

Col. SHEPHERD—Sir: The Secretary has instructed me to abridge the mason work as much as possible; and by an estimate, I find it will be much cheaper to open a canal, than to make the side wall at the lower end of my place. I have, therefore, sent your hands home. I am going to Alexandria this morning: I will be down the creek tomorrow morning, and will see you on the occasion.

JOSIAS THOMPSON, *Superintendent.*

No. 6.

Amount of measurement made by J. Gilchrist.

	<i>Feet.</i>	<i>In.</i>
Parapet heavy coping		
Bridge on Wood run	466	
Do. Deep hollow	257	
Do. Block house	225	
Do. West of Carter's	219	2
Do. West of Gooding's	178	5
Do. at Gooding's	204	
Do. at the west end of Shepherdsville	161	8
Lineal measure, Total	1,712	3

JOHN GILCHRIST.

January 1, 1825.

No. 7.

OHIO COUNTY, VIRGINIA, *sect.*

Francis Melton, being duly sworn, doth depose and say, that he was employed by Colonel Shepherd to do his blacksmith work, during the erection of the Cumberland road; and deponent further saith, that he made four hundred and fifty-six dowells for the dowelling of the bridges on the said road; that the iron and workmanship was worth 37½ cents for each dowell.

Sworn before me, this 3d day of January, 1825.

JOSIAH CHAPLIN, J. P.

No. 8.

OHIO COUNTY, VIRGINIA, *sect.*

John Gilchrist, being of lawful age, and duly sworn, according to law, deposeth and saith, that, in the month of May last, this deponent was requested by Col. Moses Shepherd, to accompany the Commissioners, who were then proceeding to measure and examine the mason work on the turnpike road in the bounds of Colonel Shepherd's contract for mason work: this deponent, with Alexander Lawrence, who is also an artist, went with the said Commissioners, and proceeded to take notes of their measurement, as far as the same could be done: we found it totally impracticable to ascertain the actual dimension or quantity of mason work, on account of the great depth of filling between the walls of the bridges, which renders it almost impossible to ascertain the accurate thickness: it is likewise very difficult to ascertain the height of the different sections, without digging down to the bottom of the walls on the inside, as the offsets are mostly on the insides of the walls, and in no instance was this mode attempted. The mode adopted by the Commissioners, was to dig a few feet down, and then to drive an iron bar down on the inside of the walls, until it reached an offset, or was stopped with some other obstruction. This is at best, we consider, but guess-work, always going to lessen, but never to increase, the measurement: the iron bar, driven down with great force with a sledge, and being sharp in the point, striking on an opening in the wall, or amongst small stones used for filling up the vacancies, would penetrate some depth below the offset, before its progress would be stopped. There was a rule adopted by the Commissioners, which we think highly unjust, and greatly affects the interest of the contractor: when their iron bar was too short to reach the offset, to ascertain the height of the sections and their thickness, instead of taking the dimensions agreeable to the notes furnished them by the Superintendent, when they found a section fall short in the upper part of the bridge, where it could be ascertained more easily, they would lessen all the other sections in the bridge in the same pro-

portion or ratio with the section measured at the top : this was done by them without taking the trouble to sink or go down, so as to ascertain the true measurement of the sections below : in one of the bridges situate west of Mrs. Gooding's, and not far from her house, the Commissioners reduced some of the walls considerably, without any certainty of their being correct ; when we objected to this proceeding, they appeared hostile, and told us we had no business to dictate to them or interfere with their mode of measurement ; they farther observed to us, that all we had to do was, to take down the notes as they did. This deponent further states, that, while measuring one of the bridges near Richard Carter's Tavern, there was an offset at the base of the bridge, on the outside, which the Commissioners refused to measure, giving as a reason for so refusing, that that base or offset was useless ; a part of it they received in the measurement, and a part they left out.

Personally appeared before the subscriber, Justice of the Peace in and for said county, and swore to the truth of the foregoing deposition.

Given under my hand, this 28th day of November, 1820.

ARCHIBALD WOODS.

No. 9.

OHIO COUNTY, *ct.*

Before me, Charles D. Knox, a Justice of the Peace for said county, personally appeared Alexander Lawrence and John Gilchrist, and made oath as follows :

The said Alexander Lawrence saith, that, in the month of June, 1820, he was with the Committee, and assisted in exploring for a rock, at what was said to be the old location, where it passed Little Wheeling creek, between the mill dam and Colonel Shepherd's house. An iron bar was driven down to the depth of 18 feet below the bed of the creek, but no rock found. This deponent then offered to have another bar attached to the one then made use of, and penetrate it still further, but the Committee declined it. A similar attempt was made near to the bridge, but with similar want of success. The Committee appeared to be satisfied with the attempts made.

On the first attempt, the bar met with some obstruction eight or nine feet under ground, whereat the Committee appeared to rejoice ; but, on farther effort being made, the bar descended to the head.

The said John Gilchrist says, that he accompanied the Committee in the undertaking aforesaid, and recollects that, on the bar reaching to the depth of eight or nine feet, and meeting with some obstruction, the Committee, expecting that they had reached a rock, appeared to exult much thereat ; but, on making a further effort, the bar descended to the head. He recollects to have heard the proposal made by the said Alexander Lawrence to lengthen the bar, which was declined.

The whole distance below the bed of the creek, to which the bar was driven, was about eighteen feet : at this point, the water, during high freshets, was ten feet ; of course the bar descended twenty-eight feet below high water mark, and no rock found. The attempt was made on the spot near to the Hackberry, pointed out by Mr. McGiffin, where he said he knew the location to be ; but, not finding a rock, the Committee went to the dam, saying that they supposed the location was there. Here the rock was discovered, but of a very irregular surface.

Sworn to before me, this 15th day of January, 1821.

CHARLES D. KNOX.

No. 10.

COMMONWEALTH OF VIRGINIA, } ss.
Ohio County,

John Gilchrist, in the annexed affidavit named, being duly sworn, doth depose and say, that, on the 12th day of January instant, at the request of Col. Moses Shepherd, he made a survey of what is called the old location of the Cumberland Road near Col. Shepherd's house : that, in making the survey, he took the notes of Col. Williams, deceased, as he is informed, as his guide, and commenced at a point designated by a rock, running S. 56° E. to the Hackberry-tree, mentioned in said notes, and found the distance to be 181 poles 15 links. That deponent also measured the present course of the road, from the Hackberry-tree, over the bridge by Col. Shepherd's house, to the rock above-mentioned, and found the distance between the two points to be 220 poles and 3 links, making the difference between the two routes 38½ poles ; and deponent further saith, that he was present, in the year 1820, when the Committee on behalf of Government measured the bridge west of Mrs. Gooding's. At the time they measured the bridge, deponent informed them that they could not make a correct admeasurement by the plan they pursued. That, according to the measurement of the Committee, as returned by them in their general admeasurement, there were 940 perches 5 feet 1 inch in the said bridge. That, after this admeasurement, in the year 1821, deponent understood that the Hon. Wm. H. Crawford, on behalf of Government, had agreed that the Committee should choose one man, and Col. Shepherd another, to re-measure some disputed measurement of the Committee. That, under this agreement, deponent was chosen on the part of Col. Shepherd, and Mr. Joseph Coulter on the part of the Committee. That, according to the measurement of said Coulter and deponent, there were 1034 perches 12 feet in the said bridge, making a difference of 94 perches more in the said bridge near Mrs. Gooding's, than the Committee made in 1820. And deponent further saith, that he measured the first six divisions in the wall near Steinerod's narrows, and found them to contain 3853 perches 14 feet. In this admeasurement, deponent had reference to the Superintendent's

notes for the dimensions of two tie-walls, and the deduction for a rock, which could not be otherwise ascertained. And deponent further saith, that he hath examined a copy of the book of admeasurement made by the Committee, and finds several of the calculations there made incorrect, some of the mistakes being in favor of, and some against Col. Shepherd. Deponent further saith, that Alexander McDonald, mentioned in the deposition of John Sample, is a competent person to admeasure work of the description mentioned in said deposition.

JOHN GILCHRIST.

Sworn to and subscribed before me, this 16th day of January, 1824.

NOAH ZANE.

No. 11.

I, Lincoln Chamberlain, of the City of Washington, on solemn oath, depose and say, that I lived with Moses Shepherd, from some time after his commencing work on the Cumberland road, until after his completing it, and served as a foreman to direct his teams and workmen, during the whole time that he was performing said work. That I was, of course, knowing to all the different parcels of mason-work, and other work done on the road by virtue of his contracts. That the mason-work was measured by Thompson as it was put up, before it was covered or filled in, and under circumstances which induced me to believe that it was correctly measured. That I saw some of the sub-contractors measure their work after Thompson had done so, and their measurement exceeded his, and caused a general dissatisfaction among them, and complaints that he reduced the work, of which they were furnished with partial abstracts of Thompson's measurement, as the work progressed, by which abstracts, certified by Thompson, said Shepherd ascertained and settled their claims for compensation. That I have been employed in road making many years, and, though not a mason by profession, am well acquainted with the mason-work necessary on roads, and the mode of measuring it, and I consider it utterly impossible to measure it after the road is completed, on account of the great depth of the filling in, and the unevenness of the foundation. I further depose, that a considerable quantity of stone, and much labor in placing them, was entirely lost to said Shepherd, by reason of the discontinuance of side-walls, which had been previously ordered. That I recollect, particularly, one hundred and fifty perch of stone, to speak within bounds, half of which was laid in wall at the corner end of Thompson's place, wholly lost to Shepherd; and about eighty feet of wall, on each side of the road at Blockhouse-bridge, was discontinued, after being built two feet above the earth, many of the foundation stones of which now remain buried up in the trench dug for the walls—an entire loss to said Shepherd. I also recollect* *three culverts* are in Thornbridges' place,

* Not included in Shepherd's account.

one near Bentley's house, and the other close to Keelen's house, which were taken up when completed, and were never measured, although amounting probably to near one hundred perch, and the stone and labor were totally lost to said Shepherd. I further say, that, at the time of said Shepherd's receiving the Superintendent's order of August 10th, 1818, to raise and enlarge the bridges, that at the widow Fay's, in particular, was in a fine state of progression, and a great deal of that, as well as a considerable portion of the others, was unnecessarily pulled down, to make the walls thicker, and capable of supporting the great additional weight of stone, then contemplated; and the labor of erecting the wall, thus pulled down, was wholly lost to said Shepherd. I further depose and say, that I have examined the book of measurement returned by Thompson, and compared it with that of Messrs. Lacock, McGiffin and Wilson, and that some pieces of the work, which were done by myself, and in my presence, are not measured at all by said Committee, among which are the following, which I well recollect, as copied from Thompson's measurement, viz.

	<i>perch.</i>	<i>ft.</i>	<i>in.</i>
Pavement at Good's run, - - -	34	10	6
Do. at Deep-hollow bridge, - - -	32	3	0
Six tie-walls in said bridge, - - -	175	3	3
'Two do. in double hollow do., - - -	27	6	1
I also well recollect the work in the bridge near			
Mrs. Gooding's, returned by Thompson at -	88	12	9
And by the Committee at - - -	64	0	0

And I have no hesitation in saying, that Thompson's measurement of that particular work made it much less than it really was.

I further depose, that I was present at the commencement of the digging for the foundation of the bridge near Col. Shepherd's house, and know that it was begun precisely at the place designated by the Superintendent, called the canal route, and that it was afterwards changed, on account of the rock not running under the entire foundation, about eight or ten feet lower down the stream, by the order of the Superintendent, and to the great loss, in labor, of the said Shepherd. I know, also, that there were many other alterations of masonry, ordered by the said Thompson, to the great injury of Colonel Shepherd, which alterations were subjects of frequent dispute and contention; but said Thompson was considered as having authority to make them, and was therefore uniformly obeyed. I can only add, that the work constructed by Col. Shepherd was the best and most faithfully constructed of any of the kind that I was ever concerned in doing; that I have no doubt but he lost money by his contract the first year, and until he dissolved his connexion with Paul, and such was the general understanding at the time; and that I have full confidence in the justice of his claim on the Government.

Given under my hand, this first day of April, 1824.

L. D. CHAMBERLAIN.

DISTRICT OF COLUMBIA, }
 Washington County, } ss.

On the 1st day of April, 1824, before me, the subscriber, a justice of the peace for the county aforesaid, personally appears L. D. Chamberlain, whose name is subscribed to the above deposition, and makes oath in due form, that the facts set forth therein, as of his own knowledge, are true as stated, and, so far as he has been informed, he believes them to be true.

JAMES YOUNG.

No. 12.

WASHINGTON COUNTY, *to wit* :

I, Lincoln D. Chamberlain, being duly sworn, depose and say, that, in relation to the item of charge for a wall, begun and discontinued at the lower end of Thompson's place, in Col. Shepherd's account against the United States for work done on the Cumberland road, that, while at work on the said wall, in the employ of Colonel Shepherd, the Superintendent directed the building of the wall to be discontinued, alleging that it would be cheaper to the Government to cut a canal through the point of the bottom, than to continue the wall. That, besides the one hundred and fifty perch of stone, or thereabouts, mentioned in a prior deposition, of the 1st of April, 1824, I have given in this case, as lost to Col. Shepherd by means of the unexpected discontinuance of the work, there was moreover lost to him the whole labor and expense of digging and laying out the foundation of the wall, and a large quantity of stone quarried out: the whole value of which, this deponent and all the workmen thought it would amount to the value of 375 or 400 perches of stone wall: and that the principal part of this stone, thus quarried out, was used by the Superintendent as the property of the Government.

And I, the said deponent, further say, that the Superintendent directed that all the walls built by Shepherd should be reduced to five feet thickness at the top; that, in consequence of such instructions, the walls were so constructed; that, some time afterwards, the Superintendent altered his plan, and directed Shepherd to reduce the thickness of the walls at top to two feet, and make what he called an inclined parapet, to the great injury of Shepherd, causing him to take down the upper part of several walls, or so to break them off as to comply with said instructions. I do remember, particularly, that the wall at Keefer's Narrows was broken down. This wall was about 600 in length, and it required a great deal of labor to make the desired alteration, which may be estimated at about \$25, and which reduced the measurement of the said wall 50 perches, if not more.

And I, this deponent, further say, on oath as aforesaid, that while the bridge at the lower part of Col. Shepherd's plantation, on the said Cumberland road, was building, and when the walls were raised above

the arch, the Superintendent came to the bridge where we were at work, and told Col. Shepherd that the Secretary of the Treasury had instructed him to have all the mason work on the road abridged and lessened as much as possible ; and he, the said Superintendent, therefore directed Col. Shepherd to have the side walls of the bridge reduced to their present thickness. Col. Shepherd, with the mason that was doing the work, and my father, who was an old and experienced road maker, expostulated with the Superintendent on the impropriety of reducing the thickness of the side walls then building, alleging that the depth of the filling was very great ; that the earth that it was to be filled with was of a calcareous kind ; that, as it became wet, it would expand and push down the slender side walls then directed to be built. The Superintendent then replied, that the walls should be made as he directed, and they were made accordingly. That, as soon as the filling became wet, the walls did *bulge* ; but by no means so much as to injure the work. That, on my way from the State of Ohio to the City of Washington, last Fall, I went under the arch of the said bridge, which is about 7 feet high ; the arch was as entire and as good as when it was first built : that no part of the whole work appeared to be injured except the upper part of the side walls ; and they not in such a manner as ever to require repair ; and, if any repairs ever should be required, it is my opinion that such repairs could be made for \$ 150. or thereabouts.

And I, this deponent, on oath as aforesaid, further say, that the constructing the wing wall of the bridge at Col. Shepherd's house, in the shape it now stands, has diminished the expense to the United States, of the said wing wall, at least 300 or 400 perches, and that the whole work was done under the immediate direction of the Superintendent. I am confident, from my own knowledge of mason work, that the part of the wall leading towards Shepherd's house, which was not measured by the committee, amounted at least to 250 perches : that the culvert in said part of the wall contains about 52 perches : that this culvert was at first located at what was called Hackberry's bridge, and was to have passed under the road at that place ; but when the site of the bridge was removed down to the rock, the Superintendent directed the said culvert to be made where it now is, in that part of the wing wall next to Shepherd's house, and that part of the wall which the committee refused to measure.

L. D. CHAMBERLAIN.

DISTRICT OF COLUMBIA, }
Washington County, } ss.

On this ninth day of March, 1826, before me, the subscriber, a Justice of the Peace for the county aforesaid, personally appears D. Chamberlain, whose name is subscribed to the above written statement, and makes oath, in due form, that the facts set forth therein are true as stated.

JAMES YOUNG.

No. 13.

Noah Clark, of lawful age, being duly sworn, according to law, depose and saith, that, in November, 1817, this deponent was present, and assisted in building a side wall (being a mason by trade) on the turnpike road, near Little Wheeling creek, at the lower end of Mr. Thompson's plantation: this deponent was employed by Colonel Moses Shepherd: this deponent thinks there was at least one hundred and fifty perch of wall actually built: and that there was stone sufficient for six hundred perch, if it had been built in the wall: Mr. Thompson, the superintendent, was present while the work was progressing; the work was then stopped, as he was informed, by the direction of Mr. Thompson; and, this deponent believes that the stone actually built in the said wall, and the stone which was collected on the ground, ready to be laid, was equal to four hundred perches of stone when laid: and further saith not.

NOAH CLARK.

OHIO COUNTY, *Virginia*.

Personally appeared before the subscriber, a Justice of the Peace in and for said county, Noah Clark, and swore to the truth of the above deposition.

Given under my hand, the 28th day of November, 1820.

ABCHIBALD WOODS.

No. 15.

The undersigned assisted Col. Shepherd and others to measure a side wall, called Keffer's wall: the result was as follows:

	<i>Perches.</i>
Bottom, or lower section, - - - -	489
Middle do. - - - -	435
Upper do. - - - -	98
Coping, - - - -	50

 1073

In taking the dimensions of this wall, we had the piece of paper hereunto annexed, purporting to be notes made by the commissioners of the same wall. By that paper, the commissioners make the

Height of bottom section, - - - -	3 3
Thickness, - - - -	5 7
Height of middle section, - - - -	4 2
Thickness, - - - -	4 3

Whereas we make

Height of 1st section, - - - -	3 10
Thickness, - - - -	6
Height of middle section, - - - -	4 00
Thickness, - - - -	5 00

Quantity in perches, agreeably to our measurement, 1073.

In the above measurement, we endeavored to arrive at accuracy, as nearly as the situation of the wall would permit. To ascertain the depth on the inside, and the thickness of the lower and middle sections, we probed with an iron bar, the same used by the commissioners, and adopted the same method used by them. It will readily be perceived that accuracy was impracticable. The iron bar might meet with obstructions before it reached the bottom of the wall, or in attempting to find the thickness, it might be impeded by a stone projecting from the wall, or enter an opening in the wall. In the one case, the wall might be adjudged thicker, and in the other, thinner than it really is. The deeper the wall, the greater the uncertainty.

The said Caldwell further saith, that, after the result of Shepherd's measurement of the wall aforesaid was made known to the Commissioners, they remeasured the same, and made it contain considerably more (precise amount deponent does not recollect) than they had assigned to it on their first measurement; that, after the Commissioners had measured the small bridge west of Mrs. Gooding's, and stated the contents thereof, Shepherd requested a remeasurement by the Commissioners, which was agreed to, and deponent was invited by Shepherd to be present thereat. Two practical masons were mutually selected, and, in the presence of the Commissioners and deponent, the bridge referred to was remeasured, and it was made to contain about 100 perches more than the Commissioners had made it by their previous measurement. The acknowledged inaccuracy of the measurement made of this bridge by the Commissioners in the first instance, together with the results attending the measurement of Keefer's wall, destroyed all confidence in the correctness of the various measurements made by the Commissioners. These inaccuracies grew, as deponent believes, out of the impracticability of measuring mason work under ground, and concealed from the view of the measurer.

In regard to the south wing wall to the large bridge near to Shepherd's house, and the culvert at same, deponent saith, that, according to the original location, a culvert to conduct the water of a run or drain into the creek was to have passed under the road at the Hackberry, some distance east of the bridge. On the change of the location at that point, the run was conducted on the south side of the road, and discharged through the south wing wall of the bridge. The Commissioners, when measuring the other mason-work, declined measuring the wing wall or culvert, on the ground, as deponent understood, that the one was not properly an appendage to the bridge, and that the other was unnecessary. At the place where the bridge is erected, the banks of the creek were so low as to render the extension of wing walls necessary to support the filling in of the bridge, and the road immediately connected with the filling. If the southern wing wall, rejected by the Commissioners, had been extended of equal length with the northern wall, it would have required more masonry than is contained in the wall which was constructed.

A disagreement also existed between Shepherd and the Commissioners, respecting the increase of distance sustained in the change

of the road from the Hackberry to the intersecting point of the two routes. The Commissioners made that increase to be a certain number of rods, not now recollected by deponent. Shepherd employed a surveyor to measure the two routes, which was done in deponent's presence, and the increase of distance reported by the Commissioners was ascertained to be less than the Commissioners had made it by about 20 rods. Deponent cannot speak to the precise quantity, but recollects that it was between 14 and 20 rods.

A. CALDWELL.

WASHINGTON COUNTY, }
District of Columbia, } ss.

Before me, Bernard Spalding, a Justice of the Peace for said county, came Alexander Caldwell, who subscribed the above, and made oath that the facts contained in the preceding statement are true.

BERNARD SPALDING,
Justice of the Peace for said County.

No. 14.

Before me, Charles D. Knox, one of the Justices of the Peace for the county of Ohio, personally appeared William Killen, and made oath that he acted as assistant to Josias Thompson, superintendent, and assisted him in measuring some part of the mason work on Moses Shepherd's contract, and some part of it he measured himself, and other parts Mr. Thompson measured, when this affiant was not present. The portions of masonry which this affiant measured, and assisted Mr. Thompson to measure, are pointed out on strips of paper attached to the margin of Thompson's abstract, dated October 7th, 1819.

That, in making the measurement aforesaid, this affiant endeavored to arrive at accuracy as nearly as possible. At the time he made the measurement, he thought it correct, and yet believes it to be so. In making the calculations, he took great pains to be correct, and thinks he was so. That the sub-contractors under Shepherd applied to Mr. Thompson, from time to time, for abstracts of the measurement of the work done by them, which was furnished agreeably to measurement contained in the general abstract above referred to. That the sub-contractors obtained copies of such measurement, in order to settle with Shepherd.

The above sworn to before me, this 18th day of November, 1820.

CHARLES D. KNOX.

No. 15.

COMMONWEALTH OF VIRGINIA, }
Ohio County, } ss.

John Sample, of said county, being duly sworn, doth depose and say: that he, together with three other persons, contracted with

Col. Moses Shepherd, to build two bridges on the United States' road, known by the name of Bentley's bridges; that deponent's contract was to build the bridges by the perch. That Josias Thompson, the superintendent, took the admeasurement of the bridges as the work progressed; that said Thompson gave deponent certificates of the measure of the work; that deponent, and those concerned with him, received their pay of Col. Shepherd, according to the certificates of Thompson. And deponent further saith, that, from the commencement of the said bridges, he, and those concerned with him, without the knowledge of either Shepherd or Thompson, requested Alexander McDonald, a person engaged in the work, to take a private admeasurement of the work as it progressed, to see whether Thompson measured correctly. That, after the work was finished, they compared McDonald's measurement with Thompson's, and they only differed in a few perches. Thompson's measurement was allowed, and Col. Shepherd settled with them to the full extent of his measurement. And deponent further saith, that he understood the bridges above mentioned were taken by Col. Shepherd upon a special contract with the agent of Government, which will more fully appear by said contract. And deponent further saith, that he never had any reason to suspect, nor does he believe, that Col. Shepherd had any secret understanding with any person whatever, relative to the bridges or road.

JOHN SAMPLE.

Sworn to and subscribed before me, this 16th day of Jan. 1824.

NOAH ZANE.

—
No. 16.

DISTRICT OF COLUMBIA, }
Washington County, } *set.*

Personally appeared Abel Gay, before the subscriber, a Justice of the Peace for the county aforesaid, and makes oath that he assisted Josias Thompson, the late superintendent for the western division of the Cumberland road, and William Hawkins, the assistant superintendent, to measure a considerable portion of the mason work done by Moses Shepherd, a contractor on said road, as the same progressed; that he then thought, and still thinks, that the same was accurately measured, and so returned in the superintendent's abstract, which he has examined; that it was customary for the contractors to get copies from the superintendent's abstract, and thereby to settle with their sub-contractors and workmen, and he believes it was Col. Shepherd's custom so to do. He is well acquainted with the work done on that road, and is perfectly satisfied that the only possible way in which the contents could be ascertained was by measuring as the work was put up; it being utterly impossible to measure accurately after the bridges were filled in. The deponent is ac-

customed to examine and measure mason work, and considers himself a competent judge of such things.

ABEL GAY.

Sworn before me, this 16th day of February, 1826.

JAMES YOUNG.

The deponent Abel Gay further states, that, in many suits which grew out of other contracts on that part of the road made in Pennsylvania, Wm. Hawkins was examined as a witness for the workmen, and has invariably testified to the accuracy of the original measurement made by him, this affiant, and the superintendent; although said Hawkins, when subsequently employed by the Commissioners to re-measure the same work, made it out less, which deponent believes resulted from the impracticability of making an accurate measurement at the time the last was attempted.

ABEL GAY.

Sworn before me, and subscribed, this 18th day of February, 1826.

JAMES YOUNG.

No. 17.

Hugh Smith, being of lawful age, being duly sworn according to law, deposeth and saith, that he was employed by Col. Moses Shepherd, to finish a bridge on the road, in the land of John Good; this bridge was called Stewart's bridge. This was in the month of July or August, 1819. That the superintendent, Mr. Thompson, besides finishing the said bridge, required this deponent to take up the paving which had been made under the arch of said bridge by Stewart, and sink the ground two feet lower than it was, and pave it again, for which work Colonel Shepherd paid him thirty dollars, exclusive of the expense of finishing said bridge.

HUGH SMITH.

OHIO COUNTY, *Virginia* :

Personally appeared before the subscriber, a Justice of the Peace in and for said county, Hugh Smith, and swore to the truth of the above statement.

Given under my hand, this 28th day of November, 1820.

ARCHPLD WOODS.

No. 18.

OHIO COUNTY, ss.

Personally appeared, Richard Hardisty, before the subscriber, a Justice of the Peace for the county aforesaid, who, being sworn, says, that he was a sub-contractor for a part of the mason work on the national turnpike, under Shepherd and Paul; that he built one of

the large bridges over the little fork of Wheeling creek; that said mason-work was measured when bare, and as it progressed, by William Hawkins, assistant to Josias Thompson, and deponent was governed by said measurement in his settlement with his laborers. The same Hawkins subsequently aided the Commissioners, Lacock, McGiffin, and ———, in their measurement, which last measurement, deponent is informed, was less than the first; deponent believes the first measurement to have been accurate, and certainly the opportunity of making an accurate measurement was greater when the work was bare, than after it was filled in; and further saith not.

Given under my hand, this 30th day of Nov. 1827.

A. WOODS.

No. 19.

OHIO COUNTY, ss.

Personally appeared James Pemberton, before the subscriber, a Justice of the Peace for the county aforesaid, who, being sworn, says, that he was a mail contractor, from August, 1818, for many years after. That, long before the national turnpike within Shepherd and Paul's contract was finished, and before they were bound to have it finished, at the request of the deponent, permission was given to use the road for the purpose of transporting the mail whenever it was practicable; the road being thus thrown open, was in general use by travellers, which consequently made it necessary to repair the road before it could be taken off the contractor's hands by the superintendent.

Given under my hand, this 30th November, 1827.

JAMES PEMBERTON.

No. 20.

VIRGINIA, *Ohio County, ss.*

Personally appeared before me, Israel Upergraff, a Justice of the Peace for the county aforesaid, Noah Zane, Esq. of the borough of Wheeling, who declared upon oath, that, after Col. Moses Shepherd had finished his contract for constructing part of the Cumberland road, and bridges, and culverts therein, he waited with great anxiety for the arrival of the commissioners, McGiffin, Lacock, and Wilson, who had been appointed to examine and report upon his contract: no money could be drawn by Shepherd until such report was made; and being pressed by them to whom he was indebted, he was anxious for the examination and report to be completed. When the Commissioners arrived at Wheeling, they put up at the tavern of

Richard Simms : deponent called upon them there ; and, after some conversation with them, and particularly with Gen. Lacock, deponent observed to him, that Shepherd, and those to whom Shepherd was indebted, would be glad to see them ; that they were waiting very impatiently to receive their money : Lacock observed, with great warmth, that Shepherd had already received forty or fifty thousand dollars more than he was entitled to. My impression, from the whole conversation, was, that Lacock had come deeply prejudiced against Shepherd. This conversation took place on the first day of the arrival of the commissioners, who, on their way to Wheeling, had travelled the road, but had made no examination of the work done by Shepherd upon his contract, as deponent understood.

NOAH ZANE.

OHIO COUNTY, *ct.*

Personally appeared before me, Israel Upergraff, a justice of the peace in the county aforesaid, Noah Zane, and, duly affirmed according to law, stated the facts contained in the written deposition as just and true.

Given under my hand and seal, the 7th day of February, 1827.

ISRAEL UPERGRAFF.

No. 21.

OHIO COUNTY, *ct.*

Personally appeared John Eoff of said county, before the subscriber, a Justice of the Peace for the county aforesaid, and being sworn, deposes and saith, that he was present at the sale of the contracts for making the Cumberland road and the mason work thereon ; that the said sale was public, and fairly made : it was put up and sold by sections : that Col. Shepherd and Paul bid for the whole road, from near West Alexandria to the Ohio River : that there were sundry other bids, and that part from Major Good's to the river, was let to different individuals, whose bids were somewhat lower than Shepherd and Paul's ; the rest was let to Shepherd and Paul, and Shepherd had all the mason work. At that period, there was but little experience in the business of road making, and both labor and provisions were extravagantly high : the people were afraid, many of them, to risk contracting ; the citizens, being anxious to have the road made, urged Shepherd to bid, supposing that, as he was a man of property, and having slave labor at his disposal, he could undertake the business at less hazard than others. When the price was known, it was the opinion of some that in all probability it would be a losing business. Shepherd that day urged this deponent to bid for one of the bridges at the same price which he Shepherd, subsequently undertook it at ; but this deponent declined hazarding. And further saith not.

Given under my hand, this 26th day of November, 1827.

GEO. DULTY.

No. 22.

OHIO COUNTY, *ct.*

Personally appeared before the Subscriber, a Justice of the Peace for the county aforesaid, Jesse C. Smith, who, being affirmed, deposes and saith, that he was a resident of Ohio county during the making of the National Turnpike by Col. Moses Shepherd, and knows that, at the time of its construction, labor and provision were extravagantly high, compared with their present value. Deponent believes, from the high price of labor, and the total ignorance of the people in the county upon the subject of road-making, that no person would have been disposed to have constructed upon as low terms as Shepherd did; and deponent has understood, and believes, that the common impression at the time was, that Shepherd must lose by his contract.

Given under my hand, this 28th day of November, 1827.

UPERGRAFF.

No. 23.

OHIO COUNTY, *ct.*

Before me, Charles D. Knox, a Justice of the Peace for said county, came Joseph Wilson, jr. of lawful age, who, being duly sworn, says, that he was a clerk in the employment of Daniel Steinrod, while he was engaged in the construction of mason work in Moses Shepherd's contract with the Government, and was present when the workmen removed the earth in search of the rock to begin the wall upon, which was afterwards erected in Col. Wood's narrows, near to Steinrod's house. Deponent knows that the earth was removed to the solid rock, and the wall commenced upon the rock. After the workmen had raised the wall to the height of the 1st section, which was four feet some inches, earth was thrown in, so as to raise it even with the highest of the mason work, and then another section was begun. On the wall wing being finished, deponent set down the entire height thereof according to the various sections. That, upon the arrival of the Commissioners, Lacock, M'Giffin, and Wilson, the two former commenced the measurement of the wall above mentioned, and drove down a long iron bar provided for that purpose, until it would descend no further. The Commissioners asserted that the bar was upon the rock upon which the wall was founded, and stated the depth it had penetrated. Deponent believing either that the bar had not descended to the bottom of the wall, or that some error had occurred in the measurement, assured the Commissioners that they had not ascertained the depth of the wall by four or five feet. They insisted that they had, and refused to make another trial. This happened on a Friday. On the ensuing Monday, Commissioner Wilson, (who was not with his colleagues on Friday,) at the request of Steinrod, made another attempt to ascertain the depth of said wall,

set four hands to work, and removed the earth to the rock, and found it to be four feet three inches further than the bar of iron had penetrated. In removing the earth at the same place essayed by Lacock and M. Giffin, when the workmen descended to the point where the iron bar stopped, they discovered that it struck upon a flat stone which had fallen in on filling in the earth as before mentioned, and was thereby impeded in its descent. Wilson expressed his surprise that his colleagues had been satisfied with the attempt they had made with the bar of iron.

JOS. WILSON, Jr.

Sworn to and subscribed before me, this 5th day of January, 1828.

CHARLES D. KNOX, J. P.

The claim now presented by Moses Shepherd is so clearly and distinctly explained in the Reports of the various Committees that have had it under consideration, that it is deemed unnecessary to do more than add a few remarks, intended to obviate any objection that may possibly be urged against it—and to refer to the testimony by which the several items are supported.

The Special Committee, in their Report of February 8, 1825, have stated “that there is sufficient evidence of the justice of his demands, in the fact of his having performed the labor, *under the Agents of the Government, fairly, and without fraud.*” He has made a fair contract to perform certain labor, at a stipulated price: and the same Committee recognize the obligation of the Government, to fulfil the terms of that contract on their part, and reported a Bill for his relief, upon the principles of a report made by the Committee of Roads and Canals at a previous session.

According to the principles thus recognized and adopted by *two Committees, and confirmed by both Houses of Congress*, the memorialist is entitled to be paid for the *full amount of the Superintendent's measurement*, which exceeded that of the Commissioners, by 8715 perches. But, in making up the account which accompanied their report, the Committee took into view *only so much of this difference as was proved to have been paid to sub-contractors*, amounting to the sum of \$7,640 41. He now claims the residue of this difference, and insists that the measurement of the Superintendent was accurately made, and that of the Commissioners erroneous. To prove the accuracy of Thompson's measurement, the inaccuracy of that made by the Commissioners, and the *utter impracticability* of making a correct measurement under existing circumstances, he refers to the nature of the work itself, and to the testimony of the following witnesses—Alexander Lawrence, John Gilchrist, Alexander Caldwell, L. D. Chamberlain, Abel Gay, William Killen, John Sample, and Richard Hardisty.

It will be seen by the testimony of Judge Caldwell, and of Gilchrist, from the deposition of this last witness, it will appear that Hawkins,

who was the measurer under the direction of the Commissioners, had, as the assistant of Thompson, previously measured a portion of the same work when it was progressing, and was accessible. He then made it much more than when he subsequently attempted to measure it for the Commissioners. The Commissioners themselves made several efforts to measure some of the same work, and each time the result was different. These facts alone shew the inaccuracy of their measurement, and fallacy of any effort now to make a correct one. The memorialist further insists that the Government cannot, when he demands payment for work, faithfully performed, according to the terms of his contract, say, "Our agent has, either through fraud or accident, committed an error, and although we cannot prove, or in any manner ascertain, the extent of his error, whether it be only one perch, or upwards of eight thousand perches, we will not pay you another cent, unless you can prove to our satisfaction the amount of his error." On the contrary, he insists, that, in order to avoid the payment, they must establish not only that there *was* an error, but the *amount* of it. This being the most important item of the claim, is first referred to here; but, in the rough sketch of the account heretofore filed among the papers, it is in the seventh item.

In the first item of said account, he claims compensation for certain extra work, authorized by the Secretary, and directed by the Superintendent, (See instructions filed, and the depositions of Francis Melton, John Gilchrist, Josiah Thompson, and the act for the relief of I. L. Skinner, wherein he is allowed for the same description of work.

The location of one of the large bridges was changed by the orders of the Secretary of the Treasury, at the request of the memorialist, who undertook to make the increased difference of the road occasioned by such change, at his own expense. The Commissioners reported this difference between the new and old routes to be 53 poles—for which the memorialist was charged 1,490 dollars 62½ cents, and that sum deducted in the settlement of his accounts under the former bill for his relief; whereas, it has since been ascertained, by actual survey, that the real difference is only 38½ poles; so that he has paid for 14½ poles, amounting to 406 dollars, more than he should have done. He asks this sum may be refunded, which forms the second item of the account. (See statement accompanying the report of the Committee, depositions of Alexander Caldwell and John Gilchrist.)

The county road intersecting the National Turnpike at the large bridge near Shepherd's house, it became necessary, instead of building the wing wall across the county road, and thereby stopping up a road legally established by the competent authorities of the State of Virginia, to give it a southern direction, so as to receive this road. In this situation, it answered the same purpose, and cost considerably less than if it had been run parallel with the other wing wall. The wall being turned, it was necessary to change the location of one of the culverts. This wing wall and culvert were not measured before Thompson was displaced. The Commissioners refused to

measure; them and their contents, not being known at the time of the last report, they were altogether omitted, and he has never been paid for them. They form the third item of his account. (See depositions of Thompson and Gilchrist.)

The fourth item is for a wall originally built by directions of the Superintendent, afterwards removed by his orders, and for which no previous allowance has been made. (See depositions of Noah Clark, L. D. Chamberlain, and J. Thompson.)

The fifth item is included in the seventh. This wall had been built by direction of the Superintendent, and after being measured, *was removed*; which accounts for some part of the variance between the measurement of the Commissioners and of the Superintendent, and with that view alone was mentioned. The Commissioners refused any allowance for all such work as is referred to in this and the preceding items, upon the ground that it was useless and unnecessary.

To this it is answered, that, being directed by the Superintendent, it was the duty of the contractor to obey his orders, without inquiring into the propriety of them; the work being done, the contractor is entitled to be paid for it.

The sixth item of his account is the amount deducted by the Commissioners for a defect in one of the bridges, which they said it would be necessary to repair. The bridge has never been repaired; and the defect not being the result of defective workmanship, but the consequence of the walls being too thin for the filling, the contractor is not responsible therefor. The walls were built after the thickness directed by the Superintendent, which, being filled with heavy clay, gave way in a slight degree. It has stood about nine years without further injury, and there is no reason to believe that it will ever need repair in consequence of that defect: the contractor does not consider himself at all responsible for the defect. He therefore asks that the sum retained for the repairs of this bridge which have not been made, and which are not needed, be paid to him. (See depositions of Thompson and Gilchrist.)

In support of the eighth item, which is for extra labor not yet paid for, see the depositions of Hugh Smith and Josiah Thompson.

By the terms of the contract, the memorialist was to have been paid for the work done in pursuance thereof, *so soon as completed, and approved of by the Superintendent*. This was done in 1819; and in fact, before that period, the road was in use by the mail contractors and others, much to the disadvantage of the maker, who was required to keep it in repair at his own expense.

By the failure of the Government to pay him at the stipulated period, he was not only deprived of the use and benefit of the money due him, but was under the necessity of borrowing large sums of money to pay his workmen, for which he *paid interest*, but was, in numerous instances, from his inability to meet the demands against him, sued by his creditors and workmen, and compelled to pay interest, together with large amounts of costs. He claims to be reimbursed for these losses. In support of this, he refers to his contract,

the Superintendent's receipt, the deposition of James Pemberton, and the certificate of the Clerk of Ohio county.

He annexes a statement of his account, which will assist in explaining the nature of his demand. If there should be any error in the amount, it will be corrected by the accounting officers.

The United States to Moses Shepherd, Dr.

1. For extra coping, including the iron clamps	-	\$ — —
2. Excess of increased distance between the old and new route for the road, paid for by Shepherd,	-	406 00
3. Wing wall and culvert near Shepherd's house	-	378 60
4. For walls and culverts built and removed by order of Superintendent, and not measured either by him or the Commissioners,	- - - -	445 00
5. Another wall, also removed, but was measured by Superintendent, and is included in the seventh item,	-	— —
6. Amount retained for repairs to the "Brokenback" bridge, which are not needed, and have not been made, and which proceeded from the thinness of the walls, built according to the directions of the Superintendent, and for which the contractor is not responsible	-	961 00
7. Difference of measurement between Superintendent and Commissioners, 8715 perches at \$3 25,		\$29,323 75
Amount heretofore received, as paid to sub-contractors	- - - -	7,640 41
		<hr/> 21,683 35
8. Extra work by Smith	- - - -	30 00
9. Cost of suit, incurred by inability to pay his workmen, in consequence of the failure of the Government to settle his accounts at the stipulated period, say	-	275 82
This is for costs recovered against him, exclusive of fees appertaining to the defence of these various suits, the amount of which he cannot now ascertain.		
10. Interest from day of	1819	— —

The account accompanying the report in his case, heretofore made, will shew that no allowance was made for any one of these items, although the report settled the principles upon which their justice depends.

But it may be urged that the bill passed for his relief purported to be in full discharge of his demand. To this it is answered, that it is evident that it was merely intended to be in full of the account then reported and stated, and not of other matters, which were not therein embraced. In no case can the debtor discharge himself by paying one half of what is due to his creditor, saying, "there, take one half and be satisfied, I will not pay the balance," unless the debtor acquiesce and agree to receive it, and as full satisfaction. This was never done.

The Memorialist was just ready to sink under his embarrassments, occasioned by the want of good faith on the part of the Government; the whole of his patrimony, together with the earnings and savings of a long and laborious life, was about to be sacrificed, and, in his old age, himself and family liable to be turned out upon the world, without a roof to shelter them: under these circumstances he could not be expected to reject what was offered, *because it was not all that was due him*. He has done no act by which an abandonment of his rights can be inferred. Even where accounts have been deliberately closed and settled by *both parties*, if any error or mistake has occurred, courts of equity will open the accounts and correct them. The sum heretofore received was barely sufficient to relieve him from his embarrassments. What he now asks for will be some compensation for his own services and loss of time. It is not a *gratuity* he seeks, but simply for that *justice* which the courts of his country would award him were his claim against an individual.

WASHINGTON, January 16, 1828.

