

where clearly in conflict in determining a right to pay. An officer could not be kept in a sea duty status after actual detachment from sea duty by any mere delay in the indorsement of the word "detached" on orders.

From August 2 to 6 the status of Passed Assistant Paymaster McMillan was not that of an officer attached to a vessel, subject to the discipline of sea service thereon, and in the performance of sea duty thereon. His duties were not duties of the vessel but merely on the vessel. The duty of settling the accounts of a vessel in itself—unconnected with other duty—is not sea duty. It is a duty that may be performed at any place the department may see fit to designate. It is frequently performed at the home of the officer. In this instance the designated place for its performance was the *Vestal*. That vessel was merely quarters furnished to the officer for his use in its performance in so far as his connection with the vessel itself was concerned. His status was no more service at sea on the *Vestal* while he was in the occupancy of quarters on board of her for the purpose of the settlement of his accounts than it would have been had he been in the occupancy of the quarters as a passenger on the vessel.

The auditor's disallowance of the item is affirmed.

#### ABSTRACTS AND INSURANCE OF TITLE IN RE CONDEMNED LAND.

The appropriation for the acquisition, by condemnation proceedings if necessary, of land in connection with the improvement of the Anacostia Flats is not available for payment for abstracts and insurance of title to various parcels of condemned land, furnished to the War Department by a title insurance company after final judgment of condemnation was entered.

Decision by Comptroller Warwick, July 28, 1916:

Col. H. C. Newcomer, Corps of Engineers, United States Army, applied July 3, 1916, for a revision of so much of the action of the Auditor for the War Department in settlement No. 37903, dated May 8, 1916, as disallowed therein \* \* \* a payment of \$350 for 22 abstracts of title of property here in the District of Columbia.

By his voucher No. 77, June, 1915, appellant paid the Real Estate Title Insurance Co. of the District of Columbia, the Columbia Title Insurance Co. of the District of Columbia, \$350 for 22 abstracts of title pertaining to property in square 5563 (block 7, Twinning City), District of Columbia, procured in connection with the work of reclamation of the Anacostia River and Flats, District of Columbia, as hereinafter set out and described.

The auditor disallowed the expenditure because:

" Payment to the Real Estate Title Insurance Co. for abstract and insurance of title to property described as square 5563, block 7, Twinning City, D. C. It appears that this property was purchased by condemnation proceedings and that the expense of an abstract is not a proper charge for the following reasons:

"Under act of March 2, 1889 (25 Stat., 941), abstracts of title are required to be furnished by the grantors and the payment for same for land purchased by the United States is prohibited. See 7 Comp. Dec., 51; 3 id., 216; 9 id., 569, and 10 id., 538.

"In suits in which the United States is a party it is the practice for the Department of Justice to provide counsel and procure all legal advice. The searching of the records in order to determine the parties in interest, as far as obtainable, would appear to be a duty of that department, and the procurement of and payment for legal advice by the War Department does not appear to be authorized.

"The amount paid covers the guarantee of a perfect title, as well as payment for services in preparing the abstract. A payment for insurance or a guarantee of a perfect title is not a proper charge against the United States. While the expense of preparing the abstract may be a proper item of expense, the charges for services and insurance are so intermingled that they are inseparable; therefore the entire amount is not authorized.

"The procurement of land by condemnation proceedings, after advertising as required by law, would cure all defects in title prior to said suit and vest a valid title in the United States, and any further evidence of ownership as indicated by an abstract of title or an insured or guaranteed title is unnecessary and not authorized."

The act of March 4, 1913 (37 Stat., 938, 971), making appropriations to provide for the government of the District of Columbia for the fiscal year 1914, and for other purposes, provided for the continuation of the reclamation and development of the Anacostia River and Flats, authorized the acquirement by purchase or condemnation for highway and park purposes of the fee simple and absolute title to certain lands along the Anacostia River, appropriated \$100,000 for the purposes therein described, and directed that—

"the appropriation herein made for the reclamation and development of the Anacostia River and Flats from the Anacostia Bridge northeast to the District line, and all appropriations heretofore made for said purpose, are hereby made available for the purchase or condemnation of said land and for the payment of amounts awarded as damages for said land and the costs and expenses of the condemnation proceedings in the event that it is necessary to institute such condemnation proceedings: *Provided*, That if said land or any part thereof can not be acquired by purchase from the owners thereof at a price satisfactory to the Secretary of War, the Commissioners of the District of Columbia, upon the request of the Secretary of War, shall institute condemnation proceedings to acquire such land under the provisions of chapter fifteen of the Code of Law for the District of Columbia."

Appellant says:

"4. As the lands embraced in square 5563 could not be purchased from the owners at a price satisfactory to the Secretary of War, the Commissioners of the District of Columbia were requested to institute the condemnation proceedings contemplated by the statute. This action was taken by the Commissioners of the District of Co-

lumbia through their attorney, the corporation counsel of the District of Columbia, and their petition to this end was filed in the Supreme Court of the District of Columbia, holding a district court, on September 22, 1914. Commissioners to appraise the value of the land to be taken were appointed on October 22, 1914, and their report and award was filed under date of February 4, 1915. The order of the court confirming this report and award of the commissioners of condemnation and allowing costs was filed on March 13, 1915."

Chapter 15 of the Code of Law for the District of Columbia, established by the act of March 3, 1901 (31 Stat., 1189), under which the condemnation proceedings were had, provides in section 486 (p. 1266) that when the report and award of the commissioners of condemnation shall be confirmed by the court, the President of the United States, in cases of condemnation for use of the United States, shall, if he thinks the public interest requires it, cause payment to be made out of any money appropriated by Congress therefor to the respective persons entitled, *according to the judgment of the court*; and when such payments are so made the land shall be deemed to be condemned and taken by the United States for the public use.

Under date of August 15, 1914, the Secretary of War addressed the president of the Board of Commissioners of the District of Columbia as follows:

"1. In the condemnation of land for the use of this department it has been the practice to authorize payment of awards only upon the certificate or opinion of the Attorney General that the proceedings have been regular and in accordance with law, and that upon payment of the awards a valid title to the premises condemned will be vested in the United States.

"2. To enable him to render an opinion in this case it is necessary that he be furnished a full certified copy of the entire record, including the final order of the court, together with abstracts of title to the several parcels of land embraced in the proceedings. It is respectfully requested that the papers mentioned be forwarded to this department for the use of the Attorney General."

And, under date of September 17, 1914, as follows:

"Referring to the matter of the condemnation of certain parcels of land needed in connection with the Anacostia River improvement, and to this department's request of the 15th ultimo, to be furnished, for the use of the Attorney General, a copy of the record in the case, together with abstracts of title to the several parcels condemned, I beg to advise you that the cost of preparing these papers is believed to be a proper charge against the appropriation for the reclamation of the Anacostia River and Flats, and that payment of such cost will be authorized by this department when the amount is properly certified by you."

Under date of April 10, 1915, the Secretary of War stated to the president of the Board of Commissioners of the District of Columbia, having reference to square 5563, that:

"Abstracts or other muniments of title are also required for the aforesaid purpose, but in this case it will not be necessary for your

department to furnish such data as they will be obtained by this department direct from a local title insurance company."

Appellant states that these abstracts of title were ordered on March 22, 1915, by authority of the Chief of Engineers, United States Army, for the sum of \$350, under oral agreement therefor, after bids for same had been invited and rejected as too high. The title company state that their proposal was to furnish abstracts of title only and the estimate was based exclusively on the preparation of such papers, and that the matter of insurance or guaranty of title did not in any manner enter into the compensation to be paid for same.

The title to the lands in square 5563 was acquired through condemnation proceedings instituted by the Commissioners of the District of Columbia, through the corporation counsel, and not by purchase. It does not appear that the abstracts of title were purchased for use in the condemnation proceedings, inasmuch as the purchase of them was after the termination of the proceedings and not before or during their progress. They were for the use of the Attorney General in determining, as stated, whether—

"the proceedings have been regular and in accordance with law, and that upon payment of the awards a valid title to the premises condemned will be vested in the United States."

Section 355, Revised Statutes, provides that:

"No public money shall be expended upon any site or land purchased by the United States for the purposes of erecting thereon any armory, arsenal, fort, fortification, navy yard, customhouse, lighthouse, or other public building, of any kind whatever, until the written opinion of the Attorney General shall be had in favor of the validity of the title, \* \* \*."

This legislation has reference (1) to lands acquired for building sites, and (2) to lands acquired by purchase and not by condemnation, neither of which has any application in this case. The lands in question were acquired by condemnation and were for the purposes of the development and improvement of the Anacostia River and Flats. The act authorizing their acquirement provided that if they could not be purchased at a satisfactory price condemnation proceedings might be instituted, and if done, the costs and expenses thereof should be a charge against the appropriation for the reclamation and development of the Anacostia River.

The abstracts of title were not used in the condemnation proceedings and the cost of same was not a part of the costs and expenses of the proceedings. As the act makes no provision for their procurement otherwise, I am of the opinion that their cost is not a proper charge against said appropriation and that appellant can not have credit in his accounts for the disbursement so made. (See 3 Comp. Dec., 216; 9 *id.*, 569; 21 *id.*, 597.)

For several years the appropriations for salaries of the Department of Justice have contained the following provision:

"\* \* \* four attorneys, at \$5,000 each, one of whom shall have charge of all condemnation proceedings in the District of Columbia and supervise the examination of titles and matters arising from such condemnation proceedings, in which the United States shall be a party or have an interest, and no special attorney or counsel, or services of persons other than of those provided for herein, shall be employed for such purposes; \* \* \*."

The abstracts of title and insurance is not filed with the papers in the case, but it may be assumed from the statements made that the title company guaranteed a good title. There does not appear to be any authority for the purchase of insurance of title on land condemned. If an abstract of title was necessary or desirable for use in any proceeding subsequent to the condemnation and vesting of title under judgment of court, the cost of such an abstract would be paid from some other appropriation, if any, available for such purpose.

#### HUNTERS' LICENSES ISSUED BY STATES.

The appropriation "General expenses, Bureau of Entomology," is not available for the payment of a fee for a hunter's license to be issued by a State to a scientific investigator of the Department of Agriculture as an attempted condition precedent to his performing his official duties in that State.

Comptroller Warwick to the Secretary of Agriculture, July 28, 1916:

I have your letter of July 22, 1916, requesting my decision of a question as follows:

"Mr. C. H. T. Townsend, entomological assistant of the Bureau of Entomology, expects to make an official trip in New Mexico for the purpose of investigating bots and other flies injurious to stock and native game animals, especially deer. It is well known that bots occur in great numbers in the heads of deer in New Mexico and the Southwest generally, but the species of fly causing these bots is as yet unknown and it is necessary for the Bureau of Entomology to know this fly. It is desirable to secure a good lot of the full grown bots from which to rear the fly. These bots become full grown about midsummer and then leave the animal; hence the deer will have to be secured during the close season in order to obtain the bots.

"Section 12 of the Game and Fish Laws of New Mexico, in effect March 18, 1915, forbids any person at any time to shoot, hunt, or take in any manner any wild animals without first having in his possession a hunting license for the year in which such shooting is done.

"Section 42 authorizes the game warden to issue a permit to any person who has a hunting license to take, capture, or kill any game at any time when satisfied that such person desires the same for scientific purposes.

"Section 47 fixes the fee to be paid by a nonresident for a hunting license at \$30.