

line as hard as we could to support and help them, and as Americans, I know we are proud, as we ought to be proud, of that splendid force and the achievements that they have placed upon the record of American history.

Mr. NEW. Mr. President, I have had it in mind to submit some ideas and suggestions of my own concerning the reorganization of the Army. The address which has just been delivered by the Senator from New York [Mr. WADSWORTH], to which we have all listened with such interest and so much benefit, has made the subject particularly opportune, and I should like, under ordinary circumstances, to proceed with my remarks at this time. But, Mr. President, the hour of 2 o'clock having arrived, I realize that there is before the Senate a bill of transcendent importance, as I regard it, and I am not willing to interpose anything that will interfere with the immediate consideration of that measure.

I therefore content myself at this time by saying that at the earliest opportunity I shall ask for the privilege of presenting the remarks, and in connection therewith I shall submit a bill.

LEAGUE OF NATIONS.

Mr. POLLOCK. Mr. President, I have listened with a great deal of interest to the narrative of the war by the Senator from New York [Mr. WADSWORTH]. It is as he states, largely in retrospect. I merely rise to give notice that on to-morrow, immediately after the morning business, I shall endeavor to submit a few remarks looking to the future and as to what should be the course of this Government with reference to the creation of a league of nations for the maintenance of the peace of the world.

CALLING OF THE ROLL.

Mr. CURTIS. Mr. President, I suggest the absence of a quorum.

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

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

Bankhead	Hitchcock	Nelson	Smoot
Beckham	Johnson, S. Dak.	New	Spencer
Borah	Jones, N. Mex.	Nugent	Sterling
Calder	Kellogg	Overman	Sutherland
Chamberlain	Kenyon	Page	Thomas
Culberson	King	Pittman	Thompson
Cummins	Kirby	Poindexter	Townsend
Curtis	Knox	Pollock	Trammell
Fletcher	La Follette	Pomerene	Vardaman
France	Lenroot	Ransdell	Walsh
Frelinghuysen	McKellar	Reed	Warren
Gay	McLean	Saulsbury	Weeks
Gore	McNary	Shafroth	Wolcott
Gronna	Martin, Ky.	Sheppard	
Hale	Moses	Sherman	
Henderson	Myers	Smith, Ariz.	

Mr. POLLOCK. I wish to announce that my colleague, the senior Senator from South Carolina [Mr. SMITH], is detained by illness.

Mr. SAULSBURY. I desire to announce that the senior Senator from Maryland [Mr. SMITH] is detained by illness.

Mr. KENYON. I wish to announce that the Senator from Nebraska [Mr. NORRIS] is absent on official business.

Mr. SUTHERLAND. My colleague, the senior Senator from West Virginia [Mr. GOFF], is absent on account of illness.

The PRESIDING OFFICER. Sixty-one Senators having answered to their names, there is a quorum present.

VALIDATION OF WAR CONTRACTS.

The Senate, as in Committee of the Whole, resumed the consideration of the bill (H. R. 13274) to provide relief where formal contracts have not been made in the manner required by law.

Mr. HENDERSON. Mr. President, on January 20 I sent to the desk an amendment to House bill 13274. Yesterday the Senator from Nebraska [Mr. HITCHCOCK] introduced that amendment to the bill. In order to protect my amendment, I submit an amendment to the amendment of the Senator from Nebraska and also one to what is known as the Chamberlain bill, so as to perfect the proposed amendment that I had printed the other day.

The PRESIDING OFFICER. The amendments will be ordered printed and lie on the table.

Mr. CHAMBERLAIN. I think it would be proper to take up the bill as reported by the committee and have it read for the purpose of amendment. The bill has not yet been read, and I suggest that it be read for the purpose of amendment.

The PRESIDING OFFICER. The Secretary will read the substitute bill.

The Secretary read the amendment of the Committee on Military Affairs, which was to strike out all after the enacting clause of the bill and in lieu to insert:

That whenever during the war emergency and prior to November 12, 1918, any individual, firm, company, corporation or foreign government has made an agreement with the Secretary of War, or with any officer or agent acting under his authority, or with any agency of the Government, authorized to procure or aid in procuring the same for the War Department, for the production, manufacture, sale, acquisition, or control of equipment, materials, or supplies, or for services, or for facilities, or other purposes connected with the prosecution of the war, and such agreement was reduced to the form of a contract or accepted procurement order and executed or signed on behalf of the Government, but the agreement did not comply with statutory requirements, in every such case the Secretary of War is authorized and directed to waive, on behalf of the Government, such noncompliance: *Provided*, That he finds such waiver is not inconsistent with the public interest, and in this event the said agreement shall have the same validity and effect it would have had if such statutory requirement had been complied with.

That whenever, prior to said November 12, 1918, any individual, firm, company, corporation, or foreign Government has made any agreement, oral or written, express or implied, with, or has received any order or request, oral or written, from the Secretary of War, or any officer, agent, or agency as aforesaid, for any of the purposes aforesaid, and the same has not been reduced to contract form, but such individual, firm, company, corporation, or foreign Government has in good faith made expenditures, incurred obligations, acquired or furnished facilities, equipment, materials, or supplies, or rendered services, in reliance on such agreement, order, or request, in every such case the Secretary of War is authorized and directed, on behalf of the Government, to enter into such contract with such individual, firm, company, corporation, or foreign Government as will, under all the circumstances, fairly and equitably compensate him or it for the expenditures made, obligations incurred, equipment, materials, or supplies furnished or acquired, or services rendered, as aforesaid: *Provided*, That in no event shall such contract provide for compensation on terms more favorable than the terms, if any, for which the aforesaid agreement, order, or request may have provided.

That whenever, prior to said November 12, 1918, the War Department, through its officers or agents, has taken possession of any land, or whenever the holder or owner of any land has removed from or removed any improvements from such land at the order or request of the War Department and no valid contract has been made with respect thereto, then the Secretary of War, if he finds that the public interest does not require the possession or occupancy of such land by the Government, is authorized to make compensation to the owner or holder thereof for the fair value of such improvements so removed and the expense incurred by such owner in removing therefrom or for the fair value of the use of such land of which the War Department has taken actual possession and for any expense or loss incurred by the owner or holder by reason of such possession.

SEC. 2. That a commission is hereby created and established, to be known as the War Contracts Appeals Commission (hereinafter referred to as the commission), which shall be composed of three members, who shall be appointed by the President by and with the advice and consent of the Senate, and shall continue in office for one year from the date of this act. One member of the commission shall represent the War Department, one member shall represent the Department of Justice, and one member shall represent the business interests of the country. None of the members of the commission shall be interested in any order, contract, or agreement within the purview of this act or have any interest in any firm or corporation having such orders, contracts, or agreements. Each member of the commission shall receive a salary of \$7,500 a year, payable in the same manner as the salaries of judges of the courts of the United States. The commission shall choose a chairman from its own membership and may appoint a secretary, who shall receive a salary not exceeding \$5,000 a year, to be determined by the commission and payable in the same manner as the salaries of the members of the commission.

That there is hereby appropriated, for the purpose of defraying the reasonable expenses of the commission, including the payment of salaries herein authorized, out of any money in the Treasury of the United States not otherwise appropriated, available immediately and until expended, the sum of \$50,000.

That within 30 days of the date when the Secretary of War tenders any contract or compensation as provided in this act, or refuses to tender such contract or compensation, the party to whom said contract or compensation is tendered or refused, or the Government by a duly authorized officer from the Department of Justice may file with the chairman of the commission a notice of appeal: *Provided, however*, That if the representative of the Department of Justice agrees with the action of the War Department there shall be no appeal by the Government, but settlement can be made at once. Thereupon, the commission shall proceed to examine and review the facts and circumstances of the case and make its award or finding thereon. Upon giving receipt in full of all demands against the United States arising out of the transaction by reason of which the award is made, the appellant shall be entitled to receive the amount of any award so made, and the proper officer of the United States is hereby authorized and directed to pay the same, but if the appellant is dissatisfied with the amount so awarded he shall be paid 75 per cent of the amount awarded and shall be entitled to sue the United States in the Court of Claims to recover such further sum as added to said 75 per cent shall make up such amount as will be fair and just compensation as provided in this act, and the Court of Claims is hereby given jurisdiction to hear said suit and render judgment therein.

That whenever any dispute arises in the matter of the adjustment or settlement, or as the interpretation or application of the terms, of any contract which has been made for any of the purposes set forth in this act, and in the execution of which there has been compliance with statutory requirements, the contractor or the Government by a duly authorized officer from the Department of Justice may give notice to the Secretary of War of intention to appeal to the commission, and provided notice of appeal is filed with the chairman of the commission within 30 days: *Provided, however*, That if the representative of the Department of Justice agrees with the action of the War Department there shall be no appeal by the Government but settlement can be made at once. On an appeal being taken the commission shall thereupon proceed to determine the questions at issue as set forth in said notice of appeal; and the contractor shall be entitled either to receive the whole amount of such award as may be made as in full of his claim on the questions submitted or 75 per cent of the same and sue the United States in the Court of Claims for any remainder, all as provided next above as to agreements otherwise within the purview of this act.

That in executing the duties and powers conferred by this act the commission may make its own rules and regulations and may hear and

determine issues informally. It shall be the duty of the Secretary of War to furnish to the commission such evidence, documents, or papers pertaining to transactions as to which notice of appeal has been filed as the commission may request. The commission is authorized, in its discretion, to appoint an examiner in any region or district when such region is within the United States where, in its judgment, the taking of additional testimony is necessary to the determination of any case. Such examiner shall be a resident of the region or district for which he is appointed, and shall not have any interest, directly or indirectly, in any contract or transaction coming before him or receive any compensation save and except such per diem compensation and expenses as shall be fixed by the commission. Whenever the commission shall refer to any such examiner any claim presented hereunder, the examiner shall proceed, under the direction of the commission, to hear the parties, take the proofs, and return the same to the commission with his recommendations thereon as promptly as possible.

SEC. 3. That nothing in this act contained shall be held to validate any such contract unless the officer who was at the time of the making of such contract the chief of the division or bureau, as the case may be, in which said contract was negotiated, or, in the event that such officer was not responsible for the making of such contract, then the officer in such division or bureau who was so responsible, together with the officer who signed said contract, shall each severally make and subscribe to an affidavit in writing, giving the definite terms of such contract, the name or names within his knowledge, of any such officer or officers who took part in the negotiation or making of the same, and stating whether or not within his knowledge any officer aiding in such making was interested, directly or indirectly, in said contract, and in addition subscribing to an oath to be appended to said affidavit in substantially the following form and tenor:

"I, _____, Chief of the Division or Bureau (naming it) in which the contract hereinbefore mentioned was negotiated, at the time of negotiation thereof, and the officer in the Division or Bureau (naming it) responsible for the making of the contract hereinbefore mentioned, and I, _____, the officer who actually signed said contract, do hereby each severally swear that I am not and was not at the time of the making of said contract directly or indirectly interested in said contract."

That in respect to any such contract as to which any one of said officers can not take the foregoing oath, or after diligent search or inquiry by the contractor can not be found, or is at the time actually engaged in foreign service, or refuses to take said oath, then upon such facts and the fact required in the oath of such officer, appearing by an affidavit of the contractor, or of one of its partners, chief officers, or chief agents acting in its behalf, the Secretary of War shall promptly report such contract to the War Contracts Appeals Commission and furnish to said commission such evidence, documents, and papers pertaining to the transaction as may be within his control, and such commission may request, and original jurisdiction is hereby vested in, said commission to hear and determine said claim with the powers and upon the procedure hereinbefore described in this act. Said commission shall make its award or finding thereon and deny said claim or grant it in whole or in part, according to the justice and equity thereof, and the award or finding shall have the same force and effect and create the same rights as if made under the provisions of section 3 of this act. And it shall be the further duty of said commission in hearing, investigating, and determining such claim to find and determine whether any of such officers is or was at the time of making of said contract directly or indirectly interested in said contract.

SEC. 4. That nothing in this act contained shall be construed to relieve any officer or agent of the Government from prosecution under the penal statutes of the United States for any fraud, criminal conduct, illegality, or irregularity in connection with any of the agreements or orders referred to herein or the execution or signing thereof.

MR. MCKELLAR. Mr. President, if it is in order, I desire to offer an amendment to the pending bill, on page 10, line 5, to strike out the period and make a semicolon, and to add what I send to the desk.

THE PRESIDING OFFICER (Mr. New in the chair). The amendment will be stated.

THE SECRETARY. On page 10, line 5, before the period, and after the word "possible," it is proposed to insert:

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

MR. MCKELLAR. That is the provision that is in the Hitchcock amendment, and it should be inserted here. I think no one will say that there should be a payment for prospective or speculative profits. This is the matter as to which the Senator from Wisconsin [Mr. LEBROOK] and others argued on yesterday, and I hope the chairman of the committee will accept the provision.

MR. CHAMBERLAIN. I think I have no objection to the first part of the amendment, but the latter part of the amendment is even broader than the Senator from Wisconsin argued for. I do not think it ought to be included in the bill.

MR. POMERENE. I ask to have the amendment again reported.

THE PRESIDING OFFICER. The Secretary will again state the amendment.

THE SECRETARY again stated the amendment proposed by Mr. MCKELLAR.

MR. CHAMBERLAIN. The latter part of the amendment I am not willing to accept.

MR. MCKELLAR. Are the words to which the Senator from Oregon objects the words "and a remuneration for expenditures necessarily incurred in preparing to perform said contract or order so canceled"?

MR. CHAMBERLAIN. Take one illustration. I understand that in some cases the Government of the United States has

insisted that a contractor shall go ahead and use patents that had been obtained and issued in the names of other parties, and that the Government would stand behind the contractors to defend them against any proceedings that might be instituted to recover penalties or royalties. I think the Senator's amendment goes to an extent that it would preclude recovery in cases of that kind.

MR. MCKELLAR. I do not think so. If the Senator will look at lines 10, 11, and 12, I think he will find the language there is sufficient to include the objects which the Senator suggests. It provides for remuneration. It requires the Government to make "remuneration for expenditures necessarily incurred in preparing to perform said contract or order so canceled." I should think that that language would be broad enough.

MR. CHAMBERLAIN. It in part nullifies the provisions of the bill, just as it nullifies the provisions of the Hitchcock bill itself, if it be inserted in it. It ought not to be in here. I am perfectly willing to accept that portion of the amendment which refers to prospective or possible profits on unperformed portions of a contract. I think that is as far as it ought to go.

MR. FRELINGHUYSEN. Will the Senator from Tennessee suffer an interruption?

THE PRESIDING OFFICER. Does the Senator from Tennessee yield to the Senator from New Jersey?

MR. MCKELLAR. I yield to the Senator.

MR. FRELINGHUYSEN. Mr. President, I understand the effect of this amendment would be the same practically as section 6 of the Hitchcock substitute?

MR. MCKELLAR. It merely includes the Secretary of War. It is the exact wording of the Hitchcock substitute, except that the words "and the Secretary of War" are added for the purpose of making it apply to the Chamberlain bill.

MR. FRELINGHUYSEN. Mr. President, I am not defending the validation of any unearned profits, nor do I believe that any of the great profits which might accrue to a contractor by reason of the validation of a contract or a contract that can not be canceled should be paid, but there are certain contracts which, I understand, have been made by the Secretary of War—verbal agreements, probably some of them agreements by letter—that involve an adjustment of profits. I do not know what those contracts are. I only know that the Secretary of War states that some of those contracts have been made by reason of the fact that the department had to induce contractors to change their method of manufacture, to change their machinery, to enlarge their plants, and that certain promises and assurances have been made to those contractors.

Now, I want this bill so written that it shall not repudiate those agreements; that those agreements may be adjusted either by the Secretary of War or by this proposed commission. A repudiation of any agreement of that character would involve the good faith of the Government when it has been pledged by an agent of the Government.

I wrote to the Assistant Secretary of War, Mr. Crowell. I might say, if I am not encroaching too much on the Senator's time in this connection, the Assistant Secretary of War has given a great deal of attention to the adjustment of these contracts, and he has accomplished a great deal in ascertaining the facts regarding them. Many of them are ready for settlement as soon as they are validated. In reply to my query, the Assistant Secretary of War sent me the letter which I hold in my hand, in regard to section 6 of the Hitchcock bill, which is practically the same in effect as the amendment proposed by the Senator from Tennessee [Mr. MCKELLAR]. I desire to ask the Secretary to read this letter, if the Senator from Tennessee has no objection.

THE PRESIDING OFFICER (Mr. Wolcott in the chair). Without objection, the Secretary will read as requested.

The Secretary read as follows:

WAR DEPARTMENT,
OFFICE OF THE ASSISTANT SECRETARY,
DIRECTOR OF MUNITIONS,
Washington, D. C., January 28, 1919.

HON. JOSEPH S. FRELINGHUYSEN,
United States Senate, Washington, D. C.

MY DEAR SENATOR: You have asked my views as to the effect of section 6 of the Hitchcock bill. This bill gives to a proposed commission complete jurisdiction over the adjustments of all contracts, valid and invalid, entered into by the War Department for war supplies which are suspended, canceled, or terminated prior to complete execution, by reason of the termination of hostilities. Section 6 provides that neither the commission nor the Court of Claims shall make any allowance in such cases for any profit to the contractor other than on goods and supplies actually delivered to the United States with the remuneration for expenses necessarily incurred in preparing to perform the contract or order that is canceled. Under this provision, though a contractor may have employed large amounts of his capital and months of hard work upon the work in process, he is to be permitted no reward whatever for such use of his capital and for such services where the con-

tract is terminated before the actual delivery of supplies. In the event that any supplies are delivered his reward is limited to that part of his capital and services which go to the completion of those supplies, and no reward is permitted for the use of that part of his capital and his services which are embodied in work in process, the completion of which is abandoned at the direction of the Government. Such a restriction would involve direct violation of obligations entered into by the American Expeditionary Force with foreign governments and with the citizens of foreign countries, and would cast a reflection upon the good name of this Government, which I believe Congress would regret just as much as this department.

As to contracts in this country, the standard termination clause in use by the department provides for the allowance to the contractor of a certain percentage of the cost to the contractor of materials, unfinished articles of work in process, and component parts furnished by the contractor and on hand, which are in compliance with provisions of the contract and specifications. This allowance is by way of compensation for the use of the capital furnished by the contractor and the services rendered by him in the performance of work for the Government which at its instance is not completed.

It seems to me that section 6 would impair the obligation of such contracts. The good faith of the Government seems equally involved where work has been undertaken by contractors on the faith of receiving a contract in this form and where the armistice has interposed to prevent its actual execution.

Very truly, yours,

BENEDICT CROWELL,

The Assistant Secretary of War, Director of Munitions.

Mr. HITCHCOCK. Mr. President—

The PRESIDING OFFICER. Does the Senator from Tennessee yield to the Senator from Nebraska?

Mr. MCKELLAR. I yield to the Senator.

Mr. HITCHCOCK. The Assistant Secretary of War is mistaken when he refers to my bill as covering legal contracts. One of the differences between the bill proposed by me and the substitute reported by the committee is that mine is limited to those cases in which the contracts are defective or the orders are informal. The House bill, like my bill, only covers those cases. It does not attempt to cover cases where there is a legal contract providing the terms under which it may be adjusted.

Mr. LENROOT. Mr. President—

Mr. MCKELLAR. I yield to the Senator from Wisconsin, who has some suggestion to make about the matter, I believe.

Mr. LENROOT. I should like to suggest to the Senator that, while his amendment as incorporated in the Hitchcock amendment covered only contracts defectively executed, when offered as an amendment to the committee bill it also covers contracts fully executed in compliance with all statutory requirements. I do not believe the Senator would desire to have Congress abrogate a legal right, and I therefore wish to ask the Senator whether he will not accept an amendment to his amendment adding these words:

Provided, The foregoing shall not apply to any contract executed in compliance with all statutory requirements.

Mr. MCKELLAR. That amendment will be entirely satisfactory, although I think the same result could be perhaps accomplished by having my amendment read:

That in no case of a contract validated by this act—

And so forth. Probably that would make it shorter; but the Senator's amendment covers it absolutely.

Mr. HITCHCOCK. Mr. President, I think the Senator from Wisconsin will have to qualify his proposed amendment to the amendment. I understand that there are some contracts entirely legal in form which contain no provision for cancellation and the settlement of damages; so that the only exception should be those cases covered by contract.

Mr. MCKELLAR. The Senator from Nebraska is entirely right about that. As I recall the testimony, there are only a very small number of contracts legally drawn and executed that have the cancellation provision; in other words, I think only until recently, I think in October—

Mr. CHAMBERLAIN. In July.

Mr. MCKELLAR. The Senator from Oregon corrects me, and I am sure that he knows the fact—in July they adopted a new form of contract, which contained a cancellation provision. All the contracts up to that time contained no cancellation provision.

Mr. LENROOT. Mr. President, may I ask the Senator if he thinks that as to any contract that is legally executed Congress now can change the measure of damages to which a contractor may be entitled?

Mr. MCKELLAR. That is perhaps true. When a contract has already been signed and is valid, while Congress under the Constitution can impair the obligation of such a contract, yet we do not permit the States to do so, and therefore it would not be proper for us to do so, either as a matter of policy or on any other ground.

Mr. LENROOT. I appreciate that. If an amendment is in order, Mr. President, I will offer such as an amendment.

The PRESIDING OFFICER. Does the Senator from Tennessee yield to the Senator from Wisconsin?

Mr. MCKELLAR. I will accept the amendment offered by the Senator.

Mr. LENROOT. Very well. Then I wish to ask the Senator whether he will not accept another amendment?

Mr. MCKELLAR. Perhaps it would be better to have the amendment already presented adopted.

Mr. POMERENE. Let me ask to have the amendment to the amendment again stated.

The PRESIDING OFFICER. Without objection, the Secretary will state the amendment offered by the Senator from Wisconsin to the amendment of the Senator from Tennessee.

The SECRETARY. At the end of the amendment offered by Mr. MCKELLAR, it is proposed to insert the following proviso:

Provided, The foregoing shall not apply to any contract executed in compliance with all statutory requirements.

So that it will read:

That in no case, however, shall any award, either by the Secretary of War or by the commission or the Court of Claims, include prospective or possible profits on any part of the contract beyond the goods and supplies delivered to and accepted by the United States, and a remuneration for expenses necessarily incurred in preparing to perform said contract or order so canceled: *Provided*, The foregoing shall not apply to any contract executed in compliance with all statutory requirements.

Mr. MCKELLAR. Mr. President, I wish to make a statement with reference to the letter written by the Assistant Secretary of War. I do not agree with his construction of section 6. I do not know whether or not the Assistant Secretary of War, who is a very fine gentleman, is a lawyer; but if he is, he has very incorrectly interpreted the meaning, as I believe, of section 6, because I think the last three lines in section 6 cover exactly the case which the Senator from New Jersey [Mr. FRELINGHUYSEN] suggested awhile ago, where it provides that such proper remuneration can be made. Section 6 does cut out prospective or possible profits, and I think it ought to do so. There ought not to be any prospective or possible profits allowed in these settlements.

Mr. FRELINGHUYSEN. Mr. President—

The PRESIDING OFFICER. Does the Senator from Tennessee yield to the Senator from New Jersey?

Mr. MCKELLAR. I yield to the Senator.

Mr. FRELINGHUYSEN. Possibly the Senator is correct. My anxiety is only to avoid any statutory prohibition which will work an injustice on a contractor who, in good faith, has gone ahead and expended his capital in order to provide materials upon an order from the Secretary of War.

Mr. MCKELLAR. I will say to the Senator that I join him in that. I am just as anxious to protect the rights of contractors as anyone else could be; and I think they ought to be protected. At the same time I think the rights of the Government should be protected in like manner and a provision should be enacted that will be fair for all alike.

Mr. FRELINGHUYSEN. I am not seeking to have the Government's rights invaded in any way whatsoever.

Mr. MCKELLAR. I am sure of that.

Mr. FRELINGHUYSEN. But I am informed by the Secretary of War that there are certain contracts—verbal contracts, I believe—which have been made, where assurances have been given to the contractor of certain profits, where no cancellation has been agreed upon. In order to get the materials and supplies, they have been compelled to give a quantity order; and they feel that when they cancel that order, having no agreement as to cancellation, there should be some adjustment as to profits without their being compelled to take the full order which they agreed to take. Does the Senator understand the situation?

Mr. MCKELLAR. I understand that situation.

Mr. FRELINGHUYSEN. Now, I claim that if the Secretary of War has made any such agreement involving the payment of profits, which according to the technical provisions of this act may be unearned, it is unfair to write such a prohibitory section in this law.

Mr. MCKELLAR. Do I understand the Senator to mean that the Secretary of War has entered into a contract giving to the contractor prospective or possible profits on the unearned portions of the contract? It is inconceivable to me that the Secretary of War would do such a thing.

Mr. FRELINGHUYSEN. I understand that there have been some orders given for a certain quantity of materials—let us assume, for illustration, a million yards of cloth. The manufacturer has bought the machinery and increased his facilities.

Mr. MCKELLAR. That is all provided for here.

Mr. FRELINGHUYSEN. The Secretary of War has stated that he would take that million yards of cloth, and the contractor has practically figured his profits on that million yards of cloth upon the assurance that the Secretary of War would accept delivery. Now, there is no provision for cancellation.

Does the Senator believe that that contractor should be prohibited from receiving his profits on that million yards of cloth when he has bought the materials and put the machinery in his plant?

Mr. McKELLAR. Let me see if I understand the Senator. If I understand the Senator correctly, I most certainly do believe that the Secretary of War ought not to permit any such possible profits to be allowed to the contractor.

Let us assume that a mill has put in \$5,000 worth of machinery on a very large order and it is only out the \$5,000, and that much of the machinery can be used by the contractor, as shown by the facts, and if he had carried out his entire contract with the Government he would have had half a million dollars of profits. Does the Senator mean to say that we ought to validate a contract that would permit this contractor on an expenditure of \$5,000 for machinery which he still owns to reap from the Government \$500,000 of possible or expected profits?

If that is what the Senator means, I most emphatically say I do not agree to any such proposition.

Mr. FRELINGHUYSEN. Of course, the Senator has inflated the figures somewhat, but I do not mean to assume that at all. I mean that when the Secretary of War has given a contractor the assurance that he will make certain profits by giving him a quantity order, and he has expended for machinery or for changes in his mill an amount of money practically in excess of the profit to be derived, it is a proper case for adjustment, and possibly some unearned profits may have to be paid in order to do justice to that contractor. Therefore I say that cases of this character should be subject to an appeal to the commission and should not be made the subject of a prohibitory statute.

Mr. CHAMBERLAIN. Mr. President, may I interrupt the Senator for just a moment?

Mr. McKELLAR. I yield; surely.

Mr. CHAMBERLAIN. Let me ask the Senator what he would do in a case of this kind, which I put by way of illustration, where a contractor has been contracted with to supply a very large amount of shells, for instance. He goes to work and he supplies the Government one-half of the goods in that line that he has already manufactured and has on the ground. What is the Senator going to do with a man of that kind? This amendment provides that there shall be no profits on any part of the contract beyond the goods and supplies delivered to and accepted by the Government.

Mr. McKELLAR. Oh, no; the Senator misinterprets the language.

Mr. CHAMBERLAIN. No.

Mr. McKELLAR (reading)—

Beyond the goods and supplies delivered to and accepted by the United States—

Mr. CHAMBERLAIN. Certainly.

Mr. McKELLAR. That is one, and what else? Why—

A remuneration for expenditures necessarily incurred in preparing to perform said contract or order.

That takes in all that the Senator means.

Mr. CHAMBERLAIN. I beg the Senator's pardon. The first part of his provision provides only for the reimbursement of the contractor for the goods actually manufactured, delivered to, supplied, and received by the Government. Now, where these goods are on the ground and have not been delivered or accepted there is no compensation provided for at all.

The latter part of this section to which the Senator calls attention has reference to the expenditures made by a man to increase his plant, for instance; and if the Senator is looking to the protection of the Government, he mulcts the Government by that last provision. Why?

Suppose a manufacturer or contractor has gone to work and spent a million dollars in the enlargement of his plant. That has been necessary to carry out the contract that he had with the Government. Now, then, the Government cancels his contract. He has not used or utilized the extended plant, and the Government must pay him for all of it, notwithstanding there may be a very large salvage. Now, there is the instance where the Government is imposed upon, and in the first part of it the contractor is imposed upon.

Mr. McKELLAR. Mr. President, I think the Senator does not get at the real meaning of this section.

Mr. POMERENE. Mr. President—

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

Mr. McKELLAR. Just one moment. Let me reply to the Senator from Oregon for just a moment. I will read the language:

That in no case, however, shall any award, either by the Secretary of War or by the commission or the Court of Claims, include prospective or possible profits on any part of the contract—

Now, wait a minute. We are not talking now about real profits. We are not limiting the real profits that are made on it. We are limiting, in the latter part of this section, only the possible or prospective profits. That is the only limitation that is in this section—

Prospective or possible profits on any part of the contract beyond the goods and supplies delivered to and accepted by the United States, and—

In addition to that—

a remuneration for expenditures necessarily incurred in preparing to perform said contract or order so canceled.

Under that provision—and I will yield to the Senator from Ohio in just a moment—every justice can be done the contractor. He is remunerated, given his real profit; full justice can be done to him, full justice can be done to the Government; but it does not provide that he shall receive the kind of profits that I have suggested a few moments ago, where a man puts \$5,000, for instance, into the increase of his plant on an order that might involve a million dollars when completed. It might take two or three years to complete it. He may have a half million dollars of prospective profits if he completes the order, but he has put only \$5,000 into it. It may be that he has put only \$1,000 into it, to use an extreme case; and yet is it to be arranged so that he can, under the terms of this validating act, receive \$500,000 of prospective profits?

I do not think the Senator contends that he should do it. I say that we ought to pay the contractor liberally; we ought to pay him well; we ought to pay him everything that is due him and give him a profit on it; but we ought not to give him a possible or prospective profit on unearned portions of his contract. This is what this section prohibits, and it ought to be adopted.

I now yield to the Senator from Ohio.

Mr. POMERENE. Mr. President, I think certainly the Senator will have to amend his proposed amendment quite a good deal.

Mr. McKELLAR. If the Senator will offer some amendments that will be good, I shall be delighted to accept them.

Mr. POMERENE. I will make a suggestion that I know the Senator will think is right.

Mr. McKELLAR. I will admit anything that is right to carry out that purpose.

Mr. POMERENE. Suppose, as a matter of fact, a concern is manufacturing cannon. They have to go through many processes, I understand. I do not know anything about the manufacture of them. They may have their shops filled with cannon that are half completed. They have not been delivered to or accepted by the Government. They are there in an uncompleted state. The material of the contractor is in them, and a large part of his labor is in them. Now, it does seem to me that the contractor ought to be allowed a reasonable profit upon that work and material, even if the goods have not as yet been delivered to or accepted by the Government.

Mr. McKELLAR. There is not any difference between the Senator and myself on that subject. If the Senator will read this provision carefully and give it the care that he usually does, being the very able lawyer that he is, I am quite sure there will be no difference between us on that subject. This section refers to prospective or possible profits. It refers to daydreams of contractors—a man who has a contract of \$100,000 and expects to make a million dollars out of it, especially if he has not done the work. It just does away with that kind of thing; but it does not prevent the contractor from getting the profits to which he is entitled.

Mr. POMERENE. It does not on the goods which are delivered, but it does prevent his getting any profits on the goods that are only half completed. That is my objection.

Mr. McKELLAR. Oh, no; it is only prospective or possible profits. That is all it refers to.

Mr. POMERENE. I think the Senator is wrong.

Mr. CUMMINS. Mr. President—

The PRESIDING OFFICER. Does the Senator from Tennessee yield to the Senator from Iowa?

Mr. McKELLAR. I yield to the Senator. I was about to yield the floor. I will yield the floor to the Senator.

Mr. CUMMINS. I wish to ask this question of the Senator from Tennessee, because he has the faculty of very clear statement, and I am deeply interested in this bill, because there are a good many people in my State who are in grave danger of suffering a loss which they can not easily bear.

Mr. McKELLAR. I will say to the Senator that I am the last man in the world to make any contractor bear a loss which he should not bear.

Mr. CUMMINS. I do not know much about these matters. The members of the Military Affairs Committee are a great deal more competent than I am to apply this language to the actual cases. What I should like to know is this, and I ask it

both in regard to the committee amendment and in regard to the proposed Hitchcock amendment:

Is it the purpose of the proposer of the amendment to put those who have entered into contracts or partial contracts with the Government in precisely the same situation or condition as though the acts which had been performed by both parties had been performed between private individuals and allow the individual to recover from the Government the damages or losses upon recognized principles of the law which would be recoverable if the same things had been done between two persons instead of between a person and the Government? If the Senator from Tennessee will explain that to me, I shall be a good deal better able to follow the language of these bills and reach a conclusion as to which one will be most equitable.

Mr. McKELLAR. Mr. President, I shall take great pleasure in giving the Senator my views.

Generally speaking, that is the purpose of both bills. They can not be put in the same position as those who have valid contracts. To illustrate what I mean, the greater portion of these properly signed contracts are contracts without any cancellation clause at all. A grosser piece of negligence can hardly be imagined. Here we have given unlimited sums of money to the departments to furnish lawyers, and how, even by accident, a cancellation clause could have been left out of the contracts it is difficult to see.

Mr. CHAMBERLAIN. Mr. President, let me make this statement to the Senator about that: The Secretary advises me that a great many of the contracts made prior to the 1st of July last had the cancellation clause in them, but that since that time all of them have.

Mr. McKELLAR. Well, that is not the proof before our subcommittee; that is all I can say. The proof before our subcommittee is that comparatively few of the valid contracts have the cancellation clause.

Mr. CUMMINS. I will ask the Senator to make that just a little clearer to me about the cancellation. Does the Senator mean a cancellation clause that would permit the termination of the contract without any damages?

Mr. McKELLAR. Oh, no; providing for the damages and providing the conditions and methods of procedure and all about how they should be computed. All of those things are provided for in the cancellation clause; and in every contract that is prepared by a lawyer there is a cancellation provision, as every lawyer knows. As I say, it is absolutely inconceivable to me why they were not in all the contracts; but they are not, and we need not bother about the water that has passed the mill.

I might say to the Senator right there that, of course, any validating of a contract that has a cancellation clause in it but is improperly signed would not put it on an exact equality with the good contract, the properly executed contract, that has no cancellation clause; so we can not put them back exactly as they were. It is impossible to do that. What is proposed by both bills, however, is to see that every contractor in this country who has done work for this Government shall be fully and amply paid. We want them to receive a profit on what they have done for the Government. The subcommittee of which the Senator from Nebraska [Mr. Hitchcock], the Senator from New Jersey [Mr. Frelinghuysen], and myself were members, pursued that policy. It was the purpose of the committee to do it; and we instituted this commission, following out the precedent, because there was after the Civil War, as I understand, a commission with independent authority and original jurisdiction created for that purpose; and then after the Spanish-American War there was an independent commission, just such a one as the Hitchcock amendment undertakes to create here, provided to do exact justice, as far as that could be done, between the Government and the contractor. There is not a purpose on the part of anyone to do anything that is unjust. It is merely a difference of opinion as to how it can best be done.

Mr. FRELINGHUYSEN rose.

Mr. McKELLAR. Will the Senator excuse me just a moment? I have a matter that I want to bring before the Senate, and then I will yield to him.

Now, I say "all contracts." There is one class of contracts that both amendments except from that rule, and that is contracts that have been fraudulently made or contracts that have been made contrary to the statutes—not simply not carrying out the statutes but that have been made in violation of the statutes, which are equivalent to fraudulent contracts. The bill, in the fourth section, I believe, or the third section, provides what shall be done even in the case of those contracts; for instance, where a concern sent its officer down here, and he became a dollar-a-year man, and then, after that, became an officer of the Army.

For instance, take the one that is in the RECORD to-day, if you gentlemen are interested in it, and will look it up—the case of John C. McCubbin, who was an officer of the Standard Sanitary Co., recommended by the officers of that firm to come down here and become a purchasing agent for the Government in connection with enamel ware. He came down here, became a major in that department, bought all of his goods from the concern which he represented, and is going back, as soon as he is released, to that concern. I think there was something like \$800,000 worth bought from that concern and \$34,000 worth bought from all the other concerns of like kind in the country. Maj. McCubbin, according to the proof here, was not representing the Government, though he was an officer sworn to represent it, but he was virtually an officer of the United States representing his own concern.

A Senator asks me if he called for bids. Oh, no; he simply bought outright from his own concern.

Now, even in the case of a contract like that, what do we do? Take a contractor like that. He comes in with unclean hands. In my judgment, that officer ought to be court-martialed and sent out of the Army; and yet, with a contract like that, the desire of the committee was to do equal and exact justice to a contractor of that kind; and we provided here that the Secretary of War shall segregate even that kind of a contract and submit it to this commission; but if the commission finds, notwithstanding the circumstances under which the contract was obtained from the Government, that they have done something or furnished goods for which the Government ought to pay, the commission is allowed to pay for them. It could not be fairer.

Mr. CUMMINS. Mr. President, no one could have any sympathy with that sort of contract; and I not only have no defense to make of a proceeding of that kind, but I should like very clearly to differentiate such contracts from the ordinary obligations which have been entered into.

Mr. McKELLAR. Will the Senator excuse me just a minute?

If he will look into this bill, the Hitchcock bill, and the Chamberlain bill, too, that class of contracts is very clearly differentiated from the other classes, and it ought to be. My natural propensity, anyone's natural propensity, would be, in a case like that, to say, "You come in here with unclean hands. You can not recover anything from the Government"; but we do not do that. We put it in the power of this independent commission which we create to deal fairly even with that man, notwithstanding he comes in with unclean hands.

Mr. CUMMINS. I am not speaking of any such case. I am speaking of an honest contract; but section 6 provides:

That in no case, however, shall any award either by the commission or the Court of Claims include prospective or possible profits on any part of the contract beyond the goods and supplies received and actually delivered.

Mr. McKELLAR. The Senator does not read it all. Will not the Senator do the provision the justice to read it all?

Mr. CUMMINS (reading)—

Beyond the goods and supplies received and actually delivered to the United States, and a remuneration for expenses necessarily incurred in preparing to perform said contract or order so canceled.

Mr. McKELLAR. Yes.

Mr. CUMMINS. I am speaking, mark you, of an honest contract, made properly or validated properly under this bill.

Mr. McKELLAR. Surely.

Mr. CUMMINS. I understood the Senator a moment ago to say that in such a case he wanted to put the contractor and the Government in exactly the same position as though the contract had been made between two individuals, and allow a recovery from the Government of those damages which, under recognized principles of the law, would be recoverable. It was that thought which led me to make the inquiry. Now, I think the Government of the United States ought to be just as honest as an individual.

Mr. McKELLAR. I do, too.

Mr. CUMMINS. It can not, of course, always be sued. It has some immunities in that respect; but whenever we find a contract that would be enforceable between private persons, I think the Government ought to pay just the same damage and upon the same rule which its courts would enforce against a private person who had violated his contract or who had failed to carry it out.

Mr. McKELLAR. I agree with the Senator entirely.

Mr. CUMMINS. This section will not do that.

Mr. McKELLAR. No; the Senator is entirely mistaken about it. If the Senator will simply read the Cramp case, in Two hundred and sixteenth United States, page 494, he will find that the Supreme Court has definitely held that the departments can not allow unliquidated damages.

Mr. CUMMINS. I am not speaking about the law. Let the law come as it will; it will be administered either by the commission or the Court of Claims.

Mr. MCKELLAR. If we give the commission the right to consider prospective or possible profits our action is final. I want to leave it where the law is, and that is what this section does. It puts them exactly where the law leaves them and where the other settlements are left.

Mr. CUMMINS. You can not put them above the law.

Mr. MCKELLAR. But we can prepare a law especially for them, and if the Senate strikes out section 6 and we adopt the provision of the House, there will be a special law in their favor in so far as possible or prospective profits are concerned.

Mr. CUMMINS. Where is that found? I am asking purely for information. Where do we make a special law for the recovery of damages in such a case?

Mr. MCKELLAR. The Secretary of War, under the terms of the bill, is given the power to allow such damages and profits as he may see fit upon the cancellation of the contract unless limited. When I say the Secretary of War, we know the Secretary of War does not do it, but some second lieutenant or major or captain. For instance, if it is enamel ware, this man McCubbin will allow it. He can allow the Standard Sanitary Co., where he comes from, whatever profit he sees fit.

Mr. NEW. Mr. President—

Mr. MCKELLAR. I will yield in just a moment.

Mr. CUMMINS. I am speaking now of the case of a contract either originally made or validated in the way provided for in either the Hitchcock amendment or the committee amendment.

Mr. MCKELLAR. I am speaking of that, too.

Mr. CUMMINS. Does the Senator mean to say that in such a case there is any special provision in either of these amendments with regard to the measure of damages?

Mr. MCKELLAR. No; but here is what we do. Without the restricting feature set out in section 6 of the amendment, these officers of the Army who make the settlements on valid contracts already validated or those that we validate will be permitted to make any settlement they please, and the Government will be bound by it. If they allow prospective and possible profits and unliquidated damages, it will be absolutely good under this provision.

Mr. CUMMINS. Would the Government then have the opportunity to appeal to a commission or the Court of Claims?

Mr. MCKELLAR. They have a limited right of appeal in the Chamberlain bill. In the Hitchcock amendment, which is much better, the commission itself settles the matter.

Mr. FLETCHER. Mr. President—

Mr. MCKELLAR. I promised to yield to the Senator from Indiana [Mr. NEW].

Mr. FLETCHER. Just in connection with what the Senator from Iowa said—

Mr. MCKELLAR. All right.

Mr. FLETCHER. If the Senator will allow me to point it out, the Senator from Iowa, I think, is correct in that the bills do not cover profits. Section 5 of the Hitchcock bill reads:

Jurisdiction to hear the case and render final judgment in such sum as may be required to reimburse the contractor for expenses necessarily incurred in good faith in the partial performance of the contract or order above referred to.

I do not think provision is made for profits in either of these measures. Therefore I can not see that there is any reason for negating something that is not provided for elsewhere.

Mr. MCKELLAR. The Senator makes the same mistake that other Senators have made. This section does not apply to profits at all; it applies only to prospective and possible profits, and there is a very wide distinction between the two classes of profits, as we all know.

Mr. FLETCHER. In the authority given elsewhere in the bill, there is nothing anywhere requiring the commission or the Secretary of War to allow profits. That is the point the Senator from Iowa makes. I also want to ask the Senator this question: He referred frequently in his remarks to the Hitchcock amendment. He has reference to the bill proposed by the Senator from Nebraska [Mr. HITCHCOCK]?

Mr. MCKELLAR. I have.

Mr. FLETCHER. The bill that is about to be offered as a substitute?

Mr. MCKELLAR. Yes.

Mr. FLETCHER. May I ask the Senator, if he has reference to that, whether section 6 of that amendment covers what is offered in the other bill?

Mr. MCKELLAR. Of course it does, and what we are doing now is trying to perfect the Chamberlain amendment.

Mr. FLETCHER. I ask the Senator if he proposes to substitute the Hitchcock amendment?

Mr. MCKELLAR. I wish to have that measure adopted. I am very much in favor of the Hitchcock amendment. I think it is a very much juster measure than this. I now yield to the Senator from Indiana.

Mr. NEW. Mr. President, I wish to make an inquiry by stating a case. I know, for instance, one concern, a woodworking concern, which was called upon in the early stages of this contract making to depart from its own line of products and to take up an entirely new one for the department; that is, new, except that it was in the line of woodworking. They did not want to do it, because it involved a very radical change in their plant, the addition of a lot of machinery, and all that. They carried on their negotiations with the department verbally; there was not a stroke of the pen on any of it. They demurred against it, objected to it, but finally, at the insistence of the department, agreed that they would depart from their own line and go into this side line that the department wanted them to take on.

They never did reach the point of making a written contract, but they did this, Mr. President: They estimated what it would cost them to put in the new plant and what it would cost them to dismantle that new plant when they got through with the Government job, because when they do get through with that the additional machinery that they put in in order to turn it out is of no value to them whatever. They have to take it out, every single stitch and particle of it, and their agreement with the Government as to the price they were ultimately to receive was fixed on the profit that they expected to make out of the Government contract.

Now, only a part of their goods have been delivered. They have a very large quantity of undelivered stuff in a partial stage of completion only left on their hands, and they owe something like \$600,000 in the banks which they have borrowed in order to complete that contract. That is four times as much as ordinarily they would be able to borrow from the banks according to their capital and all. The banks can not go any further with them. They can not dismantle and go back to their own line. They are tied up without being able to settle this contract at all. They are at a standstill. Their employees are idle. In other words, they are out of business.

Now, I want to know if the Senator thinks under the amendment he has just offered, if it prevails, it would be possible for the War Department to make an adjustment with them, allowing what they expected to get on the face of which they went into the contract.

Mr. MCKELLAR. I will answer the Senator's question. If this amendment should prevail, that concern would get a return for all the money expended, a reasonable profit on what has been done. The Secretary of War or the commission would be in position to give that concern everything, including a real profit that the concern was justly entitled to. But if the concern, with that verbal understanding stated, just as the Senator has stated, which seems to me to be quite vague, turns up and says, "Now, we have spent \$75,000 and we expected to make a million dollars out of it," it would not permit those possible or prospective profits of a million dollars on a \$75,000 investment. This section would prevent that, but the section would provide that what was right and proper and reasonable should be paid the contractor.

Mr. FRELINGHUYSEN. Mr. President—

Mr. MCKELLAR. Now, let me take just one moment to state a case that actually came up. I do not know whether the Senator from New Jersey [Mr. FRELINGHUYSEN] was on the subcommittee or not. I am talking from the record now. I am not talking of hearsay or possible hearsay.

The PRESIDING OFFICER (Mr. BANKHEAD in the chair). Does the Senator from Tennessee yield to the Senator from New Jersey?

Mr. MCKELLAR. In just one moment I will yield. One division of the Army here last September gave verbal orders for 25,000 bathtubs for the Army. I believe in bathtubs and I believe in taking baths, but it looks to me like 25,000 enamel-ware bathtubs for the Army was a pretty good order. This Mr. Ahrens, the president of the Standard Sanitary Co., in Pittsburgh, who had his agents down here buying bathtubs from him for the Government, went to the Bathtub Manufacturers' Association meeting and bragged about it. They were the people who did not get any contracts. Mr. McCubbin had cribbed all the contracts for the Standard Co., and they had not gotten these contracts and they came down here and told us about it. Mr. McCubbin denied that he had given the contract for 25,000 bathtubs. It appeared that there was no doubt about it. He

had just as good a contract as the one referred to by the Senator from Indiana [Mr. NEW]; but when he found out the monstrous proposition there was in the purchase of 25,000 bathtubs, enamel ware, zinc, and closets, and everything of that sort, what happened? Where they are going to put them in the Army it is difficult to find. I do not know where so many could have been used. But here was a great company. It had bathtubs to sell; it had its agents buying them for the Government; it had its agents selling them to the Government. Gentlemen, that is the proof. Look in part 2 of the hearings and you will find the proof of this very thing that I say. Now, had we not better put just a little hold on these boys who are settling up with themselves?

Mr. CUMMINS. Those contracts ought not to be validated at all.

Mr. McKELLAR. Certainly it ought not to be validated so as to get what the president of this company may consider is a prospective or possible profit out of it.

Mr. CALDER. Will the Senator yield to me?

Mr. McKELLAR. I promised to yield to the Senator from New Jersey, and then I will yield to the Senator from New York. Indeed, I am ready to yield the floor.

Mr. FRELINGHUYSEN. I will say to the Senator from New York that I shall take only a moment. The Senator from Tennessee has clearly stated his definition of the amendment in regard to certain cases that have come under his observation which clearly are contracts that should never have been made. I have very little knowledge of contract law. The Senator, who is a lawyer, knows a great deal more about it than I do. As I stated before, I am very anxious to avoid any injustice by inserting in the act any phraseology which will repudiate any honest contract made by the Government.

Mr. McKELLAR. I have the same view the Senator has.

Mr. FRELINGHUYSEN. Now, I will put a concrete case, and I would very much like to have the Senator's opinion as to whether his amendment will not practically repudiate this agreement made by the Government.

Mr. McKELLAR. I shall be glad to give the Senator any information I can.

Mr. FRELINGHUYSEN. A by-product coke manufacturing concern was solicited by the War Department to add to its plant additional ovens in order to increase for the Government the supply of toluol and ammonia.

Mr. McKELLAR. I am familiar with that class of contracts.

Mr. FRELINGHUYSEN. The business of the company in normal times did not need the additional equipment, and it was unwilling to expend the money required for this addition unless it was secured by a contract for the sale of these products, which were merely by-products in its coke production. The War Department therefore made a contract with the concern whereby the concern obligated itself to build additional ovens and sell its entire output of toluol and ammonia to the Government for the period of two years.

The contracts contained a provision authorizing the War Department to cancel the contract at any time, in which event it agreed to pay the producer for the balance of the term of the contract the difference between the contract price and the amount which the producer would realize on the market for such product. The manufacturers decided that if they had a sale of these products for two years at the contract price, which was the standard price paid by the Government, they could take the business risk of having a larger plant than they needed at the termination of the war.

Now, that was a two years' contract. It is canceled, and your provision provides that no unearned profits shall be paid—

Mr. McKELLAR. The Senator is mistaken about that. That contract, if I caught it right, and I think I did, would be perfectly plain. It provides what profits shall be made. They are fixed in the contract. Of course those profits will be allowed under the settlement. Under section 6 there is no doubt in the world about that. Why? Because the parties, before the contract was made, agreed upon what the profits should be, and they are not prospective or possible profits; they are excluded by the terms of the contract from prospective or possible profit.

Mr. FRELINGHUYSEN. They are prospective profits.

Mr. McKELLAR. Not at all. Prospective profits are not profits that the parties have agreed to beforehand and fixed themselves. Of course not.

Mr. LENROOT. Does the Senator mean to say if there is a contract where they propose to pay a profit of 10 per cent on a billion dollars' worth of goods and only \$1,000,000 worth is accepted, yet that is liquidated damages?

Mr. McKELLAR. No, no; I mean this: As I understood the reading of the contract by the Senator from New Jersey, it was that the profits which should accrue were fixed by the parties

themselves in the making of the contract, and if it is liquidated damages it is not prospective or possible profits at all, and it comes directly within this provision.

Mr. FRELINGHUYSEN. I will take only a moment more. I have another case, and possibly the Senator from Tennessee can tell me whether it will come under section 6.

Mr. McKELLAR. You know what they say about a lawyer who gives an offhand opinion; it is not very good. But I will be delighted to give such an opinion as I can.

Mr. FRELINGHUYSEN. I am very glad the Senator has made that reservation. Possibly when he reads the RECORD he will want to correct it a little.

In a number of instances the Government has required the manufacturers of articles, which were covered by patent which were not owned by them, to make such articles. In such instances there was not time to stop and have careful inquiry as to whether an infringement was involved, and the Government has inserted in its contract a clause agreeing to protect the manufacturer from any claims of the owner of the patent. Would your amendment affect in any way those agreements?

Mr. McKELLAR. I will answer the Senator's question by asking another. Was the acquirement of those patents necessarily incurred in order to carry out the contract?

Mr. FRELINGHUYSEN. I understand that this is the situation as it occurred in many cases where it was necessary for the Government to procure war equipment. The questions of infringement of patent rights or royalty and other questions were simply postponed for future settlement, and in the emergency the Secretary of War assured the owners of the rights and the patents that a settlement would be hereafter made and adjusted.

Mr. McKELLAR. The patents were necessary in order to carry out the contracts, were they not?

Mr. FRELINGHUYSEN. Absolutely.

Mr. McKELLAR. Then it comes directly within the very terms of section 6. It is not left to doubt or to construction, but it comes directly within the terms of section 6.

I now yield to the Senator from New York.

Mr. CALDER. I wish to make an inquiry of the Senator.

Mr. McKELLAR. I make the same reservation about curbstone opinions that I made to the Senator from New Jersey.

Mr. CALDER. I am not a lawyer, as is the Senator from Tennessee, who is a distinguished lawyer, and there is every indication that he has given much thought to this particular provision. I am disposed to agree with the Senator in many of the provisions of the so-called Hitchcock amendment, but the talk on both sides of the Chamber indicates that there is some doubt in the minds of some as to just what section 6 means. I agree substantially with what the Senator says it means, and I wonder if he will be willing to insert this language in the section—

Mr. McKELLAR. There have been some insertions already made, but let the Senator state it.

Mr. CALDER. After the words "United States," in line 10, insert "or ready for delivery or in process of manufacture."

Mr. McKELLAR. I am inclined to think that that would be a proper amendment; I have no objection to it. If the Senator will offer it, I will accept it.

Mr. CALDER. I offer that as an amendment.

The PRESIDING OFFICER. Does the Senator from Tennessee accept the amendment?

Mr. McKELLAR. I accept the amendment.

Mr. CHAMBERLAIN. May I make one suggestion to the Senator from Tennessee? I think he misapprehends that section. The section does not protect the contractor against liability which he incurred; absolutely not. In the case put by the Senator from New Jersey, where the contractor is indemnified by the Government for the use of patents that are held by other parties, every man who uses the patent violates the law, and the royalty may be recovered. Here is an institution going ahead under the guaranty of the Government and using the patents of other individuals, or it may be hundreds of them, as far as that is concerned. All these individuals will have recourse to that contractor, who has acted in reliance upon his guaranty. There is nothing in section 6 to protect those men against those liabilities.

Mr. McKELLAR. I can not possibly agree with the Senator, because it provides in specific terms remuneration for expenditures necessarily incurred. If they have incurred these expenditures, even though they have done so in violation of patent rights, they come directly within the wording of the section just the same. I yield the floor now.

Mr. LENROOT. I offer an amendment to strike out and insert.

The PRESIDING OFFICER (Mr. WOODCOCK in the chair). The Secretary will read the amendment.

The SECRETARY. In lieu of the amendment offered by the Senator from Tennessee, as modified, insert the following:

That in no case shall any award, either by the Secretary of War, the commission, or the Court of Claims, include prospective or possible profits on any part of the contract beyond the goods and supplies delivered to and accepted by the United States, and a remuneration which may include a reasonable profit for expenditures and obligations or liabilities necessarily incurred in performing or preparing to perform said contract or order so canceled.

Mr. MCKELLAR. I will accept that amendment.

Mr. LENROOT. Thank you.

Mr. MCKELLAR. I withdraw my amendment and accept this one.

The PRESIDING OFFICER. The Senator from Tennessee withdraws his amendment to the amendment and accepts the one just offered by the Senator from Wisconsin.

Mr. CHAMBERLAIN. I should like to have it read again.

The PRESIDING OFFICER. It will be again read.

The Secretary again read the amendment to the amendment.

Mr. POMERENE. May I ask the Senator from Wisconsin a question? Is the language broad enough to include remuneration for profits upon goods which might be in whole or in part manufactured, but which had not been delivered?

Mr. LENROOT. The language is "in performing or preparing to perform," which clearly would include that.

Mr. POMERENE. I so understand it, but I wanted to be certain about it.

Mr. FLETCHER. It is not clear to me as to the last clause of the proposed amendment. As I caught it, it says the remuneration shall include a reasonable profit.

Mr. LENROOT. Which may include.

Mr. FLETCHER. Which may include a reasonable profit for expenditures.

Mr. LENROOT. Or obligations or liabilities.

Mr. FLETCHER. A "reasonable profit" is one thing and "expenditures necessarily incurred" quite another thing. You do not mean a profit on expenditures?

Mr. LENROOT. I think the Senator is correct, and that should be changed.

Mr. FLETCHER. "Reasonable profits and expenditures."

Mr. LENROOT. No; the language is that the award may permit a remuneration which may include a reasonable profit for expenditures and obligations, and so forth. I think that is correct.

Mr. FLETCHER. Reasonable profits on the performance of the contract is one thing, but remuneration for expenditures; it seems to me, is a different thing. I should think what the Senator perhaps has in mind is to provide for a reasonable profit, and, in addition to that, remuneration for expenditures necessarily incurred.

Mr. LENROOT. I am permitting that. That is what I intend to do.

Mr. FLETCHER. I think the word "and" should be inserted.

Mr. MCKELLAR. I think the Senator has it exactly right. The difference between the amendment he has offered and the one offered by me is that his specifically provides for reasonable profits on what the contractor has done. The amendment offered by me provides for precisely the same thing. Both amendments exclude possible or prospective profits. That is my understanding of it, and I think it is entirely satisfactory to the Senate.

Mr. FLETCHER. It seems to me it would be perfectly absurd to provide for reasonable profits and to have a profit for expenditures necessarily incurred in preparing for the contract.

Mr. LENROOT. No; it is remuneration for expenditures, which remuneration may include a reasonable profit.

Mr. FLETCHER. I would not object to that, but a "reasonable profit for expenditures" is a thing that I can not comprehend.

Mr. LENROOT. No; the Senator does not read it correctly. It is remuneration for expenditures—that is the grammatical construction—which may include a reasonable profit.

Mr. FLETCHER. I can understand that; but what I can not quite comprehend is the expression "remuneration * * * for expenditures * * * necessarily incurred" or remuneration for profits on expenditures.

Mr. HITCHCOCK. I should like to ask the Senator from Wisconsin to explain how the term "remuneration" can include a profit. Remuneration means to make good to a man what he has expended. It is therefore less than profit. How can the lesser include the greater?

Mr. LENROOT. I do not understand that remuneration for expenditures necessarily is limited to the actual amount of the expenditures. Remuneration and compensation, I think, are synonymous terms in this, that compensation for expenditures might include the actual amount of expenditures and something added to it for profit.

Mr. FLETCHER. I agree with the Senator, but I think the language is a little unfortunate in that it seems to provide for remuneration for profits on expenditures.

Mr. LENROOT. Let me read it as it stands, and then if the Senator thinks so I shall be glad to accept an amendment to it to make it clear:

And a remuneration, which may include a reasonable profit, for expenditures.

That is, remuneration for expenditures, which remuneration may include a reasonable profit.

Mr. FLETCHER. It might depend upon the punctuation. Do you put a comma after "remuneration"?

Mr. LENROOT. I have a comma after "remuneration" and one after "profit."

Mr. MCKELLAR. That will cover it.

Mr. CHAMBERLAIN. I will accept that amendment.

The PRESIDING OFFICER. The Senator from Oregon accepts the amendment to the amendment on behalf of the committee.

Mr. POMERENE. I offer to the substitute the following, to be added to section 4—

Mr. CHAMBERLAIN. The amendment to the amendment has not been voted on by the Senate.

Mr. MCKELLAR. It has not been voted on.

The PRESIDING OFFICER. The Chair begs pardon. The question is on the adoption of the amendment offered by the Senator from Wisconsin to the amendment of the committee.

Mr. LENROOT. My amendment was not a substitute, because it left the proviso in which had theretofore been accepted by the Senator; so that the amendment as adopted includes the proviso. I merely desire to understand whether that is correct.

The PRESIDING OFFICER. Let the Chair state the question properly. The question is on the adoption of the amendment offered by the Senator from Tennessee to the amendment.

The amendment was agreed to.

The PRESIDING OFFICER. The Senator from Ohio [Mr. POMERENE] has presented an amendment, which will be stated.

Mr. CHAMBERLAIN. Pardon me, Mr. President, but I am not entirely satisfied with what the Record will show in reference to this matter. There seems to be a little pride of opinion in relation to this amendment. The amendment which the Senator from Tennessee proposed was not accepted at all.

The PRESIDING OFFICER. But the Chair calls the attention of the Senator from Oregon to the fact that the Senator from Tennessee offered an amendment; then the Senator from Wisconsin offered an amendment to it, and the Senator from Tennessee said that he accepted that amendment.

Mr. CHAMBERLAIN. That is all right.

The PRESIDING OFFICER. So that the amendment becomes the amendment of the Senator from Tennessee, which was adopted. The Senator from Ohio [Mr. POMERENE] has offered an amendment, which will be stated.

The SECRETARY. At the end of section 4, on page 12, it is proposed to insert the following:

In all proceedings hereunder witnesses may be compelled to attend, appear, and testify, and produce books, papers, and letters or other documents, and the claim that any such testimony or evidence may tend to criminate the person giving the same shall not excuse such witness from testifying, but such evidence or testimony shall not be used against such person on the trial of any criminal proceeding.

Mr. CHAMBERLAIN. I have no objection to that amendment.

The PRESIDING OFFICER. The question is on the adoption of the amendment offered by the Senator from Ohio.

Mr. HITCHCOCK. I should like to ask whether the Senator is offering that amendment to the committee substitute or to my substitute?

Mr. POMERENE. I am offering it to the committee substitute.

The PRESIDING OFFICER. The question is on the adoption of the amendment offered by the Senator from Ohio.

The amendment was agreed to.

Mr. POMERENE. I offer the amendment which I send to the desk, to be designated as section 5.

The PRESIDING OFFICER. The Senator from Ohio offers an amendment, which will be stated.

The SECRETARY. It is proposed to add as a new section the following:

Sec. 5. Whenever, under the provisions of this act, the Secretary of War shall make an award to any prime contractor who shall have sublet any part of said contract for material, equipment, or supplies to any other person, firm, or corporation who has in good faith made expenditures, incurred obligations, rendered service, or furnished material, equipment, or supplies to any prime contractor, with the knowledge and approval of any agent of the Secretary of War duly authorized thereto, the Secretary of War shall apportion the amount of said award justly due to each of the subcontractors of said prime contractors. Before payment of said award the Secretary of War shall require any

prime contractor to present satisfactory evidence of having paid said subcontractors or of the consent of said subcontractors to look for their compensation to said prime contractor only; and in the case of the failure of said prime contractor to present such evidence or such consent, the Secretary of War shall pay directly to said subcontractors the amount found to be due under said award; and in case of the insolvency of any prime contractor the subcontractor of said prime contractor shall have a lien upon the funds arising from said award prior and superior to the lien of any general creditors of said prime contractor.

The PRESIDING OFFICER. The question is on the adoption of the amendment offered by the Senator from Ohio.

Mr. CHAMBERLAIN. Mr. President, I am not going to oppose the amendment, but I believe that under the terms of the bill reported by the committee the amendment of the Senator is covered. I shall not, however, make any objection to it.

Mr. POMERENE. Mr. President, I have had serious doubts of that. I may say that this matter has been studied by some constituents of mine who are especially interested in it, and I am disposed to take their view of it. I do not believe that the interests of subcontractors are protected by this proposed legislation as they ought to be. I have not any private opinion about this matter, and I shall be very glad, if the amendment shall be adopted, to let the conferees work it out as they think it ought to be.

Mr. CHAMBERLAIN. I have no objection to that, Mr. President.

The PRESIDING OFFICER. The question is on the adoption of the amendment of the Senator from Ohio.

The amendment was agreed to.

Mr. FLETCHER. Mr. President, I desire to move to strike out the proviso, beginning in line 14, page 5, to the end of the paragraph, including line 17, and to insert instead of it another proviso, which I will ask the Secretary to read.

I think the present proviso in the bill as submitted makes it a rather one-sided sort of proposition, and I think that which I propose would clear up the whole matter. I believe it will be agreeable to the chairman of the committee and other members of the committee if they will listen to it.

The PRESIDING OFFICER. The amendment proposed by the Senator from Florida will be stated.

The SECRETARY. On page 5, line 14, after the word "Provided," it is proposed to strike out the remainder of the paragraph and to insert the following:

That payment of expense incurred or loss and damage suffered in preparing for or in the performance of such informal agreements or of formal contracts shall not exceed the fair value of labor performed or services rendered or the actual cost of the materials used, as determined by the Secretary of War.

The PRESIDING OFFICER. The question is on the adoption of the amendment offered by the Senator from Florida.

Mr. McKELLAR. I do not agree to that amendment. That means, Mr. President, that whatever agency in the entire country, or even abroad, which happens to be representing the War Department, can fix any compensation they desire. It would not be fair to the Government; it would be very unwise and unjust. The committee has provided a plan here which does equal and exact justice. I think, if we adopt the amendment offered by the Senator from Florida, we might just as well simply turn this matter over and say to the Secretary of War, "You may employ any agency you choose and settle it in any way you can." That is really the meaning and effect of the amendment offered by the Senator from Florida. It gives the Secretary carte blanche to settle these contracts in any way he wishes, and I hope the Senator will not insist upon the amendment.

Mr. FLETCHER. It does not change the provision of the bill at all as to the powers of the Secretary of War or of the commission or anything else.

Mr. McKELLAR. Let the amendment be again read.

The PRESIDING OFFICER. The Secretary will again state the amendment offered by the Senator from Florida.

The Secretary again read the amendment.

Mr. McKELLAR. The words "as determined by the Secretary of War" are absolutely the important language in the proposed proviso.

Mr. FLETCHER. I am willing to strike out those words if that is the objection to the amendment.

The PRESIDING OFFICER. Does the Senator from Florida propose to strike out any portion of his amendment?

Mr. McKELLAR. As I understand, the Senator from Florida is willing to strike out the clause which he has indicated.

The PRESIDING OFFICER. Will the Senator from Florida please state what portion of the amendment he desires to strike out in order that the Secretary may understand it?

Mr. FLETCHER. I propose to strike out the words "as determined by the Secretary of War," and to let the amendment end with the word "used."

Mr. FRELINGHUYSEN. Mr. President, I simply wish to say to the Senate that this amendment practically nullifies the

amendment which we have just adopted, as offered by the Senator from Wisconsin [Mr. LENROOT]. So I hope the Senators are aware of the effect of the amendment.

Mr. CUMMINS. Mr. President, the amendment not only nullifies or neutralizes the amendment offered by the Senator from Wisconsin, but it is inconsistent with the spirit of the provision as reported by the committee, and is so repugnant to the whole idea that is sought to be expressed that it ought not to be approved at all.

Senators will observe that the provision of the committee amendment is that there shall be awarded such relief "as will under all the circumstances fairly and equitably compensate him or it for the expenditures made, obligations incurred, equipment, materials, or supplies furnished or acquired, or services rendered, as aforesaid." That is the rule laid down by the committee for the ascertainment of losses. Then the committee qualifies that rule by the proviso:

Provided, That in no event shall such contract provide for compensation on terms more favorable than the terms, if any, for which the aforesaid agreement, order, or request may have provided.

That is understandable; it is a real limitation or qualification upon the rule laid down by the committee; but, if this amendment is adopted, we shall find ourselves in the rather unfortunate attitude of having laid down one rule and immediately afterwards having prescribed another—a most unsatisfactory ending, I should think, for a very happy expression of the rule as the committee has reported it.

Mr. CHAMBERLAIN. Mr. President, I am in accord with the views expressed by the Senator from Iowa [Mr. CUMMINS], and I hope the amendment will not be adopted. It is a great pleasure to me at this time to have, for once, the Senator from Tennessee in accord with me. It proves that he is sometimes right.

Mr. McKELLAR. Mr. President, I am very frequently in accord with the distinguished Senator from Oregon, whom I love very dearly, and when I am not in accord with him I regret exceedingly that he is wrong.

Mr. FLETCHER. That would simply indicate that if both of those Senators are in accord I must be wrong, and I ask to withdraw the amendment.

The PRESIDING OFFICER. The amendment is withdrawn.

Mr. HENDERSON. I have an amendment on the desk to the bill, to be known now as section 6, I believe.

The PRESIDING OFFICER. The Senator from Nevada offers an amendment, which will be stated.

Mr. LENROOT. I have an amendment to offer.

Mr. HENDERSON. I will yield to the Senator from Wisconsin, as I understand he has a new paragraph to offer.

Mr. McKELLAR. The amendment of the Senator from Wisconsin applies to the text itself.

The PRESIDING OFFICER. The Senator from Wisconsin offers an amendment, which will be stated.

The SECRETARY. On page 4, lines 6 and 7, it is proposed to strike out the words "or aid in procuring the same."

The PRESIDING OFFICER. The question is on the adoption of the amendment.

Mr. LENROOT. Mr. President, in order that the Senate may understand the purpose of this amendment, I will say that unless the amendment is adopted the bill is going to open the door to a veritable flood of claims not contemplated at this time at all. Under the language reported by the committee, if any department of the Government, if any dollar-a-year man on the War Industries Board, has made a request that somebody should do something with reference to the preparation of a contract or to do anything to aid the Government in securing munitions, although there is not a semblance of authority to make a contract, nevertheless the Government under the language of the bill is bound.

Mr. CHAMBERLAIN. May I interrupt the Senator?

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

Mr. LENROOT. Yes.

Mr. CHAMBERLAIN. The committee thought that the idea which the Senator now has in mind was fully provided for in lines 4, 5, and 6, where the bill reads:

Has made an agreement with the Secretary of War, or with any officer or agent acting under his authority, or with any agency of the Government authorized to procure or aid in procuring—

Mr. LENROOT. "Or aid in procuring."

Mr. CHAMBERLAIN. Yes. It is only those contracts which are authorized to be made that are covered. We thought that was adequate protection.

Mr. LENROOT. It must be remembered, however, that all of these contracts were authorized to aid in the procuring of supplies. It is not so important, so far as the first paragraph is concerned, but the Senator will recall that with reference to the

subsequent paragraphs of the bill, where the claim is founded upon a mere request, it may be founded upon the kind of an agency I have suggested.

Mr. CHAMBERLAIN. I have no objection to the amendment. The PRESIDING OFFICER. The question is on agreeing to the amendment offered by the Senator from Wisconsin.

Mr. FLETCHER. Let the amendment be again stated.

The PRESIDING OFFICER. The Secretary will again state the amendment.

The SECRETARY. On page 4, line 6, after the word "procure," it is proposed to strike out "or add in procuring the same," so as to read:

Or with any agency of the Government authorized to procure for the War Department.

The PRESIDING OFFICER. The question is on agreeing to the amendment offered by the Senator from Wisconsin.

The amendment was agreed to.

Mr. LENROOT. I offer another amendment.

The PRESIDING OFFICER. The amendment offered by the Senator from Wisconsin will be stated.

The SECRETARY. On page 8, line 17, after the word "requirements," it is proposed to insert "or compliance has been waived as herein provided."

Mr. LENROOT. That is to cover the objection made by the Senator from Iowa [Mr. CUMMINS] on yesterday.

Mr. CHAMBERLAIN. I have no objection to that amendment, Mr. President.

Mr. LENROOT. I will merely state the purpose of it. The bill as it now stands does not provide for an appeal to the commission in the case of contracts where compliance has been waived. This will permit such an appeal.

The PRESIDING OFFICER. The question is on agreeing to the amendment offered by the Senator from Wisconsin.

The amendment was agreed to.

Mr. LENROOT. I offer another amendment.

The PRESIDING OFFICER. The amendment will be stated.

The SECRETARY. On page 8, line 12, it is proposed to strike out the words "any dispute arises" and to insert "the Secretary of War and the contractor shall fail to agree."

Mr. LENROOT. Mr. President, the contention has been made that the language of the bill would permit an appeal before the contractor and the Secretary of War had come to a disagreement. I doubt very much whether that is a proper construction; but I take it there will be no objection to making it clear that the appeal can only be had after a failure to agree.

The PRESIDING OFFICER. The question is on agreeing to the amendment offered by the Senator from Wisconsin.

The amendment was agreed to.

Mr. LENROOT. Mr. President, I have one more amendment to offer. I send it to the desk.

The PRESIDING OFFICER. The amendment offered by the Senator from Wisconsin will be stated.

The SECRETARY. On page 4, at the end of line 20, it is proposed to insert the following:

And provided further, That such waiver shall not validate such contract or procurement order in so far as any claim for unearned profits may be involved.

Mr. LENROOT. Mr. President, this is the matter that was discussed yesterday as to making valid a contract that had not been validly executed, and there was some little discussion here as to whether the validation of such a contract would not give the contractor a valid, legal claim to all unearned profits. I offer this amendment, which is in harmony with the one which has already been adopted by the Senate.

The PRESIDING OFFICER. The question is on the amendment offered by the Senator from Wisconsin.

The amendment was agreed to.

Mr. CUMMINS. Mr. President, I offer the amendment which I send to the desk.

The PRESIDING OFFICER. The amendment offered by the Senator from Iowa will be stated.

The SECRETARY. On page 5, line 3, after the word "form," it is proposed to insert the words "or when the Secretary of War has not waived such noncompliance."

Mr. CUMMINS. Mr. President, the amendment is intended to give the Secretary of War, and afterwards the commission, the opportunity to do justice in those cases in which a compliance has been waived.

Mr. MCKELLAR. On what page and line, may I ask the Senator, does the amendment come in? My attention was temporarily diverted.

Mr. CUMMINS. On page 5, line 3, after the word "form," it is akin to an amendment offered by the Senator from Wisconsin [Mr. LENROOT] and is necessary to complete it. In other

words, it brings into paragraph 2 the cases in which compliance with strict statutory forms has been waived by the Secretary.

Mr. CHAMBERLAIN. So far as I am concerned, I am willing to accept the amendment, Mr. President.

The PRESIDING OFFICER. The question is on the amendment offered by the Senator from Iowa.

The amendment was agreed to.

Mr. MCKELLAR. Mr. President—

Mr. CUMMINS. Will the Senator allow me just another suggestion, and then I will not interfere again, I hope. I have another amendment, but unfortunately have mislaid it for the moment and can not put my hands upon it, but I should like to ask the Senator in charge of the bill, as well as the Senator from Tennessee, who is interested in another form of bill, a question. Suppose the Secretary of War, under the first paragraph of the committee amendment, declines to waive the failure to comply with the statutory requirements or form and the contract is therefore invalid, strictly considered. I want to provide jurisdiction on the part of the commission to review the action of the Secretary of War in that respect exactly as it is provided that the commission may review the action of the Secretary of War in every other respect which affects the rights of the contractors. Would the Senator from Oregon and the Senator from Tennessee have objection to such a provision?

Mr. MCKELLAR. I have no objection to it. I think a better plan, however, would be for the Senator to vote for the Hitchcock amendment, which will put it beyond question; but, of course, that is a matter for him to determine. I have no objection to the amendment.

Mr. LENROOT. Mr. President, if the Senator will yield, may I ask why there should be any such provision now that the bill has been amended giving the contractors the benefit of the other provisions of the bill which do absolutely guarantee them a reasonable compensation?

Mr. CUMMINS. Mr. President, there is a difference between the remedy given under the second paragraph of the bill and the remedy that might be given under the first paragraph; and it seems to me that, if the commission is to stand in review of the act of the Secretary of War, it ought to have the power to review his act in refusing to validate a contract.

Mr. MCKELLAR. I think clearly, under the Chamberlain bill, that if the Secretary of War should refuse, then the contractor could appeal to the commission. If that is not the construction to be placed upon the bill, I will be very glad to vote for an amendment which will effluenate that object, because the contractors ought to have that right.

Mr. CUMMINS. I do not think there could be an appeal prosecuted upon that ground.

Mr. MCKELLAR. If the Senator will offer such an amendment, so far as I am concerned, I will be glad to have it made a part of the bill.

Mr. CUMMINS. I now have the amendment which I had in mind and will send it to the desk and ask to have it read.

The PRESIDING OFFICER. The Senator from Iowa offers an amendment, which the Secretary will state.

The SECRETARY. On line 21, on page 7, it is proposed to strike out the word "Thereupon," and insert the following:

If the Secretary of War shall refuse to waive noncompliance with statutory requirements in respect to any agreement within the purview of the first paragraph of section 1 of this act, or upon the expiration of 60 days from the date of the taking effect of this act shall have failed to waive such noncompliance, the contractor named in any such agreement may, within 30 days after such refusal or after the expiration of such 60 days, file with the chairman of said commission a notice of appeal in all cases where an appeal is taken hereunder.

The PRESIDING OFFICER. The question is on agreeing to the amendment offered by the Senator from Iowa.

Mr. LENROOT. Mr. President, before the amendment is acted on, I should like to ask the Senator from Iowa a question. I should like to ask him if he has considered how that amendment affects the language of the remainder of the section? Do I understand that it is to be inserted before the word "Thereupon"?

Mr. CUMMINS. It is inserted in lieu of the word "Thereupon."

Mr. LENROOT. I ask to have the amendment again stated. The PRESIDING OFFICER. The Secretary will again state the amendment.

The amendment was again stated.

Mr. LENROOT. That is all right.

Mr. CHAMBERLAIN. I think the amendment is all right, Mr. President. It takes away from the Secretary of War the arbitrary power to refuse a waiver.

The PRESIDING OFFICER. The question is on agreeing to the amendment offered by the Senator from Iowa.

The amendment was agreed to.

Mr. McKELLAR. Mr. President, I think all sides to this contract controversy have ignored the House bill, which was sent over here to us to be considered. A careful perusal of that bill shows that it contains some very good provisions, and one especially that ought to go in this bill. I am going to offer an amendment, which I will read, because, in the form in which it is found, I believe I can read it better. After the word "thereof," in line 12, on page 12, I move to insert the following:

And provided further, That no settlement of any claim arising under any such agreement shall bar the United States Government through any of its duly authorized agencies, or any committee of Congress hereafter duly appointed, from the right of review of such settlement, nor the right of recovery of any money paid by the Government to any party under any settlement entered into, or payment made under the provisions of this act, if the Government has been defrauded, and the right of recovery in all such cases shall extend to the executors, administrators, heirs, and assigns, or any party or parties.

Mr. President, of course, that applies only to a settlement which is made in fraud of the Government, and I take it that there will be no objection to that amendment.

Mr. CHAMBERLAIN. Where does the Senator take it from the House bill?

Mr. McKELLAR. If the Senator will look at the bottom of page 2 and the top of page 3, he will see the words "That no" right at the bottom. I desire to have it come in as a new section immediately after the Pomerene amendment that was adopted. I had forgotten that the Senator from Ohio offered an amendment which was adopted a while ago.

The PRESIDING OFFICER. This is to be inserted after the last word of that paragraph as it is amended now?

Mr. McKELLAR. Yes.

The PRESIDING OFFICER. The question is on the adoption of the amendment offered by the Senator from Tennessee.

Mr. CHAMBERLAIN. Mr. President, just one moment. I believe that it would improve the amendment if the Senator would amend it just a little, by striking out the words "any such agreement" and inserting in lieu thereof the words "any contract covered by the terms of this bill."

Mr. McKELLAR. The amendment goes a little further than that, I believe.

Mr. CHAMBERLAIN. The amendment that the Senator has proposed reads as follows—

Mr. McKELLAR. It is identically the House provision on that subject.

Mr. CHAMBERLAIN. Yes. [Reading:]

That no settlement of any claim arising under any such agreement—

What agreement? I want it to read "any contract provided for in this bill."

Mr. McKELLAR. I will accept that amendment.

Mr. CHAMBERLAIN. Strike out the words "such agreement."

Mr. McKELLAR. I will accept that amendment; and I desire to ask unanimous consent that I may add the second proviso as well:

And provided further, That nothing in this act shall be construed to relieve any officer or agent of the United States from criminal prosecution under the provisions of any statutes of the United States for any fraud or criminal conduct.

The PRESIDING OFFICER. The Senator incorporates that in his amendment?

Mr. McKELLAR. Yes.

The PRESIDING OFFICER. Now the Senator from Oregon will please state his amendment.

Mr. CHAMBERLAIN. I want it to read in this way:

No settlement of any claim arising under the provisions of this bill shall bar the United States—

And so forth.

The PRESIDING OFFICER. Does the Senator from Tennessee accept that amendment?

Mr. McKELLAR. I accept it.

Mr. HITCHCOCK. I should like to know where it goes in.

Mr. McKELLAR. Immediately after the Pomerene amendment. Oh, the Senator means the Chamberlain amendment?

Mr. HITCHCOCK. Yes.

Mr. McKELLAR. That goes in at the top of page 3, in lieu of the words "such agreement." He inserts there "the contracts provided for in this act," which I think is very proper, on page 3 of the Chamberlain bill. It goes in as a new section.

The PRESIDING OFFICER. The amendment to the amendment will be stated.

The SECRETARY. Following the amendment heretofore agreed to, offered by the Senator from Ohio [Mr. POMERENE], it is proposed to insert the following as a new section:

That no settlement of any claim arising under the provisions of this bill shall bar the United States—

Mr. McKELLAR. It ought to be "this act."

The SECRETARY (reading)—

That no settlement of any claim arising under the provisions of this act shall bar the United States Government, through any of its duly authorized agencies, or any committee of Congress hereafter duly appointed, from the right of review of such settlement, nor the right of recovery of any money paid by the Government to any party under any settlement entered into, or payment made under the provisions of this act, if the Government has been defrauded, and the right of recovery in all such cases shall extend to the executors, administrators, heirs, and assigns, or any party or parties: *And provided further,* That nothing in this act shall be construed to relieve any officer or agent of the United States from criminal prosecution under the provisions of any statutes of the United States for any fraud or criminal conduct.

Mr. CHAMBERLAIN. May I ask the Senator whether this portion of his proposed amendment will not delay the payment by the Government to these contractors and others?

Mr. McKELLAR. Why no. Why should it?

Mr. CHAMBERLAIN. I am going to ask the Senator now and call his attention to the language. Take the language of the House bill, if you please—"from the right of review of such settlement." Suppose a claim has been adjusted and liquidated under the provisions of this bill; will it not still be open to a review before the payment has been made?

Mr. McKELLAR. Oh, no; this applies only in cases of fraud. By the way, the third proviso should be added to this. I am going to ask unanimous consent in a moment that it shall be added. This section applies only to cases of fraud. Where a settlement under a contract has been procured by fraud the Government is not precluded by such settlement if it is fraudulently made.

Mr. CHAMBERLAIN. There may be some doubt about the language.

Mr. McKELLAR. It is only about fraud; and, if there is any doubt, the Senator can fix it in conference.

Mr. CHAMBERLAIN. We can probably adjust it in conference if there is that doubt.

Mr. McKELLAR. Yes.

Mr. President, I ask unanimous consent to insert also the third proviso:

And provided further, That this act shall in no way relieve or excuse any officer or his agent from such criminal prosecution because of any irregularity or illegality in the manner of the execution of such agreement.

The PRESIDING OFFICER. The Senator does not need unanimous consent for that. The amendment has not yet been adopted. It is the Senator's amendment.

Mr. McKELLAR. I move, then, that that be added to the amendment. I perfect the amendment by adding that.

The PRESIDING OFFICER. The question is on the amendment offered by the Senator from Tennessee, as modified, to the amendment of the committee.

The amendment, as modified, to the amendment of the committee was agreed to.

Mr. FRELINGHUYSEN. Mr. President, I offer the amendment which I send to the desk.

The PRESIDING OFFICER. The Senator from New Jersey offers an amendment to the amendment which will be stated.

The SECRETARY. On page 7, line 23, after the word "thereon," it is proposed to insert the words "according to the justice and equity thereof," so that if amended it will read:

And make its award or finding thereon according to the justice and equity thereof.

The amendment to the amendment was agreed to.

Mr. HENDERSON. Mr. President, I offer as a new section the amendment which I send to the desk.

The PRESIDING OFFICER. The Senator from Nevada offers an amendment, which will be stated.

The SECRETARY. It is proposed to add, as a new section, the following:

SEC. 7. That the Secretary of the Interior be, and hereby is, authorized and directed to ascertain and determine the amount or amounts of money heretofore invested or contracted to be invested and obligations incurred by any and all persons and investors for producing or for the purpose of producing or preparing for producing or acquiring property for producing, within the United States, to supply the urgent, published, and evident needs of the Nation during the war, any ores, metals, minerals, or mineral substances mentioned and enumerated in an act of Congress approved October 5, 1918 (public, No. 220), entitled "An act to provide further for the national security and defense by encouraging the production, conserving the supply, and controlling the distribution of those ores, metals, and minerals which have formerly been largely imported, or of which there is or may be an inadequate supply;" the production of which was requested or demanded by the War Industries Board, the Shipping Board, the Department of the Interior, or other agency of the Government.

And that said Secretary ascertain, determine, adjust, liquidate, and out of the moneys provided and appropriated by said act pay to the parties entitled thereto the amount of such losses and damages as he, the said Secretary, shall find and determine have been sustained and suffered or are likely to be sustained and suffered by reason of having made such investments for said purposes or having produced surplus stocks of such materials; and that in each case he shall make such

determination, provision, settlement, advancement, or final payment, and by agreement with owners and claimants make such other adjustment or take such other action as he shall find and determine to be just, equitable, reasonable, and expedient; and that he make such provisions as he may deem necessary, advisable, and reasonable to prevent further losses pending final decision, settlement, and disposition in any case or cases; that the payments herein authorized be made to the claimant or claimants the said Secretary shall find to be morally, equitably, and justly entitled thereto; that in ascertaining and determining the losses and damages sustained or to be sustained, and the adjustments, settlements, payments, and provisions to be made the said Secretary shall consider the prices and conditions existing at the time of each investment and the prices and conditions existing prior to the war, as well as those existing at the time of such determination, adjustment, and settlement, together with all of the circumstances and conditions of each case; that the final determination, decision, provision, disposition, and action of said Secretary in each case shall be conclusive and final; that all payments shall be made and all expenses incurred by the Secretary paid from the funds and appropriations provided and appropriated by said act of October 5, 1918 (public, No. 220), and that said funds and appropriations shall continue to be available for said purposes until such time as the said Secretary shall have fully exercised the authority hereby granted and performed and completed the duties hereby provided and imposed: *Provided, however,* that said Secretary shall consider, approve, and dispose of only such claims as shall be made hereunder and filed with the Department of the Interior within three months from and after the approval of this act.

That a report of all operations under this section, including receipts and disbursements, shall be made to Congress on or before the first Monday in December of each year.

That nothing in this section shall be construed to confer jurisdiction upon any court to entertain a suit against the United States.

THE PRESIDING OFFICER. The question is on the adoption of the amendment offered by the Senator from Nevada to the amendment of the committee.

MR. SMOOT. Mr. President, I notice that this amendment authorizes the Secretary of the Interior—

To ascertain and determine the amount or amounts of money heretofore invested or contracted to be invested and obligations incurred by any and all persons and investors for producing or for the purpose of producing or preparing for producing or acquiring property for producing, within the United States, to supply the urgent, published, and evident needs of the Nation—

And so forth. I want to call the attention of the Senator from Nevada to the words "or acquiring property for producing." It seems to me that is going too far. I think that where a man has purchased a piece of property for producing these metals we should not authorize the Secretary of the Treasury to go into the question as to what he paid and whether he lost upon the purchase price of that property because of the fact that the war closed sooner than he anticipated. I believe that is going altogether too far. I will ask the Senator if it would not be very much better to strike out the words "or acquiring property for producing"?

MR. HENDERSON. I will consent to that, Mr. President.

MR. SMOOT. I offer that amendment to the amendment, on lines 6 and 7, of page 1, of the amendment.

MR. CURTIS. Mr. President, could not this amendment be printed and go over until to-morrow? Some of us have not had a chance to read it. It is a very long and very important amendment.

THE PRESIDING OFFICER. The Chair will state that the amendment has already been printed.

MR. CURTIS. Some of us have had no opportunity to read it; and, as I understood, the Senator this afternoon offered some additional amendments to the one that he offered yesterday. We have had no chance at all to read his perfected amendment offered this afternoon.

MR. CHAMBERLAIN. Mr. President—

THE PRESIDING OFFICER. Does the Senator from Kansas yield to the Senator from Oregon?

MR. CURTIS. Certainly.

MR. CHAMBERLAIN. I have tried to impress on the Members of the Senate the very great importance of the enactment of this measure, or some measure, for the relief of those that have been dealing innocently and patriotically with the Government of the United States.

MR. CURTIS. Mr. President, I want to state to the Senator that I have no desire to delay action on the bill reported by him. I think there should be early action upon it; but I do object to passing upon an amendment offered here in the afternoon which none of us have had a chance to read, and which, it seems to me, goes very, very far indeed, and is liable to constitute a very bad precedent on the part of the Senate.

MR. HENDERSON. If the Senator will yield just a moment, I wish to state that this amendment was proposed by me and printed on January 20 and is on the desks of all of the Senators.

MR. CURTIS. But the Senator offered amendments to it this afternoon.

MR. HENDERSON. No; it is absolutely in the form in which it was presented, with the exception of striking out two words.

MR. CURTIS. The Senator stood upon the floor this afternoon and announced that he wanted to perfect his amendment.

MR. HENDERSON. Yes. That was in order to introduce the same amendment that was printed on the 20th of November to the Chamberlain bill and the Hitchcock bill, so as to perfect them; to be sure that it would be considered under whichever bill passed the Senate. However, I have no objection to the amendment going over, so as to explain it to-morrow.

MR. CURTIS. Some of us have been very busy with committee meetings; and, as far as I am concerned, I have not had time to read the amendment offered by the Senator.

MR. HENDERSON. I have no objection to the amendment going over until to-morrow.

MR. CURTIS. If the members of the committee have read the amendment and are able to state to us what it contains, and what its effect will be, I am perfectly ready to vote upon it.

MR. CHAMBERLAIN. Mr. President, I will say to the Senator that in view of the feeling of some of the Senators about the matter, I am going at the proper time to move that the Senate take a recess until to-morrow at 12 o'clock.

MR. HITCHCOCK. Before the Senator makes that motion I ask for a reprint of the bill showing the committee amendment in italics and the amendments adopted thereto in the Committee of the Whole printed in small capitals. I ask that the bill be reprinted and ready for the use of the Senate to-morrow morning.

MR. CHAMBERLAIN. I join in that request.

THE PRESIDING OFFICER. That order will be made, without objection.

MR. FLETCHER. Mr. President, before any action is taken may I ask the Senator from Nebraska if he would be willing, on page 2, line 12 of his proposed substitute, in case that should be adopted, to change the word "signed" to the word "acted," so that it would read:

Not legally qualified or authorized to give a formal legal contract, except where such officer has acted as the representative of a superior officer—

Instead of "signed"?

MR. HITCHCOCK. Yes; I have no objection to that.

THE PRESIDING OFFICER (Mr. OVERMAN in the chair). Without objection, the amendment to the amendment is agreed to.

MR. MCKELLAR. Mr. President, on yesterday I asked to have inserted in the RECORD certain testimony taken from the evidence of Mr. Charles A. Rice. Only a portion of that testimony was inserted; and I ask unanimous consent to have the remainder of it inserted now as a part of my remarks.

THE PRESIDING OFFICER. Without objection, it will be so ordered.

MR. SMOOT. The Senator only wishes to have the additional testimony inserted?

MR. MCKELLAR. That is all; just the additional testimony. The matter referred to is as follows:

DYEING INDUSTRY.

The statement of Mr. Charles A. Rice is as follows:
STATEMENT OF MR. CHARLES A. RICE.

Senator MCKELLAR. Mr. Rice, what position do you occupy with the Government?

MR. RICE. I am chief of the cotton converting section of the cotton goods branch in the Quartermaster General's Office.

Senator MCKELLAR. How long have you been there?

MR. RICE. I came to Washington the latter part of February and started in the very last of February.

Senator MCKELLAR. Started in this present section?

MR. RICE. Yes, sir.

Senator MCKELLAR. Had you been connected with the Government before in any way?

MR. RICE. Not at all.

Senator MCKELLAR. What was your firm in New York?

MR. RICE. The firm of Myrick & Rice.

Senator MCKELLAR. Are you connected in any way with that firm now?

MR. RICE. Not at all, sir.

Senator MCKELLAR. Do you own any stock in it?

MR. RICE. No, sir; none whatever. In fact, it was a partnership—

it was not a stock company—acting as agents.

Senator MCKELLAR. And you have disposed of all agency you had with the firm?

MR. RICE. I have.

Senator MCKELLAR. Do you expect to go into it after the war?

MR. RICE. I can not say as to that. I mean, I have not any agreement to; none whatever with Mr. Myrick. In fact, that all depends.

MR. RICE. I can not say what I would do or will do after that—after the war is over.

Senator MCKELLAR. Have you done any business with that firm since you have been in the employ of the Government?

MR. RICE. I am doing business with concerns that they represent.

Senator MCKELLAR. With concerns that they represent. To what extent are you doing business with firms that they represent?

MR. RICE. Only to the extent that I consider that they are equipped to handle certain lines of work that have been needed; that is, along the lines of sulphur dyeing.

Senator MCKELLAR. Will you explain your method of contracting in the sulphur-dyeing industry?

MR. RICE. My personal plan when I took hold of it was to get a statement as to the equipment of all the finishers, and knowing what the equipment should be from the practical point of view I lined up

the contractors all over the country as to their equipment, as to wide machinery and narrow machinery and what character of machinery they had for dyeing of light and heavy goods, and then later I made a personal investigation, a personal inspection of these plants in connection with the inspectors, the chief inspectors of the depot quartermaster; and then I sent out lists asking quotations from all contractors whom I considered capable of handling this business, and apportioned out the material to the lowest bidders, considering, of course, their equipment and their organization, as to their being capable of handling this material, and apportioned out the business.

Senator MCKELLAR. Was it done on the competitive basis?

Mr. RICE. It is not; always.

Senator MCKELLAR. What methods do you pursue? Do you let it to the lowest bidder?

Mr. RICE. I do, provided I consider they are equipped properly and understand the handling of this particular kind of work.

Senator MCKELLAR. Can the dye operators of the country do all the Government work without any trouble?

Mr. RICE. Without any additional equipment.

Senator MCKELLAR. Is there sufficient now to do it?

Mr. RICE. I so consider. In fact, it has been so, and I believe it is so.

Senator MCKELLAR. Why would not the cheaper plan for the Government be to ask for sealed bids and give it to the lowest bidder who was responsible?

Mr. RICE. Of course. I do not know that I am correct on this, but my position is that I believe the dyeing and finishing business is somewhat different from advertising for a supply of boots and shoes, or even cotton goods. I know that the dyeing and finishing business especially, under present conditions and in such conditions as we have had during this war, is a business that has got to be very carefully handled; you have to consider the personnel and the equipment, as to whether these firms are able to handle bleaching or dyeing—on account of varying cotton materials and chemicals and dyestuffs and the various manufactures of chemicals and

Senator MCKELLAR. But, at the same time, Mr. Rice, the manufacturing concerns and the houses that you formerly represented as sales agent and broker are receiving many contracts under you.

Mr. RICE. No; but a very small amount.

Senator MCKELLAR. And the same thing is true of Mr. Bailey. I am talking to you in all frankness. Complaints have come in that you both came down here, as I believe, as dollar-a-year men, and that you were connected with these firms.

Mr. BAILEY. I did; Mr. Rice did also.

Senator MCKELLAR. Maybe not. Maybe he came in after any necessity for the dollar-a-year men in the Quartermaster Department.

Mr. BAILEY. Yes; I think so.

Senator MCKELLAR. But, anyway, it is claimed by your competitors, or men who have been your competitors, that by reason of your position you say which contractors shall get and which contractors shall not get a particular job. Just take the particular illustration that Mr. Rice made a while ago. He asked for quotations on the dyeing of kbaki cloth, and numerous bids were made at 4 cents, and the Sayles Co., I believe, put in a quotation of 4.75 cents; and Mr. Rice, after going over it, said that he would give it to Mr. Sayles, but he must put it at the 4 cents. Now, you can easily understand how every bidder who bid 4 cents feels that Mr. Rice ought never to have done that; that they were the cause of the Government getting it at 4 cents; and they ought to have had it at 4 cents.

Mr. DONALD. They had all they could handle without it.

Mr. RICE. They had all they wanted first.

Senator MCKELLAR. They do not feel so. They would not have put those figures in if they had not felt that they could do it, and they feel that they are just as competent to know what they can do as you gentleman here in Washington; and they do not feel as if they had had a square deal about it; and one of them said to me that at the very time you gave this contract to the Sayles Co., the Sayles Co. was filled up, and really was delayed in the getting out of these goods, whereas they were open and able to deliver to the Government quicker.

Mr. RICE. No.

Senator MCKELLAR. Now, those are the practical questions that confront you gentlemen here this morning. We want to be absolutely fair, now, and we want to protect the Government and we want to be fair to everybody alike. My opinion is that a system ought to be instituted that will be fair, and such that no man can say that the Government's agents are not treating him fairly. Now, we must make it so that no man can say that, and that is what the Navy has done. We ought to follow the Navy's lead in the proposition.

Mr. RICE. I think you will always have that, Senator.

Senator MCKELLAR. Who is the Southbridge Printing Co.?

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

Senator MCKELLAR. Who owns it?

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

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

Mr. RICE. He is a brother of mine.

Senator MCKELLAR. He is still interested in it?

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

Senator MCKELLAR. What amount of stock does he own?

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

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

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

Senator MCKELLAR. How much is it capitalized at?

Mr. RICE. \$135,000.

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

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

Senator MCKELLAR. I would be glad to have it.

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

Senator MCKELLAR. 3,000,000 yards?

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

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

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

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

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

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

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

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

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

Senator MCKELLAR. What is the capital of that company?

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

Senator MCKELLAR. And what was your interest in that?

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

Senator MCKELLAR. And you transferred that to your wife?

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

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

Mr. RICE. Yes, sir.

Senator MCKELLAR. How much have you allotted to them?

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

Senator MCKELLAR. Have those contracts been filled?

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

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

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

Senator MCKELLAR. Your partnership was with Mr. Myrick?

Mr. RICE. Mr. Myrick.

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

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

Senator MCKELLAR. Who are the owners of that firm?

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

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

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

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

Mr. RICE. Last March; yes.

Senator MCKELLAR. At whose instance did you come?

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

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

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

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

Mr. RICE. I could not say.

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

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

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

Mr. DONALD. Only a very few, Senator.

Senator MCKELLAR. That is neither here nor there. It does not make any difference.

Mr. DONALD. Of his firm, Lockwood Green was agent for three or four or five cotton mills.

Mr. BAILEY. Yes.

Senator MCKELLAR. Now, what dyeing concerns among those you have here were represented by Myrick & Rice?

Mr. RICE. On the commercial business only, the Martin Dyeing & Finishing Co. We never had anything to do with Government business.

Senator MCKELLAR. The Martin Dyeing & Finishing Co. at Bridgeton?

Mr. RICE. Yes. The Government business was entirely handled by Mr. Fred S. Bennett.

Senator MCKELLAR. Where is he?

Mr. RICE. In New York City.

Senator MCKELLAR. He represents the Martin Dyeing & Finishing Co.?

Mr. RICE. He is the representative of the Martin company on Government business only.

Senator MCKELLAR. He never has been connected with the Government in any way?

Mr. RICE. No; not to my knowledge.

Mr. BAILEY. Never.

Senator MCKELLAR. Was he ever here in Washington?

Mr. BAILEY. Not in any official capacity.

Senator MCKELLAR. Did he work here for the Government at all.

Mr. BAILEY. No, sir.

Senator MCKELLAR. In an unofficial capacity?

Mr. BAILEY. Oh, no, sir. He was an original member of the cotton-

goods committee of the Council of National Defense.

Senator MCKELLAR. That is, of the old Council of National Defense?

Mr. BAILEY. Yes.

Senator MCKELLAR. How long did he serve with that committee?

Mr. BAILEY. He served from April until June. I am speaking from

recollection. He resigned very early from that.

Senator MCKELLAR. So that he was connected with this cotton-goods

committee of the Council of National Defense, which had in charge these things?

Mr. BAILEY. He was on the cotton-goods committee of the committee

on supply, the subsidiary committee representing the industry.

Senator MCKELLAR. Were there any other firms that your firm represented, Mr. Rice, besides the Martin Dyeing & Finishing Co.?

Mr. RICE. Yes; the Mansfield Bleachery.

Senator MCKELLAR. At Mansfield, Mass.?

Mr. RICE. At Mansfield, Mass.

Senator MCKELLAR. Any others?

Mr. RICE. The Southbridge Printing Co.; the Fiskdale Finishing Co.; the Slatersville Finishing Co., at Slatersville, R. I.; the Edgewater Dye-

ing & Finishing Co., of Philadelphia.

Senator MCKELLAR. The Martin, the Mansfield, the Southbridge, the Slatersville; and were there any others?

Mr. RICE. The Edgewater. I believe there were eight.

Senator MCKELLAR. You have named six of them. Have all these concerns gotten contracts from the Government?

Mr. RICE. No, sir.

Senator MCKELLAR. Which ones have not?

Mr. RICE. The Martin Co.

Senator MCKELLAR. The Martin Co. has not?

Mr. RICE. The Martin Co. has had contracts.

Senator MCKELLAR. All right, sir.

Mr. RICE. The Edgewater has had contracts; the Southbridge and the Fiskdale have had contracts.

Senator MCKELLAR. And the Mansfield?

Mr. RICE. They had one or two contracts in the spring.

Senator MCKELLAR. The Slatersville?

Mr. RICE. Only one or two, recently. We have been giving them some recently.

Mr. CHAMBERLAIN. I move that the Senate take a recess until 12 o'clock noon to-morrow.

Mr. FRELINGHUYSEN. Mr. President, before the recess is taken I think we should point out to the Senator from Nevada that the amendment which he proposes to this bill undoubtedly will delay the bill in conference. This is one of the most important bills which has come before the Senate. It involves the settlement of nearly \$2,000,000,000 worth of contracts. This legislation should have been passed two months ago; and I do hope the Senator will not press that amendment on this bill when the time comes.

RECESS.

Mr. CHAMBERLAIN. I renew my motion for a recess until 12 o'clock noon to-morrow.

The motion was agreed to; and (at 4 o'clock and 50 minutes p. m.) the Senate took a recess until to-morrow, Wednesday, January 29, 1919, at 12 o'clock meridian.

HOUSE OF REPRESENTATIVES.

TUESDAY, January 28, 1919.

The House met at 11 o'clock a. m.

The Chaplain, Rev. Henry N. Couden, D. D., offered the following prayer:

Lead us, O Lord God, our Heavenly Father, by Thy counsels through the remaining congressional hours of this day.

Give to these Representatives of our people clear minds, conscientious scruples, high ideals, that they may hallow Thy name in all the legislative acts they may record in history. In the spirit of the Lord Jesus Christ. Amen.

The Journal of the proceedings of yesterday was read and approved.

MESSAGE FROM THE SENATE.

A message from the Senate, by Mr. Waldorf, its enrolling clerk, announced that the Senate had passed bill of the following title, in which the concurrence of the House of Representatives was requested:

S. 4887. An act making an appropriation for a sewer system at the Carson Indian School at Stewart, Nev.

The message also announced that the Senate had agreed to the amendments of the House of Representatives to the bill (S. 2784) to authorize the purchase by the city of McMinnville, Oreg., of certain lands formerly embraced in the grant to the Oregon & California Railroad Co. and vested in the United States by the act approved June 9, 1916.

The message also announced that the Senate had passed the following resolutions:

Senate resolution 430.

Resolved, That the Senate has heard with profound sorrow the announcement of the death of the Hon. EDWARD EVERETT ROBBINS, late a Representative from the State of Pennsylvania.

Resolved, That a committee of seven Senators be appointed by the Vice President to join the committee appointed on the part of the House of Representatives to attend the funeral of the deceased.

Resolved, That the Secretary communicate a copy of these resolutions to the House of Representatives.

Resolved, That as a further mark of respect to the memory of the deceased the Senate do now adjourn.

And that the Vice President, under the second resolution, had appointed Mr. PENROSE, Mr. KING, Mr. OVERMAN, Mr. WARREN, Mr. BAIRD, Mr. THOMPSON, and Mr. KNOX as said committee on the part of the Senate.

Also the following resolution:

Senate resolution 422.

Resolved, That the Senate expresses its profound sorrow in the death of Hon. ROBERT F. BROUSSARD, late a Senator from the State of Louisiana.

Resolved, That as a mark of respect to the memory of the deceased the Senate, in pursuance of an order heretofore made, assemble to enable his associates to pay proper tribute to his high character and distinguished public services.

Resolved, That the Secretary communicate these resolutions to the House of Representatives, and transmit a copy thereof to the family of the deceased.

Resolved, That as a further mark of respect to the memory of the deceased the Senate do now adjourn.

Also the following resolution:

Senate resolution 423.

Resolved, That the Senate expresses its profound sorrow in the death of Hon. WILLIAM HUGHES, late a Senator from the State of New Jersey.

Resolved, That as a mark of respect to the memory of the deceased the Senate, in pursuance of an order heretofore made, assemble to enable his associates to pay proper tribute to his high character and distinguished public services.

Resolved, That the Secretary communicate these resolutions to the House of Representatives and transmit a copy thereof to the family of the deceased.

Resolved, That as a further mark of respect to the memory of the deceased the Senate do now adjourn.

SENATE BILL REFERRED.

Under clause 2 of Rule XXIV, Senate bill of the following title was taken from the Speaker's table and referred to its appropriate committee, as indicated below:

S. 4887. An act making an appropriation for a sewer system at the Carson Indian School at Stewart, Nev.; to the Committee on Indian Affairs.

THE RAILROADS.

Mr. GARNER. Mr. Speaker, I want to insert in the RECORD some resolutions passed by the State Senate of Texas touching the railroad question.

The SPEAKER. Is there objection?

Mr. DENISON. Reserving the right to object, Mr. Speaker, will the gentleman state what is the nature of the resolutions?

Mr. GARNER. They express the opinion that the railroads ought to be turned back to the owners of them. If the gentleman wants to know the substance of it, that is what it is.

The SPEAKER. Is there objection?

There was no objection.

Following are the resolutions referred to:

Whereas postwar and reconstruction conditions have brought these United States of America many problems of great import, and perhaps the one of greatest importance is the question of Government ownership of the railways of the United States; and

Whereas our great democratic President, in whose wisdom we have every reason to confide, in his address to Congress on December 2, said:

"The question which causes me the greatest concern is the question of the policy to be adopted toward the railroads. I frankly turn to your counsel upon it"; and after making other illuminating statements on this subject, further says, "Let me say at once that I have no answer ready. The only thing that is perfectly clear to me is that it is not fair either to the public or to the owners of the railroads to leave the question unanswered and that it will presently become my duty to relinquish control of the roads, even before the expiration of the statutory period, unless there shall appear some clear prospect in the meantime of a legislative solution. Their release would at least produce one element of its solution, namely, certainty and a quick stimulation of private initiative"; and

Whereas in wisdom, so characteristic of the man, our President has turned to Congress for counsel on this momentous subject, in his keen sense of justice endeavoring to deal fairly with the owners of the railroads and protectively to the public welfare; and

Whereas we feel that the Congress of the United States will, by being informed of public sentiment, be better able to solve and direct the course of the problem, and recognizing the necessity, as expressed in the President's address, of relinquishing control of the railroads as quickly as possible and the certainty of conditions that said release of the railroads by the Federal Government would immediately establish; therefore, be it

Resolved by the Senate of this the Thirty-sixth Legislature of the State of Texas, That we favor the return of the railroads to their owners as immediately as it can be accomplished without confusion or losses; be it further

Resolved, That we believe and think private ownership under strong Government control and regulation in service, income, and disbursements is desirable, and we do not believe Federal Government ownership of railroads is for the best interests of the people at this time; be it further

Resolved, That the secretary of the senate forward properly authenticated copies of this resolution to each United States Senator and Member of Congress from Texas for their consideration, and a copy to the chief clerks of the house of representatives and the senate of each State.

EXTENSION OF REMARKS.

Mr. MONTAGUE. Mr. Speaker, I ask unanimous consent to extend my remarks in the RECORD by printing the letter of Chief Justice Taney, under date of February 16, 1863, known as his remonstrance against the imposition of an income tax upon judicial salaries, and also the opinion of Attorney General Hoar in relation to the same. I do this for the benefit of the conferees of the House and the few lurking lovers of the Constitution throughout the country.

The SPEAKER. Is there objection?

There was no objection.

ADMINISTRATION OF THE OVERMAN ACT.

Mr. GOULD rose.

The SPEAKER. For what purpose does the gentleman from New York rise?

Mr. GOULD. I rise to make a privileged motion, Mr. Speaker. I move to discharge the Committee on the Judiciary from further consideration of House resolution 481.

Mr. GARNER. Mr. Speaker, is the gentleman recognized for that purpose?