

words, it is entirely hearsay, and if the allegations in the petition could be corroborated they surely would be for the following reasons:

(a) Since the election a great many agents, attorneys, and detectives on behalf of Mr. Henry Ford have traveled up and down the State of Michigan collecting evidence. They have represented themselves to be members of the American Protective League, the representatives of the Department of Justice, and the representatives of Truman H. Newberry. They have examined poll books and poll lists in nearly every county. They have had access to the election returns in nearly every county. In some cases it is said they have had access to the ballots themselves. As an illustration of their methods the situation in the city of Grand Rapids is an example in point. The United States district attorney for the western district of Michigan is Myron H. Walker, a Democratic appointee. Mr. Walker, with no grand jury proceedings pending and no commissioner conducting an examination, summoned a large number of witnesses formally and informally to his office and took their statements frequently before a stenographer representing the Ford interests. He at times would issue a note in his own handwriting directing persons to come to his office. At other times he would use a blank form used by the Department of Justice or by the American Protective League to get people in his office, and frequently these illegal and improper summonses he caused would be served by volunteer women Red Cross workers, driving Red Cross ambulances in the city of Grand Rapids, who, of course, had no consciousness of the political uses to which their patriotic services were being put. If methods of this description produced proof, this proof and not mere hearsay should be laid before the Senate before the elaborate program now contemplated is undertaken.

3. All the ballots, poll books, and election history in the State of Michigan is now in a state of perpetual preservation under final injunctions issued by the two United States courts in the State of Michigan, by virtue of a stipulation entered into between counsel for Henry Ford and Truman H. Newberry, so that there is now no proof of this description which will not be available for the new Senate, the proper body, if it determines there are facts which warrant an investigation or a recount.

4. In connection with the requested recount attention should be called to the following facts:

(a) The campaign put up in Michigan on behalf of Mr. Henry Ford can be shown to have been generally regarded as the most elaborate, expensive, and pretentious in the history of the State.

(b) In every county an elaborate newspaper advertising campaign was carried on at an apparently tremendous expense.

(c) In every county literature was freely distributed through the mails by messenger boys and even to handbills.

(d) A most elaborate and pretentious billboard campaign was conducted throughout the State of Michigan, the expense of which must have run into very large figures.

(e) A very expensive, elaborate, and pretentious booklet was prepared and distributed to a number estimated at about a half a million. Testimony from all over the State can be produced indicating that this pamphlet was mailed to every voter in the State of Michigan, and in some cases to the same voter on two, three, or four occasions. It is believed it can be shown that the cost of printing this pamphlet alone must have been \$75,000, that postage on this one piece of literature must have been from \$10,000 to \$15,000, and the cost of addressing and distributing would bring this one item alone, so far as expense is concerned, into extremely large figures. There can be no doubt of its political effect.

(f) Two occasions, at least, can be shown where Democratic postmasters had mail carriers distributing Ford literature the Sunday before election and withholding other mail from distribution until the Ford political mail a day or two before election had been distributed.

(g) It will be further shown that outside of Wayne County, in which is located the city of Detroit, the majority of Truman H. Newberry over Henry Ford was approximately 45,000. The normal Republican majority (including the city of Detroit) is approximately 30,000. Yet Mr. Ford carried Wayne County by over 35,000 majority. In bringing about this peculiar, remarkable political upset it will be shown that Ford workers in great numbers were around nearly every booth with literature, cards, and banners; automobiles carrying his workers around labeled with appropriate banners were never so thick. Out of approximately 300 voting precincts in the city of Detroit approximately 40 are precincts notoriously known as politically controlled. It will be shown that in each and everyone of the precincts of this description Mr. Ford carried them by a majority running as high as 2, 3, and 4 to 1, although Republican candidates had like majorities in a great many of such precincts.

(h) It will be shown in some precincts that the Ford workers insisted on voting men who were not registered; in some cases men whose citizenship was doubted.

(i) In addition to this political organization so built up it will be shown that there is a Ford agent for the sale of Ford cars in nearly every hamlet in the State of Michigan. These Ford agents were in nearly all cases made the political headquarters of the Ford campaign, the place from which workers were furnished cars and literature, thus affording a semivolunteer organization unparalleled.

It is because of facts and circumstances as above enumerated that it is believed it can be demonstrated that the major portion of the political activity and expenditures of money on the election was done on behalf of Mr. Ford, who some time after the election in an authorized published statement said in effect the election was free from any irregularities.

TRUMAN H. NEWBERRY,
By J. O. MURFIN,
His Attorney at Law and in Fact.

VALIDATION OF WAR CONTRACTS.

Mr. CHAMBERLAIN. Mr. President, has the morning business been concluded?

The PRESIDING OFFICER (Mr. HOLLIS in the chair). The morning business has been closed. The Calendar, under Rule VIII, is in order.

Mr. CHAMBERLAIN. I move that the Senate proceed to the consideration of House bill 13274, the unfinished business.

The motion was agreed to; and the Senate, as in Committee of the Whole, resumed the consideration of the bill (H. R. 13274) to provide relief where formal contracts have not been made in the manner required by law, which had been reported from the Committee on Military Affairs with an amendment.

Mr. CHAMBERLAIN. Mr. President, this measure is one of very great importance to the country, involving as it does the validation and payment of contracts amounting to \$1,600,000,000, and possibly \$2,000,000,000. In view of its importance, I suggest the absence of a quorum.

The PRESIDING OFFICER. The absence of a quorum is suggested. The Secretary will call the roll.

The Secretary called the roll, and the following Senators answered to their names:

Beckham	Hitchcock	McNary	Spencer
Borah	Hollis	Martin, Va.	Sterling
Calder	Johnson, Cal.	New	Swanson
Chamberlain	Johnson, S. Dak.	Nugent	Thomas
Colt	Jones, Wash.	Overman	Townsend
Curtis	Kellogg	Penrose	Trammell
Fletcher	Kenyon	Pittman	Walsh
Frelinghuysen	King	Pomerene	Warren
Gay	Knox	Shafroth	Watson
Gronna	La Follette	Sheppard	Weeks
Hardwick	Learoof	Smith, Ga.	Williams
Henderson	McKellar	Smoot	

The PRESIDING OFFICER. Forty-seven Senators have answered to their names. There is not a quorum present. The Secretary will call the roll of absentees.

The Secretary called the names of the absent Senators, and Mr. BANKHEAD, Mr. CUMMINS, Mr. HALE, Mr. HARDING, Mr. KIRBY, Mr. LODGE, Mr. MARTIN of Kentucky, Mr. MOSES, Mr. NELSON, Mr. POLLOCK, Mr. RANDELL, Mr. SHERMAN, and Mr. SMITH of Arizona answered to their names when called.

Mr. SIMMONS entered the Chamber and answered to his name.

The PRESIDING OFFICER. Sixty-one Senators have answered to their names. There is a quorum present.

Mr. CHAMBERLAIN. Mr. President, as I stated awhile ago, this is a measure of very great importance, and I do hope that Senators will undertake to reach a proper solution of the question, which involves something like \$1,600,000,000, and possibly more. It grows out of section 3744 of the Revised Statutes, or the failure of the department's to observe the provisions of that statute in the making of so-called war contracts. In order to get the matter before the Senate in proper shape I am going to ask to have the Secretary read into the RECORD section 3744 of the Revised Statutes.

The PRESIDING OFFICER. The Secretary will read as requested.

The Secretary read as follows:

It shall be the duty of the Secretary of War, of the Secretary of the Navy, and of the Secretary of the Interior to cause and require every contract made by them severally on behalf of the Government or by their officers under them appointed to make such contracts, to be reduced to writing and signed by the contracting parties with their names at the end thereof, a copy of which shall be filed by the officer making and signing the contract in the Returns Office of the Department of the Interior as soon after the contract is made as possible and within 30 days, together with all bids, offers, and proposals to him made by persons to obtain the same, and with a copy of any advertisement he may have published inviting bids, offers, or proposals for the same. All the copies and paper in relation to each contract shall be attached together by a ribbon and sealed and marked by numbers in regular order according to the number of papers composing the whole return.

Mr. CHAMBERLAIN. There are certain other sections following the one just read to which I deem it unnecessary to call particular attention at this time. It so happened that during the progress of the war many contracts were entered into where the formalities of the section just read were entirely complied with; but as the emergencies grew and demand for many of the supplies which were necessary for the successful prosecution of the war became more insistent the War Department and its officers and agents began to disregard the provision of the statute. It happened that many supplies, munitions, and in fact everything needed were ordered by letter, some by telephone and telegraph, and I believe in some instances by appeals made on the ground by representatives of the Government to men who were engaged in the manufacture of munitions and other supplies, appealing to their patriotism to go ahead and manufacture the things that were needed by the Government. In nearly every case, and I think possibly in every case where this appeal was made to men who were familiar with the requirements of the statute, it was complied with, and men of large means, and frequently men of small means, individuals, firms, and corporations proceeded to manufacture without having any form of contract executed with the Government, relying upon the justice and integrity of purpose of the Government officials to see to it that they were paid later on.

Mr. POMERENE. Mr. President—

The PRESIDING OFFICER. Does the Senator from Oregon yield to the Senator from Ohio?

Mr. CHAMBERLAIN. I yield.

Mr. POMERENE. The Senator from Oregon has referred to the informality of many of the contracts. If he will permit me,

I should like to submit another instance that was called to my attention some time ago, in which a representative of the Government waited upon a manufacturer, found that his plant was especially well equipped for a certain product, and this manufacturer did not then care to take up that line of manufacture. The Government official said to him if he did not do it they would immediately commandeer his plant. Of course, the manufacturer only desired to do his full duty toward his country, and he took up this line of work, and now he is met with the statement that his contract was illegal.

Mr. CHAMBERLAIN. I am glad to have the Senator call attention to that, but it is only one illustration of a great many. In any event the War Department, I think, was undertaking to reach an adjustment of invalid or in many instances irregular contracts when the Comptroller of the Treasury, Mr. Warwick, rendered a decision which stopped the negotiations for the adjustment of contracts, or practically stopped them, because in effect he held that they could not be paid even if an ascertainment was had as to the amount due from the Government to the contractor.

This has resulted, Mr. President, in great confusion. There was probably no question about the legality of the ruling of Mr. Warwick. It not only resulted in confusion in this country but in France and Great Britain, where there were many contracts being performed by these Governments or by their citizens. In many cases consent to their cancellation was agreed to by the authorities there. It was impossible for our Government to do anything toward the adjustment of these contracts, because there was no way to pay them after the adjustments had been reached. The result has been, as the testimony shows in the hearings before our committee, that in some instances the French Government and individuals in France and in Great Britain are proceeding to carry out the terms of the irregular contracts which they had, which consisted merely of an order and an acceptance upon the part of the manufacturer to perform their part of the contract, and the whole proceeding of settlement has been stopped.

Mr. President, without going into details I call attention to the fact that after the decision of the comptroller the War Industries Board had prepared and sent up to be introduced in Congress a bill which would validate these irregular contracts. That bill was introduced on the 5th day of December, 1918, by myself at the request of the War Department. That bill was referred to the Military Affairs Committee and was taken up for consideration, with the result that a subsequent bill introduced in the Senate under date of January 2, 1919, by the Senator from Nebraska [Mr. Hitchcock] and referred to the committee, was reported out by the Committee on Military Affairs, as probably the best bill on the subject up to that time.

Later on the committee reconsidered its action with reference to this question. They heard further evidence about the whole situation, and subsequently, on the 9th day of January, authorized the chairman of the committee to report out a substitute for any bills that might be pending, or, rather, as an amendment to be taken up in whatever way the parliamentary situation permitted.

Still later, Mr. President, the committee, without further action than as above stated upon any of these bills, had referred to it House bill 13274. It is now Order of Business 597 on the Senate Calendar. It was known as the Dent bill, and had for its purpose the same object the bills which I have just been mentioning. Then the Committee on Military Affairs of the Senate reported out as a substitute for the so-called Dent bill another bill which embodied what is conceived to be the best features of the bills I have just been discussing. That bill was reported to the Senate on the 13th day of January, striking out all after the enacting clause and substituting therefor the bill which the Senate Military Affairs Committee agreed upon. That is the bill which is now before the Senate.

I do not know that there is more I desire to say with reference to the matter now, but I suppose it will be discussed quite at length, and I may have something to say about it later.

Mr. LENROOT. I should like to ask the Senator from Oregon a question in reference to the first portion of the bill validating contracts that have been defectively executed or not executed in compliance with the law. I want to ask the Senator whether in his opinion this would make a valid contract so that the contractor would be able to claim and receive unearned profits? In other words, here is a contract for, we will say, \$10,000,000 worth of munitions. Only \$1,000,000 worth of it has been received. The Government could not be held to pay the profit upon the \$9,000,000 which it had not received in munitions? I ask the Senator whether under this language it would not so validate that procurement order, for it may have been only in the form of a procurement order, that the contractor would re-

ceive his entire profit upon the \$10,000,000 worth of munitions, although he had not earned a profit except upon \$1,000,000 worth?

Mr. CHAMBERLAIN. Does the Senator ask whether the bill is drawn in such a way as to permit that?

Mr. LENROOT. Yes.

Mr. CHAMBERLAIN. The testimony before the committee shows that it was not the intention to have the profits the Senator speaks of paid.

Mr. LENROOT. What is the Senator's opinion as to the bill properly guarding the Government against that situation?

Mr. CHAMBERLAIN. I think the bill is broad enough to protect the Government. It seems to me there is a clause in it that does do that very thing.

Mr. MCKELLAR. If the Senator will permit me, I call his attention to the language on page 5 of the bill:

The Secretary of War is authorized and directed, on behalf of the Government, to enter into such contract with such individual, firm, company, corporation, or foreign Government as will, under all the circumstances, fairly and equitably compensate him or it for the expenditures made, obligations incurred, equipment, materials, or supplies furnished or acquired, or services rendered, as aforesaid.

It excludes any pay for anticipated or speculative profits.

Mr. LENROOT. That may be true, but that only relates to the cases described in that paragraph where no contract had been entered into. The preceding paragraph, concerning which I now direct my inquiry, is where the contract has been made but not fully executed in compliance with the law.

Mr. MCKELLAR. I will say to the Senator in reference to that, that the first section applies to those contracts where they have been signed, but not technically properly signed.

Mr. LENROOT. I understand that.

Mr. MCKELLAR. When we give them by this act a proper signing the rights of the party are dependent upon those written contracts which the contractor has already signed, and, of course, the Government is bound by that.

Mr. LENROOT. That would be true if the first paragraph was limited to contracts of that character; but the very first paragraph also validates all procurement orders that have been accepted.

Mr. MCKELLAR. No; that is the second paragraph.

Mr. LENROOT. No; the first. The language is:

When such agreement anticipated procurement order, and such agreement was reduced to the form of a contract or accepted procurement order and executed or signed on behalf of the Government.

I understand all the contracts do provide for cancellation.

Mr. MCKELLAR. Those procurement orders are in writing also, and the Government is bound by the procurement order in the same way as in a contract.

Mr. LENROOT. Am I correct in my understanding that where the contract was actually made it has in all cases provided for cancellation?

Mr. MCKELLAR. It has; that is my understanding.

I want to say to the Senator that there are thousands of these contracts improperly signed, and they have changed the verbiage of the contracts from time to time. I have never seen all of them, but I am informed that they all provide—

Mr. LENROOT. I mean that that is the practice.

Mr. MCKELLAR. That is the case, although they provide for cancellation.

Mr. WEEKS. I remember that the matter was brought up in the committee and that question was asked, and much to my surprise I think the opinion was furnished the committee that all contracts did not contain the cancellation clause.

Mr. MCKELLAR. That is correct as to the first contract, and that was the testimony before the committee, as the Senator from Massachusetts has described; but later on they had a form of contract, which was stated to be the standard form of contract, in which cancellation was provided. So, as I said, even the written contract is involved in a good deal of doubt.

Mr. LENROOT. Then, I take it, it is admitted that under the language in the first paragraph, as the bill stands, it will bind the Government to pay the full price or the profits that would have been realized upon the canceled portions of the contract.

Mr. MCKELLAR. No; I do not think that would be the case at all. I will state what the bill does. The first paragraph is to bind the Government to precisely the same written contract called either a contract or a procurement order, that its agent signed, but signed improperly.

Mr. LENROOT. I agree to that; but does the Senator think where such a contract has been made by anyone without any provision for cancellation the Government should be held to validation of that contract, compelling the Government to pay unearned profits?

Mr. MCKELLAR. I am very frank to say to the Senator I do not, and if he has an amendment to offer making it certain that no prospective or speculative profits are to be considered, I shall take great pleasure in making it clear, so far as my vote can do so. I thought there was a specific statement in this bill on that subject. There was one in the bill that our subcommittee prepared.

Mr. LENROOT. The Senator then would not object to a general provision being placed in the bill that no unearned profits shall be awarded in the adjustment of any of these contracts?

Mr. MCKELLAR. That would depend on the kind of profits, but no unearned profits, surely.

Mr. FLETCHER. May I call the Senator's attention to the authority given the Secretary of War in lines 7 and 8, and so on, upon page 5? The authority is "to enter into such contract with such individual, firm, company, corporation, * * * as will, under all the circumstances, fairly and equitably compensate him or it for the expenditures made, obligations incurred"—

Mr. LENROOT. If the Senator will examine a little further, he will see that that applies only to one class of cases. It is the first paragraph I am now speaking of.

Mr. FLETCHER. Oh, I see.

Mr. LENROOT. That is not covered by that at all. That validates the contracts as they stand, although defectively executed.

Mr. FLETCHER. All the Government is there authorized to do is to waive noncompliance.

Mr. LENROOT. Certainly. That makes the obligation on the Government whatever it might be.

Mr. FLETCHER. It does not oblige the Government to make a contract that requires the Government to go on and reverse its entire policy.

Mr. LENROOT. If we waive the defective execution of the contract, we validate that contract.

Mr. MCKELLAR. If the Senator will permit me, I will say that, of course, it was the argument of those contractors who appeared before the committee that the Government having made a written contract with them, it should be bound by it, even though it was defectively executed by the Government's own agent. The Senator must see that there is weight in that argument. On the other hand, it was the contractor's duty, as it seems to me, to see that he had a contract that was properly executed by the Government agent, as well as the Government's duty to see to that same thing. Under the circumstances, it seems to me that if we give this particular kind of a written contract a higher and better position than the classes of contracts in the second paragraph, we are doing an injustice to those who did not have written contracts. For that reason I am willing to support an amendment which the Senator or some one may offer on that subject.

Mr. FLETCHER. There is a provision also that the Secretary of War shall find whether or not it is consistent with the public interest.

Mr. LENROOT. I do not think that that would go to the question of unearned profits.

Mr. WEEKS. May I suggest to the Senator from Wisconsin that these men have no valid contracts, and the purpose is to validate a contract so that a claim may be made. They have no case in court as the matter now stands. Being given a case in court, then the extent of the payment to them is a matter of determination to be reached through the machinery which has been provided in the bill.

Mr. LENROOT. But if the contract is validated to the full extent, then they have a legal claim.

Mr. WEEKS. Not unless they have a completed claim. Of course, if they had completed only one-tenth of the contract there would be no basis for a claim for the profits on the other nine-tenths.

Mr. LENROOT. I beg the Senator's pardon, if the Government canceled it, through no fault of their own, certainly the general rule of law would be that they would be entitled to the profits they would have received.

Mr. WEEKS. The Government in ordinary cases always retains the power of cancellation. It had failed to do so in some cases until the matter was brought to the attention of the department by the Committee on Appropriations. After that all contracts did contain it.

Mr. LENROOT. But the objection I am making to the bill is that if it applied to contracts alone I do not think any great danger would exist; but it validates procurement orders that have been accepted, which, of course, do not contain the cancellation clause.

Mr. WEEKS. I do not think that anyone would object to protecting the Government in the payment of unearned earnings.

Mr. LENROOT. I appreciate that.

Mr. WEEKS. I think it is protected, but, so far as I am concerned, I would not object to an amendment of that kind.

Mr. SMITH of Arizona. Mr. President, I should like to state that I just received a telegram this morning of protest from long-staple cotton raisers in Arizona and southern California in regard to the importation now of many thousands of bales of long-staple cotton. These men have been prohibited, I understand, by rulings of the Government from the sale of their cotton at all. They have now on hand two years of cotton that was selling at 70 cents or over in the market. That sale has been prohibited by the action of the Government. The War Trade Board is now permitting the importation of tons and tons of Egyptian long-staple cotton, bringing the price down beyond the power of raising cotton on the lands of which I speak. It seems to me if there is any equity in any of this measure, and I have no doubt there is great equity in the purposes of the bill, these people should not be neglected.

I do not know how to get at it except by a bill preventing the importation of long-staple cotton until the cotton now on hand that the Government prevented the sale of when the raiser could get his price for it has been disposed of.

With the many ramifications that the whole question contains, I know if I introduce a bill to stop the importation of long-staple cotton for this year, which would permit the sale of this cotton, I would find very great difficulty in getting that bill through both Houses of Congress between now and the 4th day of next March. I see from the humor the suggestion causes the very impossibility of the suggestion even; but I wanted to know if there are any cases in this bill touching on that peculiar class of equity outside of any contractual relations; and if so, I should like to have an amendment put in somewhere to protect these people in their cotton, which has been absolutely confiscated as far as their profits are concerned.

Mr. CHAMBERLAIN. I will state to the Senator that there is not anything of that kind in the bill.

Mr. MCKELLAR. Mr. President, further in reference to "prospective or possible profits," especially I desire to call the attention of the Senator from Wisconsin and of other Senators to section 6 of the bill which is known as the Hitchcock bill, which was prepared by our subcommittee and reported out of the full committee; and I desire for just a moment to explain what that means. It is a little different from the bill which has since been reported by the committee, known as the Chamberlain bill. The committee at first reported out what is known as the Hitchcock bill, which provided for a commission to take charge of the settlement of these claims and to pass upon them. I think, as a matter of fact, when Senators come to consider the matter here they will agree with the Senator from Nebraska [Mr. HITCHCOCK] and myself that that is the wisest bill. I especially desire to call Senators' attention to section 6 of the Hitchcock bill, which reads:

That in no case, however, shall any award either by the commission or the Court of Claims include prospective or possible profits on any part of the contract beyond the goods and supplies received and actually delivered to the United States, and a remuneration for expenses necessarily incurred in preparing to perform said contract or order so canceled.

Mr. POMERENE, Mr. LENROOT, and Mr. STERLING addressed the Chair.

Mr. MCKELLAR. I yield first to the Senator from Ohio.

Mr. POMERENE. Am I right in understanding that the words "for expenses necessarily incurred" include the cost of any additional equipment and machinery or plants or buildings or anything of that sort?

Mr. MCKELLAR. Of course that is true. It is the purpose of this section, I will say to the Senator, to exclude the kind of profits that were spoken of awhile ago by the Senator from Wisconsin [Mr. LENROOT]. I thought that that particular provision was in the pending bill as reported by the committee; but I find that it is contained in what is known as the Hitchcock bill. It ought to be embodied in whatever bill is passed, of course, beyond the shadow of a doubt. I now yield to the Senator from Wisconsin.

Mr. LENROOT. I simply desire to say that I agree with the Senator from Tennessee, that if section 6 is incorporated as a part of this bill it will fully cover the case and protect the Government.

Mr. MCKELLAR. I will say to Senators that I intend to offer that section as an amendment to the pending bill, of course not on behalf of the committee, but I shall have to do it personally. Now I yield to the Senator from South Dakota.

Mr. STERLING. Mr. President, I was just about to ask the Senator from Tennessee as to whether or not the Hitchcock bill provided that the commission, in the first instance, instead of the Secretary of War, should pass upon the contracts, as provided in the pending bill.

Mr. MCKELLAR. I am glad to explain that to the Senator. The Senator from Nebraska is going to explain it later, but, if he will permit me, I will answer the question of the Senator from South Dakota.

The Hitchcock bill was prepared by a subcommittee composed of the Senator from Nebraska [Mr. HITCHCOCK], the Senator from New Jersey [Mr. FRELINGHUYSEN], and myself. We took testimony and we heard the whole matter; we reported the bill back to the committee; and the committee reported it to the Senate favorably. There was objection to the bill, however, on the part of the War Department, because it was claimed by the department that it took the entire settlement of these contracts out of the hands of that department. At a matter of fact, it did place the whole matter of settling these contracts in the hands of the independent commission proposed to be appointed under the terms of the bill. Our authority for the appointment of such a commission was the commission which was appointed after the Spanish-American War, which we had been informed worked very well indeed. Most of the contractors, I think, were substantially in favor of that. The bill as passed by the other House merely directed the Secretary of War to go ahead and settle these contracts, his opinion and determination of the matter to be final. Of course, this does not mean that the Secretary himself settles these contracts. It practically means anyone in his department. The contractors were not, however, willing to have that done, because it left an arbitrary power in the hands of one man which might be performed by any officer—by a second Lieutenant, a first Lieutenant, or a major, or whoever he might be—and that would be the end of it. In view of that objection, this amendment was framed by the committee, of which I have spoken, composed of the Senator from Nebraska, the Senator from New Jersey, and myself. We provided that a commission should have original jurisdiction, should take entire charge, should have the right to appoint subcommittees or agents to take proof where necessary in localities where the contracts had been made, at the situs of the contract or of the contractees, that they should report to the commission, that then the commission should have the right to pay down 75 per cent of the amount claimed to be due, and if the contractors were not satisfied they would have the right to go into the Court of Claims for the other 25 per cent. We thought that was absolutely fair, and I still think it is fair and the best plan yet offered.

I believe—and I understand the Senator from Nebraska is of the same opinion—that, with one or two amendments added, that would be the best bill of all three, including, of course, the House bill, for I do not think anyone will contend that the House bill is right. I do not think even the War Department is satisfied with that bill. Surely it is not the bill that ought to be passed by the Senate. The Hitchcock bill comes nearer being the right thing, because it puts the matter in the hands of an independent commission to settle these contracts as equity may require. We want to be absolutely fair to the contractor, and, at the same time, we want to be absolutely fair to the Government; and we believe that under the terms of the Hitchcock substitute the Government's rights would be carefully guarded and at the same time the rights of the contractors would be absolutely and fairly and squarely guarded.

Mr. BORAH. Mr. President—

Mr. MCKELLAR. I yield to the Senator from Idaho.

Mr. BORAH. Mr. President, I understand the Senator from Tennessee is now speaking in behalf of the substitute.

Mr. MCKELLAR. I will say that there was a good deal of dissatisfaction with the Hitchcock substitute after it was reported by the committee. A committee of contractors came down here. They were very fair-minded men, and, by the way, aided us very greatly. They made suggestions about the matter which were very valuable. As a matter of fact, a new substitute was reported thereafter by the committee which embodied the House bill plan and under which the Secretary of War is to go ahead and work it out as best he can, and there is then given the right of appeal to a commission to be created. That is under the last substitute reported by the committee.

Mr. BORAH. How is the commission to be created?

Mr. MCKELLAR. It is to be appointed by the President and confirmed by the Senate. It is to consist of three men—one from the War Department, one from the Department of Justice, and one from general business. I think if the Senator from Idaho will examine into the matter he will find that every safeguard has been used in reference to this commission.

The principal point of difference between the two plans is under the Hitchcock substitute the commission is given original jurisdiction to pass on all these claims, and it is directed to pay 75 per cent of them at once, which I think is a very proper thing, because many concerns will be likely to go into bankruptcy unless some sort of arrangement of that kind can be

made. If a contractor is dissatisfied as to the other 25 per cent, he has the right of appeal to the Court of Claims, just as is provided by law in other cases. I think that is entirely proper.

The substitute, I will say to the Senator, if he will excuse me just a moment, provides that all preliminary work shall be done by the department and that either the Government or the contractor has the right to appeal from the ruling of the department to this commission. In other words, the commission in the substitute which I will call the Chamberlain substitute, the last bill reported, makes the commission an appellate body, while the Hitchcock substitute makes it a body of original jurisdiction.

Mr. BORAH. Do I understand that the Government and the individual contractors both have the right of appeal?

Mr. MCKELLAR. Both have the right of appeal. By the way, I want to call the Senator's attention to that, because it was a somewhat disputed matter in committee as to whether or not the Government ought to have the right of appeal. I think it absolutely essential that the Government, as well as the contractors, should have the right of appeal from the decision of the department.

Mr. BORAH. Whose business would it be to take such an appeal on behalf of the Government?

Mr. MCKELLAR. The Department of Justice.

Mr. STERLING. Mr. President, there is this feature about the matter to which I should like to call the Senator's attention. If the representative on this commission of the Department of Justice agrees with the Secretary of War in his award there can be no appeal on the part of the Government.

Mr. BORAH. That is what I was thinking about.

Mr. MCKELLAR. I will say to the Senator from South Dakota that this is about the best way the matter could be worked out; but if the Senator has any better way to give the Government an appeal, I for one will cheerfully accept it, for I desire to say that it was the earnest purpose of every member of the subcommittee and of the full committee to get a system of validating these contracts which would be fair to the contractor and as absolutely fair to the Government. In my judgment, we must protect both, and that is the committee's judgment.

Mr. BORAH. Mr. President, why not create a tribunal wholly separate and apart from the Government, composed of men who are not in any wise associated with the Government, so that we should have a tribunal passing upon the matter without violating either directly or indirectly the principle that a man shall not sit upon his own case?

Mr. MCKELLAR. If the Senator from Idaho feels that way about the matter—and I agree with him heartily, for I am going to vote that way—then he should vote for the Hitchcock amendment. I am going to vote for the Hitchcock amendment first, and I will say that I endeavored to amend the committee substitute to provide the best method that we could.

Mr. POMERENE. Mr. President—

Mr. MCKELLAR. I yield to the Senator from Ohio.

Mr. POMERENE. I am advised that there are about 6,000 of these contracts.

Mr. MCKELLAR. There are a good many more than that number.

Mr. POMERENE. I was told the other day that there would be about 25 per cent of them in which there would be considerable dispute. The so-called Hitchcock bill provides for one trial commission. Assuming that there are 300 working days in the year, the commission would be occupied for a whole year if it tried and decided five cases a day. I know a good many of these manufacturers are very much embarrassed financially now; they need the money due them; and they need it right away. If many of them are to be held up for a goodly portion of a year before they can get an adjustment, we shall have financial ruin staring many of them in the face.

Mr. MCKELLAR. If the Senator feels that way about it, I repeat he should vote for the Hitchcock amendment, and vote for it quickly, and we should pass it just as soon as we can and have it enacted into law. These contractors can get 75 per cent of their claims right away, and they can get the entire amount if they come to an agreement with the commission. I presume in 95 per cent, perhaps in 97 per cent, of the cases they will have no trouble about coming to such an agreement. I agree with the Senator that it ought to be done, and ought to be quickly done. I do not agree with the Senator about the Hitchcock plan taking so much time. I think probably 98 per cent of the cases will be adjusted by agreement without any trouble.

Mr. POMERENE. Does the Senator mean by the payment of 75 per cent of the claim 75 per cent of the amount which is found due by the commission?

Mr. MCKELLAR. Yes.

MR. BORAH. Mr. President, I was going to ask the Senator from Ohio a question before he took his seat. I think the Senator has raised a very proper point for consideration when he suggests that speedy determination of these claims might be the means of saving some men from bankruptcy.

MR. MCKELLAR. Certainly.

MR. BORAH. But would not the same condition follow if the bill as reported by the committee were adopted, for must not somebody hear the evidence and pass upon it?

MR. POMERENE. Oh, Mr. President, that is true, and, while I have not matured my own thoughts on the subject, my tentative idea was that perhaps there ought to be two or more of these commissions to sit concurrently.

MR. CHAMBERLAIN. Mr. President, may I suggest to the Senator—because it is being overlooked in the discussion—that there was not a business man or representative of a business body who appeared before the committee who did not say that the so-called Hitchcock bill would delay proceedings, and that if there was a start made in the adjustment of these claims before the 1st of July under that bill it would be doing well. Not only that, but the War Department itself through its representative, Mr. Crowell, a most excellent clear-sighted business man, claimed that under the system proposed in that bill the work could not be commenced before July.

As has been suggested by the Senator from Ohio [Mr. POMERENE] there are many men who, unless there can be a speedy adjustment of these matters, must go into bankruptcy, because they have all their liquid capital in the business and the banks will not loan them any money until there has been some certification somewhere, either by the Government or some of its boards, that these contracts are going to be paid at some time in some way, in part or in full.

MR. BORAH. Mr. President, how does the Hitchcock sub-stitute delay the matter if we assume that somebody must examine the evidence and hear controversies and pass upon them?

MR. CHAMBERLAIN. I am going to say in perfect frankness to Senators that not one of these measures appeals to me in its entirety, but it is a critical emergency which confronts the business of the country and I have yielded my judgment on many propositions in order to try to reach results.

The trouble about the Hitchcock commission plan is that the commission to be created is to proceed *de novo*. The War Department plan—and that is the plan embodied in this bill, practically—contemplates the utilization of the 32 boards already functioning in the different regional districts. Those boards have heard the testimony and practically in many cases have agreed with the contractors as to the amount of their claims, and I do not think there is any contention that their adjustments are irregular or unjust.

MR. BORAH. Mr. President, I should consider the objection to that as being that these boards are practically in a large measure directly or indirectly settling their own affairs.

MR. CHAMBERLAIN. If I may disabuse the Senator's mind of that impression, Mr. Crowell, at page 54 of his testimony, tells how those boards are constituted, and if the Senator will permit me, as the extract is short, I will read it. It is as follows:

We have 32 boards now functioning on this thing. Our idea was to decentralize it, so as to get speedy action and so as to get the men best in touch and who have been closest in touch with the production under these contracts. The Ordnance Department has 12 boards, and those are headed in each case by the district ordnance officer, who is in every case a man of large experience, a civilian who has been expediting and watching production in his center for a considerable period of time past. He has made up boards, which have been approved in Washington, of four or five members each. They are largely officers of the Ordnance Department, but each board has an average of one civilian from the outside. In some cases he is a prominent attorney, and in some cases he is a member of the War Industries Board, in some cases representing the War Industries Board in that particular district. The orders relating to the quartermaster supplies are being handled in the same way by 12 boards, which are functioning now in the 12 zones into which the Quartermaster Department has divided the country. There are, then, eight boards functioning in Washington, each on some speciality, such as chemical warfare service or aircraft, so that we have 32 of these boards now functioning.

I will say to the Senator that in some instances they have still larger boards functioning, where there has been great industrial activity on behalf of the War Department and where many civilians are connected with the boards.

MR. FRELINGHUYSEN. Mr. President, if I may interrupt the Senator, I understand that the difference between the measure proposed by the Senator from Nebraska [Mr. HITCHCOCK] and the measure reported by the Committee on Military Affairs is this: There are 25,000 contracts under the War Department, 6,000 of which are informal, verbal contracts, or contracts that have not the signature of the statutory official. Those 6,000

contracts must be validated. They amount to \$1,700,000,000. The remaining 19,000 contracts are legal contracts conforming to law; and there is no dispute in regard to them. I understand that the Hitchcock bill provides that the commission to be created shall settle *de novo* all of the questions involved in these contracts. The War Department say that the 19,000 contracts in which they are in agreement with the contractors it is unnecessary to refer to the proposed appellate board. The bill reported by the committee, known as the War Industries Board plan, permits the War Department to settle those contracts first.

MR. POMERENE. Mr. President, the Senator has just referred to 19,000 contracts concerning which, as I understand him, there can be no dispute as to their validity. Those contracts or at least many of them have not yet been completed. What is the War Department doing with respect to them? Is it canceling these contracts, and, if so, upon what terms? Is it paying the full profit whether the contract has been completed or not? I am asking the question for information only.

MR. FRELINGHUYSEN. Mr. President, as I understand, the War Department has its machinery already in operation in connection with these claims. I have here a letter from the Assistant Secretary of War, Mr. Crowell, from which I read the following:

The War Department already has established and at work a machinery adequate to handle efficiently and promptly all settlements. Without now going into the details the department has a central board of contract review in each of the eight supply bureaus in Washington; also a total of 24 local or district boards in various sections of the country making settlements for the Ordnance Department and the former Quartermaster Corps. The department has also established in Washington a board of contract adjustment to which the Secretary of War refers for decision all cases in which the contractor and the contracting officer are unable to agree. Furthermore, several thousand contracting officers, accountants, investigators, and other assistants are now at work helping the boards to make prompt settlements. On the enactment of the legislation which the War Department has requested, this machinery is prepared to start immediately on the cases in which contracts were not made or signed as provided by law.

The War Department feels very earnestly that the good faith of the Government is pledged to a prompt settlement and payment of all just claims of contractors. The department stands fully ready to make such settlements and is already doing so where the contracts were made and signed as provided by law.

In a statement from the United States Chamber of Commerce forwarded to me under date of January 2, they say that subsequently the officials of the War Department have reported 669 agreements out of the 6,000.

I feel that the bill should provide that the War Department should settle these contracts, provided they can come to an agreement with the contractors through the machinery that they have in the War Department, and then, if there is any conflict or difference of opinion between the contractors and the War Department they can appeal to the tribunal to be created which will stand between the War Department and the Court of Claims, whose processes are so slow. What the contractors want is to know that if they fail to agree with the War Department they will have some tribunal to which they can submit their claims.

Is it necessary to refer to the proposed commission all of the claims?

The War Department made these contracts; but many of them are agreements verbally made, and there are disagreements as to the termination provision. As to some contracts, they have not been able to get any agreement as to termination because of the fact that they had to be so hastily made. Why not let the War Department go as far as they can go in the settlement? If the two parties agree, let the department dispose of the contracts where agreement is had, and where they do not agree, let the matter be referred to the proposed tribunal.

MR. POMERENE. Mr. President, I think in that behalf there is no difference between the Senator from New Jersey and myself. I agree with him that if these contracts can be settled on any equitable basis at all they should be settled by the War Department; but the thing that has troubled me most has been the fact that there are a large number of contracts which are in dispute, and I have feared that under the proposal here made it would perhaps be a year before many of these contracts could be adjudicated, if I can properly use that term. The machinery that is adopted here is the matter of greatest concern to me.

MR. FRELINGHUYSEN. Mr. President, does the Senator refer to the committee bill?

MR. POMERENE. I was referring to the commission which is provided to try the disputed claims.

MR. FRELINGHUYSEN. The committee bill provides that the War Department through its machinery shall settle these contracts first. Of course, if they are in agreement with the contractor, there will be no reference to the proposed commis-

sion. As I understand, under the Hitchcock bill all of these contracts are to be referred to the commission.

Mr. POMERENE. I have seen a good many cases tried which the attorney said would only take one day to try, particularly where a building contract or something of that character was involved, when it subsequently developed that they would take two or three weeks before they had completed the case. If there is to be any experience of that kind before the one commission which is provided here, I am afraid we will not live to see the end of these proceedings.

Mr. BECKHAM. Mr. President, will the Senator yield for just a moment?

The PRESIDING OFFICER. The Senator from New Jersey has the floor. Does he yield to the Senator from Kentucky?

Mr. FRELINGHUYSEN. I yield to the Senator from Kentucky.

Mr. BECKHAM. Mr. President, I do not wish to take the Senator's time, but in reference to the statement of the Senator from Ohio [Mr. POMERENE], I should like to say that the committee bill recognizes the organization already established under the War Department for the settlement of these claims. That organization exists now; it has been in operation, and it is believed that a large majority of these claims can be settled by that organization, with the approval of the War Department.

If the contractor in any instance is not satisfied with the settlement arrived at, he can appeal to the board created by the bill. There is also a provision that in the event the Government, through a representative of the Department of Justice, should object to the settlement the Government may appeal to the board.

I do not think there will be any delay such as the Senator from Ohio fears in the settlement of these claims under the provisions of the committee bill. The Hitchcock bill, as I understand, involves the creation of a new organization; it does not take advantage of the organization already established and in operation. I do not think, therefore, that the Senator would find that there can be any serious delay under the establishment provided for in the committee bill.

Mr. WARREN. Mr. President, may I ask the Senator a question?

Mr. BECKHAM. Yes, sir.

Mr. WARREN. My understanding is—and I will ask the Senator if his is the same—that almost all of these contracts have been under consideration and their settlement arranged for, except as stopped by the comptroller's decision.

Mr. BECKHAM. Yes, sir.

Mr. WARREN. So that the preliminary work is all done.

Mr. BECKHAM. That is my recollection.

Mr. WARREN. And it is now a mere matter of closing legally that which has already been arranged.

Mr. BECKHAM. That is my understanding.

Mr. POMERENE. Mr. President, may I ask for information?

The PRESIDING OFFICER. The Chair thinks that the Senator from New Jersey who has the floor must yield to some one particularly, if he desires to yield.

Mr. FRELINGHUYSEN. I yield to the Senator from Kentucky.

Mr. BECKHAM. I have finished. I thank the Senator.

The PRESIDING OFFICER. The Senator from New Jersey has the floor.

Mr. FRELINGHUYSEN. Mr. President, I quite agree with the Senator from Ohio that possibly some of these cases will take a long time to settle; but if you provide, as the Military Affairs Committee bill provides, that the War Department, who made these contracts, and who have all of the facts concerning them, particularly the verbal contracts and the contracts for procurement orders by telephone, are allowed to settle them, you will practically dispose of three-quarters of the contracts, because they are in agreement.

Mr. POMERENE. Mr. President, let me see if I understand the Senator correctly. He makes the statement now that these parties are in agreement with the Government. Does he mean as to the amount that is to be paid, and that that is only to depend upon the legislation validating these contracts?

Mr. FRELINGHUYSEN. Yes; as I understand, many of these contracts are already signed, but they have not been signed by the proper statutory officers, and have been declared invalid on that account. They are already formal contracts, without the proper signature. Now, there remain agreements that have been made over the telephone, verbal agreements for supplies—cloth and various quartermaster supplies—and it is only a question of coming to an agreement with the contractor who has furnished these goods; and I believe I am safe in stating that three-quarters of these contracts can be settled by agreement between the contractors and the War Department.

There will remain those contracts where the contractors refuse to accept the decision of the War Department, or the examiners, or these committees, and if they refuse to accept it they can appeal to this board. But under the Hitchcock bill, as I understand, all of these contracts are thrown into this tribunal; and I venture to say that it will take five years to settle them, judging from the experience of the Interstate Commerce Commission, for example. That commission has nine members, and during the year ending October 31 it conducted 1,000 formal proceedings and 10,000 informal proceedings. It has an organization of approximately 700 employees, and its work involved an expenditure of \$1,000,000.

Here are 6,000 contracts, at least, to be settled for \$50,000. The work of the Public Service Commission of the second New York district in 1917, with 1,350 informal proceedings, cost \$400,000. This commission is to have \$50,000, \$22,500 of which is to be expended for salaries, leaving a balance of \$27,500. Can you provide the necessary clerical assistance and examiners for \$27,500? It is ridiculous.

There is another point. There is to be a member from the Department of Justice and a member from the War Department. With a board constituted in that way, you will have the War Department appealing to a board to act as a judge, with a member of their own department acting as a judge on their own awards, and you will have the Department of Justice appealing to this board, on which sits one of the members of the appellant department. Now, the board should be differently constituted. If I were going to create this commission, I would put a banker, a lawyer, and a manufacturer on it; but it is foolish to assume that all of these 25,000 contracts can be thrown on this commission and that they can be examined and passed upon. Therefore I say that the Military Affairs Committee bill is the better measure, permitting the War Department, with its machinery, and its information, to settle these contracts which it has made.

Mr. SMITH of Arizona. Mr. President, will the Senator permit me to interrupt him?

Mr. FRELINGHUYSEN. Certainly.

Mr. SMITH of Arizona. Why would it not relieve somewhat the delays suggested by the Senator from Ohio [Mr. POMERENE] if on a finding by a tribunal, whatever it happens to be, the parties could receive a certain percentage of that finding, say, 50 or 75 per cent?

Mr. OVERMAN. Seventy-five per cent is the rule.

Mr. MCKELLAR. That is what is provided here.

Mr. FRELINGHUYSEN. That is what both bills provide.

Mr. SMITH of Arizona. Do they provide that the party shall receive 75 per cent?

Mr. MCKELLAR. Seventy-five per cent.

Mr. SMITH of Arizona. Then I do not think the question of delay cuts as much figure as it otherwise might.

Mr. THOMAS. Mr. President, I think the Senator could well add that legislation is not needed at all regarding those contracts which have been legally executed. Consequently I see no reason for including them in a measure of this sort. This is designed to meet an emergency which was created by two circumstances; One, the necessity of getting immediate results due to the exigencies of the war, and which could not be obtained if the statutory formula for the execution of contracts were observed; and the other, the sudden termination of the war, leaving all these contractors in the air.

A good many of these contracts were made in France. Personally I do not believe that the statutory requirement concerning execution applies to contracts made in France, because it is a general proposition, I think, that the place where a contract is made and the place where a contract is executed, when those two conditions exist, make the *lex loci*, or the law of the location, applicable both to its execution and to its performance and to any legal propositions or controversies that may ensue from it. So that this emergency legislation is needed to meet that class of contracts, and that class of contracts only, which, because of their failure of proper statutory execution, require legislation. As to the others, the department can proceed under existing conditions; and as a consequence I think they should be excluded from the operations of a bill like this.

Mr. CUMMINS. Mr. President, I should like the Senator from New Jersey to put me straight upon one or two things that seem to me obscure, if he will allow me.

Mr. FRELINGHUYSEN. I yield the floor to the Senator.

Mr. CUMMINS. No; I do not want the Senator to yield the floor, because I want to ask him a question.

Mr. FRELINGHUYSEN. I retain the floor, then, and await the Senator's question.

Mr. CUMMINS. The Senator has said, and I see it is very clear, that there are two classes of contracts provided for in the bill. The first relates to those contracts that have been

executed or reduced to form, but not signed by the proper officer of the Government, or in the way provided by law. That is right; is it not?

Mr. FRELINGHUYSEN. Yes.

Mr. CUMMINS. The second relates to those cases in which the contract has not been reduced to form at all, but orders having been given looking to the execution of the contract or something of that kind expenditures have been made on the faith of the contract yet to be reduced to form. Those are the two classes. When these contracts are validated is it the intention that the damages which arise on account of their nonperformance shall be settled according to the established rules of the law as those rules would apply between individuals in like circumstances?

Mr. FRELINGHUYSEN. As I understand the bill it provides that where such an agreement was reduced to contract form and executed or signed on behalf of the Government, but the execution or signing was not in compliance with statutory requirements, the Secretary of War is directed to waive, on behalf of the Government, such noncompliance.

Mr. CUMMINS. Yes.

Mr. FRELINGHUYSEN. That answers the Senator's question in regard to the contracts that were not signed by the proper statutory officials. The bill provides further—

Mr. LENROOT. Mr. President, will the Senator yield at that point before he gets away from it?

Mr. FRELINGHUYSEN. Yes.

Mr. LENROOT. I have been informed since this discussion arose that the validating portion of paragraph 1 as recommended by the War Department did not cover procurement orders, and I should like to ask the Senator how and why that was inserted.

Mr. FRELINGHUYSEN. As I understand, this bill was drawn—the chairman can probably answer that question better than I—at the request or instance of the War Industries Board. I do not know whether the original bill contained that language or not.

Mr. MCKELLAR. Mr. President, if the Senator will permit me, I shall be glad to state what happened.

Mr. FRELINGHUYSEN. Yes.

Mr. MCKELLAR. The words "procurement orders" were not in the original draft of the amendment, and the reason why they were not was because the committee did not at that time know—it had no information before it—that any of these written contracts were in the form of what are called procurement orders. I think it was the Assistant Secretary of War who brought out that fact first, and then a number of the contractors appeared before the committee and testified that instead of having a formal contract, as provided in this first section, many of them had what were known as procurement orders that were in writing, but a peculiar form of contract that did not accord with what the law provided should be done, and yet it was in writing and set out the terms. Thereupon the committee included procurement orders with the other written contracts.

Mr. WARREN. Mr. President, will the Senator allow me to interrupt him at that point?

Mr. MCKELLAR. The Senator from Iowa [Mr. CUMMINS] has the floor.

Mr. CUMMINS. I want to pursue for a moment the inquiry I made, because this other matter really relates to another phase of the subject.

Mr. FRELINGHUYSEN. I have just yielded to the Senator from Iowa, and I understand he has not finished.

Mr. CUMMINS. No; I have not finished.

The Senator from New Jersey has said that the first paragraph was intended only to validate certain contracts because they had not been signed by the proper officials. Suppose, then, that we validate a contract of that kind, and that the Government does not carry out the contract—that is, does not take the goods or the commodities, whatever is intended to be furnished by the contractor. There is nothing at all in this bill that relates to the settlement of that kind of a case, is there?

Mr. FRELINGHUYSEN. As I understand the bill which we are discussing, the failure of compliance on the part of the War Department will result in an appeal by the contractors to this commission.

Mr. WARREN. Mr. President, will the Senator allow me right there?

Mr. FRELINGHUYSEN. Yes.

Mr. CUMMINS. I have not read the bill carefully, but I do not find anything in the bill that relates to or covers the case I have just put.

Mr. WARREN. If the Senator will allow me, that is to cover the foreign contracts where they are made by other countries in

that way. For instance, our Army abroad made its contracts on letters of purchase and their approval, the same as the English, French, and Italians did. Now, as nearly as we can learn, the comptroller had not in mind, in the finding he made as to our contracts here, that it should apply to those abroad; but his deputy, immediately upon the promulgation of the order, made it applicable there. That throws all of these contracts, perfectly legitimate under the laws and practices there, into the scrap heap with the others.

Mr. CUMMINS. But I think the Senator from Wyoming has not the point in mind. I will instance a case as it was put to me.

A contractor of my own State enters into an agreement with the Government to furnish certain things.

Mr. WARREN. I was not alluding to American contracts.

Mr. CUMMINS. The contract, however, is not signed by the official whose signature is necessary in order to make it valid. This first paragraph validates a contract of that sort.

Mr. FRELINGHUYSEN. Yes.

Mr. CUMMINS. Now, it being validated, what becomes of it when the Government refuses to carry it out? Is there anything here that will enable that contractor to apply to the commission, or take an appeal, or in any way secure a settlement, save as the War Department in its regular organization may see fit to settle with him? That is the point that is bothering me about the first paragraph.

Mr. FRELINGHUYSEN. In reading the section which creates the commission, I fail to find therein any provision for an appeal. Possibly the Senator from Tennessee can answer that question.

Mr. MCKELLAR. Why, surely. If the Senator will look on page 7, he will see that if the War Department and the contractor do not agree, or if the contractor does not feel that the War Department has treated him fairly in the matter of giving him as much as he is entitled to, he has the right to appeal. That is shown on line 11, page 7, of the bill:

That within 30 days of the date when the Secretary of War tenders any contract or compensation as provided in this act—

That is, validates the one, or fixes the other—

or refuses to tender such contract or compensation, the party to whom said contract or compensation is tendered or refused, or the Government by a duly authorized officer from the Department of Justice, may file with the chairman of the commission a notice of appeal.

Then that committee hear it de novo as a court of appeal from the ruling of the War Department.

Mr. CUMMINS. But my difficulty is in finding in that language any reference to the first paragraph of this bill. I do not believe it covers, in its present terms, a contract that is validated simply because unsigned by the proper official.

Mr. MCKELLAR. If the Senator will read all of section 2 he will find that it applies to section 1, and that follows as a necessary consequence. There is not the slightest trouble about it—not the slightest.

Mr. LENROOT. Mr. President, will the Senator yield?

Mr. MCKELLAR. I have not the floor, as a matter of fact, but I will yield to the Senator.

Mr. LENROOT. I merely wish to call the Senator's attention to the fact that the provision with reference to appeals that he is now quoting relates only to cases where the Secretary is authorized by this bill to make compensation, and this bill does not authorize the Secretary to make compensation upon a valid contract.

Mr. MCKELLAR. No; it does not. That was not what the Senator from Iowa was speaking of, however.

Mr. CUMMINS. Precisely; that is just what I was speaking of. At the beginning of line 11 the bill provides—

Mr. MCKELLAR. Just look at line 12.

Mr. CUMMINS. I am going to read it now.

Mr. MCKELLAR. The Senator will find that it is absolutely plain.

Mr. CUMMINS (reading)—

That within 30 days of the date when the Secretary of War tenders any contract or compensation as provided in this act, or refuses to tender such contract or compensation—

Those are the cases in which appeals could be made to the commission.

Mr. MCKELLAR. Yes.

Mr. CUMMINS. But, under the validated contract of paragraph 1, the Secretary of War does not tender any contract nor does he tender any compensation.

Mr. MCKELLAR. Oh, yes; the point is this, if the Senator will permit me: Here is a contract that is all right except that it is signed by the wrong officer, we will say. It is all written out and the contractor has one copy and the Secretary of War has the other. The Secretary validates that contract and

tenders it to the contractor, and it comes directly within that language.

Mr. CUMMINS. No; there is not anything to indicate that he tenders it to the contractor.

Mr. MCKELLAR. There will be a great many things done that are not specifically provided.

Mr. CUMMINS. Paragraph 2 of the bill very distinctly provides for the tender of a contract and for the tender of compensation; but I am afraid that the committee—of course, unintentionally—has excluded entirely the settlement of those cases which are simply under validated contracts.

Mr. MCKELLAR. Oh, I do not think so.

Mr. FRELINGHUYSEN. Mr. President, I think possibly the Senator from Iowa might suggest an amendment to carry out his idea.

Mr. CUMMINS. That is easy enough. It would not be hard to suggest an amendment.

Mr. MCKELLAR. If the Senator will suggest one, I am sure we shall be delighted to have it inserted to make it clear.

Mr. CUMMINS. I should like to ask the Senator from Tennessee another question, or the Senator from New Jersey.

Mr. MCKELLAR. Surely.

Mr. CUMMINS. In lines 16 and 17, on page 4, it is said, speaking of the validation of contracts:

Provided, That he finds such waiver is not inconsistent with the public interest.

It seems to me that if the Government has made a contract with an officer, and all that it lacks is the statutory authority of that officer to enter into the contract or to sign the contract, it is hardly fair to give the Secretary of War the privilege of saying that the Government shall not be bound by that contract if he finds that it is not consistent with the public interest.

Mr. MCKELLAR. There is not any intention of that. It refers to an entirely different situation.

If the Senator has finished, I should like to discuss another phase of this question for just a moment.

Mr. OVERMAN. Mr. President, before the Senator begins—

Mr. FRELINGHUYSEN. I yield the floor.

Mr. LENROOT. Before the Senator from New Jersey yields the floor, I should like to ask him a question on another branch of the bill.

As I read this bill, it legalizes a claim against the Government on the part of one who has performed services or expended money upon the request merely of one who is not authorized in any way to make a contract, but one who has been requested to aid the War Department in the procurement of munitions. In other words, a dollar-a-year man in the War Industries Board has requested some one to do something, under the belief that he will later get a contract, and this bill will give that man a legal claim against the Government. Am I correct?

Mr. FRELINGHUYSEN. I think the Senator is correct.

Mr. MCKELLAR. I will say to the Senator that that is the proposition I want to discuss for just a moment when the Senator yields; and I shall be very glad to answer the Senator's question when I come to discuss it.

Mr. FRELINGHUYSEN. I yield to the Senator.

Mr. MCKELLAR. Now I yield to the Senator from North Carolina.

Mr. OVERMAN. What I wanted to ask was this: Many of these contracts, two-third of them, are subcontracts. A man gets a contract to furnish a million pairs of shoes. He can not furnish them, so he lets it out to a subcontractor. I want to know if there is any provision in this bill to take care of the interests of those subcontractors?

Mr. MCKELLAR. None whatever. They are not contractors with the Government.

Mr. OVERMAN. Here is a man, now, who has a contract with the Government for \$2,000,000 worth of shoes. You recognize him and settle with him; but the man who made the shoes, who furnished the shoes, you do not take care of at all.

Mr. MCKELLAR. That is true.

Mr. OVERMAN. Does not the Senator think there ought to be some provision by which this whole matter shall be considered, and the man who has absolutely furnished the material shall have his money?

Mr. MCKELLAR. I think, if the Senator will vote for the Hitchcock substitute, he will find that that will be taken care of.

Mr. FLETCHER. Mr. President, I should like to have the Senator explain that and point out where it is. I think the bill reads much better, on the point the Senator from North Carolina refers to, than the Hitchcock amendment.

Mr. MCKELLAR. If Senators will give me their attention for just a few minutes I want to discuss the class of cases to which the Senator from Wisconsin [Mr. LENROOT] so properly referred just a few minutes ago.

We all know that in the very active campaign we have had here during this war there have been many volunteers, men connected with certain lines of business, who have come down here and represented the Government in connection with these very lines of business; and in order to bring that matter directly to the attention of the Senate I am going to take the liberty of reading just a little of the testimony of three witnesses, one connected with the dye industry of the country, one with the clothing industry of the country, and a third with the vehicle industry of the country. I want to explain before I read this testimony, that it shows the vital necessity of having some independent commission to pass upon the question of contracts with the Government.

I want to call attention to the fact that under the bill as reported by the House many of the officers who are going to settle these contracts for the Government will simply settle with themselves, and the Government has to pay whatever these gentlemen feel like taking. Let us suppose, for a minute, that it is contract on dyes. I produce the testimony of Mr. Rice, taken before our committee:

Senator MCKELLAR. Who is the Southbridge Printing Co.?

Mr. RICE. A concern at Southbridge, Mass. They have been in sulphur dyeing for the last two years or more.

Senator MCKELLAR. Who owns it?

Mr. RICE. Mr. Schnster, Mr. Heyward, Mr. Saunders—James A. Saunders—R. A. Rice, and Mr. Myrick. Mr. Hartley had some stock in there.

One of these gentlemen is the brother, the other the partner, of the witness, who is in charge of the Government dye bureau here in the city of Washington, buying millions of dollars worth of dye work, taking millions of dollars worth of dye work for the Government. Now, listen to this:

Senator MCKELLAR. Who is Mr. R. A. Rice?

Mr. RICE. He is a brother of mine.

Senator MCKELLAR. He is still interested in it?

Mr. RICE. Yes; he is still interested in it.

Senator MCKELLAR. What amount of stock does he own?

Mr. RICE. It is my recollection, something like 75 shares. I would not state exactly. Of course that is of record.

Senator MCKELLAR. What interest did you have in the business before you came down here?

Mr. RICE. I had about a little over one-quarter of the stock.

This was a dollar-a-year man who is testifying now, and this is one of the men who will settle with the dye interests if you pass the House bill and have no independent commission.

Senator MCKELLAR. How much is it capitalized at?

Mr. RICE. \$135,000.

Senator MCKELLAR. How much, in contracts, has that concern got?

Mr. RICE. I believe about, all told, during the year—of course, I can give you an exact account of it.

Senator MCKELLAR. I would be glad to have it.

Mr. RICE. About 3,000,000 yards.

Senator MCKELLAR. Three million yards?

Mr. RICE. The recent contract, the gas-defense contract, they are doing some of the parafining for the gas defense.

Senator MCKELLAR. What did you do with your stock? To whom did you sell it?

He testified that he sold the stock.

Mr. RICE. To my wife. The Quartermaster's Department stated that should be done, and I transferred it to my wife.

Senator MCKELLAR. You did not sell it to her, did you?

Mr. RICE. I just transferred it over for \$2.

Senator MCKELLAR. You just put it in her name so you would not be interested in it?

Mr. RICE. Yes; I transferred it over to her. In other words, it belongs to her.

Senator MCKELLAR. Is there any other company you are connected with which you transferred to your wife the stock in?

Mr. RICE. Yes; I had some stock of the Fiskdale Finishing Co.

Senator MCKELLAR. What is the capital of that company?

Mr. RICE. The capital is \$200,000 preferred and \$300,000 common.

Senator MCKELLAR. And what was your interest in that?

Mr. RICE. My recollection is that it was a little over a quarter interest.

Senator MCKELLAR. And you transferred that to your wife?

Mr. RICE. That was in the common stock of that company; and I had, I think, about \$15,000, if I recall, of preferred stock. I turned that over to my wife.

Senator MCKELLAR. Have you done any business with that company?

Mr. RICE. Yes, sir.

Senator MCKELLAR. How much have you allotted to them?

Mr. RICE. I should say about 3,000,000 yards during the year.

Senator MCKELLAR. Have those contracts been filled?

Mr. RICE. Not all of them. They are working on them now. In fact, some of the material has been delivered to them. Gray mills are behind on the gray contracts.

Senator MCKELLAR. Are there any other companies with which you were connected?

Mr. RICE. No, sir; those are the only two companies I had owned any stock in.

Senator MCKELLAR. Your partnership was with Mr. Myrick?

Mr. RICE. Mr. Myrick.

Senator MCKELLAR. What contract have you with Mr. Myrick about your firm business while you are down here?

Mr. RICE. None whatever. I sold out to Mr. Myrick. I have resigned and am no longer a member of the firm of Myrick & Rice. I am out of it entirely.

Senator MCKELLAR. Who are the owners of that firm?

Mr. RICE. Mr. Myrick is the sole owner now of the firm.

Senator MCKELLAR. Would you object to stating upon what terms you sold out that business?

Mr. RICE. Certainly; I will be glad to state. I sold out of the firm for \$5,000, and all the interest that I had there for \$15,000, the total amounting to \$20,000. The \$15,000, of course, was to pay for back contracts on commercial business; nothing whatever on any Government business.

Senator MCKELLAR. When were these transactions; last March, before you came down here?

Mr. RICE. Last March; yes.

Senator MCKELLAR. At whose instance did you come?

The plot still thickens!

Mr. RICE. At the request of Mr. Albert Scott and Mr. Miller Wilson.

Senator MCKELLAR. What has become of Mr. Scott? What is he doing now?

Mr. RICE. I could not say. He is in Boston. I could not tell you just what he is doing.

Senator MCKELLAR. Mr. Scott was interested in nearly all these mills, was he not?

Mr. RICE. I could not say.

Senator MCKELLAR. You did not know that he had had large interests in them?

Mr. RICE. No, sir; I did not know anything about it. In fact, I had never met Mr. Scott but once, in 1917.

Senator MCKELLAR. Mr. Scott, I do not believe, had any interest in any of these competing plants, but he had interests in all the cotton manufacturers, or was represented in them.

Mr. DONALD. Only a very few, Senator.

I am not going to read all this testimony, but what he testified was that he was down here representing the Government, buying from the mills in which he formerly owned the stock and which he transferred to his wife without compensation, and that they were getting the dividends from that stock, and it was paying very handsomely, too. If when we turn these contracts over to the Secretary of War, as provided by the House, we are going to turn the settlement of the contract over to Mr. Rice, who may still be a dollar-a-year man, as I understand, or was a short time ago; is that right? Does any Senator feel that he wants to do that? Why pass any bill at all? Why not just invite the contractors and these dollar-a-year men to come down and take what they want?

Mr. FREILINGHUYSEN. Will the Senator suffer an interruption?

Mr. MCKELLAR. I will be delighted.

Mr. FREILINGHUYSEN. Of course, no one will indorse such a practice as the Senator has pointed out in reading the testimony, but can not the interests of the Government be safeguarded against such fraud, if fraud it is?

Mr. MCKELLAR. It can not be under the bill introduced in the House. I believe it can be safeguarded under the Hitchcock bill, with section 3 of the substitute bill as an amendment. I hope it can. I do not know whether that will do it or not. It is mighty hard to get around these gentlemen.

Mr. FREILINGHUYSEN. I suggest to the Senator that on page 4 of the committee amendment the Senator from Wisconsin [Mr. LENROOT] suggested that it would improve the bill and protect the Government against such a practice the Senator has pointed out in the testimony taken before the Committee on Military Affairs by striking out, on line 6, page 4, the words "to produce or aid in procuring the same for the War Department."

Mr. MCKELLAR. That would help it some, but it is perfectly evident to me that if this were a solitary example that I was referring to here there might not be a great deal in the contention. However, this is the rule and not the exception. I do not say it is a universal rule, but the rule very largely. For instance, in the Clothing and Equipage Division I have the testimony here of Mr. H. L. Bailey, the chairman of that division. He testified that he had stock in a number of concerns, and he transferred it to his wife and then did business with his wife's concern and the concern of Wellington, Sears & Co., and expected to go back as soon as the war is over. I am not going to read that testimony, but I ask unanimous consent to put it in the RECORD. I think Senators ought to have it.

The VICE PRESIDENT. Without objection, it will be printed in the RECORD.

The matter referred to is as follows:

THE CASE OF H. L. BAILEY.

The case of H. L. Bailey, who is chief of the cotton-goods branch of the Clothing and Equipage Division, is somewhat similar to that of Mr. Rice. Mr. Bailey was a partner of the Wellington, Sears & Co., one of the largest cotton-goods firms of the country. He also owned stock in one cotton mill, and his wife had stock in two cotton mills. He had stock in the Gluck Mills, of Anderson, S. C., and his wife owned stock in the Lanett Cotton Mills, Lanett, Ala., and the Equinox Mills, of Anderson, S. C. He bought from both the Lanett and Equinox Mills.

Senator MCKELLAR. Now, virtually speaking, this compensation is, with the exception of Commander Hancock, fixed by the trade? In other words, you gentlemen are all affiliated with the cotton trade?

Mr. BAILEY. I do not know what you mean by "affiliated." Senator MCKELLAR. I mean connected.

Mr. BAILEY. I am an experienced cotton manufacturer and have come from the industry.

Senator MCKELLAR. You are not connected with it at the present time, but you came from the firm of Wellington, Sears & Co. and were what is known as a dollar-a-year man?

Mr. BAILEY. Yes.

Senator MCKELLAR. And you went out of Wellington, Sears & Co. after you went into the service of the Government as a dollar-a-year man?

Mr. BAILEY. I did.

Senator MCKELLAR. And there is no use our attempting to camouflage the thing one way or another. We might as well look it right square in the face. When this war is over you are going back in the cotton trade, of course.

Mr. BAILEY. I am, as I have to support my family.

Senator MCKELLAR. Of course; and your interests and expectations are all in that trade; and it does seem to me that we could devise a plan that would make a real buyer and seller. As it is now, you gentlemen just fix the amount at such figure as you think would be reasonable, upon such basis as you think fit, and the Government foots the bill; and I see here from the public print that there never has been such marvelous prosperity to the cotton mills of the country. That is natural and, in a way, that is admirably right.

Mr. BAILEY. Yes.

Senator MCKELLAR. But I do not think that they ought to take such tremendous profits; and they are taking enormous profits. Now, Mr. Scott testified frankly that there were from 8 to 10 turnovers a year, and that they allowed on the basis of 12½ per cent on a turnover. By an easy calculation, that is from 100 to 150 per cent a year.

Mr. BAILEY. Did Mr. Scott testify that there were from 8 to 10 turnovers a year?

Senator MCKELLAR. Yes; that is my recollection.

Mr. BAILEY. Either you or Mr. Scott are mistaken.

Senator MCKELLAR. How many turnovers are there a year?

Mr. BAILEY. It varies with the different kinds of goods.

Senator MCKELLAR. Just enumerate the different kinds of goods, if you will, because I do not want to have any mistake about it. I do not want to be mistaken about it. Take the white duck used for tentage, and how many turnovers are there a year on that?

Mr. BAILEY. I will have to make a little computation here on that.

Senator MCKELLAR. As a matter of fact, Mr. Bailey, the real committee that fixes prices is the small committee composed of Mr. Scott, yourself, and Commander Hancock and Mr. Turner?

Mr. BAILEY. Absolutely not, sir.

Senator MCKELLAR. In what instance has any fixing of prices ever been changed by the big committee?

Mr. BAILEY. The low basis of prices which was submitted by this war-service committee before I became a member of the smaller committee, and which was put up to the large committee by the smaller committee was—well, I will not say repudiated, because it is too strong a word; but it was not allowed by the large committee, and the industry was called in conference by the large committee and the matters were thrashed out and the basis arranged in conference with the large committee and not by the small committee.

Senator MCKELLAR. Was that one approved by the small committee—that one that was adopted?

Mr. BAILEY. I was not a member of the small committee at the time. It was approved to the extent that it was put up to the large committee.

Senator MCKELLAR. What I want to know is, has any recommendation of the small committee, since you have been a member of it, ever been turned down by the big committee?

Mr. BAILEY. The small committee since I have been a member of it has not taken the responsibility for these prices. It has merely discussed the details, and a group of experts appointed by the price-fixing committee of the War Industries Board has been intrusted with the responsibility of supervising the differentials made for different cotton fabrics.

Senator MCKELLAR. Now, what committee is that?

Mr. BAILEY. I have not taken any responsibility for the price fixing.

Senator MCKELLAR. What is this supervising committee? Whom is that composed of?

Mr. BAILEY. It is composed of two mill engineers, Mr. Makepeace and Mr. Sirrine.

Senator MCKELLAR. Anybody else?

Mr. BAILEY. No.

Senator MCKELLAR. Who is Mr. Makepeace, and what mill is he connected with?

Mr. BAILEY. He is not connected with any mill. He is an engineer of Providence, R. I.

Senator MCKELLAR. An engineer. Whom does he work for? What is his first name?

Mr. BAILEY. He has his own concern. I can not recall his first name, for the moment.

Senator MCKELLAR. What kind of an engineer is he? What does he know about making prices for cotton goods?

Mr. BAILEY. He is a construction engineer.

Senator MCKELLAR. What does he know about making prices for cotton goods?

Mr. BAILEY. I should think that would be a proper question for him to answer, Senator McKellar.

Senator MCKELLAR. I know, but I just want to find out something about him.

Mr. BAILEY. He is a man who lays out mills for making certain grades of fabrics, who is presumably well informed as to the present cost of such mills, as to the past cost of such mills, their productive capacity, and for that reason the profit per pound which they should have to give them a certain return on their capital invested, and that sort of thing.

Senator MCKELLAR. Is he employed by cotton mills—to construct cotton mills?

Mr. BAILEY. Yes.

Senator MCKELLAR. Is he in them, personally?

Mr. BAILEY. Very likely, but I do not know. I have no knowledge of it.

Senator MCKELLAR. Who is Mr. Sirrine?

Mr. BAILEY. He is also a mill engineer, of Greenville, S. C.

Senator MCKELLAR. Does he own mills, too?

Mr. BAILEY. I do not know.

Senator MCKELLAR. Or is he interested in their ownership?

Mr. BAILEY. I do not know. My description of Mr. Makepeace would apply to Mr. Surrine also.

Senator MCKELLAR. Is it not a fact that with the exception of the Army and Navy officers, every man connected with the price fixing is directly or indirectly connected with the cotton trade?

Mr. BAILEY. No, sir.

Senator MCKELLAR. Now, name any that are not.

Mr. BAILEY. Mr. Brookings, Mr. Baruch, Prof. Taussig, and Mr. Franey.

Senator MCKELLAR. Was Mr. Brookings ever connected with it?

Mr. BAILEY. No, sir.

Senator MCKELLAR. What was his business?

Mr. BAILEY. He was the president of the Samuel Couples Woodenware Co., of St. Louis.

Senator MCKELLAR. Prof. Taussig never was connected with the cotton trade?

Mr. BAILEY. Not to my knowledge. He was a professor at Harvard College.

Senator MCKELLAR. I know he was. I did not know what his business was prior to that. Do you know whether Mr. Baruch or Prof. Taussig or Mr. Brookings have ever gone themselves into the figures submitted by these various committees?

Mr. BAILEY. Mr. Brookings has himself in great detail, and so has Mr. Baruch. Mr. Baruch was present and spoke at length at one meeting of the price-fixing committee.

Senator MCKELLAR. Have they ever taken into consideration the profits made by these concerns?

Mr. BAILEY. The profits that have been made?

Senator MCKELLAR. That are being made out of the Government by these various selling concerns.

Mr. BAILEY. I think so.

Senator MCKELLAR. If you have taken that into consideration, what profits have been made by any of the mills, and give their profits that you considered.

Mr. BAILEY. I am not qualified to do that, Senator McKellar.

Senator MCKELLAR. And give the dates.

Mr. BAILEY. I haven't them.

Senator MCKELLAR. Did you ever consider it in making these prices?

Mr. BAILEY. Yes. For instance, we have been allocating heavy duck from about 40 mills. Now, some of those mills would make double the profit of others, at the same price. But I want to record with you that the large profits made by the cotton mills, the marvelous profits that you have spoken of, have not been made on Government contracts, but because they have been selling their commercial contracts at much higher prices than the Government has been paying, and that all of that excess was an additional profit; and further, that these mills have, within the last year and a half, gone from cotton below 20 cents a pound to cotton at 36 or 37 cents a pound, which in itself would mean an enormous profit on their raw material. They have got the other end of that coming.

Senator MCKELLAR. Does the price change from time to time?

Mr. BAILEY. Oh yes—not since price fixing.

Senator MCKELLAR. When did you have the first price fixing?

Mr. BAILEY. The first price fixing was made the latter part of June, to be effective from June 8, I believe.

Senator MCKELLAR. And then you paid the same prices for all cotton goods bought—I mean of the same grade and quality?

Mr. BAILEY. Since that time.

Senator MCKELLAR. Since that time?

Mr. BAILEY. From normal producers.

Senator MCKELLAR. Have you a statement from the mills in which you and Mrs. Bailey are interested as to the profits made for last year and this year?

Mr. BAILEY. No; I have no idea what they are. I have been very busy with other things.

Senator MCKELLAR. You do not know what dividends they pay?

Mr. BAILEY. I haven't it in mind, you know.

Senator MCKELLAR. Do you know what dividends any of these mills pay that you have been doing business with? Have you it in mind?

Mr. BAILEY. No; I have not.

Senator MCKELLAR. You fixing prices this way, would not that be very important knowledge for you to have?

Mr. BAILEY. I think—

Senator MCKELLAR. Is not that the most important knowledge that you could have if you were going to fix the price? For instance, if you were going to fix the price for lumber produced by me—I am not in the lumber business, but used to be many years ago—suppose you were going to fix the price of lumber and I was a going concern and had a large business, and we were selling to you and had been selling to you on Government contracts—

Mr. BAILEY. Yes.

Senator MCKELLAR. Would it not be very important for you to know what profits I was making on that lumber before you undertook to fix the price?

Mr. BAILEY. If you were a corporation and were selling the Government at a lower price than you were selling your civilian business, I should say that the profits you were making were no indication of what a fair price would be on your lumber.

Senator MCKELLAR. Taking it about selling the Government at a lower price, the fact that the Government is in the market for these cotton goods is one of the things that has made cotton goods soar?

Mr. BAILEY. Definitely; yes.

Senator MCKELLAR. Yes.

Mr. BAILEY. But that is not my problem, you know.

Senator MCKELLAR. But your problem is when you fix the price that you give the seller a reasonable profit, is it not?

Mr. BAILEY. Yes.

Senator MCKELLAR. How can you tell what a reasonable price is unless you know what his profit is?

Mr. DONALD. Mr. Bailey testified that he is not on that price-fixing committee.

Senator MCKELLAR. I know, but he has recommended to them.

Mr. DONALD. He has never recommended to them.

Senator MCKELLAR. Have you never recommended to them?

Mr. BAILEY. I have not, officially.

Senator MCKELLAR. That is just the thing. I can understand how a price might not be recommended officially and yet just as effectively. As you will recall, one of the things I have been decrying for over a year is these unofficial committees actually doing the work, and I have a letter from the Secretary of War assuring me that there was not an unofficial committee in operation, yet I find them at almost every turn of the road where unofficial committees are recommending prices.

Mr. BAILEY. You mistake the intention of my remark.

Senator MCKELLAR. Well, of course I do not want to do that.

Mr. BAILEY. As one of probably 25 in a meeting with the War Industries Board price-fixing committee I have participated in a discussion regarding prices. My influence has not been on the side of increasing prices of cotton goods, Senator MCKELLAR.

Senator MCKELLAR. Well, now, do you actually, whether officially or unofficially, recommend prices?

Mr. BAILEY. At the present time?

Senator MCKELLAR. At the present time.

Mr. BAILEY. No; I do not.

Senator MCKELLAR. Have you ever done it?

Mr. BAILEY. Oh, yes.

Senator MCKELLAR. When did you stop?

Mr. BAILEY. When—

Senator MCKELLAR. The price was fixed?

Mr. BAILEY. When price fixing came into effect.

Mr. FLETCHER. May I ask the Senator whether he said it will be a case of these gentlemen passing upon their own irregular contracts?

Mr. MCKELLAR. Absolutely.

Mr. FLETCHER. For instance, the Secretary of War or the Assistant Secretary of War has stated that they have an original board going into this question, and then they have contract review boards.

Mr. MCKELLAR. I understand all that, but it is the man who represents the Government in the initial proceeding who commits the Government and the review board really adopts what he does.

Mr. FLETCHER. That is the question. The review boards are not there for that purpose.

Mr. MCKELLAR. I will say this to the Senator and let him think it over himself. I earnestly asked the Secretary of War and the Quartermaster General of the Army, upon the proof I have read just awhile ago from Mr. Rice, that they would discharge Mr. Rice and get somebody who was disconnected with that industry in charge of that particular division, and they declined to do it. Mr. Rice, so far as I know, still represents the Government, although this testimony was taken several weeks ago. If that is the case, what we are doing, if we vote for the House bill or if we vote for the initial arrangement, is just to turn it over to these very gentlemen to settle their own contracts. That is all we are doing, and we might just as well invite these gentlemen to come down and take what they will, but I want Senators to do it with their eyes wide open, because those are the facts.

Mr. CHAMBERLAIN. Let me remind the Senator that we are not voting on the House bill.

Mr. MCKELLAR. I know, but if you leave it to these gentlemen who are representing the department now to settle with themselves as provided under the committee bill, you are simply turning it over to them to settle on their own good judgment, and you see what kind of men you are going to settle with.

Mr. FLETCHER. I think the Senator is going rather far in that conclusion.

Mr. MCKELLAR. Will the Senator read the testimony? It will be in the RECORD in the morning, and he can reach his own conclusion.

Mr. FLETCHER. I am not questioning that, but what I am interested in is that his review board has something more to do than to rubber stamp the action of some subordinate officer.

Mr. MCKELLAR. Let me interrupt the Senator.

Mr. FLETCHER. I want to complete the sentence. The review board as now constituted is already operating and it is composed of Mr. Garnett, of Virginia; Mr. Lehmann, of New York; and Mr. Malone, of New York. They are actually functioning now as a board. So you can not say that they would be selected after this bill is passed with any view to passing favorably on contracts or anything of that sort.

Mr. MCKELLAR. The trouble about it is that the commission established under the bill last reported out by the committee has not any jurisdiction until it is appealed to, and 95 per cent of the cases will not be appealed by either party, and you will leave it to these very men, who have been dealing with the Government in that way, to pass upon their own acts. If the Senate is willing to do that, it may do so. I am not going to vote that way myself.

I next come to the testimony of Mr. Donald, and I want to call the attention of Senators particularly to the fact that the reason for accepting dollar-a-year men was that they had peculiar knowledge of the things about which they came here to do work.

Senator MCKELLAR. Mr. Donald, will you tell us your connection with the Quartermaster Corps?

Mr. DONALD. I am chief of the clothing and equipage division.

Senator MCKELLAR. When did you become chief of that division?

Mr. DONALD. About June 1.

Senator MCKELLAR. What was your business before?

Clothing man? Equipage man? No.

Mr. DONALD. I was a lawyer.

Senator MCKELLAR. Were you ever engaged in the cotton business?

Mr. DONALD. No, sir.

Senator MCKELLAR. How did you happen to get into the cotton goods department of the Government?

Mr. DONALD. Well, it is the whole clothing and equipage division.

Senator MCKELLAR. Well, the whole clothing and equipage division; how did you happen to get into it?

Mr. DONALD. I was asked to come to Washington last February.

Senator MCKELLAR. By whom?

Mr. DONALD. Mr. Scott, who was then chief of the division.

I will say to the Senator that Mr. Scott was the man who was discharged at my request, and for which I have been considerably criticized. He was discharged as chief of this division because of his connection with practically all the firms with which he was doing business. That appeared in the proof, and the quartermaster acted upon my request and discharged Mr. Scott. Here is Mr. Donald, a man who comes and takes Mr. Scott's place, and it develops afterwards that he is Mr. Scott's lawyer or the lawyer for Scott's firm. Now, listen to this:

I was asked to come to Washington last February.

Senators, remember now we are turning the settlement of these contracts over to these gentlemen to settle with themselves. I sometimes think the poor old Government has not many friends around.

Mr. SMOOTH. Where did Mr. Scott go?

Mr. MCKELLAR. He went back home; but I will give it to you from the testimony in a moment.

Senator MCKELLAR. Did you ever represent Mr. Scott or any of his companies before that?

Mr. DONALD. I personally have not represented Mr. Scott. My firm had done some business for Mr. Scott.

Senator MCKELLAR. What is your firm?

Mr. DONALD. Herrick, Smith, Donald & Farley.

Senator MCKELLAR. What Herrick is that?

Mr. DONALD. Robert F. Herrick.

Senator MCKELLAR. Of New York?

Mr. DONALD. Of Boston.

Senator MCKELLAR. You were asked by Mr. Scott to come here?

Mr. DONALD. Yes, sir.

Senator MCKELLAR. Were you familiar with the cotton trade, the clothing trade, before you came here?

Mr. DONALD. No, sir.

Senator MCKELLAR. Were you ever in the clothing business or the cotton business?

Mr. DONALD. No, sir.

Senator MCKELLAR. You heard Mr. Bailey testify a few minutes ago that it would be difficult to find a man who had never had any experience in the business that would know enough about it to manage it for the Government. How do you get along under that definition?

Mr. DONALD. Our division is a very large division, and, of course, we have in each of our branches the men who are technical experts in the business.

Senator MCKELLAR. Why were you selected? Do you have any idea why you were selected to come down here?

Mr. BAILEY. He is too modest to answer.

He was too modest to answer; he did not answer, and Mr. Bailey testified for him.

Senator MCKELLAR. Let him go right ahead. I am after the facts.

Mr. DONALD. The clothing and equipage division was organized by Gen. Goethals in January of this year. It was an entirely new organization and they needed a large number of men to assist. I myself have recently been endeavoring to get another lawyer to come down here. I came down as general assistant, believing there would be work in which I could assist.

Senator MCKELLAR. Referring again to your connection with cotton firms, does Herrick, Smith, Donald & Farley represent cotton manufacturers?

Mr. DONALD. There are a good many cotton manufacturers in and around Boston and New England.

That is supposed to be an answer to the question.

Senator MCKELLAR. Just tell me offhand; I will not hold you to all of your clients in that particular line, but give me the more important ones, at any rate.

Mr. DONALD. We have, so far as I know, Senator, no retainers from any firms.

Senator MCKELLAR. I understand that, but I want to know whom you represented. For instance, I know whether I represented the Union State Bank or the Central State Bank of Memphis, Tenn., and if you asked me what firms I represented I could give them to you that quick, or if you asked me what cotton houses I had represented I can tell you.

Mr. DONALD. My firm had four members, and it is a firm which has been in practice since 1873, and it has represented a great many different concerns at different times.

Senator MCKELLAR. Would you give me what your firm represented, so far as you can? You have been in the firm over a year?

Mr. DONALD. Yes, sir.

Senator MCKELLAR. And you have been in it since the war? You are interested in it now?

Mr. DONALD. Not at the present time.

Listen to this:

Senator MCKELLAR. You have no interest in the partnership now?

Here is what he said, and I will afterwards read you what he interlined:

Mr. DONALD. Last year the firm of Herrick, Smith, Donald & Farley was formed. We were formerly members of the firm of Fish, Richardson, Herrick & Neave. Mr. Farley, one of my partners, went to Pittsburgh in April. My partner, Mr. Smith, had been in the Army and he is now abroad. The firm has practically been broken up. I do not understand that I am getting any money from the firm and I have not been since last February.

He interlines this:

I do not understand that I am getting any money from (earned by other members of) the firm and I have not been (received any) since last February. (I stated to them when I left that I did not wish to take any amounts thereafter earned by the other partners, and that I wished to share expenses if the salaried employees did not earn their expenses. If these employees earn more than their expenses, it is possible the partners may wish to apportion a share of this surplus to me, but the matter has never been arranged or seriously considered.)

I am not going to read all he said, but it is on a line with the other. Here are other firms that he represents, every one of them doing business with his division of the Government, and when you turn these contracts over to him to arrange you are going to just turn them right over to the contractors to settle. When you take either one of the first bills without an independent commission are you going to turn it over to these gentlemen to settle with themselves and with their clients?

Mr. NUGENT. Mr. President—

Mr. MCKELLAR. I will yield in just one minute.

I asked him for the names and he said he had represented mills and cotton agents, the Queen City Cotton Mills and various others. He goes on to testify that he took Mr. Scott's place. I ask permission to insert in the Record that testimony verbatim. It is not very long.

The VICE PRESIDENT. Without objection, it is so ordered.

The matter referred to is as follows:

STATEMENT OF MR. MALCOLM DONALD, CHIEF OF THE CLOTHING AND EQUIPAGE DIVISION, QUARTERMASTER CORPS.

Senator MCKELLAR. Mr. Donald, will you tell us your connection with the Quartermaster Corps?

Mr. DONALD. I am chief of the clothing and equipage division.

Senator MCKELLAR. When did you become chief of that division?

Mr. DONALD. About June 1.

Senator MCKELLAR. What was your business before?

Mr. DONALD. I was a lawyer.

Senator MCKELLAR. Were you ever engaged in the cotton business?

Mr. DONALD. No, sir.

Senator MCKELLAR. How did you happen to get into the cotton goods department of the Government?

Mr. DONALD. Well, it is the whole clothing and equipage division.

Senator MCKELLAR. Well, the whole clothing and equipage division; how did you happen to get into it?

Mr. DONALD. I was asked to come to Washington last February.

Senator MCKELLAR. By whom?

Mr. DONALD. Mr. Scott, who was then chief of the division.

Senator MCKELLAR. Did you ever represent Mr. Scott or any of his companies before that?

Mr. DONALD. I personally have not represented Mr. Scott. My firm had done some business for Mr. Scott.

Senator MCKELLAR. What is your firm?

Mr. DONALD. Herrick, Smith, Donald & Farley.

Senator MCKELLAR. What Herrick is that?

Mr. DONALD. Robert F. Herrick.

Senator MCKELLAR. Of New York?

Mr. DONALD. Of Boston.

Senator MCKELLAR. You were asked by Mr. Scott to come here?

Mr. DONALD. Yes, sir.

Senator MCKELLAR. Were you familiar with the cotton trade, the clothing trade, before you came here?

Mr. DONALD. No, sir.

Senator MCKELLAR. Were you ever in the clothing business or the cotton business?

Mr. DONALD. No, sir.

Senator MCKELLAR. You heard Mr. Bailey testify a few minutes ago that it would be difficult to find a man who had never had any experience in the business that would know enough about it to manage it for the Government. How do you get along under that definition?

Mr. DONALD. Our division is a very large division, and of course we have in each of our branches the men who are technical experts in the business.

Senator MCKELLAR. Why were you selected? Do you have any idea why you were selected to come down here?

Mr. BAILEY. He is too modest to answer.

Senator MCKELLAR. Let him go right ahead. I am after the facts.

Mr. DONALD. The clothing and equipage division was organized by Gen. Goethals in January of this year. It was an entirely new organization and they needed a large number of men to assist. I myself have recently been endeavoring to get another lawyer to come down here. I came down as general assistant, believing there would be work in which I could assist.

Senator MCKELLAR. Referring again to your connection with cotton firms, does Herrick, Smith, Donald & Farley represent cotton manufacturers?

Mr. DONALD. There are a good many cotton manufacturers in and around Boston and New England.

Senator MCKELLAR. Just tell me offhand; I will not hold you to all of your clients in that particular line, but give me the more important ones, at any rate.

Mr. DONALD. We have, so far as I know, Senator, no retainers from any firms.

Senator MCKELLAR. I understand that, but I want to know whom you represented. For instance, I know whether I represented the Union State Bank or the Central State Bank of Memphis, Tenn., and if you asked me what firms I represented I could give them to you that quick, or if you asked me what cotton houses I had represented I can tell you.

Mr. DONALD. My firm had four members, and it is a firm which has been in practice since 1873, and it has represented a great many different concerns at different times.

Senator MCKELLAR. Would you give me what your firm represented, so far as you can? You have been in the firm over a year?

Mr. DONALD. Yes, sir.

Senator MCKELLAR. And you have been in it since the war? You are interested in it now?

Mr. DONALD. Not at the present time.

Senator MCKELLAR. You have no interest in the partnership now?

Mr. DONALD. Last year the firm of Herrick, Smith, Donald & Farley was formed. We were formerly members of the firm of Fish, Richardson, Herrick & Neave. Mr. Farley, one of my partners, went to Plattsburg in April. My partner, Mr. Smith, had been in the Army and he is now abroad. The firm has practically been broken up. I do not understand that I am getting any money from (earned by other members of) the firm and I have not been (received any) since last February. (I stated to them when I left that I did not wish to take any amounts thereafter earned by the other partners, and that I wished to share expenses if the salaried employees did not earn their expenses. If these employees earn more than their expenses, it is possible the partners may wish to apportion a share of this surplus to me, but the matter has never been arranged or seriously considered.) [Italicized words in parentheses show changes made by Mr. Donald after the hearing.]

Senator MCKELLAR. It has been dissolved?

Mr. DONALD. It has not been formally dissolved.

Senator MCKELLAR. And there has been no modification of the agreement about profits of the firm?

Mr. DONALD. We had no written agreement.

Senator MCKELLAR. You had no agreement?

Mr. DONALD. (*No written agreement.*) When I came away it was understood that I should take no further profits (*did not wish to take profits thereafter earned by other members of the firm.*)

Senator MCKELLAR. I interrupted you when you were going to give me a list of the cotton manufacturers that you represented.

Mr. DONALD. We have represented the Pacific Mills and the Everett Mills.

Senator MCKELLAR. The Everett?

Mr. DONALD. At times. We have represented the Harmony Mills; Bliss, Fabyan & Co., and, I think, at times, Minot, Hooper & Co.

Senator MCKELLAR. Did you ever represent any companies in which Mr. A. L. Scott was interested?

Mr. DONALD. The firm has.

Senator MCKELLAR. Which ones are those? Do you know what concerns Mr. Scott is interested in? Mr. Scott is in all of them, is he not, directly or indirectly?

Mr. DONALD. He is in two or three—three or four.

Mr. BAILEY. Mr. Scott is a partner of Lockwood, Green & Co.

Mr. DONALD. J. Spencer Turner & Co. I personally did not do their work, and that is the reason, Senator, I can not tell you.

Mr. BAILEY. J. Spencer Turner & Co.?

Senator MCKELLAR. What is that Green firm?

Mr. BAILEY. Lockwood, Green & Co.; that is the Mount Vernon-Woodbury Mills.

Mr. DONALD. It is the International Cotton Mills.

Mr. BAILEY. Yes; the International Cotton Mills.

Senator MCKELLAR. Mr. Scott is at the head of the J. Spencer Turner Co.?

Mr. DONALD. No, sir.

Senator MCKELLAR. What company is he the head of?

Mr. DONALD. He is not the head of any firm. He is a member of the firm of Lockwood, Green & Co., who are mill engineers, really, and who are managers of several concerns.

Mr. BAILEY. And part owners in these concerns that we have mentioned here.

Senator MCKELLAR. You do not recall any others?

Mr. DONALD. I think our firm has doubtless represented other firms of a similar kind.

Senator MCKELLAR. Yes. As a matter of fact, your firm is a large firm and represents a great many of these mills and cotton agents, does it not?

Mr. DONALD. It has, from time to time.

Senator MCKELLAR. It has, from time to time?

Mr. DONALD. I believe I did a small amount of work for the Queen City Cotton Mills last year.

Senator MCKELLAR. Have all these concerns got contracts with the Government?

Mr. DONALD. I have not the slightest idea, Senator.

Senator MCKELLAR. Do you know whether any of them have?

Mr. DONALD. Yes; I think so.

Mr. BAILEY. They all have, unless we have overlooked them.

Senator MCKELLAR. Unless you have overlooked them. Now, why did Mr. Scott want you, a lawyer, to come down here and engage in the cotton goods business?

Mr. DONALD. He asked me to come down and take up the question of the inspection of our goods.

Senator MCKELLAR. When did he ask you to come down?

Mr. DONALD. In January, I think.

Senator MCKELLAR. You came, when?

Mr. DONALD. I came in February, as I recall it.

Senator MCKELLAR. You came as a dollar-a-year man?

Mr. DONALD. No; I have been paid a salary of \$3,500.

* * * * *

Senator MCKELLAR. Whose place did you take?

Mr. DONALD. Mr. Scott's place.

Senator MCKELLAR. You took Mr. Scott's place? You knew that Mr. Scott's resignation had been asked for because of his connection with the various concerns which he had been in business with, did you not?

Mr. DONALD. I understood that was one reason.

Senator MCKELLAR. As a lawyer did you not feel that your coming into the same place, representing all these companies, or in part representing all these companies, would put you in virtually the same position that Mr. Scott had been in before?

Mr. DONALD. I do not understand that I am representing all these companies.

Senator MCKELLAR. You have just testified here to representing a great number of mills, and being the legal representative of Mr. Scott himself, or one of his mills, and you say you came here at his request, and you have taken his place, and my question is that, when you have seen that Mr. Scott was asked for his resignation because of his connection with these various mills with which you say you are connected, would it not have seemed to you—I am just asking this very plainly and very bluntly—that it would put you in the same category as it would Mr. Scott? In other words, if a vice president of Mr. Scott's company, or a man interested just precisely like Mr. Scott was, had come to you and asked you for legal advice, saying that Mr. Scott had just been dismissed from the Government service because he was connected with all these cotton firms, and asked you if you would advise him to take Mr. Scott's place, under those circumstances you would not have hesitated a moment in saying that this other man who was similarly situated would fall under the same ban, would you?

Mr. DONALD. I would undertake to ask him what his connection was. The fact that some cotton mills have in the past employed me to do some legal services for them did not, to my mind, mean that I was at present interested in those cotton mills.

Senator MCKELLAR. Who gave Mr. Scott the right to appoint you in his stead?

Mr. DONALD. Mr. Scott did not appoint me in his stead.

Senator MCKELLAR. Who appointed you in his place?

Mr. DONALD. Gen. Wood, Acting Quartermaster General.

Senator MCKELLAR. All right. Unless you wish to make some other statement I do not believe that there is anything further. I am greatly obliged to both of you.

I now yield to the Senator from Idaho.

Mr. NUGENT. I merely desired to ask the Senator from Tennessee which one of these numerous bills he feels will obviate the objections which he has raised.

Mr. MCKELLAR. The Hitchcock bill, with the amendment of section 3 of the committee's bill, will come nearer doing it than any other, and that is what I propose. I suppose the Senate will perfect both that and the Hitchcock bill. I mean under the rule or under unanimous consent the Hitchcock bill will be perfected and then the committee bill will be perfected. When it comes to the perfection of the Hitchcock bill I wish to offer section 3 of the committee's bill as an amendment to that bill, and with that amendment I am going to vote for the Hitchcock bill, because I think it will come nearer obviating the difficulties I have mentioned.

I want to say that the same objection arises not only in the equipage division and the clothing division but in the dyestuffs division, but it does arise especially in the vehicle division. The testimony shows what has been done in the vehicle division and what has been done in the enamel-ware division, where one concern cut out all the rest of them, and its agent, who was a Maj. McCubbin in the Army, bought all except \$34,000 worth of enamel ware from one concern over in Pittsburgh. Under those circumstances you are just turning over to this great enamel-ware concern the right to settle with its own employees representing the Government.

Mr. CHAMBERLAIN. May I interrupt the Senator? Does the Senator mean to say that any of those representatives are on any of these boards?

Mr. MCKELLAR. I mean to say, for instance, Col. R. W. Lea, as shown by the proof before our subcommittee, is the chief of the vehicle division. He is connected with either the Moline or Studebaker Co., I forget which—the proof will show—and has sent out instructions which I am going to ask leave to insert in the RECORD as a part of my remarks, a letter, by which it appears to me that he instructed the vehicle division how they could best get the most out of their unfinished contract with the Government. I have it not before me, but I will get it and submit it, and ask unanimous consent that it may be inserted as a part of my remarks.

There being no objection, the matter referred to was ordered to be printed in the RECORD, as follows:

[Copy.]

NOVEMBER 5, 1918.

MOTORS AND VEHICLES DIVISION.

VEHICLES BRANCH, O. B. P. & S.

Munitions Building, Washington, D. C.

Cancellation of Escort Wheel Contract, P. O. No. —.

1. It has been found, in the best interest of the military service, necessary to cancel a large portion of the undelivered balance of contracts for Escort wagon wheels; and your contract, as above noted, covering Escort wheels is reduced to — wheels, in accordance with mutual agreement reached with you when you were in the office of the Vehicle Branch at Washington, November —, 1918. The plan of procedure covering this cancellation of — Escort wheels was discussed with you, and an adjustment which will save you from loss in the transaction is to be made substantially according to the following plan:

a. No payment will be made for prospective profits on the canceled portion of your contract.

b. The Government will enter into a supplemental contract with you whereby your original contract is reduced in size by the amount above stated and whereby you will be reimbursed for the following items, upon furnishing satisfactory written statements, certified as correct and checked and approved by Government officers.

2. Those items are allowable only when the expenses are incurred by you in good faith for the performance of the contract and as fairly and properly apportionable to the Escort wheels, delivery of which is now terminated.

a. Expenses of special engineering, plant organization, and miscellaneous indirect items: This item will cover these expenses which may not now be shown as tangible assets, such as the cost of perfecting organization, general engineering expenses incurred in the designing and installation of special equipment acquired, and such other provable items which in ordinary manufacturing experience cause the earlier deliveries on a contract to be less profitable than the later deliveries, by reason of delay in obtaining good production, on account of training of organization required in equipment, increased cost of administration and supervision on account of lack of acquaintance with difficulties, etc. Some firms charge such items to "job cost," in which case certified account can be easily rendered. If such practice is not employed by you, it is very necessary that you scrutinize this item carefully, so that the figures submitted may be supported by the facts gathered through possible later investigation.

Manufacturing experience usually shows that the last part of a contract renders a larger percentage of profit than the first portion of deliveries, large enough in most cases to make up for the smaller profit in the first period of production. As this portion of the contract rendering a more favorable profit is hereby canceled, some recognition of the spread of this indirect expense will be given; but you are cautioned, as stated above, to go into this matter in detail, as profits or losses vary according to the efficiency of concerns, and figures submitted on this item must be irrefutable.

Several contractors in our conference have stated that they would undoubtedly waive this claim, especially those who have been on quite similar wheel production prior to the taking of the contract which is now partially canceled.

The statement covering it, therefore, should be clear, convincing, and supported by actual cost records which you can fully substantiate.

b. Cost of facilities and equipment provided solely for the performance of this contract: This includes machinery and special tools and cost of installing these, dry kilns, buildings and necessary remodeling, and other equipment which falls within the proviso. Those items must be accompanied by a sworn statement covering the cost of all such facilities, item by item, and the statement must be clearly provable by you by original invoices, book entries, or other information submitted. To guide you in the handling of this matter an assumed case is explained below:

For example: Let us state that \$100,000 was spent on the equipment, as covered above, to take care of the manufacture of 100,000 wheels, of which 50,000 wheels are now canceled.

From this total, fully set forth, is to be deducted an amount which can be fairly and properly considered absorbed in the completed portion of the contract. In other words, as you build wheels you gradually absorb the cost of special facilities.

In the assumed case, 50,000 wheels will be built out of the 100,000 wheels for which equipment and facilities were provided. One half the original cost is therefore absorbed, and the difference is \$50,000.

From this amount (difference between original cost and cost absorbed) is to be deducted the appraised value of the facilities. This will be determined by three appraisers—one appointed by the contractor, one appointed by the contracting officers, and the third appointed by those two. This appraised value is ascertained by them—in other words, a salvage value depending upon the value of the facilities to you in your manufacture or their resale value to others or possibly scrap value, is to be deducted. In determining this, it is presumed that the expense of removing the facilities, if this should be necessary, will be considered.

In our assumed case, suppose the appraised value was \$10,000, then the sum remaining is the net compensation due you on account of expenditures made for facilities and equipment provided solely for the performance of your contract.

In this case the difference is \$40,000, and this amount will be paid to you by the Government.

In preparing the tentative statement on this Item B sub b, the appraised value will have to be left blank. When you are ready for the appraisal to be made, the appraiser selected by the contracting officers will be sent to your plant to perform this duty immediately upon notification.

C. Where you have provided in good faith items of material which will be left on hand and which are over and above the materials required in the wheels covered by the reduced contract which you will be allowed to produce, such materials will be purchased by the Government and will become the property of the United States. Such items will be covered by certified invoices and in determining unit value f. o. b. your plant there will be included an additional 10 per cent covering handling charges in and out and any other necessary compensation.

Continuing our assumed case: Say you have on hand 50,000 club turned spokes which cost you 18 $\frac{1}{2}$ cents each at your factory. Part of these are fully finished, part kiln dried, and part green club turned. Assume that the portion of the order that you are allowed to complete consumes all of the finished and kiln-dried spokes and you have left over 16,000 green club turned spokes. You would, therefore, show this item as—16,000 escort wheel spokes, green club turned, cost f. o. b. your factory 18.5 cents each plus 10 per cent handling, 14.85 cents each—for all \$2,376. You will attach to your statement certified invoices showing the purchase and delivery of such quantity at such price.

If it happens that you have material left on hand partially finished by you the labor expended thereon will be shown by proper cost sheets certified to you as correct.

D. Cost to you to cover cancellation of obligations incurred in good faith, covering materials or work provided solely in the performance of the contract. If you have outstanding obligations for materials—hubs, for instance—above those that will be required by your revised contract, you should cancel that obligation at the lowest possible cost to yourself and at no cost if that is possible.

The basis of such a cancellation should be identical to that applied by the Government to you and as explained above. While you are urged to initiate those negotiations at once, you are requested before completing same—where it is necessary to agree to pay money to a subcontractor—to submit your tentative proposition for review by Government officers so that you will not incur an expense which they may later feel not justified in allowing. It is believed that most of these cancellations can be effected at little or no cost.

3. It is advisable for you to make your statements comprehensive and self-explanatory so that they may be acted upon complete and with dispatch and avoid delays in requesting further proofs and information.

4. It is suggested and strongly urged that there be used in the balance of your production, first the most highly manufactured materials so that there will be left over, if any, only the least expensive items as surplus. This is in the interest of conservation of labor and material and will tend to greatly reduce the loss of cancellation to the Government.

5. On account of a careful analysis of the entire stock situation and discussion with manufacturers it was shown that ample materials were already on hand to balance production at all factories and it is therefore assumed that further production of all raw materials has been stopped.

6. If an advance on your contract has been secured by you from the Government, same will in no way enter into cancellation adjustment as such. Most advances will by the end of your deliveries be largely repaid by deductions from invoices according to established plan of handling same. The unpaid balance undoubtedly is represented by surplus materials which the Government will take off your hands or by facilities and equipment of which the unabsorbed cost—less salvage—will be repaid by the Government. The above assumption is made as these loans were provided by the Government for the performance of the

contract they covered and not for materials used in the ordinary course of your manufacture or to retire bank loans then outstanding.

7. The cost of additional dry kilns, whether built on approved applications or not, should be included under B—Facilities and equipment provided by the contractor at his expense solely for this contract.

8. It is requested that you give this matter your immediate, careful consideration, forwarding all papers complete to the Motors and Vehicles Division, Vehicle Branch, Munitions Building, Washington, D. C., at the earliest practicable date.

By authority of the Director of Purchase.

R. W. LMA,
Colonel, Q. M. C., in charge Vehicle Branch.

QUARTERMASTER CORPS.

UNITED STATES SENATE,
SUBCOMMITTEE ON MILITARY AFFAIRS,
Washington, D. C., Friday, October 11, 1918.

The subcommittee met at 2 o'clock p. m., Senator KENNETH MCKELLAR presiding.

Present, Senators MCKELLAR, SUTTERLAND, and JOHNSON of California.
STATEMENT OF MAJ. JOHN C. MCCUBBIN, QUARTERMASTER CORPS, UNITED STATES ARMY.

Senator MCKELLAR. Will you give your full name and title to the stenographer?

Maj. MCCUBBIN. John C. McCubbin, major, Quartermaster Corps.

Senator MCKELLAR. How long have you been a major in the Quartermaster Corps?

Maj. MCCUBBIN. I think it is since the 6th of September.

Senator MCKELLAR. 1917?

Maj. MCCUBBIN. 1918; this past September.

Senator MCKELLAR. When were you first commissioned at all?

Maj. MCCUBBIN. February 1, 1918.

Senator MCKELLAR. As what?

Maj. MCCUBBIN. Captain.

Senator MCKELLAR. When did you come to work for the Government?

Maj. MCCUBBIN. It was August 15, 1917.

Senator MCKELLAR. In what capacity?

Maj. MCCUBBIN. As purchaser of plumbing materials.

Senator MCKELLAR. With what concern were you at the time?

Maj. MCCUBBIN. The Standard Sanitary Manufacturing Co.

Senator MCKELLAR. How long had you been with that company?

Maj. MCCUBBIN. Not quite three years; about, I should say, two years and eight months, I think—two years and seven or eight months.

Senator MCKELLAR. Are you interested in that company?

Maj. MCCUBBIN. No, sir.

Senator MCKELLAR. How were you interested—as a salaried man?

Maj. MCCUBBIN. Salaried; yes, sir.

Senator MCKELLAR. What salary did you get?

Maj. MCCUBBIN. Just when I came into the company?

Senator MCKELLAR. Yes.

Maj. MCCUBBIN. I was getting \$3,000 a year.

Senator MCKELLAR. When did your service with the company cease?

Maj. MCCUBBIN. I think my resignation took effect the 14th, the 14th or the 15th. The matter was handled so quick, I don't know just what day. I know I was at the office one day, and went to work the next, I think.

Senator MCKELLAR. Who called you to come? At whose request did you come?

Maj. MCCUBBIN. Maj. Hamilton's, who was then purchasing agent of the cantonment division.

Senator MCKELLAR. How did you happen to meet Maj. Hamilton?

Maj. MCCUBBIN. I was brought to Washington—my location was changed for the Standard Co., and I was brought up to Washington on account of one of the Washington men being sick here, and the other away on his vacation; and I think the cantonment division then wanted some one to succeed Capt. Maddock, who was looking after the purchasing of material, and through Capt. Maddock, Maj. Hamilton requested that they get some one to take this place, and they communicated with the Washington office of the Standard Co. while I was here, and the commanding officer carried it over to Maj. Hamilton. [Revised by Exhibit 2, p. 611 post.]

Senator MCKELLAR. Did this arrangement have the approval at that time of the Standard Sanitary Manufacturing Co. people? [Revised by Exhibit 2, p. 611 post.]

Maj. MCCUBBIN. So far as I know, it did not.

Senator MCKELLAR. Was Mr. Ahrens down here at that time?

Maj. MCCUBBIN. At the time that I went into the service?

Senator MCKELLAR. When you went into the service.

Maj. MCCUBBIN. No, sir.

Senator MCKELLAR. Has he been here?

Maj. MCCUBBIN. He was here in November, I think, the first time, and he was here in August.

Senator MCKELLAR. What was the name of the first gentleman you mentioned?

Maj. MCCUBBIN. Capt. A. M. Maddock.

Senator MCKELLAR. What position did he hold with the Government?

Maj. MCCUBBIN. He was looking after the purchase of plumbing materials, working in the Government's interest, with the contract that they had with the Government; and at this time the change was made when the Government canceled the Crane & Co. contract, and looked after the purchase of their own material.

Senator MCKELLAR. Are Crane & Co. in the enamelled-ware business?

Maj. MCCUBBIN. They are manufacturers of steam supplies and jobbers of plumbing materials.

Senator MCKELLAR. What became of Capt. Maddock?

Maj. MCCUBBIN. He resigned and went back to civil life.

Senator MCKELLAR. He went back to work for his company?

Maj. MCCUBBIN. Went back to his own company.

Senator MCKELLAR. Is that your purpose when the war is over?

Maj. MCCUBBIN. I do not know where I can go; whether I can go back to the same company or not.

Senator MCKELLAR. Have you any such arrangement?

Maj. MCCUBBIN. No, sir; none whatever.

Senator MCKELLAR. How long did they pay your salary to?

Maj. MCCUBBIN. I think they paid the half month of August, to the date of resignation. The understanding at that time was that I would be there, at most, only 60 days.

Senator MCKELLAR. Have you bought from the company with which you were connected at the time at which you went into the service since you have been in the Army?

Maj. MCCUBBIN. Bought from that company?

Senator MCKELLAR. Yes.

Maj. MCCUBBIN. Yes, sir.

Senator MCKELLAR. To what extent?

Maj. MCCUBBIN. I am unable to give it to you in dollars and cents, it has been a considerable amount of money.

Senator MCKELLAR. Can you furnish us the exact amount?

Maj. MCCUBBIN. We are working on that list now. Col. Willcutt is aving all that matter tabulated and worked up.

Senator MCKELLAR. Have you recently entered into considerable contracts with that company?

Maj. MCCUBBIN. No, sir.

Senator MCKELLAR. When was the last contract?

Maj. MCCUBBIN. We have never made any contract with them outside of that in July, when the blanket orders were made to cover 90,000 closet combinations. That company received a portion of that order; large portion of the 90,000. If I remember right, it was—

Senator MCKELLAR (interposing). How much was that in money?

Maj. MCCUBBIN. I do not know. I did not figure that out.

Senator MCKELLAR. As a representative of the Government, do you not figure out what it costs?

Maj. MCCUBBIN. So far as my work on that end was concerned, I only compare and compile it, and that is submitted to what we call the board of review that is appointed by the general purchasing agent of Gen. Cole's division, and it is all submitted to them, the tabulation and all, for their approval. The total amount of the 90,000 was figured out, but for the different companies; what each of the different companies had was not figured. (Revised by Exhibit 2, pp. 611-612 post.)

Senator MCKELLAR. Did you take bids on this?

Maj. MCCUBBIN. Yes; bids were taken on those 90,000 closets and tabulated.

Senator MCKELLAR. Have you the bids with you?

Maj. MCCUBBIN. Not with me, but they are at the office.

Senator MCKELLAR. Will you make them exhibits to your testimony? I want the bids that were made by the companies.

Maj. MCCUBBIN. Yes, sir.

Senator MCKELLAR. Was this Sanitary Co. the lowest bidder?

Maj. MCCUBBIN. Five or six of them were low bidders on the entire order.

Senator MCKELLAR. Did they get it all?

Maj. MCCUBBIN. No, sir; they only had one part of it.

Senator MCKELLAR. How much of it did they get?

Maj. MCCUBBIN. They had, I imagine, roughly speaking, approximately speaking, one-third of the amount.

Senator MCKELLAR. What proportion of all the work has gone to this company since you have been in the employ of the Government as purchasing agent of this particular kind of material?

Maj. MCCUBBIN. Enamelled ironware?

Senator MCKELLAR. Yes.

Maj. MCCUBBIN. I imagine, I should think, 6 per cent. Between 50 and 65 per cent.

Senator MCKELLAR. What other concerns have gotten any at all?

Maj. MCCUBBIN. The United States Sanitary Manufacturing Co.

Senator MCKELLAR. Who represents that company?

Maj. MCCUBBIN. The Washington representative, you mean?

Senator MCKELLAR. Yes.

Maj. MCCUBBIN. They have none here at all.

Senator MCKELLAR. Is not Mr. Arrott connected with it?

Maj. MCCUBBIN. Mr. Arrott is president of that.

Senator MCKELLAR. How much has he gotten?

Maj. MCCUBBIN. I am unable to say on that.

Senator MCKELLAR. Was it a large or small amount?

Maj. MCCUBBIN. In comparison, I should judge with the total ordered, it would be a small amount. Do you wish the names of some of the others on that?

Senator MCKELLAR. What others did you give any to?

Maj. MCCUBBIN. There was the Kohler Co., of Kohler, Wis.; the Iron City Sanitary Manufacturing Co., of Pittsburgh.

Senator MCKELLAR. You do not remember how much they got?

Maj. MCCUBBIN. No, sir. That is what we are working up now, to get the exact number of orders and the tabulation, and all on that.

Senator MCKELLAR. There is not any trouble about it, is there? Have you not got books that show it?

Maj. MCCUBBIN. No; it is just the compiling of the records, and getting them all together. Col. Willcutt's order was to go back to the beginning and get the whole information up.

Senator MCKELLAR. Who is the representatives of the Standard here?

Maj. MCCUBBIN. In Washington?

Senator MCKELLAR. Yes.

Maj. MCCUBBIN. Mr. George Herth, Jr.

Senator MCKELLAR. What are your relations with Mr. Herth?

Maj. MCCUBBIN. No relation whatever.

Senator MCKELLAR. Are you good friends?

Maj. MCCUBBIN. Yes, sir.

Senator MCKELLAR. What is the degree of relationship, so far as friendship is concerned?

Maj. MCCUBBIN. That is all; only no more than friendship. We have known each other for a number of years.

Senator MCKELLAR. Do you wish to leave it that way? Because I am going to investigate it rather carefully and I do not want to mislead you at all. Are not those relations very close and intimate?

Maj. MCCUBBIN. Very friendly.

Senator MCKELLAR. Are they not unusually close and intimate?

Maj. MCCUBBIN. I would not think any more than some other friends I have got.

Senator MCKELLAR. How often do you meet?

Maj. MCCUBBIN. I see him probably three or four times a week.

Senator MCKELLAR. Oftener than that?

Maj. MCCUBBIN. No, sir.

Senator MCKELLAR. Do you take lunch with him pretty nearly every day?

Maj. MCCUBBIN. No, sir.

Senator MCKELLAR. Quite frequently?

Maj. MCCUBBIN. I have, until we were notified to stop.

Senator MCKELLAR. That is since this investigation was started?

Maj. MCCUBBIN. It was before then.

Senator MCKELLAR. That you were notified to stop—before this investigation began?

Maj. MCCUBBIN. No; before that.

Senator MCKELLAR. When were you notified before that?

Maj. MCCUBBIN. I think it has been, offhand, about six or eight weeks ago.

Senator MCKELLAR. Who notified you?

Maj. MCCUBBIN. Col. Willcutt.

Senator MCKELLAR. How did he happen to notify you that your relations with this man were—

Maj. MCCUBBIN. It was not particularly to one. It was a general order that was made—that was announced to us at a general meeting that we have at the close of the week, that we were told.

Senator MCKELLAR. What other representative of a company had you been intimate with before that?

Maj. MCCUBBIN. I have known Mr. Cline, of the United States Sanitary Manufacturing Co., for quite a number of years, and also Mr. Arrott.

Senator MCKELLAR. Are your relations with either of those gentlemen intimate, like they are with Mr. Herth?

Maj. MCCUBBIN. No, sir. I do not come in contact with them.

Senator MCKELLAR. Is there anything about your relationship with those two that would make your commanding officer issue an order in regard to them?

Maj. MCCUBBIN. That order was for everybody. It said, "any vendors whatever"—everybody in the office, that order was issued to. I might say that I have known Mr. Herth—both of us were very close friends before either of us went with that company.

Senator MCKELLAR. And since you have been here with the Government that relationship has been continued, and in the purchases you have made you have given your old company most of the business, have you not?

Maj. MCCUBBIN. The only business they got, the prices were low, or they had the service or delivery of material.

Senator MCKELLAR. Were they always the lowest?

Maj. MCCUBBIN. If the prices were not always equal, we always found the shipment conditions better, or the location of some of the plants—

Senator MCKELLAR. Was that the only instance? When you found the prices of others lower, is it not true that you, having been with that company, and having been on such intimate relations with its officers, you always found that, other things being equal, there was something else?

Maj. MCCUBBIN. I did not let that interfere at all, Senator.

Senator MCKELLAR. If you did not, why is it that all of the other companies, who have not been getting the business, feel so very much aggrieved? You having been the representative of this company up until the day you went into the Army, and since you have been in the Army having been in the most intimate personal and official relationship with the representative of this one company, and the other companies not getting any of the business, are you surprised that they feel somewhat aggrieved that you are showing great favoritism toward your old company?

Maj. MCCUBBIN. From the information I have got I do not blame any of them for making complaint. As I understood, the representative of the Standard Co. told them that they had received a tremendous big order which they did not even have the opportunity to bid on. (Revised by Exhibit 2, p. 612, post.)

Senator MCKELLAR. I will now ask you about that. Did you buy for the housing contracts?

Maj. MCCUBBIN. No blanket contract order has been placed for the housing at all, except for the closet combinations.

Senator MCKELLAR. That is not the question I asked you. We will get along better and much faster if you will just answer my questions.

Maj. MCCUBBIN. That is what I want to do.

Senator MCKELLAR. I do not mean to say that you mean not to. I am going to be very frank and very direct with you in my questions, and I want your answers in the same way, and I am sure you will give them to me since it has been called to your attention.

My question is, Are you buying for the housing?

Maj. MCCUBBIN. Yes, sir.

Senator MCKELLAR. Are you buying under written contracts?

Maj. MCCUBBIN. No, sir.

Senator MCKELLAR. Are you just placing your orders with the Standard Co. for those contracts?

Maj. MCCUBBIN. No, sir; we are placing with the others, too.

Senator MCKELLAR. Which ones have you placed orders with for the housing?

Maj. MCCUBBIN. With the Sanitary Manufacturing Co.

Senator MCKELLAR. How much?

Maj. MCCUBBIN. They made a price here about 2 weeks or 10 days ago, which put their price lower, and since then they have had all of the enamelled-ware business.

Senator MCKELLAR. How long ago was that; when?

Maj. MCCUBBIN. About two weeks ago.

Senator MCKELLAR. Will you give the exact date?

Maj. MCCUBBIN. I can give you the exact date on that.

(The witness later stated the date to be September 28, 1918.) (See Exhibit 2, p. 612, post.)

Senator MCKELLAR. Now, Major, I am a perfectly frank man. You remember that this examination took place on September 25, just a little more than two weeks ago. I want to ask you if the only reason that you gave this other company one order was because these gentlemen complained to our committee, and it was developed for the first time that you were placing practically all the orders with your old company, and with your friend, and that therefore this other company got that order; is that correct?

Maj. MCCUBBIN. No, sir. I can get you the exact date. Mr. Kelly and Mr. Meyers of the Iron City Sanitary Co. came to the office and called, and asked if we had placed any blanket orders, if we had covered for all of the enamelled-ware business, and I told him no, we had not; that we did not have our requirements. He asked if it was too late for him to submit prices. I told him no, he could submit prices any time.

Senator MCKELLAR. Will you kindly answer this question: You and I are comparatively young men and have our lives largely before us.

Maj. MCCUBBIN. Yes, sir.

Senator MCKELLAR. Do you think that in passing upon the bids or quotations of these 12 or 14 enamelled-ware companies that are asking for the Government business, in view of your long association with the Standard Co. and your knowledge of that company, in view of the intimate relationship that exists between you and Mr. Herth, the representative of that company, you can be absolutely fair and impartial toward all those concerns in buying for the Government? Now, just as man to man, heart to heart, is it not the very essence of human nature that you would give your own company, the company of your friend, the company that you have been employed by a long time and you know so well, the best of it? Now, is not that correct?

Maj. MCCUBBIN. No, Senator; I can not say that I let that interfere at all. It was not my intention of doing anything of that kind.

Senator MCKELLAR. Whether it was the intention or not, you know that we naturally feel very kindly toward our own?

Maj. MCCUBBIN. Yes.

Senator MCKELLAR. Will you furnish the prices at which all the goods that have been bought by you from the United States Sanitary Manufacturing Co. were purchased, the names of the articles, and the prices paid?

Maj. MCCUBBIN. That report is being made up now for Gen. Marshall to submit to you, I am pretty sure.

Senator MCKELLAR. Gen. Marshall told you, of course, about the complaints that had been made against you?

Maj. MCCUBBIN. Col. Wilcutt told me this. I was called to Gen. Marshall's office this morning, and he told me to come up here, that you wished to see me.

Senator MCKELLAR. Had you never talked with Gen. Marshall about it before?

Maj. MCCUBBIN. No, sir.

Senator MCKELLAR. It was only from Col. Wilcutt?

Maj. MCCUBBIN. Yes; Col. Wilcutt.

Senator MCKELLAR. Col. Wilcutt told you that Gen. Marshall had called his attention to this testimony?

Maj. MCCUBBIN. He said that Gen. Marshall had received word from you, I believe—I do not remember how he said that the word came to him.

Senator MCKELLAR. Have you let any contracts since that time?

Maj. MCCUBBIN. No, sir.

Senator MCKELLAR. How much stuff have you got contracted up to date?

Maj. MCCUBBIN. On contracts?

Senator MCKELLAR. What is the extent of your contracts with the Standard Co. now?

Maj. MCCUBBIN. The only contract we have with them is for some closet tanks and bowls.

Senator MCKELLAR. To what extent is that?

Maj. MCCUBBIN. I imagine that they have on hand, on a rough estimate, maybe about 10,000 bowls and probably about 10,000 or 12,000 tanks. That is the only contract that they have.

Senator MCKELLAR. There is no question about the capacity of these concerns to furnish these goods? There was active competition, was there not?

Maj. MCCUBBIN. Yes, competition. We have placed orders with some Senator, and they turned them down.

Senator MCKELLAR. Which ones turned them down?

Maj. MCCUBBIN. The United States Sanitary Manufacturing Co., the Cahill Iron Works, and the Kohler Co.

Senator MCKELLAR. When did the Cahill Iron Works get a contract?

Maj. MCCUBBIN. I have got the date of that here. That order was made on July 19.

Senator MCKELLAR. Do you not think that the Government ought to have a man buying these enameled goods who is totally disassociated from all of the various companies?

Maj. MCCUBBIN. In purchasing, Senator, I do not see that that would have any connection at all with that.

Senator MCKELLAR. Considering the fact that you had been the representative of the largest enameled ware company of them all, and yourself on the most intimate terms, as you have testified about, with the Washington agent of that concern, and in view of the order which Col. Wilcutt has heretofore given in relation to your association with any representatives of any firms that were selling to the Government, do you not think that, looked at from the Government standpoint and not from your standpoint, a man with a knowledge of the business, but disassociated from all these supply firms, would be much better for the Government's interests?

Maj. MCCUBBIN. I think that if I had the direct placing of the orders, or authority to place orders, that question should be brought up and changed, but I have no authority to do that.

Senator MCKELLAR. You place the orders in the first instance.

Maj. MCCUBBIN. Yes.

Senator MCKELLAR. Who places them?

Maj. MCCUBBIN. I only make the recommendations.

Senator MCKELLAR. Has any recommendation of yours ever been turned down?

Maj. MCCUBBIN. No, sir; I can not say that it has.

Senator MCKELLAR. Then, if you recommend them and none of them has ever been turned down, does not that make you really the placer of the orders—give you the power to place the orders?

Maj. MCCUBBIN. They are all furnished in the tabulation of the bids, and it goes to the board of review.

Senator MCKELLAR. I understand that, and I am perfectly familiar with these boards of review.

Maj. MCCUBBIN. Yes, sir.

QUARTERMASTER CORPS.

UNITED STATES SENATE,
SUBCOMMITTEE ON MILITARY AFFAIRS,
Washington, D. C., Friday, November 16, 1918.

The subcommittee met, pursuant to the call of the chairman, at 10:30 o'clock a. m., in room 248, Senate Office Building, Senator KENNETH D. MCKELLAR presiding.

Present, Senators MCKELLAR (chairman), SUTHERLAND, and JOHNSON of California.

There appeared before the committee Mr. Theodore Ahrens, president of Standard Sanitary Manufacturing Co., accompanied by Mr. Francis J. Torrance and Mr. George Herth, Jr.

STATEMENT OF MR. THEODORE AHRENS, PRESIDENT OF THE STANDARD SANITARY MANUFACTURING CO.

Senator MCKELLAR. Your name is Theodore Ahrens?

Mr. AHRENS. Yes, sir.

Senator MCKELLAR. You desire to tell the committee something about the Standard Sanitary Manufacturing Co.'s contract with the Government, and if you desire you can just go ahead and say what you like.

Mr. AHRENS. I will be very glad to do that, Senator, but I would like to ask first whether you would care to tell me just generally what these charges are in which we are implicated. We have never seen any written charges of any kind. All we have heard about it is hearsay.

Senator MCKELLAR. Did you see the testimony of Maj. McCubbin?

Mr. AHRENS. No, sir.

Senator MCKELLAR. The substance of the complaint made is that Maj. McCubbin, now in the Construction Division, I believe, of the Quartermaster Corps, was formerly your employee; that he came from your office into the Army and was immediately given the position of

purchaser of plumbing supplies and enameled ware supplies, which your company is engaged in selling, and that he has since that time virtually bought the greater part of such supplies from your company; that he was constantly in company with Mr. Herth, your "agent" here, taking lunch with him virtually every day until he was directed by his superior officer not to do so; that the other 13 or 14 manufacturers of these supplies were thus frozen out of any participation in the Government's business, and that your company had access to the plans of the Government and that when quotations were asked for, Maj. Cubbin very promptly informed your company of the quotations of others, and that you thereupon gave a lower quotation in the particular instance in order to get the business, and that you had yourself boasted at a public meeting somewhere—I have forgotten where—that you had a contract of 25,000 bathtubs, and probably other paraphernalia to go with them, and that on January 1, 1919, under orders of the War Industries Board, you having the only contract with the Government, all others of your competitors would be unable to get iron for the manufacture of this enameled ware, and in that way Maj. McCubbin would put all the rest of your competitors out of business and leave you with the only good business in the country. Now, that is about the substance of the testimony, as I recall it.

Mr. AHRENS. May I just answer that in my own fashion the best way I can?

First, I admit that Maj. McCubbin—formerly Capt. McCubbin—was in our employ before he went to work for the Government. We, like other manufacturers and business concerns, were asked to submit names of our people to the Government when the Government required such men. We did not submit Mr. McCubbin's name. My partner, Mr. Torrance, recommended a man from Pittsburgh, but Mr. McCubbin's name was submitted among a number of applicants and picked out by whoever the commanding officers were that had that matter in charge. Mr. McCubbin was endorsed by Capt. Archibald Maddock, his predecessor in the office, a prominent pottery manufacturer in our line, who had the position that Mr. McCubbin occupied, but who had to give it up; and he, in fact, was instrumental in having Mr. McCubbin appointed or recommended him.

As to our getting a very large part of the business that Maj. McCubbin had to place, that may be true. I do not know how much Maj. McCubbin placed, all told, or what the total volume of it is—I have no figures—but we did furnish the Government a very large quantity of plumbing materials of all kinds, and enameled ironware, brass goods, pottery, and other plumbing material that we manufacture.

The reason, Senator MCKELLAR, why we secured this business and why we got the larger part of it is contained in this sentence, that as the largest producers in our line, with a better organization and better distributing facilities, we were in a position to render the Government better service, and did so. Let me also give you this statement, that our prices were always right and in many instances lower than those of other manufacturers. Other manufacturers, in discussing Government business, have complained to us that our prices were too low. They told us this. Other manufacturers refused business—among them particularly the Cahill Iron Works, of Chattanooga, and the Standard Sanitary Co., of Pittsburgh—at prices which we were willing and glad to accept.

You know, Senator MCKELLAR, that during these strenuous times this year, when the Government and everybody working for the Government had to exert every effort in their power to get deliveries to the Government promptly, the deliveries were of great importance. Deliveries of the larger quantities of material required by the Government could be made by us and could not be made by the other manufacturers.

Now, I would like to get this point strong, because it is a vital point. The other manufacturers were utterly unable to handle the Government business, because it came in such volume and in such short time that only my company's organization was then able to handle it, and if any other man had sat in Maj. McCubbin's chair and had had these orders to give we probably would have gotten from them about as much as Maj. McCubbin gave us. To illustrate that, let me say that in the Quartermaster Corps at Jeffersonville, Ind., which he has nothing to do with at all, we have been all of this year getting as large a percentage of the business as Maj. McCubbin gave us here.

Senator MCKELLAR. That is under Col. W. S. Woods.

Mr. AHRENS. That is under Col. W. S. Woods. That is under the commanding officer in charge there; and that has nothing to do with it, but our Louisville branch has sold many thousands of dollars' worth of goods to that department at Camp Taylor and elsewhere. We have been furnishing the great bulk of all the goods required.

At the nitrate powder plant at Nashville our Nashville house has furnished hundreds of thousands of dollars' worth of goods, none of which Maj. McCubbin had anything to do with.

As we came up here, Senator, Mr. Herth pointed out a large lot of buildings around here, dormitories the Government is putting up for war workers, a lot of them, and he said that we have furnished every plumbing fixture in every one of these dormitories, and Maj. McCubbin had nothing to do with it. It was purchased by the contractor through a local jobber.

One more point that I think ought to be brought out. We have been of great service to the Government. We have saved the Government many thousands of dollars in preventing the price of enamel ironware and other plumbing fixtures going beyond reasonable limits. Our books are open for your inspection; you can see that at the price we are working there is not any more than reasonable profit.

I want to say particularly about those complaining manufacturers that we have monthly meetings, in which we meet together and discuss particular conditions, and they have repeatedly come to me and complained of the fact that the prices at which we were selling to the Government were too low, and that we ought to advance these prices. We do not think so. We can furnish you written evidence on that point that will corroborate what I say. Now, I believe I have in substance answered the complaints as near as I can do so.

Pardon me, there is just one more thing, as to this order in question that I was supposed to have been boasting about. The matter came up when I was called here to attend a meeting at Mr. Humphreys' of the building material section of the War Industries Board, at the New Willard Hotel, a meeting of manufacturers in our line. At that meeting, at which I was asked to preside, Mr. Humphreys called particular attention to the fact that the Government wanted to deal with first hands only—that is, the manufacturers—and not through jobbers or any middlemen, and that the Government had this enormous housing program in view, about 60,000, 80,000, or 100,000 houses that they might have to have for war workers, and that the

Government would have to place that directly with the manufacturer, and only with such people as could give prompt service.

After that meeting I called on Maj. McCubbin, then Capt. McCubbin, with Mr. Humphreys. I had never met McCubbin in his office before, and had only met him once here before, outside of that, since he was appointed, and I asked McCubbin whether any such housing program was in view, and McCubbin said it was. He said that his department might place an order in the very near future for anywhere from thirty to sixty thousand sets of plumbing fixtures, which would be a bathtub, a water-closet, a kitchen sink, and lavatory. That was called a set. Of course that was a very large order, and I was very anxious to get a proportionate share of it for my company. I discussed this matter at some length—probably an hour, maybe longer—and urged Maj. McCubbin to place the order at once, because in the condition that our business was in at that time, the labor supply being very uncertain and the wages advancing continually, we had in mind to advance our prices generally to everybody, including the Government, because our cost was going up all the time; but I said to Maj. McCubbin that if the Government could place an order of that size and we could get our proportion of it, that would enable us to reduce our cost, and we would have to take the order at the price ruling at that time. Figuring that there were going to be 60,000 sets of fixtures needed, I could not see that we ought to get less than half of that, because we had always, for the last five years, as the records of the trade show, done 50 per cent of this work. That is a well-known fact. Our competitors admit that and state that themselves. So that I told McCubbin that I thought that we could handle 25,000 sets of these fixtures. We got no definite order or promise from Capt. McCubbin that such an order was placed with us or would be placed with us, but the captain did say to me that he believed such an order would be placed in the near future, and that we would get our share of it; that, however, these orders would have to first be confirmed by O. K'd by the board of review, I think he called it; in other words, that we could not consider it an order until we had a definite order in writing.

Now, I made a mistake, Senator, in going back to Pittsburgh and saying to this meeting of the manufacturers that I had such an order, as I had no order or my company had no order from the department for any such amount of fixtures at that time. We were getting business, however, every day from them. My reason for making the statement at the meeting was this, that owing to the unsettled condition of business for the last 18 months, the manufacturers had been reporting to the Secretary every month the total number of orders they received, the total number of shipments they made, and the general condition of their stocks, enough so that we would have an intelligent idea of the business of the United States in our line. Now, as to my reason for advising the other manufacturers that we had this order: As I say, I made a mistake in taking it for granted that we had this order, but I felt pretty sure from the general condition, knowing what I did about the general condition of the building in our line, that I would get that portion of the order. In fact, an order of that size could not have been filled without our support, without our taking part of it. My reason for saying and reporting on this order was that I wanted to give the other manufacturers an idea of what was coming, and I said at the meeting that the housing program that the Government had in contemplation was for about 60,000 sets of fixtures, and that Maj. McCubbin had told me he expected to distribute the order around among several manufacturers.

I also stated at the meeting, however, Senator, that we had no formal or written order, that the order would have first to go through its proper channels and be O. K'd before we would consider it an order.

Senator MCKELLAR. Is there anything else that you wish to say?

Mr. AHRENS. No, sir; I think that covers pretty well all I would like to say.

Senator MCKELLAR. Did you consider that Maj. McCubbin had given you this order or not?

Mr. AHRENS. I did consider—

Senator MCKELLAR. Yes; that he had given you the order.

Mr. AHRENS. I believe, while the major—he was then Capt. McCubbin—did not definitely give me an order, that I would get an order of approximately that size; yes, sir. I felt so from the conversation.

Senator MCKELLAR. As a matter of fact, Maj. McCubbin had given you a verbal order for it?

Mr. AHRENS. Not in so many words. That is, he explained to me that an order, to be an order, would have to first go through the regular channels and be approved by his superior officer.

Senator MCKELLAR. Did you advance the price?

Mr. AHRENS. No, sir; we did not advance the price that was fixed.

Senator MCKELLAR. Did you, when you told your associates in the meeting at Pittsburgh—that is where it was, at Pittsburgh?

Mr. AHRENS. Yes.

Senator MCKELLAR (continuing). The other manufacturers—did you tell them at the same time that the prices would be advanced on these sets?

Mr. AHRENS. No, sir—on this order?

Senator MCKELLAR. On this order.

Mr. AHRENS. No, sir. I told them that we expected to take that order at the prices then ruling.

Senator MCKELLAR. It is claimed that after securing this alleged verbal contract your company advanced the price to the Government and informally told the other manufacturers that this price would be advanced, and you would later give the other manufacturers a memorandum of the new prices. Did you do that?

Mr. AHRENS. We did not advance our prices to the Government.

Senator MCKELLAR. Did you give the other manufacturers a memorandum of these new prices?

Mr. AHRENS. I could not answer that; no, sir. I did not know.

Senator MCKELLAR. Did you have a memorandum yourself?

Mr. AHRENS. Personally; no, sir.

Senator MCKELLAR. Then do you not know whether a memorandum of the new prices was given them or not?

Mr. AHRENS. Whether a memorandum of the new prices we proposed to make to the Government was given them?

Senator MCKELLAR. Yes.

Mr. AHRENS. Whether that was given to them or not?

Senator MCKELLAR. Yes.

Mr. AHRENS. I could not answer; no, sir.

Senator MCKELLAR. As a matter of fact, have you seen such a memorandum as that?

Mr. AHRENS. Personally, no, sir.

Senator MCKELLAR. Do you know whether such a memorandum was in fact prepared?

Mr. AHRENS. No, sir; I could not say. But, Senator, I would like to say again that we did discuss at that time the question of advancing prices and—

Senator MCKELLAR. Well, it was entirely up to you as to whether or not the prices would be advanced? Maj. McCubbin just simply agreed to any price that you made, did he not?

Mr. AHRENS. No, sir; my understanding was that Maj. McCubbin got prices from enameled ware manufacturers—different manufacturers—and if our price was right we got our share of the business.

Senator MCKELLAR. I will ask you whether or not Maj. McCubbin told you that he expected to turn over all this business to you?

Mr. AHRENS. He emphatically did not. He emphatically did not, Senator. Maj. McCubbin told me that on this large order in question he expected to split it up between several manufacturers. I never made a statement at the meeting that we had taken an order for 25,000 sets of plumbing fixtures.

Senator MCKELLAR. What did you state at that meeting?

Mr. AHRENS. I said that we had an order from the Government for a very large quantity of plumbing fixtures for that housing proposition.

Senator MCKELLAR. That you had a contract for a very large quantity?

Mr. AHRENS. Yes; or words to that effect.

Senator MCKELLAR. All right, sir.

Mr. AHRENS. And I want to repeat, Senator, that I made a mistake in stating that we had an order before we had a real order—a written order.

Senator MCKELLAR. When was that?

Mr. AHRENS. Well, I am somewhat shy on dates.

Senator MCKELLAR. August or September?

Mr. AHRENS. Can you supply the date, Mr. Herth?

Mr. HERTH. The date of the meeting at the Willard Hotel that Mr. Humphreys held was August 27, so that it must have been after that. I think you left Washington on the 28th.

Senator MCKELLAR. It was probably about a week later?

Mr. AHRENS. Probably September 5.

Mr. HERTH. It must have been in September, some time.

Senator MCKELLAR. At that time you did not have this contract?

Mr. AHRENS. No, sir.

Senator MCKELLAR. You never entered into a contract after that time for these bathtubs and sets?

Mr. AHRENS. No, sir; we never received any such contract.

Senator MCKELLAR. Now, you have testified exactly to the contrary about that, have you not?

Mr. AHRENS. Contrary? What is contrary to that?

Senator MCKELLAR. I now call your attention to a photographic reproduction of an affidavit, apparently made by you and sworn to by you on the 25th day of September, 1918, and I will get you to see whether that is a photographic copy of your affidavit and signature.

Mr. AHRENS (after examination of paper). Yes, sir.

Senator MCKELLAR. Now, if you will look at that, you will find where you distinctly state that you have a contract for 25,000 enameled bathtubs, 25,000 enameled roll rim sinks, 25,000 enameled washstands, and you have just testified that you did not have such a contract?

Mr. AHRENS. Senator, I believed at the time I signed that affidavit that I did have it, or that the order would be ours in a few days. Now, might I say here that we have had similar transactions with the Government. For instance, we have a shell contract with the Government on which we did not receive any order—that is, any formal contract—for months after we started on it; but we went ahead on it.

Senator MCKELLAR. Then you are unavoidably driven to this conclusion, are you not, that the only way on earth in which this affidavit could be explained, in view of your present testimony, is that you were so absolutely sure that Maj. McCubbin would do whatever he was told to do in reference to letting these contracts that you considered it as made?

Mr. AHRENS. I felt so certain at the time that I signed that affidavit that the order would be placed—that the housing order would be placed—and that we would get that portion of it that I took that for granted. It was a mistake on my part and a mistake that I regret very much.

Senator MCKELLAR. Why was this affidavit given?

Mr. AHRENS. This was gotten up for the purpose of enabling some of our people whom we wanted to retain in the company—in the manufacturing end of our business—to claim exemption from military duty.

Senator MCKELLAR. Did you get exemptions for them on the faith of this affidavit?

Mr. AHRENS. I do not think so. I do not know that it was used.

Senator MCKELLAR. Were any of them released?

Mr. AHRENS. It may have been used, but I do not know that any of our people ever obtained releases on that.

Senator MCKELLAR. However, it was filed with the Provost Marshal General's office for that purpose, was it not?

Mr. AHRENS. It may have been in some instances. I am not certain; but I do not know that it was used to any extent. But it was made for that purposes—that is, it was gotten up for that purpose.

Senator MCKELLAR. If you had been given a contract for these plumbing fixtures, consisting of bathtubs and sinks and water-closets and lavatories, and none of the others, none of the competitors, had been given any such contracts, or any Government contracts at all, under the priority orders of the War Industries Board permitting iron to be used for this purpose only by those who had Government contracts, that would have put all other enameled-ware manufacturers out of business, would it not?

Mr. AHRENS. No, sir; not as I understand it. It would not have put them out at all.

Senator MCKELLAR. How could they have gotten the iron?

Mr. AHRENS. There were lots of other Government departments purchasing these same supplies; and the other manufacturers have not been put out of business at all, Senator. The best evidence of that is that for all of this year and during all the period when we supplied to the Government a considerable quantity of plumbing material, these other manufacturers obtained a proportionately large share, just as large a share, of business from the rest of the United States.

Senator MCKELLAR. Now, let us see if that is correct or not. I have before me here a statement of the shares of this particular business, which shows that the Standard Sanitary Manufacturing Co.—is that your company?

Mr. AHRENS. Yes, sir.

Senator MCKELLAR. Was given \$387,311.92; the United States Sanitary Manufacturing Co. was given \$20,353.78; the Kohler Co. was given \$9,311.30; the J. A. Mott Iron Works, \$15,226.36.

This would indicate that, in round numbers, your concern got \$387,000 worth of this particular business and all the other concerns together got \$44,000 worth. In other words, your concern got about 90 per cent, just speaking roughly, under the control of Maj. McCubbin, who had been in your employ and who was, as shown by his own testimony, and has been, so closely connected with your company since he has been in the employ of the Government. Can you wonder that under those circumstances, when these other gentlemen were confronted with the priority order under which your company would be allowed to get iron for your needs because you had Government contracts secured in this way, and where they could not get iron because they had no Government contracts—can you wonder that they felt in very great fear that their business was going to be absolutely ruined and taken away from them, and that through this means of Government procedure, carried on by Maj. McCubbin, who had been in your employ, your business would be built up at the expense of theirs? Now, can you wonder that they complained? Just look at it as man to man.

Mr. AHRENS. Yes, Senator, if those were the whole facts in the case you would be absolutely right, but they are not. The business placed by Maj. McCubbin was only a small part of the business that was being placed at that time. My answer to your question is that the other manufacturers during this same period have sold more ware than we sold to the Government. In other words, they got their full proportion of the business; and, what is more, and I think this should have some weight, they got it at better prices than we were getting from the Government.

Senator MCKELLAR. What profit did your concern make? What is your capital and what profits have you made on your capital within the last year?

Mr. AHRENS. Why, our capital is about \$17,000,000; \$16,000,000 in round numbers on the 1st of January, I think you had better say, and on that we showed about \$2,225,000 profit, net, last year.

Senator MCKELLAR. How much will it show this year?

Mr. AHRENS. Our profits this year, counting in our entire business, will show probably a half a million dollars more than that.

Senator MCKELLAR. What was the amount of orders; at what price were these 25,000 sets of plumbing fixtures sold? Speaking roughly, what was the cost of them, each?

Mr. AHRENS. Can you supply that, Mr. Herth?

Mr. HERTH. The price on bathtubs at that time, as near as I can recall, was \$19.25.

Senator MCKELLAR. And the other three items, how much were they?

Mr. AHRENS. Pardon me, Senator, may I interrupt you just a minute?

Senator MCKELLAR. Yes.

Mr. AHRENS. I said there were four items, but the water-closet was not to be considered. There are really only three features. These are enameled iron fixtures.

Senator MCKELLAR. The bathtub is \$19.25?

Mr. HERTH. I could not state exactly, Senator.

Senator MCKELLAR. Approximately?

Mr. HERTH. The lavatory was around \$7; approximately \$7. We had a price on one at \$8.65, or it might have been \$7.04.

Senator MCKELLAR. What is that?

Mr. HERTH. That is the lavatory. Then the sink, I think, was approximately \$9; \$9.25 or \$8.75.

Mr. AHRENS. Altogether, about \$34.

Senator MCKELLAR. About \$34?

Mr. AHRENS. Yes; and it would be twenty-five times \$34 for the contract. That would be about right; \$850,000, I think.

Senator MCKELLAR (after making calculation). That would be about \$850,000?

Mr. AHRENS. May I say one word more there, Senator?

Senator MCKELLAR. Certainly.

Mr. AHRENS. The largest order we received from the Government was not through Capt. McCubbin, but through his predecessor.

Senator MCKELLAR. Who was he?

Mr. AHRENS. Capt. Maddock.

Senator MCKELLAR. Did he ever work for you?

Mr. AHRENS. No; he was a prominent manufacturer in Trenton, N. J., and he is a competitor of ours, Senator, and he placed that order with us because we know that he could give service, and service was of paramount importance at that time.

Senator MCKELLAR. What average profit did you make on these goods?

Mr. AHRENS. We never took this order, or it was never filled—do you mean what average do we make on the enameled ware we sell?

Senator MCKELLAR. Yes; to the Government.

Mr. AHRENS. About 15 per cent; possibly 20 per cent; not over that. But in saying that we should bear in mind the fact that we have got to pay income taxes and excess-profit taxes out of that, and a very large share of it goes back to the Government.

Senator MCKELLAR. There never has been a contract made about these plumbing fixtures, has there?

Mr. AHRENS. No, sir.

Senator MCKELLAR. Have any of them been actually bought from you?

Mr. AHRENS. Have what?

Senator MCKELLAR. Have any of them been actually bought from you by piecemeal?

Mr. AHRENS. We have, no doubt, since that time furnished similar goods to the Government. Mr. Herth can answer that better than I can.

Senator MCKELLAR. Mr. Herth, will you just be sworn, please, sir?

(Mr. George Herth was here sworn by the chairman.)

Senator MCKELLAR. Will you state whether or not you have sold to the Government any of these goods through Maj. McCubbin—any of these 25,000 sets?

Mr. HERTH. You mean, that applied on the contracts we have?

Senator MCKELLAR. It does not make any difference whether they applied on those contracts.

Mr. HERTH. Oh, yes; we have sold some fixtures to the Government.

Senator MCKELLAR. How many?

Mr. HERTH. I could not tell you that.

Senator MCKELLAR. Can you give an approximation as to how many?

Mr. HERTH. Oh, yes; we have sold some; there is no question about it, we have sold them some. The question is this, how many of these fixtures were bought after all this controversy. That is the idea, is it not?

Senator MCKELLAR. Yes; in other words, it is charged, with how much truth I do not know, that when Maj. McCubbin found that he could not hand the entire contract of 25,000 sets of fixtures for plumbing, he then proceeded to buy as many as he could by piecemeal from your firm, without giving the other people any chance to bid on them at all.

Mr. HERTH. Yes; I will be very glad to give you the number of fixtures.

Senator MCKELLAR. Yes. Now, do you know whether or not you have had any written request for quotations about that since the 25th of September?

Mr. HERTH. Have we got any written quotations on our different lines of fixtures?

Senator MCKELLAR. No; have you received any written communications asking for quotations on these bathtubs and fixtures?

Mr. HERTH. We receive almost every day requests from the Construction Division for prices on all those fixtures—any fixtures that the Government may want.

Senator MCKELLAR. Mr. Ahrens, would it be very much trouble to get a detailed statement, I do not mean of all the articles, but just a statement of the amount and nature of goods, of what you have sold the Government since the war began?

Mr. AHRENS. I will be glad to get that for you.

Senator MCKELLAR. Of all sales?

Mr. AHRENS. Yes, sir; I will be very glad to.

Senator MCKELLAR. I would like it in compact form, if you can get it.

Mr. AHRENS. There will be no trouble about that. We can get you here in 24 hours a statement of all the goods and the business we have done with the Government in its various departments, you mean?

Senator MCKELLAR. In various departments.

Mr. AHRENS. Since the war began?

Senator MCKELLAR. Yes.

Mr. AHRENS. Senator MCKELLAR. This question was raised: It is claimed that Maj. McCubbin would buy under very peculiar circumstances from you. For instance, the Cahill Co., of Chattanooga, complained that when it was wanted to buy some of these goods for use at Camp Greenleaf or out at Fort Oglethorpe, and they wanted them in a hurry, he did not ask for any bids or quotations or prices from the Cahill Iron Co., but he put these emergency orders with your company and had you send them by express, taxing the railroads to bring them into Chattanooga, when they already had the same material there, and costing the Government a large expressage. Do you know whether that is correct or not?

Mr. AHRENS. I can not answer that because I do not know, of course, what the Government did or did not. Perhaps Mr. Herth could give some information on that point.

Senator MCKELLAR. All right; Mr. Herth, do you know?

Mr. HERTH. I think that is up to the others to show you. I do not know; of course we have shipped material to different places by express and by freight. I know of one case out at Camp Lewis where we had received an order, and the contractor wired us to ship it by express. That meant a whole car. I took that up with the department, and I wanted to know whether we should do it. We did not do that. So I could not say as to any particular order at Camp Oglethorpe, that might have gone by express there.

Senator MCKELLAR. Could you look it up on your books?

Mr. HERTH. And find out just what we shipped there?

Senator MCKELLAR. Yes; and when you get that information make it Exhibit 2 with this testimony.

Mr. HERTH. Yes, sir.

Senator MCKELLAR. Have you any agreement with McCubbin that he is to return to your employ when the war is over?

Mr. AHRENS. No, sir; excepting that there are some six hundred odd men that left our employ, a large per cent of our force, and went into the Government service, and we have said to every man of them, "When the war is over we are going to try to put you back right in the place you were in." We did not make a definite promise, because that would be impossible, but we said, "Every man that leaves our employ and goes into the Government service and comes back after the war, we are going to try to find a job for you." Therefore, to that extent, I would say that Maj. McCubbin had that promise.

Mr. HERTH. But you did not make that promise only to him. You never made that promise to any individual?

Mr. AHRENS. Oh, no; absolutely not.

Senator MCKELLAR. Have you any other employees in the purchasing departments of the Government? Are there any at Jeffersonville, for instance?

Mr. AHRENS. Where?

Senator MCKELLAR. Have you any at Jeffersonville?

Mr. AHRENS. I do not know. I can not answer that question. And again, I will have to say that, for instance, at Camp Taylor, when the camp went up and they were working 24 hours a day, and day and night, and everybody was working as hard as they could, the people in the clerical departments there were overrun with work, and they did telephone down to our Main Street store, and they asked, "Can you give us a clerk? Your people know about these prices and discounts, and are familiar with the business, and can you help us?" We furnished such a man to them. I do not know whether we furnished such a man in Jeffersonville, but if we were called on to do so we did so, because we would think it was our duty to do so.

Senator MCKELLAR. Now, again returning to the other feature of the same kind, where you had men working in various departments, the purchasing supply departments of the Government using your goods, and they did not have men on the inside in that way, do you think that your competitors would feel that they would naturally get a square deal on the whole circumstances?

Mr. AHRENS. Yes, sir. My point is that when Capt. McCubbin or any other man in our company left our employ and went into the employ of the Government, he was no longer in the employ of the company, nor did we ask him in any way, shape, or form to prefer us over anybody else; nor have we in any way, directly or indirectly, told these people that we were going to take care of them or do something for them because of the fact that they were in the Government employ and had helped us to get business; absolutely nothing of that kind.

Senator MCKELLAR. Now, would you give me a statement, and make it Exhibit No. 2 with your testimony, of any of your former employees who were employed by the Government or were loaned by you to the Government at any of these camps or depots where supplies were being handled?

Mr. AHRENS. Yes, sir. It is quite possible that two or three people were furnished in that way; but might I say right there, Senator, that

for a very responsible position in the construction department here, a position under Maj. Humphreys—

Mr. HERTH. And Maj. Sergeant.

Mr. AHRENS (continuing). And Maj. Sergeant, covering the entire plumbing field of the United States, they wanted a man to take charge of that, a man who had technical knowledge of the business and who could be Maj. Sergeant's right arm; and the jobbers and manufacturers of the Eastern Supply Association, representing all the prominent people in our business, came to us and asked us, as a patriotic duty to the Government, to allow one of our men, Mr. J. D. Tschopick, who was our general manager of furnishing housing, to accept that position, you see with the indorsement of all these men and including our competitors, and it was to be a dollar-a-year job; and we sent Mr. Tschopick on to see Mr. Sergeant. We told him that if it was necessary to give him up we would be willing to do so. We sent him on to see Mr. Sergeant and he convinced himself that the position was not one in which he could render the kind of service that the Government would expect from a man of his importance, but that it would require a man of lesser importance, and he declined the job; and subsequently some one else was appointed to the position, who now fills it, some one not connected with my company.

Senator MCKELLAR. I will ask you to make this photographic copy of an affidavit made by you, which you have identified, dated September 25, Exhibit No. 4 to your deposition.

Mr. AHRENS. I do; yes.

Senator MCKELLAR. I must go to the Senate now, and I must ask you gentlemen to excuse me, but I will let you know later in the day when we can continue with your testimony, either this evening or to-morrow morning.

(Thereupon, at 11:45 o'clock a. m., the subcommittee adjourned, subject to the call of the chairman.)

QUARTERMASTER CORPS.

UNITED STATES SENATE,
SUBCOMMITTEE ON MILITARY AFFAIRS,
Washington, D. C., Saturday, November 18, 1918.

The subcommittee met, pursuant to the call of the chairman, at 10 o'clock a. m., in room 248, Senate Office Building, Senator KENNETH D. MCKELLAR presiding.

Present, Senators MCKELLAR (chairman), SUTHERLAND, and JOHNSON of California.

There appeared before the committee Mr. Theodore Ahrens, president of Standard Sanitary Manufacturing Co., accompanied by Mr. Francis J. Torrance and Mr. George Herth, jr.

STATEMENT OF MR. THEODORE AHRENS—RESUMED.

Senator MCKELLAR. Proceed, Mr. Ahrens.

Mr. AHRENS. I do not remember exactly, but I think we were discussing, when the committee adjourned yesterday, the reason why I thought I had an order for 25,000 of these sets.

Senator MCKELLAR. Yes; I think so. That is all right. Go on.

Mr. AHRENS. Let me say that when I testified yesterday I did so without having read the charges against Maj. McCubbin and ourselves. I did not know that we were in what is called an open hearing, a public hearing, and we were entitled to have a copy of the testimony; but Mr. Johnson, the official stenographer, told us just after the adjournment yesterday, and stated that we could have a copy of the testimony furnished to us, and we asked him to prepare a copy and let us have it. He did so, and we received it late last night. Now, I wanted to make that statement preliminary to this other.

Senator MCKELLAR. Yes; you could have had a copy of the testimony at any time, of course.

Mr. AHRENS. Now, Senator, I would like to add this to what I said yesterday before you adjourned the hearing. In regard to the interview I had with Maj. McCubbin, and during which we discussed the large housing contracts the Government proposed to place, or had in mind to place, with the manufacturers, my testimony as given yesterday is correct, but I would like to add that after going into the subject thoroughly with Maj. McCubbin and after calling in Maj. Noss, who was consulted on the length of time it would take to put the orders through the department, I left Maj. McCubbin's office with the impression that he would recommend to his superior officers the placing of a large order for plumbing fixtures required for the housing program, which was estimated at about 60,000 sets, and would give us an order for 25,000 sets of these fixtures. The major asked us whether we could make deliveries of this quantity by the end of the year, and I told him we could.

Senator MCKELLAR. Mr. Ahrens, since this investigation has begun you have received a letter from Maj. McCubbin asking you to deny that you had a contract with him, have you not?

Mr. AHRENS. He asked me to write a letter to the Enamored Ware Manufacturers' Association, denying that we had such a contract.

Senator MCKELLAR. Have you a copy of that letter of Maj. McCubbin to you?

Mr. AHRENS. No, sir; I have not; but it is on file in the Pittsburgh office.

Senator MCKELLAR. Will you furnish a copy of that letter and make it Exhibit No. 5 with your testimony?

Mr. AHRENS. Yes, sir.

Senator MCKELLAR. Do you remember the contents of the letter—the substance?

Mr. AHRENS. The substance of it was that Maj. McCubbin called my attention to the fact that I had made such a statement at a meeting of the Manufacturers' Association, and he wanted me to retract it, as he had not given me any such contract. That is as near as I remember it. I did not answer that letter, or I did not write the letter that he wanted me to write to the association, because it was not an association matter; that is, the matter never came up in the association meeting. It came up in an informal meeting or discussion that we had after the adjournment of the association meeting, at which I made this statement that we had this order. Therefore I did not think it was necessary or proper for me to write to the association about it or drag them into it.

Senator MCKELLAR. With reference to the affidavit about the order for 25,000 sets of plumbing fixtures, did you not get a priority order for coal on account of that affidavit?

Mr. AHRENS. We asked for a priority order for coal, based on the Government contracts we had, and we did include that order among the rest, Senator.

Senator MCKELLAR. Yes. When was that priority given?

Mr. AHRENS. Shortly after this whole matter occurred. I do not recall the exact date, but it was before I made up my mind that we would get these contracts or this order.

Senator MCKELLAR. It was after the 25th of September, was it not, and after this hearing had begun and Maj. McCubbin had then been before our committee?

Mr. AHRENS. I could not say that, because I do not know when you had the hearing, and I never talked to any of the officers that were connected with this case or with any of the other manufacturers, until recently, and the only talk I had with any manufacturer connected with the case was with Mr. Caldwell the day before I saw you in Memphis, when I talked to him over the long-distance wire. May I make a statement here, Senator?

Senator MCKELLAR. Yes; I would be delighted to have you make any statement you wish.

Mr. AHRENS. What I wanted to say, Senator, was that we have received during this year a number of large orders from the Government, and which we considered orders, before we had the formal contracts. Our first shell contract, amounting to about \$1,500,000, was given us practically on the same basis; that is, we went ahead and ordered \$400,000 worth of machinery before we had that contract. In fact, we did not get the contract for three months after we had begun operations and after we had invested of our own money approximately \$400,000 for machinery. But we had the assurance from the officers of the Ordnance Department that the order was going through in good shape, they gave us an order number, or something like that, and told us not to be uneasy about it, and we went on and spent \$400,000 of our own money preparing for that contract three months before it was executed.

Senator, this year was a year of big things, and they were done in unusual ways. This order, while it looked big, was not, in proportion to many other orders that were handled and placed by the Government in the various lines.

Senator MCKELLAR. Without expressing any opinion, but merely giving you my version, it seems to me that your man McCubbin has misled you into a very serious situation. I gather from what you have said, and what he said and what all have said that appears in this record, that you had every reason for believing that you had a contract; and yet when this investigation came up, knowing that he had been simply acting as your agent, he has besought you and others to protect him by making statements, and statements that are going to get somebody into a very serious situation. In other words, he has gotten you and he has gotten a half dozen other officers here to assure me or to assure this committee that you had no contract, and that is exactly what you have testified to and that is exactly what these other men have testified to, when, as a matter of fact Maj. McCubbin in my judgment—I am not expressing it as my final judgment at all—appears to me to be conscious that he has done wrong himself, and in trying to protect himself he has gotten all you gentlemen in a very remarkable situation. You are in the attitude of having sworn to one state of facts on the 25th of September and another state of facts on the 15th of November, which is, I must say, a very serious thing, and all because of this system to which I have been opposed from the very beginning, of having men interested in the business buying for the Government. It is all wrong; absolutely wrong.

You ought to take your chances before a fair and impartial purchasing officer, a man who has no connection with your business, and the department is all wrong in permitting a man from your office to buy goods from you; and I would say, and it would not make any difference who it was, that if an officer was selected from one of these other concerns, your competitors, to do that, it would be perfectly outrageous, unfair, and unjust to you, just as this is unfair and unjust to them. It is a system that can not be defended. I know that Gen. Marshall is a splendid man, and I can not understand how he permits Maj. McCubbin to be in the employ of the Government for 10 minutes after this is disclosed. It is a matter that I had hoped that Gen. Marshall would remedy promptly by suggesting the dismissal of Maj. McCubbin from the service of the Government. He should not be in the service of the Government. It is indefensible that he should be in the service of the Government; and I say this after having heard all the proof—that is, all that has occurred up to this date—and I think practically all the facts are in. He has gone officially and gotten up a very elaborate statement here, and ex parte statements here from witnesses, Maj. Noss and others, that do not agree with the facts in the case at all, and I am surprised to find that anything like that should be done. It is not warranted by the facts, and it is not fair to the Government at all, and it is not fair to these other people—not a bit—and as a matter of fact I am rather inclined to think it is unfair to you, because you believe that you had a contract, and have not got one.

Mr. AHRENS. Senator, I did that honestly; yes, sir. I must say, however, in justification of Maj. McCubbin, that I think I am to blame in the matter in simply having talked about having the contract before I had it. Let me put this feature before you, please. I certainly had no business talking to my competitors about having a contract simply, as somebody said yesterday, to boast about it, because that would not do me any good and would only cause bad blood.

Now, my reason for making that statement and telling these other gentlemen that we had such a contract—please remember that I qualified that at once by saying that we had no actual order; no written or formal order—but my reason for advising them of it was because for the last two years, or since the Government has been in this war, we have been cooperating together very closely in every way in order to keep this industry from going on the rocks; and I felt it my duty to advise these other manufacturers that a very large order, a much larger order than was promised me, would be placed, and that they were to receive, or some of them were to receive, the balance of it. Now, that was my reason for making that statement at that time. They, however, took it in another way.

Senator MCKELLAR. Now, the trouble about that is that the very first time that the 60,000 has ever been brought forward has been in your testimony. It has never been mentioned heretofore. The number mentioned has always been 25,000, and Maj. McCubbin has never said anything about 60,000 at all, and he certainly ought to have known something about it if he knew anything about the business at all. In the next place, these gentlemen, none of them, understood that there was anything but the 25,000-set order; and in the next place—

Mr. AHRENS. Pardon me, Senator.

Senator MCKELLAR. Just one moment.

Mr. AHRENS. Yes, sir.

Senator MCKELLAR. In the next place, under the priority order, they would have all gone out of business and you would have had an entire monopoly.

Mr. AHRENS. I have a little information on that point that I would like to give you.

Senator MCKELLAR. Those are the things that make this situation absolutely intolerable, and it just shows that the department was all wrong in employing a man out of your office to buy goods from you for the Government. That is absolutely indefensible. The Lord Jesus Christ 2,000 years ago said that no man could serve two masters; and no man can. No man can serve the Government and serve you, too. It is absolutely impossible.

Mr. ARRENS. That same thing happened in a hundred offices, Senator. Senator MCKELLAR. Yes; and it is indefensible, wherever it has been done.

Mr. HERTH. They had to do that because they had to go out into the firms in these different lines in order to get somebody who knew about these things.

Senator MCKELLAR. No; the people have gone out, in these different lines, to put these men on the Government, and greatly to the discredit of the Government and to the injury of the Government in securing contracts this way. It is indefensible—absolutely indefensible. I say that with all respect to you, because I think that you have put yourself, by reason of the signing of that affidavit, into an indefensible position, and perhaps into one which you are not entitled to be in, and you have been put in this position by a system that ought not to be tolerated for a moment, and I do not see how any superior officer of Maj. McCubbin can permit him to be in the Army for a moment. He ought to be discharged, and discharged instantly. He ought to have been discharged when this matter was first brought up.

It is a crime against the Government to let a man of that sort, who permits himself to be used in that way, to stay in the employ of the Government; and of course if the War Department can not do it, I am going to see that it is done by publicity. Publicity is the best thing, in this country anyway. I feel outraged at this action on the part of the department and on the part of this whole situation. I speak very plainly. I am a very plain-spoken man. Perhaps I have said here on this record what I ought not to have said. Perhaps I ought to have let the Department of Justice handle this matter in its own way. But, being familiar with it, I feel that you have permitted this young major in the Army, who has been indulging in practices that no man should have indulged in, to put you in the most awkward attitude that you have ever been in in your life, as you will certainly find out. It is an indefensible attitude, and really one that grows out of the course of business that ought not even to have been tolerated. I may have said more than I ought to, but it is as much in your favor as it is against you. That is the situation. I do not wish you to be unaware of it, because the fact is that you have testified twice.

Mr. ARRENS. I am fully aware of it.

Senator MCKELLAR (continuing). And in one case your testimony is opposed to your testimony in the other case.

Mr. ARRENS. Yes, sir.

Senator MCKELLAR. And I am really inclined to think that you are not entitled to be in that position.

Now, if there is anything else that you wish to say, I will be glad to hear it.

Mr. ARRENS. I would like to correct some statements here that we discussed yesterday.

Senator MCKELLAR. I will be glad to have you put in anything you wish. I want to be absolutely fair about the matter.

Mr. ARRENS. I never had this testimony of Maj. McCubbin and these others until last night. I went through it late last night, and these are points I would like to bring to your attention.

Senator MCKELLAR. Surely.

Mr. ARRENS. First, the statement of C. F. Arrott (p. 389 of transcript) and the statement of "Certain manufacturers" (p. 398).

On page 386 you asked this question:

"**Senator MCKELLAR.** If the Government business is confined alone to the Standard Co., what effect would that have on the various other companies engaged in this business, in view of this contract?"

To that Mr. Arrott answered:

"**Mr. ARROTT.** We will have to close our plants down, or turn our plants into making shells or some other Government essential work."

Senator MCKELLAR. Yes, sir; you want to comment on that?

Mr. ARRENS. I want to comment on two cases that I am going to cite. I will read now an extract from the "Statement of certain manufacturers," which is appended to the hearing of September 25, 1918, as follows:

"With the further restrictions recently made by the War Industries Board covering expenses for general building improvements and repairs, the present market for sanitary enameled ware is virtually confined to the Government's requirements; and to meet these ultimate requirements, were the business equitably distributed, all of the plants producing enameled ware would be permitted to live."

Now, on that I want to say that these statements are contradicted by the fact that the other manufacturers of enameled ware, in the first nine months of 1918, sold \$4,731,067.69, or 45 per cent, fully 45 per cent, of the enameled-iron ware disposed of in the United States, Government business included. The total amount of enameled ware purchased by Maj. McCubbin from the Standard Sanitary Manufacturing Co. was less than \$100,000, being therefore less than 7 per cent of the Standard Sanitary Manufacturing Co.'s sales of enameled ware, and less than 4 per cent of the total business of the country. Our own sales of enameled ware for the same period were \$5,286,286.51. This makes a total business of enameled-iron ware in the United States for those nine months of \$10,566,354.20. These figures are taken from the reports that we all furnished the secretary of the association, and can be verified. I mention them here to show that after all the amount of business Maj. McCubbin gave us was insignificant compared to the total business of the country, and that these other manufacturers got millions of dollars' worth of business outside of Maj. McCubbin's office.

Senator MCKELLAR. But the question that they raise in that testimony is that after January 1, 1919, if the war had continued, you would have been the only man with priority orders, and they would have had to have closed down their businesses, and you would have had the entire enameled-iron-ware business of the country; and I am inclined to think that if Maj. McCubbin had had his way that would have been mighty near the situation.

Mr. ARRENS. Senator, that is not the situation.

Senator MCKELLAR. And that is an indefensible situation, of having an employee in the Army in that position.

Mr. ARRENS. I agree that that would be indefensible, but that is not the situation. All these manufacturers sold many hundreds of thousands of dollars' worth of enameled ware for Government purposes through other channels. That is the point I am trying to bring out.

Mr. NUGENT. I will ask the Senator from Tennessee if, after his recital, he does not think a lot of these people should

be in the penitentiary instead of longer serving as agents of the Government.

Mr. MCKELLAR. I will give the Senator my view about it. I recommended that these men be discharged from the service of the Government just after this proof was taken, and my recommendation was ignored by the War Department. There was not any question in my mind as to what ought to be done with them. I do not think we ought to turn these contracts over to them to settle. I think if we do we will be derelict in our duty, and I, for one, will not do it if I know it. I feel that it is my duty to bring this testimony before the Senate and before the public when passing upon these contracts, and, Senators, it is our duty as representatives of the Government to see to it that the Government is treated fairly and right in the validation of its contracts and in our settlement in regard to them.

I believe that is all I have to say.

Mr. POMERENE. I wish to ask the Senator a question.

Mr. MCKELLAR. I was going to yield the floor, but I will be delighted to answer any question.

Mr. POMERENE. The Senator has given a great deal of attention to this matter.

Mr. MCKELLAR. I want to say that it is a pretty thankless job, too. I have given great attention to it, but a man gets criticism for it. Any man who defends the interest of the Government now is always criticized for it.

Mr. POMERENE. I mean the legislation now pending rather than the particular contracts to which the Senator refers. Is there anything in either of the bills now pending before the Senate which will protect the interests of the subcontractors?

Mr. MCKELLAR. No; there is not.

Mr. POMERENE. I have submitted an amendment which will be printed in the Record in the morning that will take care of the interests of subcontractors.

Mr. MCKELLAR. I think that is a very wise provision. I do not see that the Government has any possible contractual relation, as I understand it, with a subcontractor. It is a difficult provision.

Mr. POMERENE. That is entirely true, but this is my thought about it: If A has a contract with the Government, known as the head contractor, as we call them in Ohio, or in some places the prime contractor—

Mr. MCKELLAR. Subcontractors they are called everywhere.

Mr. POMERENE. I am speaking of the head contractor, and he subtlets to half a dozen other men.

Mr. MCKELLAR. Which is always done.

Mr. POMERENE. They furnish their product to the head contractor for the Government. It seems to me that any money which goes to the head contractor for that product ought to be reserved for the benefit of the subcontractor who contributed toward the execution of the contract with the Government; in other words, that the money which the head contractor gets from the Government should not go to the general creditors of the head contractor at the expense of the subcontractor.

Mr. MCKELLAR. I will say to the Senator that I think there is a great deal of merit in his contention, and there is but one way in which it can be effectuated, and that is to put the whole matter in the hands of an independent commission, because the War Department is under no obligation to consider subcontractors. All that is settled by the War Department in these contracts. I do not see how you are going to enforce that obligation upon the department. Many of them have already been settled; but if you will put it in the hands of an independent commission and require the commission to adjust the claims of subcontractors, there is no reason in the world why it can not be done, and I will join the Senator in that.

Mr. POMERENE. There is nothing in the amendment which will be inconsistent with the provisions of either bill, as I understand them.

Mr. MCKELLAR. That can be worked out. I will look at it when it is printed, and we will see what can be done.

Mr. FLETCHER. Mr. President, of course, what the Senator from Tennessee has been discussing with respect to leaving the department the absolute right to adjust these matters is scarcely pertinent to the matter before the Senate, because the House bill is not the bill before the Senate.

Mr. MCKELLAR. It is the only bill that is before the Senate. I will say to the Senator. These other measures are amendments to it, and if the matter of protecting the Government is not pertinent, then I am utterly unable to understand what is pertinent.

Mr. FLETCHER. Of course, I understand that perfectly well, but the Senator has been arguing all the afternoon that there ought to be a commission, and there is not any proposal here that there should not be a commission. The substitute offered to the House bill provides for a commission, and the

bill reported by the Senator from Nebraska [Mr. HITCHCOCK] provides for a commission. So we are not confronted with anybody proposing that this matter should be left entirely to the War Department. That is the point I make on that score.

Mr. MCKELLAR. Of course, I have explained that fully. The difference is that under the Chamberlain substitute the commission is merely an appeal commission, and you can not get anything before it except by appeal. Under the Hitchcock amendment the commission has full and plenary powers to do justice to all.

Mr. FLETCHER. I understand the difference, but I did not understand that the Senator really expressed much preference one way or the other, just so there was a provision for a commission that took it at some stage of the proceedings out of the hands of the War Department having the entire charge.

Mr. MCKELLAR. Oh, no. What I am trying to enforce on the Senate is that I believe in a commission with full power and authority to act—a real commission, not simply an appellate commission.

Mr. FLETCHER. Precisely; I understand the Senator, but till I come back to the original proposition that the measure before the Senate is the report of the Committee on Military Affairs, which proposes a substitute for the House bill, and that report and the bill as reported provides for a commission.

It is a question now for the Senate to decide whether to adopt the substitute to the House bill or not. That is the sole question. Of course, they have a right to amend the substitute, and I take it nobody here is contending in opposition to the adoption of the substitute. I have not heard of any contention.

There is something to be said on the other side of the question if I cared to take the time of the Senate, which I do not, because I realize that this is an urgent matter. It is a matter that ought to be attended to, and we ought to enact this legislation and get it behind us, because there are people in all portions of the country vitally concerned, some of them on the very verge of bankruptcy, as the Senator from Tennessee will recall the testimony before the committee particularly upon that subject, waiting for some adjustment of the differences between them and the War Department, adjustments that are honest, adjustments that are made necessary because the conditions could not be avoided by anybody; in many instances irregular contracts, not the fault of the contractor, not the fault of the department, but irregular, growing out of the very necessities of the conditions and the very urgency of the cases; so no one is to be blamed for that situation. All of a sudden contractors are notified to proceed no further; you are not to go on with your performance. The contractor says, "All right; what will you do about adjusting this case? I have ordered a whole lot of material; I have gone to a great deal of expense; I have incurred obligations; here are men idle on my hands; what are we going to do about it?" Of course, the War Department says, "We will adjust the matter on a fair and equitable basis; come down." They come down and they get together and agree as to what is a fair and equitable basis, and the War Department says, "We will adjust it by paying you so much; are you willing to accept that?" The contractor says, "Yes; all right."

Mr. MCKELLAR. Will the Senator yield to me a moment?

Mr. FLETCHER. When they go to settle they find when they offer the adjustment to the comptroller the comptroller says "No; you can not settle that sort of thing because this contractor had no contract under the law and you have no authority to pay it; you can not adjust it." There they are. As I said, it is nobody's fault, but the law is such and the conditions have been such that these situations have arisen, and these losses are pending, and they ought to be adjusted, and they ought not to wait a day about it. I yield to the Senator from Tennessee.

Mr. MCKELLAR. I would just like to ask the Senator this question. The Senator heard the testimony of Mr. Rice, of the firm of Myrick & Rice, in dyestuffs. Would the Senator feel that the Government's interest could be properly looked after when Mr. Rice, representing the Government, settled with Myrick & Rice, representing the dyestuffs?

Mr. FLETCHER. No; I would not. I did not read the testimony, but from what the Senator says about it I would not think of that sort of a thing, and I do not think that is contemplated by anybody. I do not think it is contemplated under the House bill, known as the Dent bill.

Mr. MCKELLAR. Would he not be one of the men who would act on the board, acting for the Government? He has been acting for the Government in buying all this dyestuff.

Mr. FLETCHER. No; not at all.

Mr. MCKELLAR. Does the Senator know whether Mr. Rice is still acting for the Government in this matter?

Mr. FLETCHER. I have no doubt about it.

Mr. MCKELLAR. The Senator knows he was acting a short time ago.

Mr. FLETCHER. As one of the adjusters.

Mr. MCKELLAR. He is the man who has charge of that division, and he is the one who makes the contracts. If he comes along and makes a settlement with his own concern would the Senator be satisfied with that?

Mr. FLETCHER. I have never said that. Mr. Rice was one of the original board of adjustment. He was one of the parties concerned in making purchases for the Government at the time the purchases were being made; but I do not understand that he is one of this board of adjusters; and he is certainly not on the appeal board of adjustment. That board is composed of Mr. Garnett, of Virginia; Mr. Malone, of New York; and Mr. Lehmann, of New York. That is the board that is now acting in that capacity. None of them are members of the military forces; they are all three of them from civil life. I mean to say that they are not officials of the War Department; they are civilians. I believe there was some talk—and perhaps that was done—of a sort of commission being issued to them in order to qualify them in some relation so that they might administer oaths; but they are citizens from civil life. They compose the board that is now acting upon this matter. Mr. Rice is not on it, and Mr. Jones is not on it. Those I have named are the ones that compose that board.

I say this matter ought to be speeded, because of the existing situation. Contractors all over the country have hundreds of thousands of dollars involved. Some contractors have only a small amount involved, but it is a great deal to them, although it be small as compared with the claims of other contractors. These contractors are suffering from the lack of an adjustment which would be fair and honorable and equitable and right, and which everybody would agree should be made. However, there is no power to make it and the object of this regulation is to authorize those adjustments.

The law as it stands is found in section 3744 of the Revised Statutes, showing exactly the requirements to make a contract with the United States Government. If a contract is not made in accordance with that law, it is not a valid contract, and any payments made in pursuance of it or under it, or any adjustment on it is rejected by the comptroller and will not be passed by him. No adjustment, therefore, can be reached. That is the law, and I will ask to have it inserted in the RECORD.

There being no objection, the statute was ordered to be printed in the RECORD, as follows:

SEC. 3744. It shall be the duty of the Secretary of War, of the Secretary of the Navy, and of the Secretary of the Interior, to cause and require every contract made by them severally on behalf of the Government, or by their officers under them appointed to make such contracts, to be reduced to writing, and signed by the contracting parties with their names at the end thereof; a copy of which shall be filed by the officer making and signing the contract in the Returns Office of the Department of the Interior, as soon after the contract is made as possible, and within 30 days, together with all bids, offers, and proposals to him made by persons to obtain the same, and with a copy of any advertisement he may have published inviting bids, offers, or proposals for the same. All the copies and papers in relation to each contract shall be attached together by a ribbon and seal, and marked by numbers in regular order, according to the number of papers composing the whole return.

Mr. CHAMBERLAIN. Mr. President, may I interrupt the Senator?

Mr. FLETCHER. Yes.

Mr. CHAMBERLAIN. Does the Senator understand from the statement which the Senator from Tennessee [Mr. MCKELLAR] has made that these three gentleman—Charles A. Rice, H. L. Bailey, and Malcolm Donald—are on the adjustment boards?

Mr. FLETCHER. I do not.

Mr. CHAMBERLAIN. I rather inferred from the statement of the Senator from Tennessee that these men were on the regional boards; and if so, I think it is quite a serious statement to make.

Mr. MCKELLAR. Oh, no; Mr. President, the Senator from Oregon misunderstood me. I said these gentlemen were chiefs of their several divisions.

Mr. FLETCHER. That is a different thing.

Mr. MCKELLAR. And had charge of these contracts. Under the committee substitute, which is known as the Chamberlain substitute, primarily officers of the War Department would settle these contracts; and as to the board about which the Senator from Florida [Mr. FLETCHER] is talking, that board only has jurisdiction when the case comes up on appeal. These officers will settle it; and if they can not settle it with themselves, how can they settle it?

Mr. FLETCHER. But they are not on the board at all.

Mr. CHAMBERLAIN. I did not want the Senate to get the impression that these men were on the board or were adjusting these contracts; and the Secretary of War would certainly be

a very foolish business man if he undertook to put them on the board.

Mr. FLETCHER. The Senator is entirely right. So when the Senator from Tennessee asked me the question if I would stand for a settlement made under those circumstances, with this gentleman on the board, I said no; but he is not on the board. He was one of the original agents of the Government in making the purchases, a head of a division, but I do not understand that he is an adjuster of those contracts.

Mr. MCKELLAR. Mr. President, will the Senator yield to me?

Mr. FLETCHER. Certainly.

Mr. MCKELLAR. As I understand, the War Department's machinery now is that those officers of the War Department who have in charge these contracts attempt to arrive at an adjustment. Suppose there is a legal contract, they will arrive at an adjustment; the War Department follows their recommendation in the matter, and that ends it. The board of which the Senator speaks has nothing in the world to do with it. The question I ask the Senator from Florida is, Is he willing to settle it by these gentlemen?

Mr. FLETCHER. Except that the department arrives at an adjustment in pursuance of such investigation, study, and recommendation as the board may make, I take it.

Mr. MCKELLAR. Not at all. It is an appellate board. The testimony disclosed to us that it was an appellate board entirely. For instance, if Mr. Donald, representing the clothing and equipment division, settles with the various firms with which he is connected, that simply goes through as a matter of course, and the settlement is made. The Senator may be satisfied with that kind of a settlement on behalf of the Government, but I am not.

Mr. FLETCHER. Mr. President, there are 8 of these adjustment boards in Washington and 24 of them throughout the country all told. These boards are the boards before whom these claims are presented. They make their recommendation to the Secretary of War. If that recommendation is not satisfactory, then it comes to the board of which Mr. Garnett, Mr. Lehmann, and Mr. Malone are members, and they review it.

Mr. NUGENT. Will the Senator yield to me?

Mr. FLETCHER. Certainly.

Mr. NUGENT. I should like to ask the Senator if he knows the personnel of those committees; if he knows how those committees are made up which are now adjusting these contracts? Are they made up of the gentlemen who made the contracts in the first instance?

Mr. FLETCHER. I think not; not at all. They are designated by the Secretary of War to make the investigations as to the particular matters which are presented in connection with these contracts or quasi-contracts.

Mr. NUGENT. Does the Senator know—

Mr. MCKELLAR. If the Senator from Florida will yield to me for a minute, I will say this, which, I think, will probably answer, as well as it can be answered, the question which the Senator from Idaho has asked.

Mr. FLETCHER. I do not think these boards are made up of the chiefs of the divisions that made the contracts.

Mr. MCKELLAR. There is not a scintilla of evidence before our committee in reference to who compose the smaller boards. They did not give us the names of the members of the appellate boards who are officers in the Army, and were made officers in the Army purely for the purpose of sitting on appeal.

As to the lower boards, who are on them, who they are, what connection they have with the gentlemen with whom they are doing business, we have no knowledge whatsoever.

Mr. FLETCHER. I do not know their personnel.

Mr. NUGENT. The Senator can not enlighten me with respect to that?

Mr. MCKELLAR. It can not be done, because we have not the information.

Mr. FLETCHER. I do not know the personnel of these different boards—8 of them in Washington and 24 of them throughout the country—but I presume we can get their personnel if that is important. I do not understand, however, that the personnel composing those boards is made up of the same persons who made the contracts.

Mr. NUGENT. I should like to know their personnel, I will say to the Senator, before the vote is taken with respect to this matter.

Mr. FLETCHER. I think I can get that information for the Senator.

I have here a letter from Assistant Secretary of War Crowell with regard to Senate bill 5261, which is referred to as the Hitchcock bill. Inasmuch as the Senator from Tennessee [Mr. MCKELLAR] based his remarks on a comparison between that

bill and the substitute now pending before the Senate, I think it is worth while to refer to that letter and to have it printed in the RECORD. I will not take the time to read it; but I think Mr. Crowell mentions that the department has already provided for these boards, although I am not sure that he gives the method of making up the boards or how they are constituted. But the letter does state:

In addition to being utterly unable to do its work, the adjustment board provided by S. 5261 is entirely unnecessary for the reason that the War Department already has established and at work a machinery adequate to handle efficiently and promptly all settlements. Without now going into the details, the department has a central board of contract review in each of the eight supply bureaus in Washington; also a total of 24 local or district boards in various sections of the country making settlements for the Ordnance Department and the former Quartermaster Corps. The department has also established in Washington a board of contract adjustment to which the Secretary of War refers for decision all cases in which the contractor and the contracting officer are unable to agree. Furthermore, several thousand contracting officers, accountants, investigators, and other assistants are now at work helping the boards to make prompt settlements. On the enactment of the legislation which the War Department has requested, this machinery is prepared to start immediately on the cases in which contracts were not made or signed as provided by law.

That is the machinery that is now in operation. I do not know whether it is necessary to go further into detail as to how it is constituted than that or to set out the names of all of the officers who are connected with it. I am quite sure that the machinery is ample to arrive at an honorable and a fair adjustment of these matters and to assure to the Government that there is no fraud being committed as against the Government. I will ask to have Mr. Crowell's letter inserted in the RECORD.

The VICE PRESIDENT. Without objection, it is so ordered. The letter referred to is as follows:

WAR DEPARTMENT,
Washington, January 6, 1919.

Hon. DUNCAN U. FLETCHER,
United States Senate.

My DEAR SENATOR: I am glad to avail myself of your suggestion that I submit to you a statement with reference to S. 5261, known as the Hitchcock bill.

This bill provides for the establishment of an adjustment commission of three members who shall decide all cases of cancellation of existing valid contracts or orders of the War Department, and also all cases in which a contract was not made or signed as provided by law.

The War Department is strongly convinced that the enactment of this bill would cause great and unjustifiable delay in settling the proper claims of contractors and would most unjustly throw hundreds of contractors into bankruptcy.

It would first be necessary for the President to appoint the members of the commission. The Senate must then confirm the appointments. Thereafter the board must organize and familiarize itself with its duties. If regional boards of examiners are appointed, their membership must be selected and their machinery started.

These various steps will necessarily take time. After they have been performed the board will find itself confronted with a situation which will absolutely prevent prompt settlements. This situation will result both from the magnitude of the task and from the almost total lack of assistance provided for the board in the bill.

Incomplete figures show that the total number of settlements which would come before the board would exceed 25,000. That this is an impossible task for three men in one year is, of course, obvious.

Your attention is invited to the fact that the entire appropriation provided by the bill is only \$50,000; that \$35,000 of this amount will be used to pay the salaries of the three members of the board and the secretary; and that only \$15,000 will be left for the accountants, investigators, clerical assistance, and office expenses of the central board and the entire expenses of all such boards of examiners as may be appointed. Comment on the utter inadequacy of such an appropriation is unnecessary. At the very outset, the board would be choked with work and this condition would become hopelessly more aggravated each succeeding week.

As bearing on the personnel and the expenditures necessary in the determination of large numbers of cases, by prompt and informal methods, your attention is invited to the following illustrations:

(1) The Interstate Commerce Commission consists of nine members. During the year ending October 31, 1917, the commission decided approximately 1,000 formal proceedings and 10,000 informal proceedings, with an organization of approximately 700 employees and an expenditure of \$1,080,000 chargeable to this work. The Hitchcock bill proposes to have three men decide in one year at least twice as many cases on an appropriation less than one-twentieth as large.

(2) The public service commission of New York, second district, a typical State public service commission, decided in 1917 approximately 450 formal proceedings and 1,350 informal proceedings, a total of 1,800 proceedings on an appropriation of approximately \$400,000. The Hitchcock bill proposes to have the adjustment commission decide approximately 20 times as many cases with one-eighth the appropriation and personnel.

In addition to being utterly unable to do its work, the adjustment board provided by S. 5261 is entirely unnecessary for the reason that the War Department already has established and at work a machinery adequate to handle efficiently and promptly all settlements. Without now going into the details, the department has a central board of contract review in each of the 8 supply bureaus in Washington; also a total of 24 local or district boards in various sections of the country making settlements for the Ordnance Department and the former Quartermaster Corps. The department has also established in Washington a board of contract adjustment to which the Secretary of War refers for decision all cases in which the contractor and the contracting officer are unable to agree. Furthermore, several thousand contracting officers, accountants, investigators, and other assistants are now at work helping the boards to make prompt settlements. On the enactment of the legislation which the War Department has re-

quested, this machinery is prepared to start immediately on the cases in which contracts were not made or signed as provided by law.

The War Department feels very earnestly that the good faith of the Government is pledged to a prompt settlement and payment of all just claims of contractors. The department stands fully ready to make such settlements and is already doing so where the contracts were made and signed as provided by law.

The Dent bill, as amended by the House Committee on Military Affairs, will meet the requirements of the situation if amended in a few further respects as suggested by the War Department and will enable the department to utilize its existing boards and its existing personnel to make prompt settlements of all formal and informal contracts.

Very sincerely,

BENEDICT CROWELL,
The Assistant Secretary of War.

MR. FLETCHER. Mr. President, I have not any serious objection to this commission. The only thing I am fearful about is that it will delay matters. I believe that the War Department is perfectly capable of dealing with this whole situation if Congress will simply say that certain contracts which ought to have been formally executed and would in the ordinary course of events have been formally executed are valid contracts. If Congress will simply give the authority provided in two sections, I believe, as I have said, that the department will adjust these matters in such a way as to bring relief to the contractors who have undertaken to serve the Government in its hour of need, and to bring it speedily; whereas if we add to that some sort of commission to review what the department does, we will create a condition which will inevitably mean uncertainty and delay. The contractors are not in a position where they can endure that hardship. They have suffered enough already; there has been enough delay already, and, indeed, there has already been too much.

What will it mean, for instance, if we have to wait here until the President names three members who are to constitute the proposed commission? We have had some experience in that direction. We know that whenever the President is authorized to make an appointment it does not come here the next day or the next week. Sometimes it takes several weeks and sometimes several months for the name to come in. The President has difficulty in finding men to fill these responsible positions, and an appointment on this commission is a responsible position, a position that calls for \$7,500 a year as compensation.

That is another thing that is made necessary by this bill. It is proposed to spend \$50,000 a year, in my judgment, wholly without any necessity at all. It is necessary to set up a court with clerks and stenographers and records, and all that sort of thing—a regular court machinery.

MR. HITCHCOCK. That is also in the committee bill.

MR. FLETCHER. I know it is, but I am totally opposed to it. I am opposed to that provision in both bills. I am opposed to the creation of a commission, but I am not going to delay the bill by making any great contest about it. I take it as being the best thing for us to do in order to get some action on this legislation, for other members of the committee seem to be against me on that idea. It is true that both bills—the bill of the Senator from Nebraska [Mr. HITCHCOCK] and the bill now offered as a substitute—provide for a commission, but I repeat I think it is a useless thing, an expensive thing, a costly thing for everybody concerned, to the Government as well as to the contractors, because it means delay. It will be weeks and weeks before we get the three names before the Senate, and then they must be confirmed by the Senate. Both the bills provide for that, and that may take several weeks. We do not know how long. And then after they are appointed and confirmed by the Senate and begin the work they have got to establish their headquarters, their apartments, and organize their forces for conducting this inquiry. So we are going to have claims pending before that court until most of us in this Chamber have passed away, and we will never hear the end of them. It seems to me an absurd thing to establish a court here to deal with these matters which ought to be adjusted without any delay at all and without all of this expensive machinery.

If we provide this commission, we are establishing a fifth wheel to the coach, for we have the Court of Claims anyway without this provision, which may be resorted to where there is a valid contract, and when we make valid contracts that are now irregular we open the way so that any contractor can secure justice, even though he has to bring suit finally in the Court of Claims. But here it is proposed to establish another court ahead of the Court of Claims. We already have the War Department and the whole machinery of that department, with all of its boards, and a final appeal to the Secretary of War himself.

Then, after that, it is proposed to create a commission before which the contractors may go. They can thrash out the matter before the commission, with years and years of delay and detail in connection with proceedings there, and then, after the com-

mission has rendered a decision, they can go to the Court of Claims. When will we reach an end to these matters that are in dispute between citizens who have endeavored to serve the Government and the Government itself? I think it is a useless and expensive piece of machinery that ought to be eliminated from this bill.

Furthermore, coupled with the proposal to establish a court is a provision that it shall be composed of men, according to the very language of the bill, who are pledged to look after particular interests on that commission. One is to represent the War Department, the other is to represent the Department of Justice, and the other is to represent the contractors, I presume; "the business interests of the country," the bill says. In other words, we are creating a court composed of three members, every member of which must go there pledged to look after some particular interest. That is a ridiculous kind of court to create. It is not a court of justice. A court of justice ought to be absolutely free and unhampered to deal with the facts, the law, and the justice of the controversy, and not be composed of partisans, as this bill specifies they must be. It is proposed to create a court of justice to pass upon the claims and to constitute that court of men appointed for the very reason that, respectively, they represent specially, particularly, and peculiarly conflicting interests.

That is another objectionable feature of it; but, as I have said, I am not going to take up more time in discussing the commission idea. I think it is absurd and ought to be eliminated from the bill, and I may offer an amendment to that effect before we get through with it. However, I would rather have the bill passed even with the unnecessary, useless, and expensive provision with respect to this commission than not to have it at all. I want to see the legislation enacted promptly. It ought to have been enacted before this time. It is a pity to have had all this delay about it. There are citizens who have rights, whose rights the department recognizes, and who are suffering daily by reason of the technicalities obtaining which prevent the settlement with them now. They ought to be settled with, and they can be settled with, and I am in hopes that most of them will be settled with without any appeal to this extraordinary commission.

I think there are safeguards thrown around the whole matter by provisions of the bill which protect the Government in every way, although I do not think that anybody is contemplating robbing the Government. I think it is undisputed—the authorities themselves admit it is undisputed—that there are contractors who are entitled to the adjustment and settlement of their rights and their just claims, but they can not get them as the law now stands. This bill opens the way for them to get what is due them. The danger would be rather that the department would be strict with them rather than that the department would not be strict enough. I fail utterly to see that there is any necessity for a commission. It merely puts upon the Government an additional expense, and it is going to cause inevitably serious delay and thereby hardship where there is no occasion for it. As I have said, I think that very likely before we are through I shall offer an amendment to strike out the provision for the commission, but I am not going to delay action on this bill by insisting strongly on it or taking up time discussing it further. I desired, however, to mention these facts in connection with the matter, and to urge, as I have said, speedy action upon the bill, in order that we may afford the relief that ought to be afforded and which those whom it will affect are entitled to receive.

MR. SMOOT. Mr. President, on January 23 the administrative committee of the American Bankers' Association adopted a resolution in relation to a provision in this bill, which I wish to take just a moment to read into the RECORD, and when the proper time comes I desire to discuss it to some extent. The resolution is as follows:

Resolved, That the American Bankers' Association earnestly urge the passage by the Senate of H. R. 13274, as reported by Mr. CHAMBERLAIN on January 20, with an amendment, subject, however, to the important modification that wherever the right of appeal therein is given to the Department of Justice such right be eliminated.

A provision of this nature places upon the Department of Justice a duty to investigate all contracts or orders now pending validation, adjustment, and final settlement, and will cause a serious and unnecessary delay, to the great detriment of business, and will cause a great financial loss to customers of banks and seriously interfere with the employment of labor.

We believe that there are adequate laws existing to protect the Government in the payment of contracts when validated, and that section 2 of the bill in question protects the Government in the validation of informal contracts and the completion of contracts to replace informal orders and agreements.

At the proper time, Mr. President, I may offer an amendment to the amendment reported by the committee, although at this time I do not care to do so.

From what has been said this afternoon by members of the committee, it seems to me that this bill ought to be guarded a little more carefully in certain particulars than it is; but if there is to be any relief whatever granted to the business interests of this country, let us have early action and let us perfect the bill so that there can not be criticisms against the Government such as have been referred to here to-day. I am rather surprised at what has been said upon the floor of the Senate, and yet I presume if we went into an investigation of all of the departments of the Government we would find that some unheard-of, unthought-of actions have been taken at a time when the demand was pressing, when the question of money counted nothing, and when the main consideration was the question of time. I can not conceive, Mr. President, how the conditions related here to-day can be justified or defended.

To my mind the department itself ought to have taken those matters in hand immediately, and they ought to have been rectified long ago. I have no doubt that there must be some legislation granting relief to the men who have furnished materials to the Government and who in many cases abandoned their regular business to do so, and who have not only all of their capital invested in producing the materials furnished to the Government in time of war but a great deal more. I think the chairman of the committee well said that unless some relief is granted, and that quickly, there are a great many institutions in this country which are going to be driven to the wall financially.

Mr. HITCHCOCK. Mr. President, as I understand the situation, we have before us a bill of the House of Representatives for which the committee has submitted a substitute. I desire to inquire of the Chair whether it is now in order to offer an amendment to perfect the House bill before the substitute is voted on?

The VICE PRESIDENT. It is.

Mr. HITCHCOCK. Then, Mr. President, I offer the amendment which I send to the desk, which I ask to have printed so that the Members of the Senate may have it to-morrow.

The VICE PRESIDENT. Without objection, it is so ordered.

Mr. CHAMBERLAIN. Mr. President, I rise to a parliamentary inquiry. The bill as reported by the Senate Committee on Military Affairs is an amendment to the House bill proposing to strike out all after the enacting clause, and to insert.

The VICE PRESIDENT. That comes under Rule XVIII, which was adopted for the very purpose of avoiding what was known as amendments in the third degree. That rule makes the House bill one question and the Senate committee amendment another question, and each is subject to amendment, under the rule the part to be stricken out having precedence in the matter of amendment.

Mr. CHAMBERLAIN. Then when the amendment comes up to which the Senator from Nebraska just called attention, will that be voted on first or will we vote on the committee amendment first?

The VICE PRESIDENT. If the amendment of the Senator from Nebraska is an amendment to amend the House bill, it must be voted on first.

Mr. CHAMBERLAIN. I rather think that the Senator's amendment is practically a substitute for the House bill. Is it not, I will ask the Senator?

Mr. HITCHCOCK. I think the suspicions of the Senator from Oregon are pretty well founded, but I believe that technically I am within the rules of the Senate.

Mr. CHAMBERLAIN. Then, Mr. President, I confess to my ignorance of parliamentary law.

The VICE PRESIDENT. The Chair is of this opinion: The Chair has been sitting here this afternoon, and has heard incidentally, on the side, what was attempted to be done. The Chair thinks that the Senator from Nebraska has a right to move an amendment as in lieu of the amendment offered by the committee; and the Chair thinks, also, that amendments may be offered to the amendment of the Senator from Nebraska. While the Chair has not seen it, from what the Secretary tells the Chair the Chair does not believe it is an amendment of the part that was stricken out at all. It is in lieu of that. The Secretary says, however, that the Senator does save part of the House text.

Mr. SMOOT. He has the right, however, to perfect it.

The VICE PRESIDENT. Oh, yes; the Senator has a perfect right to do that.

Mr. HITCHCOCK. Mr. President, in addition to having the amendment printed, I should like to have it printed in the Record. I make that request.

The VICE PRESIDENT. Is there any objection? The Chair hears none.

Mr. SMOOT. Why not have it read?

Mr. HITCHCOCK. I am perfectly willing to have it read, although I have suggested to the Senator in charge of the bill that we could not make any more progress to-night, and that we ought to have an executive session.

Mr. FRELINGHUYSEN. May I ask the Senator when we will be able to get copies of his amendment?

Mr. HITCHCOCK. The amendment will be on the desk of Senators to-morrow morning.

The amendment of Mr. HITCHCOCK is as follows:

In line 3, page 1, after the word "That," strike out all down to and including line 24, page 3, and insert the following:

"Where during the present war and prior to November 12, 1918, officers or agents acting under authority of the Secretary of War have placed orders or made contracts with manufacturers or contractors for war supplies or materials, or for the performance of work thereon, or for the construction or enlargement of plants or other preparations necessary to furnish supplies or materials for the War Department, the procurement of which has heretofore been authorized by Congress, and any of said orders or contracts has been partly or wholly performed, or expense has been incurred by the manufacturer or contractor prior to the 12th day of November, 1918, in preparation or partial execution of said contract or order, the fact that any such contract or order or agreement has not been made in the form or signed in the manner required by law shall not invalidate the same if it was entered into in good faith and lacked only the sanction of a contract in legal form. Nothing herein provided, however, shall be held to validate any contract, order, or agreement given or made by an officer or agent of the War Department not legally qualified or authorized to give a formal legal contract, except where such officer has signed as the representative of a superior officer authorized to make such contract, nor to permit an officer to make such contract with any company, corporation, or firm in which he has, or had at the time, directly or indirectly, any interest.

"SEC. 2. That in all cases as above included it shall be lawful to make payments under the terms of the contracts or orders so made or given to the extent that performance thereof has been made, expenditures incurred, or supplies thereunder have heretofore been received and accepted by the United States, provided that payment in such cases shall not exceed the fair value of the supplies or materials delivered to and accepted by the United States, together with remuneration for expenditure properly incurred in preparing to perform said contract, orders, or agreements.

"SEC. 3. That in case of the cancellation, suspension, or annulment of any contract, order or agreement as described in this act, by the Secretary of War, or officers or agents acting by his authority, and in cases where no property or supplies have been delivered to and accepted by the United States, or where only partial delivery and acceptance has been made, contractors shall file with the Secretary of War within 60 days after the passage of this act any claim for remuneration arising out of the discontinuance, cancellation, or suspension of such contract, agreement, or order, properly itemized and set forth. Each claim shall thenceupon, or as soon as possible, be transmitted to and filed with the commission hereinafter provided for, together with a statement attached thereto, showing the amount, if any, which the War Department deems to be justly due to said claimant. If the claimant shall file a statement offering to accept the amount awarded by the War Department in full for said claim, the commission shall, within 10 days, order the same paid in the absence of evidence that it is excessive.

"SEC. 4. That for the adjustment of all claims arising out of the cancellation of contracts, orders, and agreements for supplies or materials of war, as described in the foregoing paragraphs of this act, there is hereby created an adjustment commission to be composed of three members, to be appointed by the President and confirmed by the Senate, one representing the War Department, one representing the Department of Justice, and one representing the business interests of the country, none of whom shall be interested in any contracts with the Government or have an interest in any firm or corporation having war contracts, who shall hold their offices for one year and receive as compensation a salary of \$10,000 each. It shall be the duty of said commission promptly to examine and pass upon all claims for compensation and reimbursement arising out of cases as set forth in this act for supplies furnished, expenditures or obligations necessarily incurred, or materials purchased under faith of contracts in legal form or orders received from officers and agents of the Secretary of War as heretofore set forth.

"SEC. 5. That in each case, as soon as the commission has made an award, the contractor shall be entitled to receive the same upon giving receipt in full of all demands against the United States arising out of the transaction, or if the contractor is not satisfied with the amount so awarded he shall be entitled to receive, and shall receive at once, 75 per cent of the amount that has been awarded him, and he shall thenceupon be entitled to appeal the case to the Court of Claims, which is hereby given jurisdiction to hear the case and render final judgment in such sum as may be required to reimburse the contractor for supplies and materials delivered to and accepted by the United States and expenditure necessarily incurred in good faith in the partial performance of the contract or order above referred to, or in preparing for the same.

"SEC. 6. That in no case, however, shall any award, either by the commission or the Court of Claims, include prospective or possible profits on any part of the contract beyond the goods and supplies delivered to and accepted by the United States and a remuneration for expenditures necessarily incurred in preparing to perform said contract or order so canceled.

"SEC. 7. That the purpose of this act being to secure prompt settlement of claims, the commission is authorized to make its own rules and regulations and to hear and determine the issues informally and promptly upon presentation of the case. The commission is authorized to appoint, under such rules and regulations as it shall prescribe, one or more regional boards of examiners to serve in such districts throughout the country as the commission shall fix and determine to investigate and determine the facts concerning claims, legal or equitable, that may be presented as herein prescribed. The members of such board shall be composed of one representative of the War Department, one representative of the Department of Justice, and one from the business interests of the region, none of whom shall have any interest in the contract, directly or indirectly, and receive no compensation, save and except such per diem compensation as shall be fixed by the commission. Whenever the commission shall refer to any such regional board, of examiners any claim they shall proceed informally to hear the parties,

take the proofs, and return the same promptly to the commission with their recommendation thereon.

"SEC. 8. That the sum of \$50,000, or so much thereof as may be necessary, is hereby appropriated, out of any money in the Treasury not otherwise appropriated, for the reasonable expenses of said commission, to be paid out upon the warrant of the chairman, who shall be chosen by the commission from among their own members, and approved by the secretary, who may be selected by the commission, and who shall receive a salary of not exceeding \$5,000 for the period of one year, or so much thereof as may be necessary, to be determined by the commission."

Amend the title so as to read: "A bill to legalize informal or defective orders for war supplies and materials; to provide for the cancellation of orders and contracts, for the reimbursement of contractors and manufacturers, for the adjustment of claims on canceled contracts or orders, to provide for the partial payment of awards pending final determination, and for the creation of an adjustment commission."

WASHINGTON'S FAREWELL ADDRESS.

THE VICE PRESIDENT. In accordance with the order of the Senate heretofore made, directing the reading of the Farewell Address of George Washington upon the 22d day of February, immediately following the reading of the Journal, the Chair appoints for that purpose this year the Senator from New Jersey [Mr. FRELINGHUYSEN].

EXECUTIVE SESSION.

MR. MARTIN of Virginia. I move that the Senate proceed to the consideration of executive business.

The motion was agreed to, and the Senate proceeded to the consideration of executive business. After 25 minutes spent in executive session the doors were reopened.

DEATH OF REPRESENTATIVE ROBBINS.

MR. PENROSE. Mr. President, I ask that the resolutions received from the House of Representatives on the death of Hon. EDWARD EVERETT ROBBINS, late a Representative from the State of Pennsylvania, be laid before the Senate.

THE VICE PRESIDENT. The Chair lays before the Senate the resolutions from the House of Representatives, which will be read.

The Secretary read the resolutions as follows:

IN THE HOUSE OF REPRESENTATIVES,
January 25, 1919.

Resolved, That the House has heard with profound sorrow of the death of the Hon. EDWARD EVERETT ROBBINS, a Representative from the State of Pennsylvania.

Resolved, That a committee of 34 Members of the House, with such Members of the Senate as may be joined, be appointed to attend the funeral.

Resolved, That the Sergeant at Arms of the House be authorized and directed to take such steps as may be necessary for carrying out the provisions of these resolutions, and that the necessary expenses in connection therewith be paid out of the contingent fund of the House.

Resolved, That the Clerk communicate these resolutions to the Senate and transmit a copy thereof to the family of the deceased.

Resolved, That as a further mark of respect this House do now adjourn.

MR. PENROSE. Mr. President, I offer the following resolutions, which I send to the desk and ask for their adoption.

The resolutions (S. Res. 430) were read, considered by unanimous consent, and unanimously agreed to, as follows:

Resolved, That the Senate has heard with profound sorrow the announcement of the death of the Hon. EDWARD EVERETT ROBBINS, late a Representative from the State of Pennsylvania.

Resolved, That a committee of seven Senators be appointed by the Vice President to join the committee appointed on the part of the House of Representatives, to attend the funeral of the deceased.

Resolved, That the Secretary communicate a copy of these resolutions to the House of Representatives.

THE VICE PRESIDENT, under the second resolution, appointed MR. PENROSE, MR. KING, MR. OVERMAN, MR. WATSON, MR. BAIRD, MR. THOMPSON, and MR. KNOX the committee on the part of the Senate.

MR. PENROSE. Mr. President, I move as a further mark of respect to the memory of the deceased Representative that the Senate do now adjourn.

The motion was unanimously agreed to; and (at 4 o'clock and 55 minutes p. m.) the Senate adjourned until to-morrow, January 28, 1919, at 12 o'clock meridian.

NOMINATIONS.

Executive nominations received by the Senate January 27, 1919.

APPOINTMENTS IN THE NAVY.

To be ensigns for temporary service.

Jack G. Scott,
Lawrence V. Smith,
Harold E. Aul,
Edwin J. Simons,
Roger K. Hodson,
Wilbur J. Schoepfle,
Robert T. Lattin,
Charles A. Harrison,
Edward A. Pedersen,
James R. Bagshaw, jr.,

Arthur R. Curry,
Cecil G. Cooley,
Frank V. Herdman,
Leslie V. Winchester,
William C. Wroe,
Robert C. Saunders, jr.,
Frank E. Goeckler,
Albert L. Struven,
Bascom H. Thomas,
Willard W. Wright,
Arthur T. Leonard,
Perry B. Sample,
William F. Evans,
Alfred G. Scott,
Cellan A. Hendee,
Kenneth E. Bryant,
Philip H. Smith,
Edwin E. Valentine,
Leon W. Dunbar,
Richard W. Reep,
Edgar V. Carrithers,
Elliott S. Hastings,
James P. Carroll,
Howard L. Clark,
Rodney H. Dobson,
Eldridge W. Reese,
Clinton H. Beckwith,
Terence W. Greene,
Ernest O. Arnold,
William N. Thornton,
Joseph G. Brearley,
Oliver F. Green,
Rudolph J. Anderson,
Thomas J. Spellman,
William H. Terrey,
Edgar A. Self,
Theodore J. Olson,
Lannis A. Parker,
Waldorf B. Brown,
Carl H. Taylor,
David E. Tell,
Herman B. Thompson,
Harold W. Skillman,
Leo W. Baker,
Harry S. Ford,
Robert G. Strong,
Aloysius D. Keller,
Ernest V. Abrams,
Wallace H. Collins,
Ivan L. Kingsley,
Frank P. Doheny,
Alzamore B. Smith,
Leroy S. Miller,
Ralph A. Schuyler,
John E. Walrath,
Frank W. Thunberg,
Frank A. Zimbelman,
John L. Landfair,
David J. Nolin,
Alexander N. Crowder,
Robert L. Rundle,
Charles M. Steele,
William B. Collier,
Clyde R. Kennedy,
Frank M. Andrews,
Joseph S. Fogerty,
James C. Knowles,
Edward L. Sheldon,
James J. Horeau,
Walter E. Peterson,
William T. Ryan,
Foster B. Crutcher,
Charles H. Engelhard,
James H. Joyce,
Irving Thurston,
Charles C. Babcock,
Richard T. Harte,
Ernest M. Moore,
David T. Sanders,
John A. Gee,
Otis Howard,
John A. Scoville,
Verne L. Sullivan,
Merton J. Wakefield,
Lyle H. Gallivan,