

RELATIVE TO CONTRACTS

HEARINGS

BEFORE THE

COMMITTEE ON MILITARY AFFAIRS

HOUSE OF REPRESENTATIVES

SIXTY-FIFTH CONGRESS

THIRD SESSION

ON

H. R. 13274

TO PROVIDE RELIEF WHERE FORMAL CONTRACTS HAVE NOT
BEEN MADE IN THE MANNER REQUIRED BY LAW

STATEMENTS OF

HONORABLE BENEDICT CROWELL

Assistant Secretary of War

MAJ. GEN. GEORGE W. GOETHALS

Director of Purchases

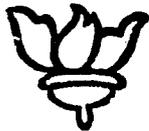
MR. G. H. DORR

Assistant Director of Munitions

MR. WALTER W. WARWICK

Comptroller of the Treasury

DECEMBER 9, 1918



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1918

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HOUSE OF REPRESENTATIVES.

SIXTY-FIFTH CONGRESS.

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RELATIVE TO CONTRACTS.

HOUSE OF REPRESENTATIVES,

COMMITTEE ON MILITARY AFFAIRS,

Monday, December 9, 1918.

The committee met at 10.30 o'clock a. m., Hon. S. Hubert Dent, jr. (chairman), presiding.

The CHAIRMAN. The first matter I wish to call to the attention of the committee is the bill (H. R. 13274) to provide relief where formal contracts have not been made in the manner required by law.

The committee was called together this morning to hear the Assistant Secretary of War, Mr. Crowell, and Gen. Goethals, on the subject matter of the bill. Mr. Secretary, will you explain in a general way the reasons for this legislation?

STATEMENT OF HON. BENEDICT CROWELL, ASSISTANT SECRETARY OF WAR, ACCOMPANIED BY MAJ. GEN. GEORGE W. GOETHALS, DIRECTOR OF PURCHASES, AND MR. G. H. DORR, ASSISTANT DIRECTOR OF MUNITIONS.

Mr. CROWELL. Mr. Chairman, immediately on the signing of the armistice the need of the prompt suspension of work and cancellation of all these contracts, most of which were reaching the peak of their production at this time, occupied our attention. We promptly made an agreement with the Navy Department and the Shipping Board by which the hours of work were reduced, cutting out all Sunday and overtime work. This immediately acted as a slowing down of all the contracts, because so many men who were working on these contracts and had left their homes went back to get their old jobs, and by the slowing down of the work a gradual cutting down of all production was obtained.

A study was then immediately made of the requirements and the state of production in all these contracts. Complete immediate cancellation could not be had for many reasons, first, because in the case of a contract where material was in process a cancellation would mean we would lose all that material. A great deal of it was 75 or 80 per cent finished, and in a case of that kind we would prefer to pay the remaining 20 per cent and get the finished article rather than pay 80 per cent and have a complete loss.

The case of a rifle is perhaps a good case in point. We are completing the rifles that were in process so that in all cases we get a complete rifle rather than an 80 per cent complete rifle. That principle was applied in most cases, and we then met with the Comptroller of the Treasury in regard to payments, because a prompt payment to these contractors, I believe, is imperative. Many of them, because

of the greatly increased cost of doing business, have a large amount of money borrowed, and if they can promptly meet their difficulties and make this payment, that will allow them to immediately and easily turn back into their own business, and at the same time we can settle the claims of a large proportion of them.

I think the saving we can make will run into many millions of dollars—if we can act promptly.

We found, from the comptroller, that we would not be able to make adjustments on many of our contracts, because they were informal in one way or another. In other words, the moral obligation was there, the contracts had been properly performed as far as they had gone, but there was a legal defect in making the contracts informally. This bill is intended to correct that situation. I can specify a few cases, perhaps, which will make it somewhat clearer. A contract is drawn by a contracting officer. As you know, in most of these contracts, speed was the great thing. The contractor would meet with the Government officials, and, in a few moments, would settle the main points of the contract, and he would then leave in order to get the operation started; as a formal contract would then be drawn, but rather slowly. In some cases as much as three months would elapse before the final contract would be formally drawn up and be signed. Many questions of detail would have to be worked out later, and those things take time. So it meant, in some cases, that the contracting officer, who was named, was not present when it came to the signing of the contract. He may have been in France, or somewhere else, so another officer signed it.

Mr. NICHOLLS. Does this bill make these contracts good?

Mr. CROWELL. It allows us to pay what we owe. In other cases we gave what are known as procurement orders, and that was just another way of speeding the things up, and the armistice caught us before the formal contracts were signed; and, under the law, the contractors, who had spent a lot of money, have no claim whatever against the Government. We can not make reasonable settlement with those men under those conditions. We must be able to pay what we owe, and that is covered by this bill.

In other cases we have even given orders on the long-distance telephone. We have had to get these things done quickly, and these men have these operations in various stages, the material is in progress, and unless we have this bill, or a similar bill, to enable us to meet our obligations promptly and pay the contractors, there will be a long delay, and there will be many cases of bankruptcy in the country, and the Government will be forced to pay millions of dollars finally, and the matter will probably run for 10, 15, or 20 years in the Court of Claims, if it should turn out that these informal agreements afforded any basis for resort to the Court of Claims.

Mr. TILSON. In a word, this bill is to permit you to do what any honest business man would do in private business?

Mr. CROWELL. Exactly.

Mr. TILSON. It is simply to permit the Government to be honest.

Mr. CROWELL. That is all.

Mr. CALDWELL. But does not this open up the door and invite people to come in and get a claim settled without the proper processes of law? Would not the fair thing be in cases of this kind to

provide some system by which a man would be required to file his proof and make out a prima facie case?

Mr. CROWELL. In every case the first step is the submission of his claim by the contractor. Our officers then make their estimate and the negotiation is then completed. We think in 90 per cent of the cases there will be no disagreement because it is merely a matter of book-keeping and of keeping a contract.

Mr. NICHOLLS. Your department passes on all the claims before they can be paid?

Mr. CROWELL. Yes.

Mr. GREENE. There is no chance that somebody might trump up a claim because they must meet your requirements and their records must compare with your records, and if they can not qualify and meet those requirements, there is no payment.

Mr. CROWELL. I can not see any possibility of a claim being trumped up under this bill.

Mr. KAHN. The last proviso, beginning on line 13, page 2, seems to meet that situation, where it says, "*Provided further*, That no liability shall be incurred by the United States by reason of the passage of this act, excepting such amounts only as the Secretary of War shall find to be fairly and equitably payable under such agreements, which amounts when received and accepted shall be in full of all claims and demands whatever arising out of or by virtue of such agreement, and nothing in this act shall be construed to confer jurisdiction upon any court to entertain a suit against the United States upon any agreement of the character herein referred to, but the allowance made by the Secretary of War shall be final and conclusive." I think that protects the rights of the United States Government in the matter. Do you not think so?

Mr. CROWELL. I think so, fully.

Mr. GORDON. Of course, that is conferring judicial powers on the Secretary of War. That is a pretty broad provision.

Mr. CALDWELL. That is absolutely antagonistic to the whole theory of American jurisprudence.

Mr. KAHN. It is done all the time.

Mr. GORDON. The Constitution of the United States provides that the judicial power shall be conferred upon the Supreme Court of the United States, and such inferior tribunals as Congress may, from time to time provide for. This bill confers judicial power upon the Secretary of War.

Mr. KAHN. Of course, if you want every man who has come to the assistance of the United States Government during this war to go into a court of law to adjudicate his claim, do you consider it would be fair to such a man, to compel him to bring a suit?

Mr. GORDON. Of course, it is a pretty complicated question. May I ask you this question on that point? Do I understand that the Comptroller has held that if you had an informal contract for manufacturing rifles, and the rifles had been manufactured and delivered and the War Department had given a voucher for the payment for those rifles, that because of the informality of the contract, the War Department was prohibited from paying for what property they had actually received?

Mr. CROWELL. That is my understanding.

Gen. GOETHALS. That is just it, exactly.

The CHAIRMAN. I want to call your attention to this fact. If you will notice the reading of the bill, it is limited to cases in which the Secretary of War will act and is limited to those cases where the contract has either been partially or totally performed and the benefit received by the Government.

Mr. NICHOLS. As I understand it, the proposition is this. You are morally bound to pay the money on these contracts, but you want to get for the Government the legal right to do it, and that is the reason for the bill?

Mr. CROWELL. Yes, sir.

Mr. MCKENZIE. I want to ask whether or not this bill is intended to cover subcontracts as well as original contracts. Suppose you make a contract with an individual or a corporation; that corporation or individual naturally goes out and sublets certain parts of this contract to other concerns. Now, when you come to settle, under this bill, with the principal contractor, of course you will undoubtedly very carefully go over such subcontracts and examine the amount that would be due to subcontractors as alleged by the principal contractor. That is the only place, as I see it, where they might undertake possibly to pad the contract.

Gen. GOETHALS. But it is impossible, under the system we have, because those contracts are under the control of inspectors not only at the factory of the main contractors, but at the factories of the subcontractors. So that the Government has kept a check on the work from its inception up to the time the contract is canceled.

Mr. SHALLENBERGER. What proportion of the contracts that have been formulated because of the war, would be included in this bill? Are there are large number of contracts that would be affected by this bill?

Gen. GOETHALS. The larger part of them are affected by this bill.

Mr. SHALLENBERGER. Why is it that there are so many informal contracts? What is the reason for that?

Gen. GOETHALS. Take the Engineer Department. All of the equipment they ordered on what they call purchase orders. They had been operating under the river and harbor bill, which authorizes them to make purchases by contract or otherwise, as might be most advantageous to the Government. When the war broke out their attention was not called to the fact that they are prohibited from placing an order in excess of \$5,000, or an order which can not be completed in less than 60 days. Practically all of their purchases have been made on these individual purchase orders, and are not covered by a written, formal agreement.

The Quartermaster's Department was making contracts three months in advance. The programs were constantly changing for the the number of men, and they would make contracts for certain amounts of material covering a three months' period. The armistice caught them with nearly all of their contracts extended, but not yet formally reduced to writing.

Mr. SHALLENBERGER. This bill would not prevent any investigation of or reduction of any contract by the Secretary of War that would be permitted if the bill was not passed, would it?

Gen. GOETHALS. This is only to make legal the payments we expect to make under the agreements which have been made.

Mr. SHALLENBERGER. It would not commit the United States to any forfeiture of its rights, if the contracts are merely withdrawn?

Gen. GOETHALS. No, sir.

Mr. GORDON. This bill authorizes the Secretary of War to settle all claims for damages arising out of contracts not performed.

Gen. GOETHALS. I do not believe this legislation will allow him to pay claims for damages of that character, except for actual losses incurred by the contract, due to the performance of this work.

Mr. CROWELL. Take the first proviso, beginning at the end of line 6 on page 2. I think that covers that point. It says:

Provided, That payment under such informal agreement shall not exceed the fair value of the property transferred or delivered as accepted by the United States, as determined by the Secretary of War, and where no property has been transferred, delivered, or accepted, payment shall not be in excess of the actual cost incurred in preparation for performance as such cost is determined by said Secretary.

I think that covers the point.

Mr. CALDWELL. It says, "shall not be in excess of the actual cost incurred in preparation for performance as such cost is determined by said Secretary." Here is the situation I have in my mind. A couple of days before the armistice was signed, some reserve officer sent a telephone order to the manufacturer of some light automobile truck in Detroit and said, "Make us 100,000 of these trucks instead of the model we wanted." And thereupon this fellow orders the material. He is to have a profit of something like \$700 on each truck. Then there is a telegram sent saying that the armistice has been signed and telling him that he is to cease the manufacture of the trucks. He takes this to the Secretary of War, and the Secretary says that it is only fair that we should pay this man \$700 profit on each truck when the contract, as a matter of fact, had never been put in writing. I do not say that has actually been done, but it is one of the possibilities.

Gen. GOETHALS. We have already ruled that anticipated profits will not be considered. So, if that is the statement we start out with, the profit of \$700 on each truck can not be paid. We will be obliged to pay him for whatever material he has on hand, which he can deliver to us as a part of our property.

Mr. CALDWELL. Wherever he can accumulate it?

Gen. GOETHALS. Wherever he can accumulate it.

Mr. CALDWELL. Anywhere in the United States?

Gen. GOETHALS. Exactly.

Mr. CALDWELL. Here is the proposition: A law was on the statute books stating that these contracts should be made in such and such a way. This being a country of laws, it was expected that the men who hold executive office would comply with the laws passed by the Congress of the United States. Yet, in utter disregard of the law they continued to make these agreements or contracts which are not legal, and now they are asking Congress to say that what they, God's anointed, did, shall be paid for with the people's money, and I will not vote for such a proposition as that.

Gen. GOETHALS. That is all right. We are just telling you the conditions, and it is up to you to pass the bill or not, as you see fit. I am perfectly willing to tell the contractors that they have recourse to the Court of Claims.

Mr. OLNEY. I have in mind the concrete case of a concern, which borrowed a quarter of a million dollars from the War Credits Board in anticipation of future business, and if the war had gone on and had lasted until February or March, this concern would have been able to pay all its obligations. But the armistice was declared and this concern promises to be bankrupt. Would such a concern as that be able to come out whole on its contract for making 1-pound shells?

Gen. GOETHALS. We will take whatever shells they had for delivery, and whatever moneys they had expended to produce the shells they had delivered would be covered by the provisions of this bill.

Mr. GORDON. No contracts have been awarded since the armistice has been signed?

Gen. GOETHALS. No contracts have been awarded since the armistice has been signed; no.

There are three classes of cases. The first one is where a contract has been made and not signed by the proper officer, where the contractor has delivered his material, and where we have paid him for it, and by reason of the fact that the contract was not regularly signed the payments are illegal. The second case is where we have gotten part of the stuff, but where no contract has been signed. The third case is where we have given an order to a contractor to make preparations to go to work, where he has expended the money, but had delivered nothing under the contract at the time the armistice was signed.

Mr. GREENE. The presumption is that the Government does not undertake to insure these contractors against any speculative risk.

Gen. GOETHALS. None at all; it is simply actual cost as far as we are able to determine it. The method of procedure is that we notify the contractor that his contract is suspended and no further production will be allowed. The contracting officer, together with his inspectors, determine how much has been expended on that contract and what is properly allowable. That goes before the bureau board of review, and they pass upon it, and, if in passing upon the claim, it receives the approval of the chief of the bureau, the claim is settled beyond question. The next case is where there is a disagreement. If that can not be settled by the bureau board of review, it comes to a part of my organization, which is called the board of contract adjustment, which passes upon it, and their decision is final.

So the machinery is set up for the closing of these contracts, and had there been no illegality in the signing of the contracts this legislation would never have come up and we would have settled the claims by the machinery which has been set up, and Congress would not have been appealed to.

Mr. NICHOLLS. Does the same rule apply to contractors who have been working on encampments? If they have bought material, it would be the same as in the case of the rifles which Mr. Crowell referred to?

Gen. GOETHALS. Yes.

Mr. NICHOLLS. They would be paid for their their materials, but their work would be stopped.

Gen. GOETHALS. There is a certain overhead that would come in. They would be paid for their material, their labor, and a certain

amount of overhead which would be properly chargeable both to their labor and material.

Mr. ANTHONY. In the case of an informal contract for the purchase for real estate, would this legislation ratify such an informal contract, so that the Government would have to take it whether it wanted the real estate or not?

Gen. GOETHALS. No; we are not obliged to take anything under this bill that we do not need.

Mr. ANTHONY. It still leaves the matter to the judgment of the department as to whether it is advisable to complete the contract?

Gen. GOETHALS. Yes.

Mr. GREENE. The claimant is not presumed to have any greater right than his country?

Gen. GOETHALS. Absolutely not.

Mr. GREENE. If the country does not want the thing, it is not obliged to take it?

Gen. GOETHALS. No.

Mr. SHALLENBERGER. What right has the United States Government to terminate a contract after it has entered into it? Suppose I have a good contract; what right has the Government to terminate that?

Gen. GOETHALS. The bulk of the contracts contain a cancellation clause, and it is under that clause that final settlement is made.

Mr. SHALLENBERGER. And you would propose to adjust the matter along that same line?

Gen. GOETHALS. Yes, sir.

Mr. CALDWELL. In the clothing contract there was no cancellation contract.

Gen. GOETHALS. No.

Mr. CALDWELL. What are you going to do with those people?

Gen. GOETHALS. We own all the material. We bought all the wool in the first place. When the armistice was signed I stopped the manufacture of clothing, so we have the cloth. We told the manufacturers to make up the clothing that was cut up to that time, and we have taken the cloth that remains, and it is ours.

Mr. CALDWELL. I know of one case where there was a firm given an order for several thousand various portions of uniforms, and they were told the kind of machinery they had to buy. The inspectors were there and saw it installed. They had made but 2 per cent of the amount called for in the contract when the contract was canceled.

Gen. GOETHALS. If that is an agreement made that the machinery will be purchased, it is the property of the United States.

Mr. CALDWELL. No; that machinery was directed to be bought.

Gen. GOETHALS. If we are going to pay for the machinery it is ours, and we are going to take it.

Mr. CALDWELL. It was not a part of the contract.

Gen. GOETHALS. Then we can make a settlement and not pay anything for the machinery—

Mr. CALDWELL (interposing). The theory under this bill is that you settle for the machinery because you have canceled the contract under which they were to make those clothes.

Gen. GOETHALS. I am not prepared to answer that question, but I assume that if we paid for the machinery, the machinery would become ours; it would be our property.

Mr. CALDWELL. They had a contract to make so many thousand suits. Under that they figured the profit would be so much, and there is no cancellation clause in the contract. Relying upon that they bought \$20,000 worth of machinery which they were directed to buy by the Government with the idea that the Government would require that the uniforms be made on that kind of machinery. Now, then, you cancel that contract, which you had no authority to do, you knock them out of a profit of 20 cents on a garment, which would have made them whole for the machinery they bought. What are you going to do in that kind of a case?

Gen. GOETHALS. I would pay for the machinery, and take the machinery.

Mr. OLNEY. Do all the contracts have a cancellation clause during the period of the war?

Gen. GOETHALS. No; not all of them. A large number of them have.

Mr. GARRETT. General, I imagine the first question that will be asked on the floor of the House in regard to a bill of this character will be, how many of this kind of contracts have you, and how many dollars are involved? Have you any way of calculating that?

Gen. GOETHALS. I should say thousands of contracts and millions of dollars. That is all I can tell you.

Mr. GARRETT. The books of the department are not in such shape that you could file later a statement showing those facts?

Gen. GOETHALS. We ought to be able to give you a statement of the number of contracts, and the amount of money involved. I will have that worked out for you.

The CHAIRMAN. That would be safeguarded by requiring the Secretary of War to make a report to Congress on these contracts which he will pass upon.

Mr. GREENE. Would it not be possible to have a time limit included so as to outlaw claims not presented within a reasonable time?

Gen. GOETHALS. I do not see any objection to that.

Mr. GORDON. Your conception of the powers of the War Department suggest that it would have the right to proceed with the performance of every valid, existing contract that has been made up to the point of final delivery and pay for the property regardless of the armistice or the ending of the war. That is the conception which the War Department places upon its powers now?

Gen. GOETHALS. No; I would not say that. I do not believe the War Department—I can not speak for the War Department—but I do not believe the War Department would feel that it was justified in getting this extra material for which it has no use, but would assume they are bound by a contract.

Mr. GORDON. If they made a valid contract for the delivery of any number of articles just before the armistice was signed, they would feel, in the absence of some action on our part, that they were legally bound to proceed with the contract to final delivery and pay all that was due under the contract.

Mr. GARRETT. Provided it had no cancellation clause in it.

Gen. GOETHALS. We are not treating them in that way at all.

Mr. CROWELL. Practically all the recent contracts have cancellation clauses.

The CHAIRMAN. This bill is to provide for contracts that were not valid contracts.

Gen. GOETHALS. This is to legalize payments to be made on the informal agreements.

Mr. QUIN. Was there any situation similar to this after the Civil War or after the Spanis-American War?

Mr. GORDON. Yes; and they were all settled in the Court of Claims.

Mr. CROWELL. I think some of them are still unsettled, and we are trying to avoid that condition.

Mr. GORDON. You are trying to avoid it by assuming judicial functions.

Mr. CROWELL. I can not get that distinction myself.

Mr. GREENE. Is it not true that in such a case as this you may not have to be confined entirely to the precise terms of the contracts in that this is an emergency and for that very reason these contracts are not now legally complete? They were emergency orders, and the claimant himself shared in the risk of the emergency quite as much as the Government.

Gen. GOETHALS. I do not think that is quite a fair statement.

Mr. GREENE. Let me finish it. He ought to have the same interest the Government has in the termination of the war.

Gen. GOETHALS. Exactly.

Mr. GREENE. Consequently, if he undertook anything toward the end, while he should have some monetary compensation, he ought not to feel that the Government, which was in the same risk with him, should compensate him for anticipating profits or speculative risks.

Gen. GOETHALS. That is right.

Mr. GREENE. Because the production of the article at all was to save his business and not necessarily his profits.

Gen. GOETHALS. That is all we are trying to do. But it is not fair to assume that the claimant believed when he was given the order that the Government was not acting in good faith and that the officer was not fully within his rights.

Mr. KAHN. Just prior to the signing of the armistice did your department in any way cut down production?

Gen. GOETHALS. Not until the signing of the armistice.

Mr. KAHN. I think you were wise.

Gen. GOETHALS. We did take this precaution, that on the 9th of November I issued instructions that should be followed for the closing out of these contracts.

Mr. KAHN. You made no endeavor to cut down production until the armistice was signed?

Gen. GOETHALS. Absolutely none. I personally told them that we were not yet out of the war.

Mr. HULL. As I understand it, these cancellations would all have to be approved by the office of the Secretary of War. Is that right?

Gen. GOETHALS. Yes, sir; that is right.

Mr. HULL. There is just one other feature I would like to inquire about. I believe you are correct in the theory that you ought to take care of the people that made these contracts, but there is a class of

people that should be considered in the cancellation of the contracts, and that is the laborers.

Gen. GOETHALS. Let me state right there that the instructions issued by the War Department stated that these contracts should be so annulled as not to upset industrial or labor conditions. Now, in closing out the contracts, for instance, for knit goods in Connecticut, they are not able to turn at once to civilian goods, and we allowed them to produce in their own period of time the output they were making for three weeks prior to the closing out of the order. That will keep them going for an indefinite time, if they so elect, to enable the industry to get on its feet and take up civil work, and for the Labor Department to adjust labor conditions.

Mr. GORDON. What proportion of the contracts contain a cancellation clause?

Gen. GOETHALS. I think the largest part of them do.

Mr. GORDON. Mr. Secretary, will you be good enough to put in the hearing a copy of the cancellation clause for the consideration of the committee?

Mr. CROWELL. Yes, sir.

(The matter referred to is as follows:)

CANCELLATION AND TERMINATION BEFORE COMPLETION.

SECTION 1. *Cancellation for contractor's default.*

In the event of the Contractor's default in making deliveries at the times and in the quantities herein specified, or in performing the work at the times and in the manner herein provided, the Contracting Officer may at any time and from time to time, at his option, by giving written notice to the Contractor, cancel on behalf of the United States the delivery or performance of all or any part of the articles or work then in arrears, and such cancellation shall be deemed to be effective from such date as may be specified in said notice.

Articles or work completely manufactured or completely performed in accordance with the requirements of this Contract at the date any cancellation above permitted is to become effective shall be accepted, and upon delivery shall be paid for by the United States at the contract price or compensation. Any such cancellation shall be without prejudice to any other rights or remedies or to any claim against the Contractor which the United States may have by reason of such default or otherwise.

SECTION 2. *Termination in public interest.*

If, in the opinion of the chief of the bureau, the public interest shall so require, this Contract may be terminated by the United States by ---days' notice in writing from the Contracting Officer, to the Contractor, and such termination shall be deemed to be effective upon the expiration of --- days after the giving of such notice, and shall be without prejudice to any claims which the United States may have against the Contractor under this Contract. After the receipt of such notice the Contractor shall not order any further materials or facilities, or enter into any further subcontracts, or make any further purchases in connection with the performance of this Contract, without written consent previously obtained from the Contracting Officer, but inspection of the completed articles or work and acceptance thereof by the United States in accordance with the terms of this Contract shall continue during such period of --- days as though such notice had not been given.

In the event of and upon such termination of this Contract prior to completion, as provided in this section 2, for any reason other than the default of the Contractor, the United States shall make payments to and protect the Contractor as follows:

(a) The United States shall pay to the Contractor the contract price or compensation, not previously paid, for all articles or work completely manufactured or completely performed in accordance with the requirements of this Contract at the date such termination becomes effective.

(b) The United States shall reimburse the Contractor for such proportion of the Contractor's expenditures (other than expenditures for plant, facilities, and equipment solely provided for the performance of this Contract) made by the Contractor in good faith in connection with the performance of this Contract, as is fairly and properly apportionable to the articles or work the delivery or performance of which is so terminated, plus — per cent of the amount so ascertained. Any raw materials, articles in process of manufacture, and other property so paid for shall become the property of the United States.

(c) The United States shall protect the Contractor against such proportion of the Contractor's outstanding obligations, incurred by the Contractor in good faith in connection with the performance of this Contract, as is properly and fairly apportionable to the articles or work, the delivery or performance of which is so terminated.

The facts to be determined under the above subdivisions (b) and (c) shall be determined by agreement between the Contractor and the Contracting Officer, and in event of their failure to agree shall be determined by three persons, one to be appointed by the Contractor, one by the Contracting Officer, and the third by these two.

NOTE.—The Contracting Officer may, in his discretion, amplify the above provision so as to provide that any such determination shall be reached with due regard to the provisions of the pamphlet defining costs of manufacture, which may be in use in the particular bureau.

(d) The United States shall also pay to the Contractor on account of depreciation or amortization of plant, facilities, and equipment, solely provided by the Contractor at its expense for the performance of this Contract, an amount to be determined as follows: As soon as conveniently may be done after such termination of this Contract, the fair market value of such plant, facilities, and equipment at the time of such termination shall be determined by an appraisement to be made by three appraisers, one to be appointed by the Contractor, one by the Contracting Officer, and the third by these two. The United States shall then pay to the Contractor such part of the amount by which the cost to the Contractor of such plant, facilities, and equipment shall exceed such appraised fair market value thereof as shall be fairly and properly apportionable to the articles or work the delivery or performance of which is so terminated; and in determining what amount is so fairly and properly apportionable due regard shall be had to the extent to which this contract shall have been performed and the extent to which the cost of said plant, facilities, and equipment should be regarded as having been absorbed by such performance. The amount so fairly and properly apportionable shall be determined by agreement between the Contractor and the Contracting Officer, if possible, and in the event of their failure to agree shall be determined by three persons, one to be appointed by the Contractor, one by the Contracting Officer, and the third by these two.

In the event of the termination of this Contract under this section 2, any and all obligations of the United States to make any payments to the Contractor under this Contract, other than those specified or provided for in this section 2, and in the Article hereof entitled "Patent Infringements," shall at once cease and determine.

SECTION 3. *Assignment of subcontracts.*

In the event of the cancellation and termination of this Contract, pursuant to the provisions of the above section 1 or 2, the Contractor shall, upon the request of the Contracting Officer, assign to the United States, or to such person as the Contracting Officer may direct, the unperformed portion of any or all contracts and subcontracts made by the Contractor in contemplation of or in connection with the performance of this Contract. In the event of the failure of the Contractor to assign any such contract or subcontract as herein provided, this Contract shall operate as such assignment. It is understood that such assignment in and of itself shall not compel the United States to assume or become responsible for any obligation of the Contractor which has arisen prior to such assignment by reason of the Contractor's performance of, or failure to perform, the contract or subcontract so assigned.

SECTION 4. *Taking possession of contractor's plant.*

In the event of the cancellation or termination of this Contract, pursuant to the provisions of the above section 1 or 2, the United States may proceed at the Contractor's plant to complete the manufacture or performance of the

articles or work herein contracted for, or any part thereof, as well as to manufacture additional articles or perform additional work out of materials and property then on hand for the performance of this Contract, and for these purposes may take possession of and use any or all of the plants and properties of the Contractor used in the performance of this Contract.

If the United States shall take possession of and use any of the plants and properties of the Contractor as above permitted, the United States shall pay to the Contractor such reasonable sum for the use thereof as may be agreed upon between the Contracting Officer and the Contractor, or, if they fail to agree, as may be determined in the manner and with the effect provided in the Article hereof entitled "Adjustment of claims and disputes." Such plants and properties shall be occupied and used by the United States without cost or expense to the Contractor; the United States, however, reserving any claim which it may have against the Contractor under this Contract.

* * * * *

CANCELLATION AND TERMINATION BEFORE COMPLETION.

The same provisions as hereinbefore set forth for fixed-price contracts, except that sections 2 (a), (b), and (c) shall read as follows:

(a) All expenditures made by the Contractor in good faith and in connection with the performance of this Contract for which the United States is obligated to reimburse the Contractor under the terms of this Contract and for which the United States has not previously reimbursed the Contractor.

(b) In addition to the payments under the above subdivision (a), the United States shall make the following payments to the Contractor:

(1) For all articles or work completed in accordance with the provisions of the contract and specifications, the sum provided as profit thereon under the terms of this Contract and not theretofore paid.

(2) ——— per cent of the cost to the Contractor of all materials and unfinished articles or work and component parts furnished by the Contractor and then on hand hereunder which are in compliance with the provisions of the contract and specifications.

(c) The United States shall discharge the Contractor's outstanding obligations incurred by the Contractor in good faith in connection with the performance of this Contract for which the Contractor has not theretofore received reimbursement or protection from the United States and which are of such character as the United States would under the terms of this contract have become liable to reimburse the Contractor for its expenditures thereunder had this Contract not been so terminated.

Mr. SHALLENBERGER. Have the manufacturers generally accepted willingly this cancellation, or has there been any disposition on their part to hold up the Government?

Gen. GOETHALS. That has not been so.

Mr. SHALLENBERGER. They have accepted the conditions—that is, a great many of them—in the right spirit?

Gen. GOETHALS. Yes, sir. We have notified practically all of the contractors of the suspension of their contracts. Some of them are being tapered off, as in the case of knit goods. In the manufacture of projectiles they are being allowed to taper off. We are not requiring them to keep up to time. The first thing done after the armistice was signed was to remove the priorities to enable manufacturers to take civil work at once.

Mr. QUIN. As a matter of law, the contractor is bound to abide by the cancellation clause in the agreement?

Gen. GOETHALS. Yes.

Mr. QUIN. It is not at his option?

Gen. GOETHALS. No.

Mr. QUIN. To get this knot clear out of my friend Gordon's mind, this bill provides for no contracts not made, but simply for existing agreements that were not legally made.

Gen. GOETHALS. That is all. This bill authorizes the War Department to pay its obligations.

Mr. NICHOLLS. It seems to me this is the situation: This bill protects the Government as well as the contractor to a certain extent. If the contract is illegal, then the cancellation is illegal. In other words, you want the illegal contracts made good contracts under this bill.

Gen. GOETHALS. Yes, sir.

Mr. CALDWELL. This bill only applies to contracts illegally made. What are you going to do about contracts which have been legally executed?

Gen. GOETHALS. We have the same machinery to do it whether it is legal or illegal. We had this set up in advance of the signing of the armistice, and we expected that we would settle all of them. We did not anticipate this trouble until it was brought to our attention.

Mr. GARRETT. What you mean by contracts that are not legal is unwritten contracts?

Gen. GOETHALS. That is right. Those that are covered by the provisions of this bill.

Mr. TILSON. Informal rather than illegal.

Gen. GOETHALS. They are informal. They could not legally be paid, if I understand the comptroller correctly.

The CHAIRMAN. I would like to have an explanation of the various statutes which were not complied with in the executions of these contracts.

Mr. CROWELL. Mr. Dorr can explain that.

Mr. DORR. I suppose, Mr. Chairman, the particular statutes which you have in mind are those which were called to the attention of the department by the Comptroller of the Treasury in the decision which has been referred to.

Mr. KAHN. I would suggest that the decision of the comptroller be inserted in the record.

(The decision referred to is as follows:)

TREASURY DEPARTMENT,
Washington, November 25, 1918.

The honorable the SECRETARY OF WAR.

SIR: I have your letter of November 21, 1918, as follows:

"The War Department has outstanding numerous contracts for munitions which in view of the armistice it is to the public interest to terminate in order that facilities and labor may be returned as speedily as possible to commercial production. In many of these contracts the contractors have a very considerable part of their working capital tied up in expenditures for labor and other disbursements on unfinished work made in performance of their contract. It is important in the interest of labor and the industrial security of the country that these plants be returned to commercial work as speedily as practicable and so far as possible without a break in their continuous operation and employment of labor. The department believes that many such contractors are willing to forego the prospective profits on the remainder of the work contemplated by the contract and terminate the existing contract on a basis which would amount substantially to compensation for expenditures incurred and profits not to exceed 10% of the cost of the unfinished articles on hand—a basis more favorable to the Government than the terms of the contract would permit—if they can secure promptly a substantial portion of this sum so as to release their working capital for switching back to commercial work. It is practicable for the department in such cases to readily determine a minimum sum which will be well within the figure of ultimate settlement on this basis, but it is difficult to fix with exactness that ultimate sum without a delay which will lose to the Government and to the country the advantage of a speedy return of such plants to commercial work.

"The department therefore desires to enter into supplementary contracts with such contractors by which a sum well within what it is certain would have to be paid by the Government on such basis of adjustment will be paid immediately to the contractor upon his consent to a termination of the original contract and a release to the Government from all its obligations thereunder, the Department agreeing to pay subsequently such additional sum as the Secretary of War may determine will complete payment to the contractor on such basis of adjustment. The department desires your opinion as to whether it can enter into supplemental contracts involving this method of payment.

"The department has prepared a form of supplemental contract for use where, if the best interests of the Government and industry and labor are to be secured, it is desirable to make an initial payment to enable the contractor to switch back immediately to commercial work. I transmit this to make clear the procedure the department desires to adopt.

"The procedure above outlined has been carefully worked out since and in the light of the discussion in my office Tuesday. The importance of the adoption by the War Department of some definite procedure to meet the readjustment problems with which we are faced is as obvious to you as to me and I hope you will help us by deciding the matter as speedily as possible and if you see where the suggested procedure can be improved by telling us so and advising us how to improve it."

The agreement referred to above is as follows:

Agreement entered into this _____ day of _____, 19____, between _____, United States Army (herein called "contracting officer"), acting by authority of _____ and under the direction of the Secretary of War, for and in behalf of the United States of America (herein called the "United States"), party of the first part, and _____ (herein called "contractor"), party of the second part.

Whereas, a certain { purchase order was issued by } the United States { contract was entered into between } { to } the contractor, No. —, dated _____ (herein called "original contract," { and } which term shall also include, wherever used herein, all agreements or orders, if any, supplementary to said contract or purchasing order, except this agreement).

And, whereas, the furnishing and delivering of further articles or work under said original contract will exceed the present requirements of the United States,

And, whereas, it is in the public interest to terminate said original contract as herein provided.

And, whereas, the contractor, pursuant to the original contract, has incurred expenses and obligations for the purpose of furnishing and delivering articles or work remaining undelivered under said original contract.

And, whereas, the contractor is willing to accept the termination of said original contract and to forego such profits as might accrue to it from the completion of said original contract and to accept this contract in lieu of said original contract and any and all claims and demands of every nature whatsoever arising or which may arise, out of said original contract.

And, whereas, the contractor estimates the amount of said expenses and obligations incurred by it in the sum of _____.

And, whereas, the contracting officer has examined said statement and finds that the amount of such expenses and obligations for which the contractor is entitled to be reimbursed is not less than the sum of _____.

Now, therefore, in consideration of the premises and of the mutual covenants herein contained, it is agreed between the parties hereto as follows:

1. This contract supersedes and takes the place of said original contract, which is hereby terminated, and the contractor hereby releases the United States from any and all claims of every nature whatsoever arising out of said original contract.

2. The contractor shall furnish and deliver and the United States shall accept and pay for nor more articles or work agreed to be delivered under said original contract.

3. All articles or work delivered and accepted on or before the date of this contract under and in pursuance of said original contract and not yet paid for shall be paid for in accordance with the provisions of said original contract as if it had not been terminated.

4. The United States shall forthwith pay to the contractor the sum of _____ (this being seventy-five (75) per cent. of the amount found by the contracting

officer to be the minimum amount for which the contractor is entitled to be reimbursed) and agrees to pay to the contractor such further sum as may be found by the Secretary of War is the amount which will, when added to the said sum of _____ herein agreed to be paid forthwith, reimburse the contractor for and hold him harmless against the expenses and obligations incurred by him pursuant to said original contract and properly applicable to the unfinished portion thereof and compensate him for the termination of said original contract, it being agreed that the sum allowed for such compensation shall not exceed ten (10) per cent. of the cost of the unfinished articles on hand at the date hereof, and may be any less sum in the absolute discretion of the Secretary of War.

5. This agreement shall not become a valid and binding obligation of the United States unless, and until, the approval of the Board of Review of the Office of _____ has been noted at the end of this instrument.

In witness whereof, the parties hereto have executed and delivered this agreement in triplicate as of the date first hereinabove written, and the Contracting Officer satisfied himself of the authority of the person signing the Contractor's name to bind the contractor and has waived the filing of written evidence of said authority.

Witnesses:

_____ as to _____ U. S. Army.
 _____ as to _____

By _____

Approved: Board of Review

By _____

The undersigned sureties to the bond pertaining to the above described original contract assent to the foregoing modification thereof and hereby stipulate that said bond shall be construed to apply accordingly.

Witness our hands and seals this — day of _____ 19—.

Witnesses:

_____ as to _____ U. S. Army.
 _____ as to _____

Attest: _____ By _____.

(The following affidavit is required only on the copy of the Contract for the Returns Office.)

I do solemnly {swear } that the foregoing is an exact copy of a contract made
 {affirm } by me personally with the contractor named above; that I made the same fairly, without any benefit or advantage to myself, or allowing any such benefit or advantage corruptly to the contractor, or any other person; and that the papers accompanying include all those relating to the contract, as required by the statute in such case made and provided.

 U. S. Army.

Subscribed and {sworn to } before me this — day of _____, 19—.
 {affirmed }

It is not the province of this office to prescribe the form of the contract which administrative officials are authorized to enter into, as it may become necessary for it to construe its terms in connection with payments made. It is the duty of the proper legal officers of the Government to draft the contract and the responsibility must be theirs and that of the administrative officers.

An attempt by this office to decide whether or not payments of public money are authorized to be made under proposed contracts to terminate existing contracts would not be justified without a consideration of the language of the existing contracts. Some may provide a specific method of payment on termination. To substitute, by a new contract, another and different method of payment would be justified only when the new method is not prejudicial to the interests of the Government. It can not be assumed, as the proposed contract form does, that the contractor anticipates profits from completing his contract. There may be contractors willing to terminate their existing contracts, whether containing termination clauses or not, on terms more favorable to the Government than are contained in the proposed form. It is possible some may be willing to terminate existing contracts on the basis of payment for what is delivered before termination.

Having no authority to decide the form of contract, the only question properly for the decision of this office in your submission is whether payment would be authorized of the sum, being 75% of the amount found by the contracting officer to be the minimum amount for which the contractor is entitled to be reimbursed. The making of the supplemental agreement and the simple certifying to a minimum amount by the contracting officer upon the statement and estimate of the contractor will not be sufficient nor conclusive upon the accounting officers. The supplemental agreement can not be permitted to impose a liability upon the Government where none theretofore existed.

It will be the right and duty of the accounting officers in each case in which such a payment is made to inquire in the first instance that there was a legal contract with the Government made prior to the supplemental agreement (of which the contract date alone will not be conclusive), in compliance with the provisions of Revised Statutes, section 3744, that the contract be reduced to writing, with the names of the parties signed at the end thereof; and section 3745, that the oath of the officer personally responsible for the contract appears (as to which a signing by proxy is considered by this office as not permissible, in view of section 3746, the penalties prescribed being personal to the officer); to require the submission of facts and details showing the basis of the minimum amount fixed by the contracting officer; and that no amount has been paid without adjustment of such claims as the Government may have against the contractor arising out of defective performance, defaults, etc., under the contract, and for this purpose a specific statement will be required of both the contractor and the contracting officer of what the claims of the Government are, or that there are none.

The general answer accordingly can only be given, that if there is a legal liability of the Government for the amount, of which 75% is paid under the agreement, such payment is authorized.

For your information I have to say the tenor of the agreement is that the termination of a contract authorizes a payment to the contractor. It does not reserve to the Government its rights to recover payments improperly made under the original contract and to enforce the liability of the contractor and surety for defects in materials, work done, etc., which may hereafter appear. It refers to "articles and work," but does not specifically include labor. The provisions of article 3 are objectionable in that they would permit deliveries in the interval to the date of the supplemental agreement, notwithstanding notice of the intention of the Government to terminate. In connection with this the provisions of paragraph 5 may involve a delay before the contract becomes effective. The expenses and obligations of the contractor properly applicable to the unfinished portion of the contract and to compensate for the termination of the contract (par. 4) furnish no definite standard of compensation; the limitation is not clear, that the compensation shall not exceed 10% "of the cost of the unfinished articles on hand at the date hereof," and there is no limitation that the amount payable under the supplemental agreement shall not exceed the amount of the original contract.

There also is no provision for crediting the value of the property and things, supplies, raw materials, etc., entering into the computation of the compensation, if they remain the property of the contractor, or for giving the Government the option to take them at such valuation.

If it is the intention that the compensation for termination of the contract and all the liabilities of the Government thereunder shall not exceed 10% of the cost of the unfinished work on hand at the date of notice of termination, a simple provision to that effect would appear practicable in connection with with a provision stipulating for inventories of such work and how its cost shall be arrived at and what shall be included therein.

Assuming that a legal contract for a definite work or quantity of articles is to be terminated by a new contract superseding it; that the Government will not be prejudiced financially by the change or will be benefited; that the Government has no legal method, or none of more benefit to it, other than the execution of a new contract to terminate the old, I think it clear that payment under such new contract is justified and can be made from public money.

Any form of contract similar to that now considered should not attempt to cover a "purchase order" as this form does by reference in the second paragraph—the first "whereas." There may be legally issued purchase orders that it is desirable to terminate, but the term is liable to misapplication. I refer to

the fact that there are in the hands of contractors many informal papers, such as letters, purchase orders, procurement orders, etc. These papers generally are intended to be and are preliminary to the execution of contracts. In themselves they place no obligation on the Government. The latter may be liable on a quantum meruit for the fair value of articles delivered and accepted, but it has no legal obligation for expenses incurred, value of incomplete work, material on hand or arranged for, etc., unless a contract in legal form has been made. Of course, it is understood a legal contract can not be made now for articles the Government does not need, and this is true regardless of prior negotiations or understandings, written or oral.

As your inquiry does not relate to orders given under section 120 of the national defense act of June 3, 1916 (39 Stat., 213), no discussion of the status of such orders is necessary.

As to outstanding contracts not signed by the officer named as contracting officer, their validity is open to question and is dependent upon proof of the fact, if it be a fact, that the officer who signed was a duly authorized contracting officer and made the agreement with the contractor, and that the officer named as contracting officer did not. The statute clearly requires the act of one officer in the making and signing and wholly negatives the idea of one officer signing for another.

The purpose of section 3744, Revised Statutes, has been so clearly stated many times by the Supreme Court, and the result of failure to comply with it has been so often pointed out by that court, that I do not cite or discuss the cases. The decisions of this office have followed the interpretation of the statute as announced by that court and have been uniform for 40 years or more.

This office is anxious to do all in its power to meet the situation referred to in your letter and to facilitate settlement with contractors legally entitled to payment on the termination of their contracts. Cases involving only equitable claims can not be settled by executive officers without new legislation.

Respectfully,

W. W. WARWICK, *Comptroller.*

Mr. DORR. Perhaps the most important of the statutes is section 3744 of the Revised Statutes, and the particular provision of that statute which is giving us the most difficulty is this:

[R. S. Sec. 3744.]

Contracts to be in writing.—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 thirty 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.

Now, that provision occasions much difficulty in two ways, and the first is that it shall be signed by the contracting officer. In certain contracts we now find that the contracting officer did not personally sign the contract. The contract was signed by one of his subordinate officers, at his direction. That is not a signing by the contracting officer, and the comptroller points out two other statutes which indicate why that formality of the contracting officer himself having actually affixed his name should have been observed because there is a provision in section 3745 under which the contracting officer has to make oath in connection with the contract to the effect that "I do solemnly swear"—

[R. S. Sec. 3745.]

Oath to contract.—It shall be the further duty of the officer, before making his return, according to the preceding section, to affix to the same his affidavit in the following form, sworn to before some magistrate having authority to administer oaths: "I do solemnly swear (or affirm) that the copy of contract hereto annexed is an exact copy of a contract by me personally with ———; that I made the same fairly without any benefit or advantage corruptly to the said ———, or any other person; and that the papers accompanying include all those relating to the said contract, as required by the statute in such case made and provided."

That is done in filing the contract with the returns officer.

Then, there is a penalty provided in section 3746 for omitting to make such a return. It says:

[R. S. Sec. 3746.]

Penalty for omitting returns.—Every officer who makes any contract, and fails or neglects to make return of the same, according to the provisions of the two preceding sections, unless from unavoidable accident or causes not within his control, shall be deemed guilty of a misdemeanor, and shall be fined not less than one hundred dollars nor more than five hundred, and imprisoned not more than six months.

The comptroller, in interpreting those sections together, has found that it was not enough that an officer deputized by the contracting officer should affix his signature on the bottom of the contract, but that the contracting officer himself should personally actually sign his name.

In that class of cases, as you will readily see, the defect, while perhaps a fatal one—and in the light of the comptroller's decision it is a fatal one—is, nevertheless, of rather a technical character. Here was a contract actually written and reduced to writing and actually signed by the contractor and actually signed by an officer of the War Department at the direction of the contracting officer, but nevertheless such contracts have this defect. All contracts which have been signed, as I understand it, since July 1 have signatures properly affixed in this respect. That is my understanding.

But prior to that time, in the great press of business, with the thousands of contracts under execution, the contracting officer, I suppose, merely to preserve his own effectiveness in following up other matters that came before him, had not personally signed all of them.

The CHAIRMAN. Who made the affidavit in that case?

Mr. DORR. I can not speak with positiveness in regard to that, but my impression is that it was made by officers who actually executed the contract. I think Comptroller Warwick can give you definite information in regard to that.

Mr. HARRISON. Is there any reason why those affidavits can not be filed now?

Mr. DORR. No; I suppose they could be.

Mr. HARRISON. Is there any reason why the contract could not be formally executed if the War Department wanted to incur the liability?

Mr. DORR. The difficulty there is that we find in another portion of the comptroller's decision the statement that "of course, it is understood that a legal contract can not be made now for articles the Gov-

ernment does not need, and this is true regardless of prior negotiations or understandings, written or oral."

Under that ruling for an officer to negotiate a valid contract it must be for articles which we do now need and it must be under the authority of an act of Congress. So the first thing we are seeking is to get relief in the cases where there have been contracts actually reduced to writing and actually signed, but where there has been a defect in the signature through an officer who has been deputized to sign having signed instead of the contracting officer. If we are permitted to proceed with those contracts, an adjustment can be made under their terms which will permit tapering them off or their cancellation and the reduction of the amount of deliveries provided in them.

As I understand it, it is not the desire of the department in such contracts to proceed to the bitter end if they actually call for material that is not needed, and under circumstances where they can in fairness with regard to the interests of both the industry and labor be at this time reduced.

Mr. KAHN. On that point I presume there were hundreds of contracts that were entered into by the officers of the Government practically about the same time.

Mr. DORR. That is my understanding of it.

Mr. KAHN. And was it necessary sometimes for the officers who should have signed to go to the other cities on Government business so they could not have done the work themselves?

Mr. DORR. I think that was the fact, and that was the theory, undoubtedly, on which they proceeded.

Mr. KAHN. Of course, the contractor was told by the department to go ahead as quickly as possible, because the country was in war and it was necessary to get the materials for the benefit of the Army?

Mr. DORR. There is no doubt but what the emergency existed, and the contractors complied.

Mr. KAHN. Under that assumption the contractor did not wait to find out what the law of the United States was on the subject, but went ahead to prepare himself to fulfill his agreement and begin the delivery of his goods.

Mr. DORR. I think he very naturally assumed that when the written contract was prepared and signed by the Government officials it was properly signed.

Mr. WISE. What is to prevent the Government and the contractors at this time in either of those cases where the contract was technically incorrect or where it has not actually been signed but where a contract has been made—what is there to prevent the Government and the proper officer from signing now either of those contracts?

Mr. DORR. If the contract in its original terms provided for the delivery of more material, for example, than the department would now be justified in contracting for—

Mr. WISE (interposing). But here is the point. It would not be a contract made now. The contract has already been made in all these cases. What would be wrong about the execution of the contract as of the date when the contract has been made? Why can not that be done without additional law?

Mr. DORR. The difficulty with that is this, that while all these formalities of contracts have been gone through, in contemplation of law, there is no liability whatever, and any liability that would be created would have to be created as of the date on which the execution took place, and that would be after the armistice and under the changed conditions produced by the armistice.

Mr. WISE. Legally, you may be correct, but the Government is liable to pay this money. If you and I made a contract six months ago and we signed it in good faith, thinking it was all right, and it turned out that it was worth nothing, I would still be liable to you for money. There would not be anything to prevent you and I getting together and signing a contract which had already been made.

Mr. HARRISON. He just read from a decision of the Comptroller of the Treasury to the effect that he would not recognize a condition of that kind.

Mr. DORR. This is what the Comptroller says in the last sentence of his decision: "Cases involving only equitable claims can not be settled by executive officers without new legislation."

Mr. MCKENZIE. Will the enactment of this law waive the penal statutes you just read in connection with this?

Mr. DORR. I should unhesitatingly say that it would not affect those in any degree.

Mr. MCKENZIE. Who would be held under the penal statute, the man who signed it or his deputy?

Mr. DORR. I should say if there was no valid contract actually entered into, probably there was no duty to make the returns, and therefore there would not be any criminal liability on anyone, as all they had done was to go through an empty form.

Mr. GORDON. A useless and vain thing.

Mr. DORR. Exactly.

Mr. CALDWELL. If a man was real smart he would negotiate his contract and then turn it over to his subordinate. And now you come along and want to give a man money without a real hearing; is not that the proposition?

Mr. DORR. No; I should not think so.

Mr. MCKENZIE. I wondered whether it might not be advisable to add an amendment—I favor this legislation—I do not know, but I think it might be well to put in something to the effect that this does not waive anything.

Mr. HARRISON. We ought not to hold a man criminally responsible for something he thought he was doing properly. I do not think these men ought to be held criminally responsible, when we are going to validate the contracts they made.

Mr. WISE. I understand this is based on the idea that the contract was made but had not been properly signed. I am in favor of paying this money. I would like to know what would be wrong in requiring that the man who made the contract should still sign and make the return.

The CHAIRMAN. They are scattered all over the face of the earth.

Mr. GORDON. If we put a provision in this bill to authorize the officer of the Government to sign the contract, that would not relieve him of his criminal responsibility, would it, Mr. Dorr? I understand you to say you do not think that that would relieve the man of any criminal responsibility.

Mr. DORR. I should say it would not relieve him of it.

Mr. GREENE. Where is the intent in the criminal liability? All it comes down to is that the wrong man certified to it.

Mr. WISE. I am not charging that, but I think it would be a good policy to require the officer who made the contract to make the return which the law requires to be made.

Mr. DORR. I should not suppose this could possibly affect anyone who did any wrong; this would not relieve anyone.

Mr. WISE. Would it not be better to require him to make a return?

Mr. DORR. If a contract is now made he will have to make a return. I think perhaps some of our difficulty is in trying to use the word "contract" to cover both situations. All we have had so far is an agreement.

Mr. DORR. An agreement may not be a contract, and it was not a contract in this case because the law prescribes that it shall not be a contract until it is signed in a certain way.

Mr. WISE. But when men agree on a certain thing, it is a contract.

Mr. DORR. As between business men, in private life, it is regarded that way.

If at this time a contract is entered into, then the officer who enters into the contract would be required by law to make the return, and the return would be filed at this time, so if we start over again to make a contract at this time the return will be filed.

Mr. NICHOLLS. My idea is that wherever you find it possible, if we go ahead and ratify these contracts and make them technically legal or validate the contracts, then wherever the officer who should originally have signed a contract can be located, he should make the affidavit as required by law. I think that covers Mr. Wise's suggestion.

Mr. CALDWELL. Will you put into the record the names of the contractors who will be affected by this bill and the amount of the contracts? There is a tabulated list in the department, is there not?

Mr. DORR. I am not clear how long it would take to make up such a list.

Mr. CALDWELL. I would like to have it in the hearing.

Mr. DORR. What would have to be done would be to look over literally thousands of contracts, particularly those in the Ordnance Department, with a view to looking at the signatures and comparing them to see if the signature in a particular contract is that of a deputy or that of a contracting officer. You would not be interested, I suppose, except in those that are now open? You would not be interested in those that have been completely executed?

Mr. CALDWELL. Congress has a right to know what we are appropriating for, what money is going to be involved, and we ought to know who the people are who are going to get it. It is only fair that the Members of Congress should know who the people are.

Mr. GORDON. Contracts subject to these informalities which have been fully executed have been paid for and passed by the comptroller?

Gen. GOETHALS. They have not been passed by the comptroller. They have not been settled by the Auditor for the War Department. But we did close out some contracts that are illegal contracts by the decision of the comptroller.

Mr. GORDON. Then it was not quite correct to say that these contracts which were informal, but which had been fully executed, have really been paid for?

Mr. DORR. There is a provision of the law that where a contract has been completely executed, and where the contractor has furnished all the goods provided for under the contract, that then these formalities can be, not waived, but they become beside the point. If the Government has actually gotten what the contract provided for, it is treated as a sale in the eyes of the law.

Mr. GORDON. Then, as a matter of fact, this legislation would only apply to contracts which have not been fully performed?

Mr. DORR. I should say so, yes; and that is where it is most important.

Gen. GOETHALS. That is where it is most important, but you must understand that this decision of the Comptroller has been sent out broadcast, and were I a disbursing officer, even though the Government had gotten all the articles, I would not pay one cent on that contract.

The CHAIRMAN. Let me see if I understand the proposition. Are you sure there is a statute making a claim valid against the Government, although the contract was not properly executed, if the goods were actually received.

Mr. DORR. There is not a statute, but I understand there have been some decisions permitting payment.

The CHAIRMAN. That would not apply to the Government?

Mr. DORR. I have reference to some cases in the Court of Claims that lay down that proposition.

The CHAIRMAN. I understood you, in answering Mr. Gordon's question, to state that there was a statute to that effect.

Mr. DORR. No; there is no statute. It is a matter of court decision, if anything.

Mr. SHALLENBERGER. Mr. Secretary, I would like to ask one question with respect to the cancellation of the contracts. There is one class of contracts which must run into many millions of dollars, and I would like to know whether they have been canceled. I refer to the contracts for a large amount of heavy ordnance, the building of big plants for the manufacture of heavy ordnance. Have those contracts been canceled.

Mr. CROWELL. The notice of suspension has been sent. In all cases with which I am familiar that has been complied with, and the matter is under negotiation.

Mr. GREENE. Would there be any objection, or would there be anything to be gained by writing into this bill some time limit during which these claims may be presented and legally paid, so that it will take care of not only those you know of now, but some others may come on very soon, and at the same time prevent the possibility of Congress having before it claims such as the French spoliation claims?

Mr. CROWELL. I see no objection whatever to that.

The CHAIRMAN. Are there any other statutes you wish to refer to, Mr. Dorr?

Mr. DORR. No. Of course, the situation under the provision for the signing of contracts affects not merely cases where there was an

actual written contract entered into and signed effectively, but it also affects those cases where purchasing officers have gone ahead with a purchase order, where the performance of that purchase order was not to be within the 60-day limit which applies to it, and where there has been actual part performance by the contractors, or actual expense in preparing to perform it; but the principle, I take it, is the same in both cases.

The thing that prevents the Government making payment is the fact that although there has been an agreement and what the contractor has done is at the request of the Government and in the public interest, in response to a public necessity, nevertheless that agreement not having been made in the form required by the statute, payment can not be made to the contractor on it, and adjustment can not be made with him with respect to it.

Mr. KAHN. Do these contracts run to large amounts?

Mr. DORR. I understand some of them run to very considerable amounts.

Mr. KAHN. And the concern, in order to carry out its contract with the Government probably had to be carried by the bank with which it was doing business and has to pay interest for the time they are not able to meet their obligations?

Mr. DORR. That is undoubtedly true, and that is why the situation is rather urgent. I may say that I was at the recent conference of the United States Chamber of Commerce at Atlantic City, and I heard that there were many instances with just that situation, where the manufacturer was involved, and where the bank naturally now felt this uncertainty about money—about whether they would ever get it, because of the contractor having no valid contract, and where the terms of arrangement with the bank were such that it became urgent that some relief be afforded promptly.

Mr. MCKENZIE. I think it would be well, in line with the suggestion made by Mr. Wise or Mr. Nicholls, to put into the hearing for use on the floor of the House a citation of a few of the most glaring cases you can find showing the difficulty under which the War Department and the contractors are now laboring.

Mr. DORR. I might mention one which was brought to my attention this morning. That was the case where the Government was planning to build a T. N. T. plant at Racine, Wis. At the time the armistice was signed it became evident that that plant ought not to be proceeded with. The plant was just beginning, and it had been necessary to get some land for it, and that land had been occupied; options had been given; there was a question of titles to look up; and the whole matter could not wait for the adjustment of the technicalities of the real estate law in the matter, and the Government was occupying the land. There were farmers who had their all in their little places and had turned over the occupancy of that land to the Government, and the Government naturally wants to make some compensation to the owners, to give them relief, and I do not see how we are going to do it. There was a very urgent telegram from that locality urging the department to make prompt settlement in the matter. I do not see how that can be done without enabling legislation.

Mr. CROWELL. Mr. Chairman, I should like to ask you to add an amendment to this bill. The bill as drawn and practically approved

by the Comptroller of the Treasury provided for two cases but not, we think, for a third case. It provides that payment may be made for articles which are delivered. It provides that payment may be made to contractors where they have spent their money in getting ready to deliver, in their procuring the facilities, but it does not cover the case of a combination of those two cases, and the amendment which we proposed to cover the third case would come in after the word "Secretary" on line 13 of page 2, as follows: "And where the Secretary of War decides that it is not in the public interest to receive and accept the full performance provided by said agreement payment may be made as hereinabove provided for such property as is transferred, delivered, and accepted, and in addition a payment not in excess of the actual cost as such cost is determined by said Secretary, incurred in preparation for performance of said agreement and not included in the cost of articles, which the Secretary of War determines to accept and receive."

Mr. GORDON. Mr. Secretary, has your attention been called by a circular letter which has been sent out by the New York Chamber of Commerce on this precise question in regard to war contracts?

Mr. CROWELL. No; I have not seen it.

Mr. GORDON. I received it last Saturday, and I presume other members have received the same thing, a copy of the resolution adopted by the Chamber of Commerce in New York in which they refer to long delays in settling these uncompleted contracts and damages arising out of them following the Civil War, and I take it the purpose they had in view was the same as that of the War Department in asking for this legislation, to wit, to settle upon just terms these contracts which were incompleated and unperformed. I do not know that I agree with their suggestions, but I thought if you had received a copy of that it might be worth considering. I would like personally to see objections to it placed in the record. As I recall, they proposed to create certain regional boards who are to investigate and report the facts in each case so as to prevent injustice being done either to the parties or to the public by the settlement of those contracts.

Mr. CROWELL. I have not seen that. Those regional boards have been created in the War Department.

Gen. GOETHALS. This is machinery gotten up by the various chambers of commerce throughout the country to handle this matter. Naturally some of those boards would be more or less interested in their local community and I do not think there should be any such boards created. I think we have the necessary machinery in the War Department, which I think is satisfactory for the purpose.

Mr. GORDON. This really does confer the exercise of judicial power.

Gen. GOETHALS. That is a question I am not going to argue.

Mr. GORDON. Take the case in Wisconsin. Whether or not those people should have their farms back or be paid for them is a part of the matter to be decided.

Mr. KAHN. We appropriate in the Army bill every year a certain amount of money for the payment of claims for damage done by troops of the United States Army in their maneuvers. Does that not give the War Department the absolute power to investigate those claims?

Mr. GORDON. Yes; and to spend about \$5,000 or \$6,000. This is a proposition involving hundreds of millions of dollars.

Mr. KAHN. The principle is the same.

Mr. GORDON. Of course it is.

Mr. KAHN. The principle is the same, and it is a question of principle which is involved, and not the amount of money involved.

Mr. SHALLENBERGER. We have heard a good deal about the informalities of these contracts and possibility of some losses to the Government. Has anything come before your department, Mr. Secretary, wherein the Government has lost money, where the contracts have been informal and by reason of that fact you have discovered the Government has suffered loss? Have you found upon investigation that they have always been honest contractors, to all intents and purposes?

Mr. CROWELL. We have found no evidence of any desire to rob the Government, so far. The contractors have been very fair.

Mr. SHALLENBERGER. I was impressed with the fact, with all this immense amount of money being spent, so far as officers of the Government are concerned, it is remarkable that no officer of the United States Government has been corrupted. It is interesting to find that the Government has been honestly dealt with. We are trying to protect the Government rights here, and it is important to know that while something has been done which has been more or less informal that the Government has not been robbed by these men who were attempting to help us win the war.

Mr. CROWELL. I presume that there may be some such things as those developed. But I can not see how this would in any way aid the dishonest contractor.

Mr. GORDON. As a matter of fact, the bill does not require the War Department to recognize any equity at all in such a contract as that.

The CHAIRMAN. The Comptroller of the Treasury is here if the members of the committee desire to ask him any questions.

STATEMENT OF MR. WALTER W. WARWICK, COMPTROLLER OF THE TREASURY.

Mr. KAHN. Mr. Comptroller, did you hear the question propounded by Mr. Wise as to whether it would be possible to validate the contracts now by the officers who had really negotiated the contract on the part of the Government signing the agreement on the part of the Government at this date and making proper returns? Do you think that, under existing law, that would be possible?

Mr. WARWICK. I do not believe it would be possible, because a contract of the War Department, under section 3744 of the Revised Statutes, dates from the date it is signed only.

Mr. KAHN. A signature nunc pro tunc—

Mr. WARWICK. That would simply destroy the statute. The Government not being bound under section 3744 until it is regularly signed, any signing nunc pro tunc would be to destroy the statute. The Government is not bound until the signature is put on.

The CHAIRMAN. In other words, a Government officer could not ratify it like an individual.

Mr. WARWICK. A Government officer has no power beyond what the statute gives him.

Mr. GORDON. That is what makes this contract illegal?

Mr. WARWICK. The contracts, though, are illegal, because they do not comply with the statute, and about every State in the Union has special statutes under which you will not get any money from the State unless you comply with those statutes. The United States Government had such a statute in 1862 during the Civil War. That is section 3744, which provided that the contract would not be valid unless it was signed in that way. That law does not differ from State laws. Most of the States have them now.

Mr. WISE. I understood from the reading of the decision that it had been held that this officer who has to sign this contract was sitting there and told his subordinate to sign the contract, and the subordinate officer signed his name to it, and it is held that that did not comply with the statute.

Mr. WARWICK. I think that such a case arose, but I do not know the facts as to how these were signed; and if such a case arose I am entirely certain, as a matter of law, or it is my opinion that as a matter of law, the Supreme Court would hold the contract did not bind the United States. The statute has been construed by the Supreme Court as a statute of frauds, and failure to comply with it exactly as it is written invalidates the contract.

Mr. WISE. Suppose an officer could not write?

Mr. WARWICK. He would make a mark; but he would not hold the office if he could not write.

Mr. GREENE. He could not direct a subordinate to do a wrongful thing.

Mr. WARWICK. Something that the statute made good only if he did it himself, and section 3745, where he is required to take an oath that he made the contract personally, negatives any idea that there can be two Government officials concerned in the making of the contract.

Mr. GARRETT. He has the power under the statute—

Mr. WARWICK (interposing). He has the power given him by law, and it is limited to himself; he can act for himself and for no one else. The statute evidently intended that one officer of the Government would be liable for this contract, and would evidence that by his signature and by his affidavit.

Mr. CALDWELL. If this statute was passed during the Civil War, it is pretty good evidence that they found it necessary.

Mr. WARWICK. The statute seems to be particularly applicable to war times. An investigation by Congress in 1861 and in 1862, indicated that indefinite agreements were made and uncertain liability placed upon the Government, and this statute was passed to make definite the liability of the Government by requiring that the agreement be reduced to writing; and so a proposal marked "Accepted" is not good, because it is not signed at the end. I do not think there is any question about an accepted proposal being valid by everybody except a State government or the National Government, which has a statute against it. But such contracts so made by proposal and acceptance are informal. It can very well be validated or paid under. The Supreme Court of the United States holds that so far as the

man who has delivered under an informal contract is concerned, he is entitled to quantum meruit.

The CHAIRMAN. Against the Government?

Mr. WARWICK. Against the Government; oh, yes. But this bill does not cover that; this bill covers articles not delivered.

Mr. CALDWELL. What do you think about this bill?

Mr. WARWICK. You will notice, when you read the bill carefully, it is not drawn to validate contracts; it is drawn to authorize payments under contracts that are not legal.

Mr. KAHN. You drew the bill?

Mr. WARWICK. I wrote the bill as a redraft of the one which the War Department made. There is no occasion, in my opinion, to validate any contracts. You do not want to validate contracts that are invalid now. This bill provides that you will pay under them as though they were valid.

Mr. HARRISON. It provides for an equitable settlement.

Mr. WARWICK. It provides for a settlement by the War Department of claims which will arise under informal contracts and also under agreements, made orally. I do not think the bill is intended to cover oral agreements of which there is no memorandum in writing, and where the terms are indefinite.

For instance, I would not think this bill was intended to cover a case which may have arisen where a contractor has expected to get a contract and did not get it. You go down the line from the legal contract at the top made in strict accordance with section 3741—and that is the only thing that binds the Government—you come down through about seven classes.

You strike a case like this: I heard of a contractor whose contract was regularly signed, but the 11th of November came along, and the contracting officer would not deliver it to him. It is not binding. The Government is not bound by that contract, because of the failure to deliver. The contracting officer could have stricken his name off at any time. But that is the highest form of equitable claim.

That kind of a contract should be validated. But if you say that officer ought to have delivered that contract, then you could also say he ought to have delivered some next week, and next month, and go signing contracts for delivery for material which the Government did not want.

Mr. GORDON. You say that contract, not having been delivered, is invalid. Of course, every lawyer knows that. Therefore that is the highest form of equity. You say the armistice having been signed, the officer of the Government refused to deliver the contract, and very properly. What equity would arise under that contract?

Mr. WARWICK. This would propose to recognize that contract to the extent that the contractor had done work under it.

Mr. GORDON. What authority had he to do any work until the contract was delivered?

Mr. WARWICK. The contractor had no authority of law other than the practical situation presented by war times.

Mr. GORDON. That leads up to the very question I want to ask you.

Mr. KAHN. I would like to have a complete answer to that question.

Mr. WARWICK. I will say further that during war time contractors have been given their purchase orders, or their orders to proceed, and

some of those orders are very different as to quantity and price, and all the particulars just as in the case of a formal contract, and of course they are pushed by the War Department for the work and told that a formal contract would be ready later.

Some of them were delayed longer than that, and when the formal contract was made it varied somewhat from the original. In any event, I think it is fair to state that, so far as I know the situation, the contractors in the country began to work on the request or demand of the Government without waiting for the formal papers.

Mr. GORDON. If the contractor had gone ahead and delivered stuff to the Government under those instructions he would be entitled to his pay.

Mr. WARWICK. He would be entitled to his pay under this informal contract for what he had delivered. But that does not cover the case where he may not have delivered, or where he may have delivered, or where he is in any position other than that of completely finishing his contract, where he has material in process, lots of it useful only for military purposes, and under the agreement to take it he gets nothing except for what he has delivered.

Mr. GORDON. What would be some of the elements of his damages in a case such as you have just cited, of the material that could not be used for other purposes?

Mr. WARWICK. The difference between the cost of the material to him and its use for other purposes, or its entire cost if the Government takes the material over. That is a matter of adjustment, as to whether the contractor or the Government takes the material.

Mr. TILSON. It would also include the equipment for the manufacture of the material, such as machinery that he has had to purchase.

Mr. WARWICK. This bill covers the losses on equipment.

Mr. GORDON. Losses on equipment? It would not necessarily require the Government to pay him all that his machinery had cost him?

Mr. WARWICK. I think not.

Mr. GARRETT. Suppose he could not use that machinery for any other purpose, and it is a complete loss, except what can be salvaged?

Mr. WARWICK. Then this bill would put the entire cost on the Government, but not the price of the machinery, if the contractor keeps it and uses it for something else.

Mr. WISE. Suppose he had been running the machinery for several months so that he made a million or two dollars out of it, and when the war closed the machinery would not be worth anything?

Mr. WARWICK. This bill is intended to settle equitable claims. There is no real liability on the Government for these claims. The Court of Claims and the Supreme Court would give judgment to the United States on any case that is intended to be covered by this bill.

Mr. GORDON. Unless Congress authorizes suit to be brought.

Mr. WARWICK. If Congress authorized the Court of Claims to entertain a suit and enter judgment on the equities of the case, but under its present jurisdiction the Court of Claims would dismiss the case.

Mr. CALDWELL. Why would it not be the best plan to give the Court of Claims authority over these cases?

Mr. WARWICK. I suppose the War Department has put up to the committee the proposition that that, as I understand the department, would involve too much delay. I understand the War Department, if this proposed legislation is enacted, could settle with the contractors within 30 days after the law was passed by Congress.

Mr. KAIN. How long does it take generally to get a judgment in the Court of Claims?

Mr. WARWICK. It depends entirely on the character of the claim or the condition of the docket of the court, and on the size of the force which the Attorney General has to send out to take the depositions. Generally it takes two years or more.

Mr. GORDON. This bill really does confer judicial power upon the War Department, does it not?

Mr. WARWICK. This bill will confer on the War Department the settlement of more equitable claims in amount, in my opinion, than Congress has settled since the beginning of the Government.

I do not want that statement misunderstood, because I think a large proportion of the claims arising here are of the highest equities, but they can not be sued on in the Court of Claims. These contractors would not get their money in the Treasury or in the courts. If they get it at all, they get it from Congress.

The CHAIRMAN. I understood you to state in reply to Mr. Gordon that the Supreme Court had held that the Court of Claims would entertain jurisdiction of a suit where the Government actually received the property or parts of the property.

Mr. WARWICK. Yes.

The CHAIRMAN. Although the contract was invalid?

Mr. WARWICK. No; only in the case of a valid contract.

The CHAIRMAN. That is a different thing. But as I understand it, the Court of Claims would not entertain jurisdiction under any circumstances of any of the claims proposed to be taken care of by this bill.

Mr. WARWICK. No, the Court of Claims would not take jurisdiction of anything intended to be covered by this bill. This bill does not cover cases where the material has been delivered.

Mr. HARRISON. Would there not have to be an appropriation to pay the judgment of the Court of Claims after the case had been adjudicated? Another Congress would have to pass an appropriation bill to pay the judgments?

Mr. WARWICK. Yes, sir.

Mr. KAIN. They are generally covered in the sundry civil bill.

Mr. CALDWELL. This bill says, at the top of page 2, "It shall be lawful to make payments under the terms of said agreement to the extent that the performance thereof has heretofore been received and accepted by the United States or shall hereafter be received or accepted by officers or agents acting under authority of the Secretary of War, if the latter shall find the public interests require such acceptance." You said this does not apply to a case where the United States has received the goods?

Mr. WARWICK. I mean the contractor would get his money without this bill where he has delivered the articles, and the Government has accepted and used them; he would get the fair value of the articles.

Mr. HARRISON. By going through the Court of Claims?

Mr. WARWICK. No; he would get that at the Treasury.

Mr. HARRISON. Would the disbursing officer accept the responsibility of passing on a question like that?

Mr. WARWICK. They have taken the responsibility. They have paid under these informal agreements a considerable amount of money.

The CHAIRMAN. Did your office approve the payment?

Mr. WARWICK. We have not passed on them. In every case which has come to the office, such as the case involved in the recent decision of November 25, on the request of the Secretary of War for a decision, the office has held that, following the Supreme Court's decisions exactly, a contract not executed in the form prescribed by section 3744 is not binding on the United States. It is binding, however, on the contractor.

The CHAIRMAN. As I understand it, the disbursing officer holds that where the Government has actually received benefits by the delivery to the Government, the disbursing officer will take the responsibility of paying, and your office has not approved that action of the disbursing officer?

Mr. WARWICK. No.

Mr. WISE. Did I understand you to say that the other party would be bound by the contract, but the Government would not be bound?

Mr. WARWICK. The Supreme Court decision in the Porto Rico Steamship Co. case was that the contractor was bound when the Secretary of the Navy accepted his proposition.

Mr. WISE. And it still held that the Government was not bound by that?

Mr. WARWICK. That case did not involve the question as to whether the Government was bound by that.

Mr. WISE. I understood you to say that the other party was bound, but that the Government was not bound.

Mr. WARWICK. The Supreme Court decided in the Porto Rico Steamship case that the contractor who had made a bid for hauling coal for the Navy Department, and the Secretary of the Navy had accepted it by telegraph, and the man had refused to sign the formal contract, that the man was still bound for loss to the Government.

Mr. WISE. Although that statute requiring both parties to sign was in effect?

Mr. WARWICK. Yes. That is the rule in the States and the United States, that a statute limiting public officers in making contracts is for the benefit of the public.

Mr. NICHOLLS. Both parties are bound, and under the statute the Government could not be forced to pay, but they are bound by it. No contract is good that binds one party and does not bind the other.

Mr. WARWICK. Oh, yes.

Mr. GORDON. The character of the claims covered by this bill, following the Civil War, were adjudicated in the Court of Claims by authority of legislation by Congress, is that not so?

Mr. WARWICK. I think so.

Mr. GORDON. It really does involve conferring judicial power upon the War Department, does it not?

Mr. WARWICK. It involves a conferring of authority to do what has customarily been done by a judicial tribunal. I would not call it judicial authority.

Mr. GREENE. Is it not more in the nature of a more scrutinizing audit than judicial authority?

Mr. WARWICK. It is conferring the right of an audit on the War Department, with full and equitable jurisdiction, while the accounting officer of the Government will only recognize a legal claim. Anything of an equitable nature requires a special statute.

Mr. SHALLENBERGER. I understood you to say this would confer upon the War Department power to settle within 30 days more claims than had been settled by Congress since the organization of the Government?

Mr. WARWICK. That is my estimate.

Mr. SHALLENBERGER. What did you mean? Did you mean more claims than Congress had appropriated for, or that the amount would be greater than the amount of appropriations that had been made by Congress?

Mr. WARWICK. Probably the amount of money in equitable claims which will be covered by this bill is more than has been acted on by Congress through its committees on claims since the beginning of the Government.

Mr. SHALLENBERGER. I do not understand what that means. Can you give us a general idea of how many millions or billions this applies to?

Mr. WARWICK. I should think this bill would cover a billion dollars.

Mr. GORDON. You have already stated the War Department could settle those claims within 30 days. They can do that in 30 minutes, could they not?

Mr. WARWICK. Yes; but I was allowing 30 days for speedy action.

Mr. GORDON. But you would not think any real, judicial investigation could be made of a thousand million dollars of claims in 30 days?

Mr. WARWICK. I think the War Department, through its agencies, could probably make a fair settlement with 10,000 different contractors in from 30 to 60 days.

Mr. GORDON. They could make it if they pay them what they ask, of course.

Mr. GREENE. All that this legislation does is practically to write into these contracts, which are not now statutory, therefore not now complete, an authorization for payment, and then your people simply audit what is due under them?

Mr. WARWICK. I would not state it just that way. I made the statement that this bill does not validate any contract. This bill does not fix the status of any man's relations to the Government, as to the Government being bound. It authorizes the payment of the equitable liabilities of the Government, provided the work has been done and accepted in full, and waives his right to go into court in the future.

Mr. GARRETT. Do you not think that provision ought to be added to the bill?

Mr. WARWICK. It is in the bill, beginning on line 17, page 2, "Which amounts when received and accepted shall be in full of all claims and demands whatever arising out of or by virtue of such agreement, and nothing in this act shall be construed to confer jurisdiction upon any court to entertain a suit against the United States upon any agreement of the character herein referred to." That was drafted by us to show that this bill did not confer jurisdiction on the courts in a case of that sort. This would not give any equitable jurisdiction to the Court of Claims.

Mr. CALDWELL. Would there be any provision under this bill by which anyone could restrain the Secretary of War? Do you not say in this bill the allowance made by the Secretary of War shall be final and conclusive? Neither you nor I nor anybody else expects the Secretary of War himself to pass on these things.

Mr. GREENE. Have you any opinion to offer about the idea of writing a time limit in the bill?

Mr. WARWICK. That is a matter for the judgment of the committee, but I would not see any objection to putting in a limitation, making the date June 30, 1919, at the end of the fiscal year.

Mr. CALDWELL. When these contracts were made there was talk in the halls of Congress and the streets of our country to the effect that men formerly employed by these great contractors were the people who were giving the contractors all the contracts. Under this bill those men will be put on boards to pass on the question as to what their former bosses are going to get, when the war is over. After we have won, there is no need of paying a tribute for winning the war.

Mr. WARWICK. That is not a question directed at me, is it?

(Thereupon the committee adjourned.)