

The Rt. Hon.
Robert W. Horton.

24 March,
1831.

in this instance had stated an opinion, that it was desirable to proceed by contract, and it is impossible to proceed by contract upon a vote of Parliament, unless you were to take a vote for the whole sum in the first instance. Although there might have been some irregularity in the proceeding, it will at once be perceived that it is impossible to enter into a contract, limiting the pledge to the contractor to the sum voted for the current year. No contract could be formed on such a principle. In such a case, therefore, the only mode ought to be to take a vote for the whole expense, spreading the payment over the period. I wish distinctly to say, you cannot execute a work by contract, if you are merely to limit the expenditure to the proportions which each separate year may afford for the purpose.

It appears in this despatch, written by Lord Bathurst's instruction, that no limit is put on the contract into which Colonel By might feel himself at liberty to enter?—I would remind the Committee that this had distinct relation to an Estimate prepared by a civil engineer, and sanctioned by an officer of the Ordnance, therefore the contracts alluded to must be contracts founded on that Estimate; undoubtedly, Colonel By might have exercised a discretion, and finding that the original Estimate could not be acted upon, or rather could not be kept within, he might have considered that it was only a conditional instruction, having reference to a particular Estimate. I would beg also to call the attention of the Committee, in illustration of the practice of the department, to what was done by a person so conversant with public business as Mr. Huskisson. If the Committee will refer to Mr. Huskisson's letter of the 26th of March 1828, in page 52, he says, "That though he cannot but regret that Lieut.-Colonel By should have felt himself at liberty, before his increased Estimates had been considered and approved by the Board of Ordnance, to conclude contracts for carrying on the work on the present very extensive scale, and have entered into engagements involving so large an expenditure of the public money, without waiting for specific authority from the department at home, yet so many reasons appeared to combine in favour of the plan of Water Communication, which he had recommended, that he was not disposed to withhold the sanction of the Government to the prosecution of the work on the scale recommended by him, provided the Commission to be employed in the investigation of this subject should, after careful survey and examination, concur in the expediency of the measures proposed, and in the steps which have been taken by Lieut.-Colonel By for the furtherance of this great work." If the Committee refer to another part of the same letter, they will perceive that Mr. Huskisson states that he does not propose to apply to Parliament that year for a larger sum, in the whole, than 120,000*l.*; though, from the context of the sentence, it appears that a larger sum might be necessary to be expended.

In point of fact, did not Colonel By go out under a general authority to enter into contracts on the faith of the Estimate of 169,000*l.* and when upon examination on the spot, he found that that Estimate was not nearly sufficient for the purpose of the work, did he not feel himself at liberty under the original instructions from the Colonial Office, to enter into contracts on an extended scale of expense?—Colonel By had received no instructions whatever from the Colonial Office.

Did he not receive instructions founded on the letter of the 18th of April 1826, written by Lord Bathurst's direction?—Colonel By is the servant of the Ordnance department. The Ordnance apply to the Secretary of State for authority to proceed. The responsibility of the Estimate rested on them, because it was their business to examine into it. In reference to their Minute, Lord Bathurst, whose authority is asked, expresses his concurrence; that is, as the Committee will observe, he gives his authority that the Ordnance are to instruct Colonel By to carry into effect their directions.

Do you conceive then, that Colonel By, in entering into contracts to accomplish the work on a very extended Estimate beyond that of the provincial surveyors, acted without any authority whatever?—I beg to say, I offer no opinion on that point. I merely state the fact in a very positive manner, that the Colonial department at the time my letter was written, had no reason to suppose that the Estimate would exceed 169,000*l.* I would also beg to add, in reference to the authority of Mr. Huskisson, that it appears from his letter of the 14th of March 1828, page 50, that Colonel By had given an opinion that great advantage would result from enlarging the locks of the Rideau Canal, Mr. Huskisson says, he agrees with Colonel By in that opinion, and that if the Committee of Engineers should concur in the opinion of Colonel By, that this important object can be effected at an additional expense of 50,000*l.* with a further charge of 3,000*l.* for widening the locks, it will be advisable to leave it to their